SUPREME COURT OF NOVA SCOTIA

Citation: *A.B. v. United Kingdom (Attorney General)*, 2019 NSSC 289

Date: 20190731
Docket: Hfx No. 474033
Registry: Halifax

Between:

A.B.

Plaintiff

v.

United Kingdom of Great Britain
and Northern Ireland (Attorney General)

Defendant

DECISION

Judge:	The Honourable Justice Darlene Jamieson
Heard:	July 31, 2019 in Halifax, Nova Scotia
Oral Decision:	July 31, 2019
Written Decision:	September 24, 2019
Counsel:	Michael Dull and Kelsey Nearing, for the Plaintiff Leanne Fisher, for the Defendant

By the Court:

Introduction

[1] This is a motion by the Plaintiff for a Confidentiality Order that would allow the Plaintiff to proceed with the action by using a pseudonym. Specifically, the Plaintiff requests an Order directing that any pleading or document filed with the Court would use the pseudonym "L.A." in place of the Plaintiff's legal name. The Plaintiff is also seeking that any Order or decision of the Court resulting from the action would reference the Plaintiff solely by pseudonym and provide that the identity of the Plaintiff not be published or broadcast.

[2] The Plaintiff, in the Statement of Claim, alleges on or about April 9, 2015 she was sexually assaulted by "several of the Defendant's employees" who were in Nova Scotia for a hockey tournament.

[3] The only evidence filed on this motion was a Solicitor's Affidavit of Plaintiff's counsel, Mr. Dull. Mr. Dull did not argue the motion. The affidavit states, in part, as follows:

> … She advised me of her belief that she will suffer serious harm if her identity is published in connection with this action. I verily believe this to be true.
>
> The assaults at issue in this action were also the subject of a criminal investigation and resulting criminal trial, which concluded on January 18, 2019. Those criminal proceedings received high-profile coverage in media outlets across Canada and the United Kingdom. Select examples of such media coverage are attached as Exhibit "A." I'm advised and do verily believe that to date the Plaintiff has not been identified by name in the media, due to a publication ban in relation to the criminal proceedings.
>
> The Plaintiff is a native and current resident of the Halifax area. She is currently undertaking graduate education and I'm advised and do believe that she hopes to pursue a career in a professional community in the Halifax area upon graduation.
>
> The Plaintiff has advised me, and I do verily believe, that she has genuine concerns that continuing to prosecute this action under her own name would bring unwanted attention that would follow her throughout her personal and professional life.

[4] The media articles attached to the affidavit include articles from the *Vancouver Sun*, the *Globe and Mail*, and two United Kingdom publications *The Telegraph* and *The Daily Mail*. The articles are dated from either October of 2018 or January of 2019.

[5] The decision of Justice Duncan in the prior criminal proceeding (***R. v. Smalley***, 2019 NSSC 32), is contained in the Defendant's Book of Authorities. The decision, at paras. 23 and 27, indicates the Plaintiff was, at the time of the alleged assaults, a 21-year-old undergraduate university student with aspirations of going to medical school.

Procedure and Test

[6] Civil Procedure Rule 85.04 is applicable to this motion. It states:

> 1. A judge may order that a court record be kept confidential only if the judge is satisfied that it is in accordance with the law to do so, including the freedom of the press and other media under section 2 of the *Canadian Charter of Rights and Freedoms* and the open courts principle.

Rule 85.04(2) states:

> 2. An order that provides for any of the following is an example of an order for confidentiality:
>
> (d) permitting a party, or a person who is referred to in a court document but is not a party, to be identified by pseudonym, including in the heading.

[7] The parties agree that the test for determining whether a publication ban should be granted is contained in what has become known as the *Dagenais/ Mentuck* test. It was first set out in the Supreme Court of Canada's decision in ***Dagenais v. Canadian Broadcasting Corp.,*** [1994] 3 SCR 385, and subsequently modified by the Supreme Court of Canada in ***R v. Mentuck***, 2011 SCC 76. The test contains a two-pronged assessment. A publication ban should only be ordered if:

1. such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonable alternative measures will not prevent the risk; and
2. the salutary effects of the order 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. ***R v. Mentuck*** , *supra*.

Position of the Parties

[8] The Plaintiff says, in relation to part one of the test (that being preventing a serious risk to the proper administration of justice) that the use of a pseudonym is necessary due to the nature of the allegations at issue in the action. She says, if her name is published, it is likely to have a very damaging impact on her life. The Plaintiff points to the enduring nature of publication in the internet era and the fact that she is on the verge of embarking on a professional career and argues associating her name with the civil action will very likely ensure undesirable consequences that could follow her throughout her career and her adult life.

