Unofficial Translation of the Judgment of the Court

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| A.B. c. Robillard | | | | | 2022 QCCA 959 |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | | MONTREAL | | |
| No.: | 500-09-700042-211 | | | | |
| (500-17-117012-214) | | | | | |
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| DATE: | September 1, 2022 | | | | |
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| CORAM: | | THE HONOURABLE | | FRANÇOIS PELLETIER, J.A.  MARTIN VAUCLAIR, J.A.  SOPHIE LAVALLÉE, J.A. | |
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| A.B.  FONDATION A.B. | | | | | |
| APPELLANTS – plaintiffs | | | | | |
| v. | | | | | |
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| JEAN-FRANÇOIS ROBILLARD  DIS SON NOM  DELPHINE BERGERON  A.A. | | | | | |
| RESPONDENTS – defendants | | | | | |
| and | | | | | |
| SOCIÉTÉ RADIO-CANADA  LE DEVOIR | | | | | |
| RESPONDENTS – interveners | | | | | |
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| CORRECTION  (of the judgment rendered August 31, 2022) | | | | | |
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1. A clerical error was unfortunately made in the judgment rendered on August 31, 2022. Specifically, the publication and dissemination ban issued on October 1, 2021, by the Honourable Justice Stéphane Sansfaçon was reproduced in the judgment.

**FOR THESE REASONS, THE COURT:**

1. **CORRECTS** the judgment rendered on August 31, 2022, by deleting the warning contained therein.

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|  | | FRANÇOIS PELLETIER, J.A. |
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|  | | MARTIN VAUCLAIR, J.A. |
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|  | | SOPHIE LAVALLÉE, J.A. |
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| Mtre Josée Therrien | | |
| VERREAU DUFRESNE AVOCATS | | |
| For the appellants | | |
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| Mtre Justin Wee  Mtre Imane Melab | | |
| ARSENAULT DUFRESNE WEE AVOCATS | | |
| For Jean-François Robillard, Dis son nom, Delphine Bergeron, and A.A. | | |
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| Mtre Christian Leblanc  Mtre Patricia Hénault | | |
| FASKEN MARTINEAU DUMOULIN | | |
| For Société Radio-Canada and Le Devoir | | |
|  | | |
| Date of hearing: | April 1, 2022 | |

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| […]  A.B.  FONDATION A.B. | | | | | |
| APPELLANTS – plaintiffs | | | | | |
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| JEAN-FRANÇOIS ROBILLARD  DIS SON NOM  DELPHINE BERGERON  A.A. | | | | | |
| RESPONDENTS – defendants | | | | | |
| and | | | | | |
| SOCIÉTÉ RADIO-CANADA  LE DEVOIR | | | | | |
| RESPONDENTS – interveners | | | | | |
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| RECTIFIED JUDGMENT  (September 1, 2022) | | | | | |
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1. The appellant A.B. appeals from a judgment rendered in the course of proceedings by the Honourable Justice Sylvain Lussier of the Superior Court, District of Montreal, on June 16, 2021, denying his application to depersonalize the proceedings and his application for a publication and dissemination ban.

For the reasons of Lavallée, J.A., with which Pelletier and Vauclair JJ.A. agree, **THE COURT:**

1. **DISMISSES** the appeal, with legal costs.

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|  | | FRANÇOIS PELLETIER, J.A. |
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|  | | |
| Date of hearing: | April 1, 2022 | |

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| REASONS OF HOGUE, J.A. |
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1. Having discovered that his name was on a list published on Facebook by “Dis son nom” and on the personal web page of Jean-François Robillard (“Robillard”) tying him to a sexual assault, A.B. commenced defamation proceedings against “Dis son nom” and Robillard in conjunction with Fondation A.B., of which he is president and director.
2. The Honourable Justice Sylvain Lussier of the Superior Court rendered a judgment in the course of the proceedings, denying their application for the depersonalization of the proceedings (including all exhibits and testimony) and their application to prohibit their disclosure and dissemination, but allowing them to elect domicile at their lawyers’ office.[[1]](#footnote-1)
3. The appellants appeal from that decision, in which Lussier, J. found that there was no need to depart from the presumption in favour of open court proceedings to allow the plaintiffs to sue the respondents anonymously.
4. The relatively straightforward facts of this case are uncontested. The dispute is about how a three-step test, laid down by new case law and discussed further below, is to be applied.

