2016 ONSC 6732, 2016 CarswellOnt 17051

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Ontario Superior Court of Justice

Foulidis v. Foulidis

2016 CarswellOnt 17051, 2016 ONSC 6732

Lynne C. Foulidis (Applicant) and George Foulidis (Respondent)

Postmedia Network Inc. (Moving Party) and The Office of the Children's Lawyer (Intervener)

Harvison Young J.

Heard: September 30, 2016
Judgment: October 28, 2016
Docket: FS-15-404561

Counsel: Jodi L. Feldman, for Applicant
Tanya N. Road, for Respondent
Brendan Hughes, for Moving Party
Lisa A. Johnson, for Intervener

Subject: Civil Practice and Procedure; Constitutional; Family; Human Rights; Income Tax (Federal)

Headnote

Civil practice and procedure

Constitutional law

Family law

Tax

Table of Authorities

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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

s. 2(b) — considered

Children's Law Reform Act, R.S.O. 1990, c. C.12

s. 70 — considered

Courts of Justice Act, R.S.O. 1990, c. C.43

s. 137 — referred to

s. 137(2) — considered

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Generally — referred to

s. 241 — considered

Judicature Act, R.S.A. 2000, c. J-2

s. 30(1) — considered

s. 30(2) — considered

***Harvison Young J.*:**

OVERVIEW

1 Postmedia Network Inc. brought this motion to set aside Kruzick J.'s August 5, 2016 sealing order and publication ban of the matrimonial file in this matter. The motion was heard before me on September 30, 2016. Because of the urgency of the matter, which I will discuss below, I made an order at the end of the hearing with reasons to follow (see Appendix A). These are those reasons.

2 Postmedia's position was that the sealing order flies in the face of the "open court" constitutional principle entrenched into our law by s. 2(b) of the *Charter*. It submitted that the order was obtained improperly, both from a procedural and legal perspective, because:

> a. The media was not given any notice of the intention to seek a sealing order;
>
> b. The motions judge was not directed to the legal test that must be applied to any order restricting public access to court proceedings; and
>
> c. The application of the evidence before the court did not establish that a sealing order was necessary in the circumstances.

3 The Respondent, George Foulidis, opposed the removal of the sealing order. The heart of his position was that the court must consider the best interests of the children, his and his family's privacy, and his and third parties' commercial and security interests. He asked the court to leave the sealing order in place.

4 With respect to the failure to provide notice to the media, Ms. Road, on behalf of Mr. Foulidis, pointed out that neither counsel nor the motions judge was aware of the need to provide notice under the Superior Court of Justice's recent Practice Direction.

THE ISSUES

5 The issues raised in this case may be simply stated:

> a. What considerations must a court apply in determining whether to make an order that limits the public's access to court proceedings or documents?
>
> b. In particular, how do these considerations apply to the exercise of discretion in the family law context and to s. 70 of the *Children's Law Reform Act* ("*CLRA*") in particular?
>
> c. Does s. 241 of the *Income Tax Act* apply to prevent the disclosure of tax information material which Mr. Foulidis has filed as part of his financial disclosure obligations in the matrimonial litigation?

BACKGROUND

6 Lynne C. Foulidis and George Foulidis were married in 1995 and have three children together: Alexander (20 years old), Elena (17 years old), and Nikolas (16 years old). The parties separated at the end of July 2015. While this proceeding has become acrimonious, the issues are not unlike many such family law matters. The key difference is Mr. Foulidis' business interests.

7 Mr. Foulidis, through Tuggs Inc., has held a lease over property in the Beaches area of Toronto since the late 1980s (the "lease"). In the course of the 2010 mayoral campaign, the restaurant lease became a political issue and garnered significant

media attention. The former Toronto Mayor, the late Rob Ford, publicly voiced his displeasure with the lease and the way it was obtained. In particular, he was highly critical of the *in camera* meetings held by Toronto City Council concerning the restaurant lease. He referred to "corruption and skullduggery" and stated that the deal "stinks to high heaven."