[9] The Plaintiff says a refusal to grant a Confidentiality Order relating to her identity may have chilling effects on the willingness of victims of sexual assault to seek redress through civil actions, where appropriate. She further argues that to deny such a ban in the present case would be to effectively circumvent the publication ban applicable to the criminal proceeding.

[10] In relation to the second part of the test, being the salutary effects of the order outweigh the deleterious effects on the rights and interests of the parties and the public, the Plaintiff says Canadian courts have long recognized the appropriateness of using a pseudonym to protect the identity of victims of sexual crimes and the importance of this protection outweighs any deleterious impacts. They say it also protects the vital public interest of access to justice in the civil court system for victims of sexual crimes. She says the remedy requested is minimally impairing on the open court principle and is of relative unimportance in the face of her willingness to proceed with the action in open court with an unsealed court file.

[11] The Defendant, the United Kingdom of Great Britain and Northern Ireland (Attorney General), opposes the motion. The Defendant says that the evidence relied upon by the Plaintiff falls far short of meeting the rigorous test required to displace the presumption of open court proceedings. The Defendant says the Plaintiff has not demonstrated that "serious risks to the administration of justice" will flow by not granting a publication ban, nor has she demonstrated that the salutary effects of the requested publication ban would outweigh the deleterious effects of so doing.

[12] The Defendant also argues that a publication ban in the criminal sexual assault proceeding, which is mandated pursuant to s. 486.4 of the *Criminal Code*, does not flow through to the civil proceedings. The Defendant says that the only

specific harm outlined in the evidence is the expressed "genuine concerns that continuing to prosecute this action under her name would bring unwanted attention that would follow her throughout her personal and professional life." The Defendant says much more compelling and precise evidence of serious actual harm is required for a publication ban to be constitutionally justified.

[13] The Defendant points to ***MEH v. Williams***, 2012 ONCA 35, in support of its position that, to amount to a serious risk to the proper administration of justice, physical or emotional harm must be of such a serious or debilitating degree that they undermine the moving party's ability to access the courts; they must be convincing and subject to close scrutiny, and meet rigorous standards; and be based on expert medical opinion firmly based on reliable evidence of the specific circumstances and condition of the litigant.

Analysis

[14] The open court principle is a pillar of our justice system. As Justice Abella, for the majority, said in ***A. B. v. Bragg Communications Inc***., 2012 SCC 46, at para. 11:

> 11. The open court principle requires that court proceedings presumptively be open and accessible to the public and to the media. This principle has been described as a 'hallmark of a democratic society' (*Vancouver Sun, Re* [2004] 2 SCR 332 (S.C.C.) at para. 23) and is inextricably tied to freedom of expression. A.B. requested two restrictions on the open court principle: the right to proceed anonymously and a publication ban on the content of the fake Facebook profile. The inquiry is into whether each of these measures is necessary to protect an important legal interest and impairs free expression as little as possible. If alternative measures can just as effectively protect the interests engaged, the restriction is unjustified. If no such alternatives exist, the inquiry turns to whether the proper balance was struck between the open court principle and the privacy rights of the girl: *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 (S.C.C.); *R. v. Mentuck*, [2001] 3 S.C.R. 442 (S.C.C.).
>
> [Emphasis added]

[15] Confidentiality is not an automatic protection given to Plaintiffs in civil cases involving allegations of sexual assault. The circumstances of each individual case must meet the *Dagenais/Mentuck test*. The publication ban in the prior criminal proceeding does not flow through to this civil matter. The *Dagenais/Mentuck* test must be applied to the circumstances of this civil matter. The fact that this motion is brought in the context of alleged sexual assaults is a factor for consideration in application of the test, as I set out below.

[16] Before I address the test, it is important to emphasize that the Plaintiff is not seeking an in-camera hearing, a sealed record or a ban on any publication. The Plaintiff is solely seeking the use of a pseudonym.

[17] The first part of the *Dagenais/Mentuck* test is whether such an order is necessary to prevent a serious risk to the proper administration of justice because reasonable alternative measures will not prevent the risk.