**I. Background**

1. A.B. purports to be a well-known cultural figure in Quebec; he is an actor, public speaker, commentator, writer, and director, and is president and director of Fondation A.B.,[[2]](#footnote-2) a foundation that bears his name.
2. In the summer of 2020, A.B. learned that his name was on a list of alleged assailants published on the “Dis son nom” Facebook page.[[3]](#footnote-3)
3. In response to a first formal notice to cease and desist, “Dis son nom” deleted the listing concerning A.B.
4. On May 7, 2021, the respondent Robillard published a message about A.B. on his personal web page, complaining about the legal proceedings he had commenced, and claiming their purpose was to silence and intimidate him. Robillard added:

[TRANSLATION]

In closing …, know that if you sue me, your case becomes public, so I wouldn’t be the one damaging your reputation. In seeking to defend your reputation, you run the major risk of bringing to light what you were trying so hard to hide with your cease‑and-desist letter. Silence is no longer an option!

1. A.B. says that when he saw this message, he felt cornered.[[4]](#footnote-4)
2. On May 20, 2021, A.B.’s name reappeared on the list published on Facebook by “Dis son nom.”[[5]](#footnote-5)
3. On May 28, 2021, A.B. sent the respondents a new cease-and-desist notice.[[6]](#footnote-6)
4. On June 2 and June 3, 2021, A.B. and Fondation A.B. filed an application to institute defamation proceedings against the respondents, and applications to preserve their anonymity. Specifically, they sought to elect domicile at their lawyer’s office, to have the pleadings depersonalized, and to have the disclosure and dissemination of the pleadings, exhibits, and testimony prohibited.
5. On June 16, 2021, Lussier, J., rendered the judgment under appeal, denying all the applications except the one respecting election of domicile.
6. After analyzing the steps of the test articulated in *Sherman*,[[7]](#footnote-7) he found the following concerning the other orders sought:

[TRANSLATION]

(a) It is not needed to prevent a serious risk to the proper administration of justice. In the present case, there is no serious risk to the administration of justice.

(b) There are more narrowly tailored reasonable alternatives to obviate the risks the plaintiff fears. The order sought is not a minimal impairment of the open court principle.

(c) The benefits to the plaintiff do not outweigh the prejudicial effects on the rights and interests of the parties and the public, including the effects on freedom of expression, the right to a fair and impartial trial, and the effective administration of justice.[[8]](#footnote-8)

1. The appellants argue that the judge at first instance erred in denying the applications. The four questions they state in support of their position raise essentially a single issue: Did the judge at first instance err in his application of the *Sherman* test?[[9]](#footnote-9)

**II. Analysis**

1. After reviewing the applicable principles, I will consider the merits of the appeal.
2. **The applicable principles**
3. The principle that the workings of the courts should be public is fundamental to our justice system. Kasirer, J. notes this in *Sherman*, stating 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”.[[10]](#footnote-10) He adds that there is a strong presumption in favour of open courts and that, while that presumption is not absolute, it can be overcome only if it conflicts with an equally important public interest such as the need to protect a person’s dignity.
4. Also in *Sherman*, Kasirer, J. notes that dignity is “a 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”.[[11]](#footnote-11) Therefore, to be protected, “the information that will be revealed by court openness must consist of intimate or personal details about an individual” that constitute the “biographical core”.[[12]](#footnote-12) In this regard, Kasirer, J. adds:

[71] Violations of privacy that cause a loss of control over fundamental personal information about oneself are damaging to dignity because they erode one’s ability to present aspects of oneself to others in a selective manner (D. Matheson, “Dignity and Selective Self-Presentation”, in I. Kerr, V. Steeves and C. Lucock, eds., *Lessons from the Identity Trail: Anonymity, Privacy and Identity in a Networked Society* (2009), 319, at pp. 327‑28; L. M. Austin, “Re-reading Westin” (2019), 20 *Theor. Inq. L.*53, at pp. 66‑68; Eltis (2016), at p. 13). Dignity, used in this context, is a social concept that involves presenting core aspects of oneself to others in a considered and controlled manner (see generally Matheson, at pp. 327‑28; Austin, at pp. 66‑68). 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. This was even alluded to by La Forest J., dissenting but not on this point, in *Dagg*, where he referred to privacy as “[a]n expression of an individual’s unique personality or personhood” (para. 65).