8 Mr. Foulidis commenced defamation litigation against Mr. Ford concerning the comments he made with respect to the lease. In his December 22, 2012 decision, MacDonald J. held that Mr. Foulidis had failed to establish that a reasonable person would have understood Mr. Ford's comments about Tuggs Inc. as defaming him, and that Mr. Ford spoke only of his suspicions of corruption and admitted that he could not prove that anyone had acted improperly: *Foulidis v. Ford*, 2012 ONSC 7189, 114 O.R. (3d) 58 (Ont. S.C.J.), at para. 44.

9 After the parties' marriage breakdown in 2015, Ms. Foulidis brought the divorce application. Mr. Foulidis once again found himself in the public eye because of the proposed assignment of the lease to Cara, which was scheduled to go before Toronto City Council on October 5, 2016. Sue-Ann Levy, a Toronto Sun journalist, emailed Ms. Foulidis' counsel and reviewed the court file with the intention of submitting an article for publication. On August 5, 2016, before an article could be published, the motions judge granted a consent sealing order and publication ban. No notice of Mr. Foulidis' motion was given to Postmedia. Having learned of the sealing order, Postmedia moved to set it aside. I made the order set out in Appendix A in light of the urgency arising from the October 5, 2016 date that the lease assignment was to go before City Council.

10 On October 5, 2016, Toronto City Council approved the transfer of the lease to Cara.

11 While the matrimonial litigation has been highly acrimonious to date, Mr. and Ms. Foulidis consented to the August 5, 2016 order and Ms. Foulidis took no position on the Postmedia motion to set it aside.

The Considerations to be Applied in Limiting Access to the Courts and Court Documents

The Open Court Principle

12 The first issue to be addressed is: what are the considerations that must be applied before a court makes an order limiting the public's access to court proceedings and documents?

13 The presumption that our courts are open is a hallmark of our judicial system and the freedom to report on court proceedings is protected under s. 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 [*Charter*]:

> [T]he administration of justice thrives on exposure to light — and withers under a cloud of secrecy.
>
> That lesson of history is enshrined in the *Canadian Charter of Rights and Freedoms*. Section 2(b) of the *Charter* guarantees, in more comprehensive terms, freedom of communication and freedom of expression. These fundamental and closely related freedoms both depend for their vitality on public access to information of public interest. What goes on in the courts ought therefore to be, and manifestly is, of central concern to Canadians: *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188 (S.C.C.), at paras. 1-2 [*Toronto Star*].

14 The media is the means by which the public, generally speaking, exercises access to the courts. In fact, the Supreme Court of Canada has previously stated:

> It is only through the press that most individuals can really learn of what is transpiring in the courts. They as "listeners" or readers have a right to receive this information. Only then can they make an assessment of the institution. Discussion of court cases and constructive criticism of court proceedings is dependent upon the receipt by the public of information as to what transpired in court. Practically speaking, this information can only be obtained from the newspapers or other media: *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, [1990] 1 W.W.R. 577 (S.C.C.), at para.

10 [*Edmonton Journal*].

15 Thus, exceptional circumstances must exist to restrict this freedom and the long standing principle that the courts are open to all. The constitutional benchmark against which any limitation to the open court principle must be judged has been articulated in what is now widely known as the *Dagenais/Mentuck* test: *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, [1994] S.C.J. No. 104, 120 D.L.R. (4th) 12 (S.C.C.) [*Dagenais*]; *R. v. Mentuck*, 2001 SCC 76, [2001] 3 S.C.R. 442 (S.C.C.) [*Mentuck*]. This test requires that the party seeking an order restricting access to judicial proceedings or files establish that:

> (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice: *Toronto Star* at para. 26.

