

CANADA / JUDGMENT

S.L.K. v. A.B.

2025 BCSC 2617

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Supreme Court of British Columbia

DECIDED

18 December 2025

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2025 BCSC 2617 S.L.K. v. A.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.L.K. v. A.B.,

2025 BCSC 2617

Date: 20251218

Docket: S255888

Registry: Vancouver

Between:

S.L.K.

Plaintiff

And

A.B., Vancouver Minor Hockey Association,

Pacific Coast Amateur Hockey Association and Hockey Canada

Defendants

Restriction on publication: A publication order has been imposed by an order of this Court restricting the publication, broadcast or transmission in any way of information or evidence that could identify the plaintiff referred to in these proceedings by the initials S.L.K. This publication ban applies indefinitely unless otherwise ordered.

Restriction on publication: A publication ban has been imposed by an order of this Court restricting the publication, broadcast or transmission in any way of information or evidence that could identify the defendant referred to in these proceedings as "A.B." This publication ban applies until the commencement of trial.

SEALED FILE (IN PART)

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

S.L. Kovacs

K. Rogers, Articling Student

Counsel for the Defendant, A.B.:

C.W. Ehman

R.J. Robb

Place and Date of Hearing:

Vancouver, B.C.

December 8, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 18, 2025

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Introduction

- [1] THE COURT: In this civil case, S.L.K. accuses the personal defendant of a series of sexual assaults over five years in the 1990s, beginning when S.L.K. was 16 and the personal defendant was his hockey coach.
- [2] In this application, the personal defendant seeks anonymizing of his name in all documents filed in the case, at least until trial, and associated orders.
- [3] The personal defendant denies the allegations of assault. His evidence is that he has no history of any such allegations. The case is causing him depression and anxiety for which he is taking medication, problems with his weight and sleep, and stomach pain which he fears is an ulcer. The case is beginning to attract media attention, and he fears losing his job. There is a temporary order in place restraining his identification pending the decision on this application.
- [4] S.L.K. argues that the open-court principle should not be constrained by concern for embarrassment or distress from allegations of moral turpitude, and that the public can be expected to understand that, until trial, the allegations against the personal defendant are no more than untested assertions. S.L.K. himself gives important evidence, to which I will come in a moment, about the effect on him of the orders sought by the personal defendant.
- [5] In my view, in the circumstances of this case, the reasoning in *A Lawyer v. The Law Society of British Columbia*, 2021 BCCA 284, applies. The allegations in issue bear so seriously on the personal defendant's dignity, reputation, and well-being that they override the strong presumption in favour of the open-court principle, at least to the extent of anonymizing the personal defendant's identity pending trial.
- [6] I therefore grant the orders sought by the personal defendant.

Background

- [7] S.L.K. filed his claim in August 2025. Orders have been made anonymizing the plaintiff and protecting his identification.
- [8] S.L.K. is now in his late forties. He is a member of the -- and I apologize, I do not know how to pronounce the name of the First Nation -- Dzawada'enuxw First Nation (Kwakiutl). His affidavit describes allegations of sexual grooming, abuse, silencing, and terrible long-term consequences even 30 years later.
- [9] His affidavit includes this in opposition to the personal defendant's application:

13. For 30 years, I have been afraid that if I came forward, I would not be believed. If [A.B.] is permitted anonymity until trial, my fear of not being believed is effectively realized, because such an order is based on the assumption that my claim is a falsehood and a fraud. If I feel silenced again, and if [A.B.] is protected by a powerful justice system, this will impact my mental health and my ability to maintain sobriety.
15. [A.B.] tried to threaten me into secrecy. It has taken me 30 years to break my silence, gain insight into the harm that [A.B.] caused me, and to feel psychologically well enough to bring this lawsuit. I urge the court to consider that if [A.B.] gets to hide his name, it will feel as though he is exploiting and abusing me all over again.
- [10] S.L.K. alleges that, from 1993-1998, while he was between the ages of 16 and 18, he was subject to this sexual abuse by the personal defendant who was his hockey coach.
- [11] The personal defendant is now in his sixties and is a general manager of a business in the [redacted] industry. As mentioned, he denies the allegations. His evidence is that, at all times, he conducted himself appropriately as a coach and mentor and friend to S.L.K. He is unaware of ever being the subject of a complaint by S.L.K. or others in relation to any type of sexual misconduct. He has never been charged criminally in relation to this or any other matter or disciplined by any organization.
- [12] The personal defendant has been advised by the defendant Vancouver Minor Hockey Association that his status as a lifetime member is suspended, as is his involvement in the association, pending the outcome of this case.
- [13] S.L.K. submitted a lengthy affidavit from Dr. Julie Macfarlane, an emeritus professor law from the University of Windsor. It focuses on the negative effects of non-disclosure agreements, including silencing for survivors of sexual assault, and similar effects from the hiding of the identity of the perpetrators. She says this about the silencing and chilling effect of the orders sought in this application:

The order sought in this case would indirectly have the same effect as a contractual non-disclosure agreement: it would prohibit the plaintiff from revealing the identity of the defendant or what they allegedly did. It is especially problematic if the claim is settled short of trial, and the interim publication ban endures, forever silencing the complainant.