[Emphasis added and citations omitted]

1. In Quebec, these principles are consistent with those codified in the *Code of Civil Procedure* (*C.P.C.*). The principle of open proceedings is codified in art. 11 *C.C.P.* and constitutes a “[guard] against improbity”[[13]](#footnote-13) by ensuring “that justice is administered in a non-arbitrary manner, according to the rule of law.”[[14]](#footnote-14) In essence, it is “a means of guaranteeing the fair and transparent administration of justice.”[[15]](#footnote-15) Since the advent of the *Canadian Charter of Rights and Freedoms*[[16]](#footnote-16) (the *Charter*), it has been an integral part of the protection provided by s. 2(*b*), which guarantees freedom of expression,[[17]](#footnote-17) a freedom that includes freedom of the press and the corollary right of the public to be informed.[[18]](#footnote-18) However, art. 12 *C.C.P.* states that the court may make an exception to the principle of open proceedings, in particular when the preservation of the dignity of the persons concerned by the proceedings requires it.
2. The courts must be particularly cautious about granting an exception to the open court principle.[[19]](#footnote-19) The person seeking to overcome the presumption must demonstrate a serious risk to their dignity, as defined in terms of public interest. Kasirer, J. explains this aspect in *Sherman*:

[62] Second, I recall that in order to pass the first stage of the analysis one must not simply invoke an important interest, but must also overcome the presumption of openness by showing a serious risk to this interest. The burden of showing a risk to such an interest on the facts of a given case constitutes the true initial threshold on the person seeking to restrict openness. It is never sufficient to plead a recognized important public interest on its own. The demonstration of a serious risk to this interest is still required. What is important is that the interest be accurately defined to capture only those aspects of privacy that engage legitimate public objectives such that showing a serious risk to that interest remains a high bar. In this way, courts can effectively maintain the guarantee of presumptive openness.[[20]](#footnote-20)

1. Lastly, it is important to avoid applying the principle or its exceptions systematically and inflexibly. The court must perform a factual and contextual analysis[[21]](#footnote-21) based on the specific facts of the case.[[22]](#footnote-22)
2. It would in fact be imprudent to lay down generalities and attempt to categorize legal proceedings in advance by asserting that in some of them, the openness principle can be overcome and that in others, it cannot. The “status” of a party or the stance the party takes in the proceedings does not in itself decide whether the burden for overcoming the open court presumption has been met. The inanity of such categorizations becomes clear when one imagines the multitude of contexts where applications for depersonalization and for publication and dissemination bans might be sought. Caution must be exercised, and each case is different, as Kasirer, J. notes in *Sherman*:

[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.[[23]](#footnote-23)

1. Initially, the test for balancing the rights and freedoms of one party against the fundamental principle of open proceedings had two steps (*Dagenais*),[[24]](#footnote-24) but the first step of that test was later bifurcated in *Sherman.*[[25]](#footnote-25) Under the new three-step *Sherman* test, the person asking the court to limit the open court presumption must show 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.[[26]](#footnote-26)

**B. Application to the facts of this case**

1. The analysis of A.B.’s allegations must be limited to the first step of the *Sherman* inquiry, namely whether there is a need to restrict the openness of court proceedings, since, as Lussier, J. properly concluded, such openness does not pose a serious risk to an important public interest in this case.
2. The relevant allegations of the application for confidentiality are sufficient to demonstrate this. They are worded as follows:

[TRANSLATION]

17. The plaintiff A.B. is a public figure in Quebec.

18. His fame and good reputation allow him to earn his living in the public eye.

19. The information that A.B. wishes to keep confidential has already been publicized as a result of the defendants having published it on social networks.

20. This application for depersonalization and for a publication and dissemination ban therefore seeks to mitigate the injury that A.B. would suffer as result of the casting of a “spotlight” that would attract media and public interest in the defamatory information the defendants are publicizing.

21. The defamatory remarks in question are not only contrary to the values the plaintiff A.B. expresses to the general public; they also bring dishonour upon him by subjecting him to hatred and contempt in the eyes of the public.

22. The defendant Robillard, with the complicity of Ms. Bergeron and the defendant organizations, set up a contrivance that forces the plaintiff into instituting court proceedings that could aggravate the injury caused by Robillard’s defamatory allegations.

23. This contrivance is a well-planned trap that has cornered plaintiff A.B.

24. Specifically, if A.B. does not sue, he runs the risk that the defamatory remarks will multiply, with devastating consequences for him.