The Open Court Principle and Family Law

16 The Supreme Court has made it clear that there is no exception to the open court principle in the family law context. In *Edmonton Journal*, the Court held that section 30(1) and (2) of Alberta's *Judicature Act*, which restricted the publication of details relating to matrimonial proceedings other than certain general information, contravened s. 2(b) of the *Charter* and stated at para. 13:

> The term "or in relation to a marriage" is a broad one. It encompasses matters pertaining to custody of children, access to children, division of property and the payment of maintenance. All are matters of public interest yet the evidence given on any of these issues cannot be published. The dangers of this type of restriction are obvious.

17 In any and all judicial proceedings where judges are asked to utilize their discretion to order that public access to a file or proceeding be restricted, courts must apply the well-established *Dagenais/Mentuck* test: *Vancouver Sun, Re*, 2004 SCC 43, [2004] 2 S.C.R. 332 (S.C.C.), at paras. 23-27; Toronto Star at para. 28. There can be no doubt then that any discretion within the family law context must be exercised within the constraints of the *Dagenais/Mentuck* test.

18 Whether or not a discretionary order constraining the openness of the courts is justified must be evaluated on a case-by-case basis, and the interests of the parties must be balanced with the public interest of open courts.

Section 70 of the CLRA

19 There are a number of statutory provisions that permit judges to exercise their discretionary power to limit the open court principle. Under s. 137(2) of the *Courts of Justice Act*, a court may order that any document be treated confidentially, sealed, and removed from the public record. Section 70 of the *CLRA*, meanwhile, states:

> 70. (1) Where a proceeding includes an application under this Part, the court *shall consider whether it is appropriate to order*,
>
> (a) that access to all or part of the court file be limited to,

(i) the court and authorized court employees,

(ii) the parties and their counsel,

(iii) counsel, if any, representing the child who is the subject of the application, and

(iv) any other person that the court may specify; or

(b) that no person shall publish or make public information that has the effect of identifying any person referred to in any document relating to the application that appears in the court file.

(2) In determining whether to make an order under subsection (1), the court shall consider,

(a) the nature and sensitivity of the information contained in the documents relating to the application under this Part that appear in the court file; and

(b) whether not making the order could cause physical, mental or emotional harm to any person referred to in those documents.

[emphasis added]

20 Section 70 of the *CLRA* allows the courts to take into account the best interests of the child and their particular circumstances. But as I have already set out, this does not mean that family law courts are not bound by *Dagenais/Mentuck* and the open court principle.

21 Thus, any discretion authorized by the statute must be exercised in accordance with both the constitutional principles and the factors set out in s. 70 itself. In short, although the parties may both want a sealing order, the fact that they have children and sign a consent cannot justify such an order in the absence of satisfying the *Dagenais/Mentuck* analysis.

ANALYSIS

Has the Respondent Met the Dagenais/Mentuck Test in this Case?

22 In response to Postmedia's argument that no notice was given to the media, Ms. Road commented that she had not been aware that notice to the media was necessary under the Ontario Superior Court of Justice's Consolidated Provincial Practice Direction. The Practice Direction states, at s. 107 of Part F, that "[u]nless otherwise directed by a judge, the person seeking the publication ban (the requesting party) must provide notice to the media of the motion/application, using the procedure set out in this section."

23 At the outset, I would emphasize that there is no suggestion that counsel deliberately failed to give notice. I acknowledge that the Practice Direction only recently came into effect: see *P. (B.C.) v. P. (A.R.)*, 2016 ONSC 4518, [2016] W.D.F.L. 4270 (Ont. S.C.J.). I am also sympathetic to the fact that the granting of sealing orders and publication bans, on consent and with no notice to the media, has at times been routine in the family context. The Practice Direction, however, may be understood as a "wake up call" to family law practitioners that open court constitutional principles must be applied in the family law context. In this case, the press only became aware of the sealing order because of Mr. Foulidis' high public profile arising from previous media attention concerning the lease, his lawsuit against Rob Ford, and the renewed interest in the lease because of the assignment and the fact that it was about to go to City Council for approval.