It is my observation, based on my experience with sexual violence complainants subject to NDAs, that publication bans protecting alleged perpetrators of sexual violence carry a significant risk of creating a chilling effect reinforcing power imbalance and discouraging survivors from accessing justice. Moreover, for those plaintiffs who have been pressured to sign an NDA during earlier settlement negotiations, this would be the second time that they had faced an effort to hide the name of the alleged perpetrator. The possibility of achieving anonymity for the defendant in a civil trial may discourage complainants from proceeding. This is in addition to the already acknowledged obstacles that already exist to making such a claim, including public shame and stigma, intimidation and fear of court processes, and the stress of being engaged in this type of

litigation.

Governing Law

- [14] The leading case on assessing limits on the open-court principle is, of course, *Sherman Estate v. Donovan*, 2021 SCC 25.
- [15] The open-court principle serves the constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy. In doing so, it necessarily infringes on personal privacy.
- [16] Pleadings, like other parts of court proceedings, can be a source of discomfort and embarrassment, but these intrusions on privacy are generally seen as of insufficient importance to overcome the presumption of openness.
- [17] Important public interests can override court openness, but only sparingly in light of the strong presumption that justice should proceed in public view: *Sherman Estate*, paras. 30, 33, 58.
- [18] In *R. v. B.L.*, 2024 BCCA 108, the Court of Appeal said this about the framework for anonymization and sealing orders:
- [52] Both of the orders sought by B.L. limit the openness of court proceedings. The anonymization order will prevent publication of his full name. The sealing order will prevent the public, including members of the media, from accessing affidavits (and related applications material) in the appeal record.
- [53] There is a three-pronged test that governs an application for these types of orders. The test is set out in *Sherman Estate v. Donovan*, 2021 SCC 25:
- [3] Where a discretionary court order limiting constitutionally-protected openness is sought -- for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order -- the applicant must demonstrate, as a threshold requirement, that openness presents a serious risk to a competing interest of public importance. That this requirement is considered a high bar serves to maintain the strong presumption of open courts. Moreover, the protection of open courts does not stop there. The applicant must still show that the order is necessary to prevent the risk and that, as a matter of proportionality, the benefits of that order restricting openness outweigh its negative effects.
- [38] The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order. Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption 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.

Only where all three of these prerequisites have been met can a discretionary limit on openness -- for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order -- properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments

[Emphasis added in B.L.; internal references omitted.]

- [54] There is no closed category of "competing interests" that may appropriately constitute an "important public interest" for the purpose of *Sherman Estate*. However, as explained by Justice Kasirer, writing for a unanimous Court:
- [42] courts must be "cautious" and "alive to the fundamental importance of the open court rule" even at the earliest stage when they are identifying important public interests. Determining what is 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. By contrast, whether that interest is at "serious risk" is a fact-based finding that, for the judge considering the appropriateness of an order, is necessarily made in context. In this sense, the identification of, on the one hand, an important interest and, on the other, the seriousness of the risk to that interest are, theoretically at least, separate and qualitatively distinct operations. An order may therefore be refused simply because a valid important public interest is not at serious risk on the facts of a given case or, conversely, that the identified interests, regardless of whether they are at serious risk, do not have the requisite important public character as a matter of general principle.

[Internal references omitted.]

- [55] The party that applies for an anonymization or sealing order bears the onus of justifying the order. As explained in *Mother 1 v. Solus Trust Company Limited*, 2021 BCCA 461:
- [70] The risk said to necessitate a limiting order must be a "real and substantial risk." It must also be "well-grounded" in evidence: *R. v. Mentuck*, 2001 SCC 76 at paras. 34. The party that seeks to keep information from public access bears the burden of displacing the open court principle: *Mentuck* at para. 38. In *Sherman Estate*, the Court reiterated that applicants for a restrictive order cannot rely on "unsubstantiated claim[s]" (at para. 35). Instead, they must show that a real and substantial risk exists based on the facts of the case. They must also show that the risk cannot be adequately addressed without an order.

[Emphasis added in B.L.]