25. On the other hand, if A.B. does sue, his own action could aggravate the consequences of Robillard’s defamatory remarks.

26. A.B. seeks a path out of this quandary, which is why he is applying for an order preserving his anonymity.

. . .

34. The publication and dissemination of the proceedings would definitely have an adverse effect on the plaintiff A.B.’s psychological integrity and right to privacy.

35. As noted above, holding these proceedings in public would cast a “spotlight” on the defendants’ defamatory remarks.

36. The defendants and in particular Jean-François Robillard, who are seeking to publicize these remarks, would get the benefit of a public gallery violative of the plaintiff’s fundamental rights.

37. The information contained in the court pleadings and exhibits would undoubtedly attract not only curiosity, but quite probably improper interest.

38. In addition, the plaintiff will have to testify about his psychological distress and reveal detailed confidential information about his state of health.

39. Several people close to the plaintiff risk being brought into the spotlight in connection with the court proceedings, including but not limited to his family, friends, and business associates.

40. Moreover, it is highly likely that third parties and partner businesses of the Foundation will, by virtue of a natural association that would be made with A.B., become reluctant to continue working with the Foundation if the defamatory remarks concerning A.B. are published and disseminated as a result of this dispute being brought into the justice system.

41. Indeed the plaintiff Fondation A.B. is a Foundation whose very purpose is to combat all forms of intimidation and violence.

42. The Foundation can exist and survive only if it benefits from the contributions and input of third parties and of its partner businesses.

43. The publication and dissemination of the proceedings would create a serious risk that the Foundation would have to cease its operations.

44. The plaintiff A.B., as director and president of the Foundation, would be psychologically destroyed by such an outcome, having devoted so much time and energy over the last ten (10) years to creating the Foundation with the specific aim of combatting all forms of intimidation and violence.

45. This poses a serious risk to his psychological integrity.

1. In his sworn statement, A.B. adds:

[TRANSLATION]

4. I do not know the defendant; I have never met him or even spoken with him.

1. It is my finding that all the potential consequences to which A.B. refers and which he claims would result from an open trial are speculative.
2. A.B. claims that he has never met or even spoken to defendant Robillard. His action in defamation seeks to establish this fact, and accordingly, the falseness of the public comments made about him. It aims to show that he does not know Robillard and did not engage in the sexual misconduct Robillard alleges. This will not require A.B. to disclose private details that constitute biographical information that *Sherman* would protect as part of an important public interest.
3. The allegations in his application and sworn statement are general in nature and fail to show any serious risk to his dignity or to the proper administration of justice. They generically assert that being associated with the status of a sexual predator poses a serious risk to his dignity, without showing that he would be required to reveal private details that strike at the heart of a person’s fundamental identity and must be protected on that basis.
4. In this regard, although the appellant is a plaintiff in a defamation action, his situation is similar to the defendant’s in *Dis son nom c. Marquis*.[[27]](#footnote-27) There, the defendant in a defamation action applied for anonymity. She alleged in general terms that she was the victim of an assailant who was not a party to the litigation. As a result, the details of the assault were not relevant to the outcome of the proceedings and she would not be required to testify about this incident affecting her dignity.[[28]](#footnote-28) It should also be noted that those two cases can be distinguished from *J.C. c. Douville*,[[29]](#footnote-29) where J.C. would necessarily have to reveal intimate details of their sex life to prove the veracity of their assertions in order to defend themselves in defamation proceedings. In the case of J.C., the allegations are far from general; they get into the after-effects of the alleged sexual misconduct, which was reported both anonymously and publicly.
5. The concept of human dignity is distinct from the concepts of honour and reputation. In the case at bar, A.B. claims there is a serious risk to his honour and reputation. However, based on the allegations he has made, it cannot be concluded that his dignity is also at risk. Yves-Marie Morissette J.A. speaks to this point in *Calego*:

[TRANSLATION]

[101] Furthermore, the concepts of dignity, honour, and reputation are not interchangeable. I would tend to think that the latter two evoke, albeit perhaps to different degrees, a third party’s perception of an alleged victim of wrongdoing. I do not think this is the case with dignity, which is the respect to which people are entitled as a human beings and as subjects of law.[[30]](#footnote-30)

[Emphasis added]