24 It is important to recognize that the primary law governing notice to the press and the criteria for limiting the open court principle is s. 2(b) of the *Charter* and the jurisprudence that has developed interpreting it: see *M. (A.) v. Toronto Police*

Service, 2015 ONSC 5684, 127 O.R. (3d) 382 (Ont. Div. Ct.), at para. 9. While the recent Practice Direction addresses the implementation of the governing law in the Superior Court of Ontario, it neither purports to, nor could, alter the law and constitutional norms that the courts must apply.

25 Postmedia's procedural objection is that notice to the media should have been provided before the sealing order was presented to the motions judge on consent. I agree. While there may be exceptional circumstances in which such notice may be dispensed with, as the Practice Direction recognizes, the parties did not submit evidence or submissions in support of such a position.

The Dagenais/Mentuck Test Applied

26 I now turn to the *Dagenais/Mentuck* analysis and the facts of this case. The first branch of the *Dagenais/Mentuck* test asks: Is a sealing order necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures would not prevent the risk?

27 Mr. Hughes, on behalf of Postmedia, argued that the motions judge was not directed to the legal test that must be applied to any order restricting public access to court proceedings. He submitted that the evidence before the court did not establish that a sealing order was necessary in the circumstances of this matter. In particular, Mr. Hughes argued that Mr. Foulidis had not met his onus of providing sufficient evidence to satisfy the first step of the analysis, and thus the inquiry must stop there. Alternatively, he submitted, with respect to the second branch of the test, that the deleterious effects of imposing any restrictions far outweighed the salutary effects.

28 On a practical level, and without resiling from his position that there was no legal or evidentiary basis upon which to justify limiting access to any portion of the court file, Mr. Hughes stated that Postmedia was not interested in any of the information relating to the Foulidis children. Rather, it was chiefly interested in the financial information relating to Mr. Foulidis and his business holdings.

29 Mr. Foulidis, in his affidavit material, set out two general bases supporting his argument that the ban should be upheld. First, he alleged that he has been repeatedly subject to harassing, unfair, and incorrect media attention in relation to the lease, and in the course of his defamation lawsuit against the late Rob Ford. Second, he alleged that the circumstances of his divorce should be private.

30 Mr. Foulidis further framed his claim as the public interest in third parties' privacy of personal and financial information. He relied on *Himel v. Greenberg*, 2010 ONSC 2325, [2011] W.D.F.L. 1528 (Ont. S.C.J.) [*Himel*], where the court found that the protection of confidentiality provisions in a shareholder agreement was an important public interest, and thus sealed certain portions of the court file. He argued that the volumes of financial information filed with this court disclose personal and financial information of persons who have been "dragged into the litigation," and that the court should find that their privacy interests are of super-ordinate importance. He submitted that the substantial risk of identity theft outweighed any public interest in financial documents relating to him or the lease. Mr. Foulidis also noted that he had suffered "economic harm" due to the public attention, he believed the Canada Revenue Agency ("CRA") audits were due to this attention, and that he had filed "far more extensive personal and corporate financial information than would normally be required" due to the CRA audits and allegations in the divorce proceedings.

31 Having considered the applicable law, the record before me, and the parties' submissions, I conclude that the evidence before the court does not establish that, absent a sealing order, there would be any risk to the administration of justice.

32 To begin with, the interest in privacy is not, in and of itself, sufficient to justify limiting the principle of open courts. A litigant's personal interest in keeping certain litigation details private cannot establish the "necessity" branch of the *Dagenais/Mentuck* test. Rather, the jeopardized interest must have a public component, such as a risk that complainants of unlawful acts would not come forward if they were exposed to the media.