- [19] The personal defendant relies on A Lawyer for the principle that disclosure of unproven allegations that may cause irreparable reputational harm can garner protection under the first prong of Sherman Estate. The case involved an LSBC investigation into a lawyer's practice which involved his reputation and that of his firm. The Court granted sealing and anonymization orders during the investigation stage, subject to change as the case developed. It said:
- [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.
- [74] It is not enough that the information disseminated is a "source of discomfort": Sherman Estates at para. 56. It must "strike at the core identity of the affected persons": Sherman Estates at para. 36. As well, the Court in Sherman Estates cautions against too broad a recognition of a public interest in privacy: at para. 57.
- [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? The Court in Sherman Estate noted:
- [42] While there is no closed list of important public interests for the purposes of this test, I share Iacobucci J.'s sense, explained in *Sierra Club*, that courts must be "cautious" and "alive to the fundamental importance of the open court rule" even at the earliest stage when they are identifying important public interests (para. 56). Determining what is 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 (para. 55). By contrast, whether that interest is at "serious risk" is a fact-based finding that, for the judge considering the appropriateness of an order, is necessarily made in context. In this sense, the identification of, on the one hand, an important interest and, on the other, the seriousness of the risk to that interest are, theoretically at least, separate and qualitatively distinct operations. An order may therefore be refused simply because a valid important public interest is not at serious risk on the facts of a given case or, conversely, that the identified interests, regardless of whether they are at serious risk, do not have the requisite important public character as a matter of general principle.

- [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.
- [20] In *A.B. v. C.D.*, 2022 BCSC 2145, this court granted the same type of order sought here to a defendant accused of sexual assault by a woman when she was between 10 and 15 years old. The court quoted from *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, para. 120, that the:
- good reputation of the individual represents and reflects the innate dignity of the individual, a concept which underlies all the Charter rights. It follows that the protection of the good reputation of an individual is of fundamental importance to our democratic society.
- [21] In granting the order, the court said:
- [25] In sum, I find that without anonymizing the defendant's name, there is a significant risk that the plaintiff's name would become known before trial (or a further court order).
- [26] Further, I am also satisfied that the defendant's reputation "implicates an important public interest". In a manner similar to that in *A Lawyer*, the three Sherman criteria are also met. Revealing the defendant's name at this time would affect his livelihood and future advancement within the medical profession. It would also affect his "innate dignity".
- [27] I add that, at this stage, the defendant is an "innocent" as Chief Justice Esson described in *A. v. C.*, [1994] 6 W.W.R. 183 at paras. 33-35, 1994 CanLII 10978 (B.C.S.C).
- [28] I realize that in criminal cases a complainant's identity is often subject to a publication ban but the accused's name is disclosed. However, in criminal proceedings, before a person is charged with an offence the charge must first receive the approval of Crown counsel.
- [22] In *A.B. v. X.Y. Training Inc.*, 2024 BCPC 243, the court said this about the importance of not identifying someone accused of sexual misconduct when the claim is as yet unproven:

- [28] Using the framework above then, it strikes me that, just as there could be harm in publicly identifying the victim of sexual battery, there could also be harm in publicly accusing someone of sexual misconduct when the claim is false. Recall that the court may take judicial notice of any "notorious and undisputed facts". I think the court here can equally take notice that a false allegation of sexual misconduct could be ruinous to a professional's reputation and economic interests. This is so especially where the business is one that relies heavily, if not primarily, on the goodwill of female patients and clients. In today's climate with the prevalence of social media, I do not think it disputable that a professional and/or a business such as that of the Defendants' can be destroyed in a matter of moments. Moreover, unlike some of the cases cited above, there has been no parallel criminal proceedings where the defendant has already been named, or even convicted. Here, to my knowledge, there has been no criminal proceedings or even investigation.
- [29] For the above reasons, I am inclined to accede to the Defendants' request for anonymization as well. Additionally, two other factors militate in favour of anonymizing the Defendants. Firstly, in a civil case, a claimant chooses to sue; a defendant does not choose to be sued. As such, while a claimant can weigh the cost/benefit of seeking compensation versus the risk of being publicly identified, a defendant does not have that option. Secondly, the court has some residual concerns that, on the facts before me, granting an anonymization order for the Claimant but not the Defendants implies, however subtly, indirectly, or unintentionally, that the Claimant's version of events is more likely to be true. Any appearance or perception of that bias must be avoided. Above all, the justice system must be seen to be impartial.
- [23] In *Randhawa v. Boegman*, 2025 BCSC 1134, the court found an important public interest in protecting the reputational interest of individuals, by not being publicly identified in connection with unproven allegations of improper voting in a provincial election.
- [24] S.L.K.'s counsel acknowledges these cases run contrary to her position on this application. She points to cases from outside BC taking a different approach. In *F.K. v Shakibaian*, 2024 ONSC 4250, where the plaintiff sued the defendant for taking intimate photos of her allegedly without her consent, the defendant argued that making the allegations public would harm his employment and role in minor hockey. Following a decision of the Newfoundland Supreme Court in *Jane Doe (#24) v. Newfoundland and Labrador*, 2022 NLSC 158, the court held the defendant failed to identify a serious risk to an important public interest. Instead, the interests he identified were personal in nature and did not give rise to a serious risk to personal dignity, and the presumption of innocence is not designed to protect an accused from the publication of embarrassing personal information.
- [25] The second case is *Picture Butte Feeder Cooperative (Re)*, 2025 ABKB 162, which relied on *F.K.* and *Jane Doe (#24)* in preference to *A Lawyer*. The court denied anonymity to two individuals regarding how they were portrayed in a regulator's report about an Alberta cooperative that was applying to place itself into receivership. The court said:

- [36] In my reading of Sherman Estate, reputational concerns due to untested allegations are more in the nature of "individual sensibilities and personal discomfort" resulting from court openness or the "fact that openness is disadvantageous, embarrassing or distressing to certain individuals" and therefore insufficient to constitute an important public interest in this analysis. Such allegations, if revealed, do not in my view breach the "biographical core" of the person.
- [37] Were it not so, every businessperson, professional, person who claims standing in the community or claims to occupy a position of trust could claim entitlement to a Sealing Order over every criminal indictment relating to an allegation involving moral turpitude against that person, on the basis of "protection of the innocent". Similarly, every such person accused of an act of moral turpitude in a statement of claim or an affidavit filed in a civil matter could similarly ask for a Sealing Order. Such a broadening would undermine the very purpose of court openness. This is another reason I would not adopt the approach in A Lawyer.
- [40] I conclude that "protection of the innocent" as posed by the two individuals, based on the current case law and the circumstances of this case, does not constitute an "important public interest" within the meaning of Sherman Estate.

Analysis

- [26] I agree with the personal defendant that refusing the orders sought poses a serious risk to an important public interest. That interest is the protection of the reputation, dignity, and well-being of a defendant in the circumstances of the exceptionally damning allegations in this case, and where his evidence is: (a) of no history of such allegations against him; and (b) the severe effects of the allegations and the threat of identification on his mental and physical health.
- [27] I agree with the personal defendant that the orders sought are necessary to prevent these consequences. As mentioned, there is media interest in the case.
- [28] In my view, this determination is supported by the BC cases described above. I agree with the statements in those cases about the distinction between a civil defendant and a criminal accused whereby, in the latter situation, the Crown has vetted the accusations and found a reasonable possibility of conviction.
- [29] I disagree with S.L.K.'s submission that, in the context of allegations of sexual abuse of an adolescent in one's care, these consequences can be avoided by a denial of the accusations. That is not the approach taken in the BC case law.
- [30] Finally, I come to the most difficult aspect of this decision, balancing the benefits and drawbacks of the orders sought. Although non-disclosure of a party's identity is often seen as a minimal limit on the open-court principle, that does not apply in this case given S.L.K.'s evidence of his perception of the order sought and its anticipated effects upon him.

- [31] I can only ask for S.L.K.'s understanding that, before trial, the court must be even-handed as between plaintiffs and defendants. Such even-handedness has nothing to do with any form of disbelief of either side, which Ms. Kovacs explained can be a plaintiff's perception of such orders in these circumstances. To the contrary, it represents the court's effort to be as fair as possible to both parties until the assessment of the merits of the case.
- [32] With all due respect to the important evidence S.L.K. has given in opposing this application, both from himself and Dr. Macfarlane, in my view, anonymization and protection of the personal defendant's identity strikes the right balance in extremely difficult circumstances.
- [33] It balances the open-court principle and S.L.K.'s right not to be silenced with the public interest associated with the reputation, dignity, and well-being of a defendant in the face of these allegations. It does not silence S.L.K.'s allegations or shield any of the court proceedings or process from public view. Further, the protection of the personal defendant's identity is sought only until the first day of trial.
- [34] An additional important consideration is the protection of public safety. The personal defendant has been suspended from coaching hockey pending the outcome of the case. In my view, there should be an additional order, and I make this order, that until trial the personal defendant not participate in any youth organization role or event without an authorizing order of the court.
- [35] With that protection in place, I do not see anonymization or protection of identity as posing a threat to public safety pending trial.

Conclusion

- [36] I make that order regarding youth organization roles or events, and I will also sign the personal defendant's proposed orders anonymizing his identity or anonymizing his name in the case, prohibiting publication of any information that would tend to identify him, and sealing the court records which do identify him.

[OTHER MATTERS SPOKEN TO]

- [37] THE COURT: All right, counsel, thank you very much. I will sign the orders Yes, all right, thank you very much, we will adjourn there.

"Coval J."

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Prepared on 26 October 2026 · Esheria