1. Consequently, Lussier, J. properly held that in order to overcome the presumption of openness, it was not sufficient for A.B. to allege in general terms that open proceedings would endanger his dignity.[[31]](#footnote-31)
2. This is because A.B.’s allegations are so general that they could apply in a generic way to anyone who sues in defamation because they have been accused of sexual misconduct. In other words, if the Court allowed A.B.’s appeal, this would in a sense amount to asserting that any plaintiff in defamation alleged to have engaged in sexual misconduct would automatically be entitled to a confidentiality order if they applied for one. In reality, for a court to grant an application to depersonalize proceedings, a plaintiff in defamation must, like any other plaintiff, discharge the onus of demonstrating a serious risk to dignity in the sense of an important public interest in privacy. This can be difficult where, as here, the alleged defamation consists of false statements.
3. A.B. has not met this onus of proving a serious risk to the proper administration of justice. Public disclosure of the allegations the respondent has made against A.B. cannot succeed in overcoming the open court presumption, even if such disclosure would be embarrassing and would tarnish his honour or reputation.
4. All legal proceedings come with their share of discomfort. This is especially true of defamation actions. But such inconveniences alone are not sufficient to set aside the cardinal principle, protected by s. 2(*b*) of the *Canadian Charter of Rights and Freedoms* and codified in art. 11 *C.C.P*., that court proceedings are to take place in the open.
5. Kasirer, J. noted this very point in *Sherman*:

[2] Accordingly, there is a strong presumption in favour of open courts. It is understood that this allows for public scrutiny which can be the source of inconvenience and even embarrassment to those who feel that their engagement in the justice system brings intrusion into their private lives. But this discomfort is not, as a general matter, enough to overturn the strong presumption that the public can attend hearings and that court files can be consulted and reported upon by the free press.[[32]](#footnote-32)

1. Further on, he adds:

[31] … neither individual sensibilities nor mere personal discomfort associated with participating in judicial proceedings are likely to justify the exclusion of the public from court (*Attorney General of Nova Scotia v. MacIntyre*, [1982] 1 S.C.R. 175, at p. 185; *New Brunswick*, at para. 41). Determining the role of privacy in the *Sierra Club* analysis requires reconciling these two ideas, which is the nub of the disagreement between the parties. The right of privacy is not absolute; the open court principle is not without exceptions.

…

[33] … 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.

[34] This public interest in privacy appropriately focuses the analysis on the impact of the dissemination of sensitive personal information, rather than the mere fact of this dissemination, which is frequently risked in court proceedings and is necessary in a system that privileges court openness. It is a high bar — higher and more precise than the sweeping privacy interest relied upon here by the Trustees. This public interest will only be seriously at risk where the information in question strikes at what is sometimes said to be 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.

[35] … this requires the applicant to show that the information in the court file is sufficiently sensitive such that it can be said to strike at the biographical core of the individual and, in the broader circumstances, that there is a serious risk that, without an exceptional order, the affected individual will suffer an affront to their dignity.[[33]](#footnote-33)

[Emphasis added]

1. Applying the analytical framework laid down in *Sherman* to the facts of this case, I find no serious risk to the public interest in privacy, as defined in terms of dignity. As for the issue of sensitivity, the information in the record discloses nothing particularly private about A.B. The legal proceedings in themselves may well cause him inconvenience and possibly embarrassment, but he has not shown that he would be required to reveal biographical information in a way that would erode his control over the expression of his identity. His privacy could well be disturbed, but he has not shown that the relevant privacy interest in personal dignity is at serious risk.[[34]](#footnote-34)
2. It has been determined that the information A.B. seeks to protect is not highly sensitive. This is sufficient to establish that the necessity required by the first step of the applicable test has not been demonstrated.
3. Since A.B.’s application for depersonalization is not granted, it is unnecessary to answer the respondent’s question as to whether a legal person — in this instance, Fondation A.B — is also entitled to anonymity so it can safeguard an important public interest in personal dignity.
4. For these reasons, I would dismiss the appeal, with legal costs.