33 This issue was considered by the Ontario Court of Appeal in *H. (M.E.) v. Williams*, 2012 ONCA 35, [2012] W.D.F.L. 2136 (Ont. C.A.) [*Williams*]. In that case, the wife of convicted murderer Russell Williams had commenced divorce proceedings against him. Mr. Williams' crimes were well covered in the media and his wife was found to be "another victim

of Williams' depravity," yet her name, place of employment, and photograph were all published in the media: *Williams* at paras. 12-13. Williams' wife sought a sealing order and publication ban concerning the divorce proceedings to protect her fragile mental and emotional state.

34 Justice Doherty, writing for the court, distinguished personal distress and embarrassment from the more serious mental harm that would have to be established in order to justify a restricting order, at para. 30:

> The distinction between personal emotional distress and embarrassment, which cannot justify limiting publication of or access to court proceedings and records, and serious debilitating physical or emotional harm that goes to the ability of a litigant to access the court is one of degree. Expert medical opinion firmly planted in reliable evidence of the specific circumstances and the condition of the litigant will usually be crucial in drawing that distinction.

35 The Court of Appeal struck down the sealing order and publication ban that had been ordered in the lower court. Although Williams' wife's treating psychologist provided evidence of a risk to her mental health, Doherty J.A. concluded that the wife did not provide the kind of convincing evidence needed to satisfy the necessity branch of the test, and it was consequently unnecessary to consider the second branch of the test.

36 It is clear from *Williams* that neither Mr. Foulidis' privacy interests nor his desire to avoid media attention can justify a sealing order as he has not led any convincing evidence of harm to the administration of justice. Moreover, he has not explained why an alternative measure would not suffice.

37 Mr. Foulidis was candidly concerned about potential negative publicity, particularly from Sue-Ann Levy. While this is understandable, particularly in light of some of the earlier coverage, it cannot be a basis that can satisfy the necessity principle. His concern about his privacy and that of his family does not justify a sealing order.

38 A lesser order grounded in the protection of the privacy of his financial information is also not warranted. Mr. Foulidis claimed that absent a sealing order or non-publication order, his personal financial information and financial information relating to third party corporations would be public. He relied, as I have indicated, on the *Himel* decision.

39 The court's decision to seal certain portions of the court file in *Himel* related specifically to protecting the confidentiality provisions in a shareholder agreement. There was no evidence of a confidentiality agreement before me in the current case. Regarding the economic harm alleged by Mr. Foulidis, I would note that *Himel* held, at para. 52, that "mere economic harm is not an important commercial interest sufficient to override the open court principle." Further, while it is Mr. Foulidis' "belief" that the CRA audits are due to media attention, absent any evidence, this is mere speculation.

40 Lastly, the fact that Mr. Foulidis filed more personal and corporate financial information before any "thought was given to a publication ban and sealing order" is immaterial to the application of the *Dagenais/Mentuck* analysis. On his own admission, there is a link between his current personal finances and the history of this matter and the lease.

41 In short, I do not find that Mr. Foulidis has established any risk of harm to the administration of justice that would arise in the absence of a sealing order or indeed any general order such as an unlimited publication ban.

42 I do, however, accept Mr. Foulidis' submission that identify theft from these parties and other third parties is a realistic concern given the nature of the documents in the court record. The risk of identity theft may properly be considered to be a real threat to the administration of justice. This concern may be effectively addressed, however, by an order imposing a publication ban on any personal identifiers, other than names, such as dates of birth, telephone numbers, license plate numbers, social insurance numbers, bank account numbers, and addresses.

43 I am satisfied that such an order meets the second branch of the *Dagenais/Mentuck* test as the press is not limited in terms of any discussion of substance concerning Mr. Foulidis, and the obvious salutary benefits of protecting individuals from the possibility of identity theft justify this.