[18] In the circumstances of the present case, I find there is sufficient evidence to meet part one of the test. The prior criminal proceeding garnered significant media attention both in Canada and in the United Kingdom, as is illustrated by the media articles attached to the affidavit. Intimate details of the alleged assaults are reported. It is logical to infer that the Plaintiff's fear of future harm to her professional/employment life and personal life that could result from intense media attention is very real. This could potentially result in losses over and above those alleged losses claimed in the civil proceeding.

[19] As Justice Abella, for the majority of the Supreme Court of Canada, said in ***A. B. v. Bragg***, *supra*, at paras. 15 and 16:

> 15 The *amicus curiae* pointed to the absence of evidence of harm from the girl about her own emotional vulnerability. But, while evidence of a direct, harmful consequence to an individual applicant is relevant, courts may also conclude that there is objectively discernable harm.
>
> 16 This Court found objective harm, for example, in upholding the constitutionality of Quebec's *Rules of Practice* that limited the media's ability to film, take photographs, and conduct interviews in relation to legal proceedings (in *Société Radio-Canada c. Québec (Procureur général)*, [2011] 1 S.C.R. 19 (S.C.C.)), and in prohibiting the media from broadcasting a video exhibit (in *R. c. Dufour*, [2011] 1 S.C.R. 65 (S.C.C.)). In the former, Deschamps J. held (at para. 56) that the *Dagenais/Mentuck* test requires neither more nor less than the one from *R. v. Oakes*, [1986] 1 S.C.R. 103 (S.C.C.). In other words, absent scientific or empirical evidence of the necessity of restricting access, the court can find harm by applying reason and logic: *RJR-Macdonald Inc. c. Canada (Procureur général)*, [1995] 3 S.C.R. 199 (S.C.C.), at para. 72; *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877 (S.C.C.), at para. 91.
>
> [Emphasis added]

[20] I note, at para. 16, Justice Abella specifically referred to there being findings of objective harm in the prior Supreme Court of Canada cases of ***Société Radio-Canada c. Québec***, [2011] 1 SCR 19, and ***R. v. Dufour,*** [2011] 1 SCR 65. While Justice Abella was addressing the particular vulnerability of children in ***A.B. and***

Bragg, *supra*, the comments are also applicable to the vulnerability of victims of sexual assault. In the case of ***A.B. v. Canada (Citizenship and Immigration)*** 2018 FC 237, Sebastian, J. of the Federal Court, in reference to Justice Abella's comments in ***A.B. and Bragg,*** *supra*, said: "a judgment may be anonymized even though there is no evidence before the Court as to the effects of the public dissemination of the applicant's identity."

[21] I do not take Justice Abella's comments in ***AB v. Bragg,*** *supra*, to mean those alleging sexual assault are excused from meeting the *Dagenais/Mentuck* test. It means, in the circumstances of each particular case, the Court can determine whether there is harm under part one of the test by applying reason and logic. It is logical to infer that victims of sexual assault may suffer harm by re-traumatization as a result of their identity being linked to court proceedings related to the very sexual assault(s) which is (are) the subject of the proceeding, whether they are in the context of criminal or civil proceedings.

[22] The Plaintiff's action alleges sexual assault by "several of the Defendant's employees." The Plaintiff's concern here is not simply one of embarrassment; hers is a privacy concern that intensely private information about incidents of personal sexual violation will make their way into the public sphere and follow her throughout her life. It is logical to infer that the type of media attention this matter garnered under the criminal proceeding would follow in the civil proceeding and have the very real potential to exacerbate any trauma suffered by the Plaintiff.

[23] The *Vancouver Sun* article of January 16, 2019, reports on the prior criminal proceeding. The article is entitled "Nova Scotia Judge to Deliver Verdict in British Sailors Gang Rape Case." The article contains explicit details, for example, of forensic evidence found on the Plaintiff's body and specifics of where it was found, specifics of the injuries she sustained, etc.

[24] In criminal proceedings, as Justice Arnold said in ***M. H. B. v. AB***, 2016 NSSC 137, at para. 14: "…Parliament's intention regarding the need to protect the identity of complainants in sexual assault cases is detailed in the *Criminal Code of Canada*." In ***Canadian Newspapers Co. v. Canada (Atty. Gen.)***, [1988] 2 SCR 122, the Supreme Court of Canada confirmed a prior version of s. 486.4 of the *Criminal Code* was constitutionally valid and that protecting a victim's privacy encourages reporting (para. 18). This concept of protecting a victim's privacy encouraging reporting is now deeply rooted in Canadian law.