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| SOPHIE LAVALLÉE, J.C.A. |

1. *A.B. c. Robillard*, 2021 QCCS 2550 [judgment under appeal]. [↑](#footnote-ref-1)
2. Sworn statement of A.B. at paras. 1–6. [↑](#footnote-ref-2)
3. *Ibid.* at paras. 5–7. [↑](#footnote-ref-3)
4. Judgment under appeal at para. 21. [↑](#footnote-ref-4)
5. *Ibid.* at para. 13; Sworn statement of A.B. at para. 22. [↑](#footnote-ref-5)
6. Sworn statement of A.B. at para. 24. [↑](#footnote-ref-6)
7. *Sherman Estate v. Donovan*, 2021 SCC 25 [*Sherman*]. [↑](#footnote-ref-7)
8. Judgment under appeal at para. 72. [↑](#footnote-ref-8)
9. *Sherman*, *supra* note 7 at para. 38. [↑](#footnote-ref-9)
10. *Ibid.* at para. 1. [↑](#footnote-ref-10)
11. *Ibid.* at para. 33. [↑](#footnote-ref-11)
12. *Ibid.* at para. 75. [↑](#footnote-ref-12)
13. *Vancouver Sun (Re)*, 2004 SCC 43, [2004] 2 S.C.R. 332 at para. 24, quoting Jeremy Bentham. [↑](#footnote-ref-13)
14. *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480 at para. 22. [↑](#footnote-ref-14)
15. *Sherman, supra* note 7 at paras. 12 and 39; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 at 1337-1339, citing *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175 at 185. [↑](#footnote-ref-15)
16. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11. [↑](#footnote-ref-16)
17. *Sherman*, *supra* note 7 at paras. 30 and 39; *Vancouver Sun (Re)*, *supra* note 13 at paras. 23-26; S*ierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41, [2002] 2 S.C.R. 522 at para. 36; *Canadian Broadcasting Corporation v. New Brunswick (Attorney General)*, *supra* note 14 at para. 23; *Edmonton Journal v. Alberta (Attorney General)*, *supra* note 15 at 1336–1337. [↑](#footnote-ref-17)
18. *Vancouver Sun (Re)*, *supra* note 13 at para. 26; *Nova Scotia (Attorney General) v. MacIntyre*, *supra* note 15 at 1339-1340. [↑](#footnote-ref-18)
19. *Sherman, supra* note 7 at paras. 42 and 62; *R. v. Mentuck*, [2001] 3 S.C.R. 442 at paras. 26 and 39; *Canadian Broadcasting Corporation v. New Brunswick (Attorney General)*, *supra* note 14 at para. 71; *L.B. c. J.S.*, 2021 QCCA 1593 at para. 11. [↑](#footnote-ref-19)
20. *Sherman*, *supra* note 7 at para. 62. [↑](#footnote-ref-20)
21. *Edmonton Journal* *v. Alberta (Attorney General)*, *supra* note 15 at 1353-1354*,* cited in *Sierra Club of Canada v. Canada (Minister of Finance)*, *supra* note 17 at para. 86. See also S*. c. Lamontagne*, 2020 QCCA 663 at para. 22. [↑](#footnote-ref-21)
22. *Sherman, supra* note 7 at para. 42. [↑](#footnote-ref-22)
23. *Ibid*. See also para. 59, which cites *Sierra Club of Canada v. Canada (Minister of Finance)*, *supra* note 17 at para. 55. [↑](#footnote-ref-23)
24. *Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 S.C.R. 835 at 878. [↑](#footnote-ref-24)
25. *Sherman*, *supra* note 7 at para. 38. [↑](#footnote-ref-25)
26. *Ibid.* [↑](#footnote-ref-26)
27. 2022 QCCA 841. [↑](#footnote-ref-27)
28. *Dis son nom c. Marquis*, 2022 QCCA 841 at paras. 66–67 and 75–78. [↑](#footnote-ref-28)
29. *J.C. c. Douville*, 2022 QCCA 958. [↑](#footnote-ref-29)
30. This quote is from the concurring reasons of Morissette, J.A. in *Calego International inc. c. Commission des droits de la personne et des droits de la jeunesse*, 2013 QCCA 924 at para. 101, cited with approval by the dissenting justices in *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43 at para. 166. [↑](#footnote-ref-30)
31. At para. 72 of the decision under appeal, Lussier, J. writes: [TRANSLATION] “There are more narrowly tailored reasonable alternatives to obviate the risks the plaintiff fears. The measures sought are not a minimal impairment of the open court principle.” With respect, applications for anonymity generally *are* measures that minimally impair the open court principle. [↑](#footnote-ref-31)
32. *Sherman*, *supra* note 7 at para. 2. [↑](#footnote-ref-32)
33. *Ibid.* at paras. 31 and 33–35. [↑](#footnote-ref-33)
34. *Ibid.* at paras. 89 and 91. [↑](#footnote-ref-34)