44 I would also note that because of the lack of notice to the media and the sealing order, the media is in the difficult

position of not knowing what else is in the file and thus its ability to make submissions is compromised. In addition to the two volumes of the continuing record which contain the parties' financial statements, affidavits, and supporting affidavits with attachments, there are two boxes of documents which contain additional materials. As Mr. Hughes pointed out, he has no idea whether any limitation is justified or not because he has not seen those documents and has no idea what is in those boxes. Ms. Road was not in a position to file evidence on this motion in relation to all the materials. She did acknowledge that one of the documents in those boxes is a report from Mr. Foulidis' accountant, Athena Mailloux, which she argued should not be released. I determined that a 30 day publication ban with respect to the two boxes of material, in addition to the court file addressed at the motion, was appropriate in order to give the parties' time to review the file and consider what it contains. This ban will expire 30 days from September 30, 2016, without prejudice to Mr. Foulidis' right to seek a further ban or other relief upon the filing of appropriate evidence.

The Children

45 As I previously noted, Postmedia has indicated that it is chiefly interested in the financial information relating to Mr. Foulidis and his business holdings.

46 Mr. Foulidis submitted that the children's privacy, and emotional, psychological, and financial best interests required that the entire file be sealed. His daughter, Elena, who is now 17, filed an affidavit in which she swore that the coverage has been very stressful and has exacerbated the stress of the high conflict divorce. The Office of the Children's Lawyer (the "OCL"), meanwhile, was appointed for the son, Nicholas, who is now 16. On his behalf, Ms. Johnson stated that he would like there to be no media coverage of his family. The oldest son, Alex, is now 20.

47 The application of the *Dagenais/Mentuck* analysis with respect to children is somewhat different in the case law, although, as I have outlined above, the same analysis applies. Again, judges must engage in a case by case analysis: see *Smithen v. Polychronopoulos*, [2006] O.J. No. 5566 (Ont. S.C.J.). There are cases where the privacy interests of children are seen to meet the necessity test for the purposes of permitting some limitations to the open court principle: see *M. (G.) v. M. (R.)*, 2015 ONSC 4026, 255 A.C.W.S. (3d) 348 (Ont. S.C.J.) [*G.M. v. R.M.*]. However, the orders imposed are generally not sealing orders. Rather, they tend to protect the identity of children without limiting the access of the public and the media to the case and issues involved.

48 In *A.B. (Litigation Guardian of) v. Bragg Communications Inc.*, 2012 SCC 46, [2012] 2 S.C.R. 567 (S.C.C.) [*Bragg*], a 15 year old girl had discovered that someone had posted a fake Facebook profile using her picture, a slightly modified version of her name, and other particulars identifying her. She brought an application that the internet provider reveal the identity of the person(s) who used the IP address to publish the profile, so that she could identify them for a potential defamation action. She sought permission to do so anonymously and also sought a publication ban on the content of the profile.

49 The Supreme Court, in a decision written by Abella J., applied the *Dagenais/Mentuck* test and ruled that her identity could be protected by permitting the child to proceed anonymously, but also held that there was no justification for a publication ban once this was done.

50 When courts do step in to protect children in family law cases by imposing restrictions, the children are demonstrably vulnerable and generally far younger than Mr. Foulidis' children. Even in such cases, sealing orders are rare, and publications bans are restricted as much as possible. Here, I do not accept that a sealing order is necessary to protect any interests that these children have because there are alternative measures for doing so.

51 In *G.M. v. R.M.*, Justice Gray considered a request for a publication ban and sealing order in a family law case concerning two children, where one of the children had gender identity issues. After canvassing the relevant law and applying the *Dagenais/Mentuck* test, Justice Gray found, at paras. 47-49, that no sealing order was appropriate but a partial publication ban protecting the identity of the children was justified:

> In the case before me, there is no question that it is not in the interests of the child that he be identified in any way. This is particularly so because the child is at an age where his gender identity has not fully formed, and it is not clear that he

> is even in the process of identifying his preferred gender. As was the case before O'Connell J. in the child protection proceedings, there are issues in the case in this court as to what restrictions, if any, should be placed on the parents in influencing the child, one way or another, as to his preferred gender. It is a matter of superordinate importance, in my view, that restrictions be placed on any information that might, directly or indirectly, identify the child.
>
> Having said that, there is no doubt that the issue of whether, and to what degree, it is appropriate that parents influence the gender identity of one of their children is a matter of public interest. The open court principle would suggest that the processes of the court should be open to the extent possible, to allow the public to see how that debate plays out in the court system.
>
> I am not persuaded that an order sealing the entire file is necessary or appropriate. To do so will shut the public out from the debate altogether.

52 In the current case, Mr. Foulidis' youngest child is 16 years old. He has his own counsel from the OCL. At the motion, Ms. Johnson informed the court that in their recent meeting, Nikolas echoed his sister's sentiments — he wanted no information about the family to be published in the newspapers.

53 It is not clear that the children's sensitivities about publicity concerning their parents' matrimonial dispute are inherently different from those of other children. However, the press is not generally interested in such matters. Here, the press has focused on Mr. Foulidis because of his business interests and the lease. I also note that the children, at 20, 17, and 16, are not young children.

54 Here, the affidavit materials filed by these parties do contain allegations made by various family members against or about other family members. The children are implicated at various points and it is clear that they have been very much at the heart of much of this high conflict litigation. I find, in this case, and in light of the continuing coverage of Mr. Foulidis and his business interests, that press coverage of the actual family law allegations between the parties would constitute harm to these young persons who may already be battle-scarred.

55 Protecting these children from harm resulting from media attention to the actual family conflict does not warrant a sealing order. I do find, however, that a limited publication ban is warranted with respect to the private details of the marital breakdown, contained in the affidavits filed in the matrimonial matter, insofar that they contain allegations of various actions of family members against other family members. Although these children are not young children, the nature and acrimony between various members of the family has frequently placed them in the middle of the conflict. For this reason, I find that a limited publication ban is necessary to prevent the harm that is likely to occur because media attention to the details will exacerbate the stress on these children. As in *Bragg* (at paras. 15-16), there is objectively discernible harm in this case. It may be presumed that media discussion of particular details of these allegations will be harmful, particularly to Nicholas who is the youngest of the three children. Unlike *Bragg*, an anonymity order would not protect these children because the family is already well known through the previous media attention.

56 A balancing of the interests under the second branch of the test satisfies me that the children's interests justify a publication ban of information related to the family members' allegations. I find that the salutary benefits will outweigh the deleterious effects on the rights and interests of the parties and the public in access to the courts. I note that Mr. Hughes, for Postmedia, indicated that the press in not interested in this aspect of the matter. I accept, under this part of the test, that it is in the best interests of the children that the publication ban be ordered to this extent. Thus, a publication ban is ordered with respect to any and all allegations or references to mistreatment made by any members of the immediate or extended family against any other members of the immediate or extended family. As well, a publication ban is ordered with respect to any information that identifies the Foulidis children, including references about or to their status, alleged incidents involving the children, or alleged harm to the children. These are specific details affecting the privacy interests of these children.

Section 241 of the Income Tax Act

57 Mr. Foulidis also argued that s. 241 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) [*ITA*] specifically prohibits the public dissemination of his income tax information, and that the court is an arm of the government and does not fall

within any of the listed exceptions to the prohibition. He further submitted that any disclosure of such information would have a chilling effect on individuals voluntarily reporting to the Canada Revenue Agency. He relied on *Slattery (Trustee of) v. Slattery*, [1993] 3 S.C.R. 430, [1993] S.C.J. No. 100, 106 D.L.R. (4th) 212 (S.C.C.) [*Slattery*]; and *Glover v. Minister of National Revenue*, [1981] 2 S.C.R. 561, 12 A.C.W.S. (2d) 170 (S.C.C.), aff'g (1980), 113 D.L.R. (3d) 161, 16 C.P.C. 77 (Ont. C.A.) [*Glover*] in this regard.

58 In *Glover*, a divorce case involving custody issues, the father absconded with the children and the mother could not locate them. The issue was whether a court could order the Minister of National Revenue to reveal confidential information such as a party's address. It was held that s. 241 prohibits the Minister from divulging any information received for the purposes of the *ITA*, including taxpayer addresses. In *Slattery*, meanwhile, Revenue Canada petitioned an individual into bankruptcy and sought to collect $1 million of outstanding income taxes. The trustee in bankruptcy commenced an action seeking a declaration that certain assets registered to the bankrupt's wife were in fact the property of the individual's estate or were held in trust for that estate. He sought to introduce evidence from Revenue Canada officials who had conducted an investigation into the estate. Counsel for the individual's wife objected on the ground that the information was confidential under s. 241. It was ultimately held that the officials' evidence related to the enforcement provisions of the *ITA* and was necessary to collect the taxes owed.

59 Having reviewed the two cases and the appropriate section of the *ITA*, I do not accept Mr. Foulidis' submission on this point. Section 241 of the *ITA* does not bind individuals. Rather, it binds the state. Furthermore, no disclosure is being ordered here. Certain documents in the boxes are routinely filed in family cases and other additional documents were voluntarily filed by Mr. Foulidis. Given the circumstances, I am unable to curtail public access to court files and documents that are presumptively in the public domain.

CONCLUSION

60 For the above reasons, I order as follows:

1) The sealing order of Kruzick J. dated August 5, 2016 is vacated.

2) A publication ban is ordered with respect to the rest of the file, except that it does not apply to the affidavits of 1) Mr. Foulidis dated July 14, 2016, and 2) Mrs. Foulidis dated June 9, 2016, or to the attachments to those affidavits, subject to paragraphs 3 and 4 of this Order. This publication ban will expire in 30 days from September 30, 2016.

3) A publication ban is ordered with respect to any information that identifies the Foulidis children, including references about or to their status, alleged incidents involving the children, or alleged harm to the children.

4) A publication ban is ordered with respect to any and all allegations or references to mistreatment made by any members of the immediate or extended family against any other members of the immediate or extended family.

5) A publication ban is ordered with respect to any personal identifiers of any persons, other than names, such as dates of birth, telephone numbers, license plate numbers, social insurance numbers, bank account numbers, and addresses.

6) The parties will provide cost submissions to the court, in writing, within 30 days according to a schedule to be agreed upon between themselves.

Appendix A

F., L.D. v. F., G.
ENDORSEMENT
09/30/16
Harvison Young J.
Post Media has brought a motion to set aside the sealing order made on consent by Kruzick J. dated August 5, 2016. I have carefully reviewed the materials filed on this motion and heard the able submissions of counsel, for which I am grateful.
There is no dispute that in exercising its discretion under s. 137 of the *Courts of Justice Act*, and s. 70 of the *Children's Law*

Reform Act, the court must apply the two-part Dagenais-Mentuck test set out by the Supreme Court of Canada. The court must be satisfied that any constraints or limitations to the open court principle are warranted pursuant to that test.
Having considered and applied the test, I am satisfied that the sealing order must be set aside. Full reasons will follow.
OTG as follows:

1) The sealing order of Kruzick J. dated August 5, 2016 is vacated.

2) A publication ban is ordered with respect to the rest of the file, except that it does not apply to the affidavits of 1) Mr. Foulidis dated July 14, 2016, and 2) Mrs. Foulidis dated June 9, 2016, or to the attachments to those affidavits, subject to paragraphs 3 and 4 of this Order. This publication ban will expire in 30 days from today.

3) A publication ban is ordered with respect to any information that identifies the Foulidis children, including references about or to their status, alleged incidents involving the children, or alleged harm to the children.

4) A publication ban is ordered with respect to any and all allegations or references to mistreatment made by any members of the immediate or extended family against any other members of the immediate or extended family.

5) A publication ban is ordered with respect to any personal identifiers of any persons, other than names, such as dates of birth, telephone numbers, license plate numbers, social insurance numbers, bank account numbers, and addresses.

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