[25] While the publication ban in the prior criminal proceedings certainly does not flow through to the civil proceeding, without the use of a pseudonym this Plaintiff will be publicly connected, in perpetuity, not only to the details that will arise through the civil allegations of sexual assault but also to the details previously published in the media concerning the prior criminal proceedings and contained in the decision of the Court in the prior criminal proceedings.

[26] The Plaintiff was a 21-year-old university student at the time of the alleged sexual assaults in 2015 with aspirations of medical school (per ***R. v Smalley,*** *supra*). She is now 25 years old, with a lifetime ahead of her. The media articles attached to the Solicitor's Affidavit illustrate the level of publicity this matter has garnered. Attaching the Plaintiff's name to this litigation will mean the intimate details reported upon in the prior criminal proceeding, and those very likely to be reported upon in this civil proceeding, will be available to all on the internet. Access to the court should not have to come at such a high price for this Plaintiff. The use of a pseudonym will remedy these privacy concerns.

[27] As Justice Grammond of the Federal Court stated, in ***AB and the Minister of Citizenship and Immigration***, 2018 FC 237, at para. 42:

> Moreover, the balance between the protection of privacy and the need to uphold the open court principle should take into account the realities of cyberspace (see generally K. Eltis, "The Judicial System in the Digital Age: Revisiting the Relationship between Privacy and Accessibility in the Cyber Context" (2011) 56: 2 McGill LJ 289). Modern search engines make it considerably easier to retrieve information about a particular individual. Thus, when published judgements containing sensitive private information are not anonymized, the information they contain is easily accessible to anyone.

[28] The Defendant relies extensively upon the ***MEH,*** *supra*, decision from the Ontario Court of Appeal in relation its argument that the Plaintiff does not meet part one of the test. The Defendant, in reliance on the decision, argues in order to amount to "serious risk to the proper administration of justice", physical or emotional harm must be of such a serious or debilitating degree that they undermine the moving party's ability to access the courts, must be convincing, be subject to close scrutiny and meet rigorous standards and be based on expert medical opinion. The factual circumstances of the ***MEH*** case bear no resemblance to the present case. It involved a divorce proceeding, not a proceeding involving alleged sexual assaults of the Applicant. In addition, in that case, MEH sought to seal the entire record of the proceedings. The motion to seal the entirety of the

record was based on the affidavits of a treating psychiatrist, who the Ontario Court of Appeal described as:

> 53 … Without evidence from the respondent, much of what Dr. Quan said in his letters and reports is properly characterized as speculation and assumption.
>
> 57 … the opinion rests entirely on his assumption that the respondent would be subject to immediate harassment occasioned by "persistent, insistent and incessant" efforts to invade her privacy. These assumptions have no foundation in the evidence. Consequently, Dr. Quan's opinion cannot be said to provide the kind of convincing evidence needed to meet the rigorous standard demanded by the necessity branch of the *Dagenais/ Mentuck* test.

[29] The Court, in ***MEH,*** *supra*, also noted that in another proceeding involving MEH, where the content was likely to overlap with the present proceeding, that proceeding had been reported through the media and there was an absence of evidence of adverse impact in relation to that matter.

> 60 . . . There was no evidence filed on this motion to suggest that the media coverage of the fraudulent conveyance proceeding has amounted to a 'feeding frenzy' or has been 'persistent insistent and incessant'.… The media's reporting of the fraudulent conveyance claim and the absence of evidence of any adverse impact on the respondent are significant as there is likely to be an overlap between the issues in that proceeding and some of the issues that may arise in the divorce proceeding.

[30] The Plaintiff seeks to use a pseudonym in this action. She does not seek to close the court. I see no alternative measure other than the use of a pseudonym that would prevent the identified harm. I find such an order is necessary to prevent a serious risk to the proper administration of justice, as there are no other reasonable alternative measures to the use of a pseudonym that will prevent the risk. The first step in the *Dagenais/Mentuck* test is satisfied.

[31] The practice of a solicitor making an affidavit that swears facts going to the merits of the motion must be avoided as, invariably, it leads to counsel arguing the case on the basis of their own affidavit. Although, in the present case, a Solicitor's Affidavit was filed, cross-examination was not requested and Mr. Dull did not argue the motion. Regardless, Solicitors' Affidavits should be limited to purely procedural content and should not contain assertions of facts that may be in issue. Clearly, an affidavit from the Plaintiff is preferred where there are factual assertions of the Plaintiff being advanced.

[32] In the present case, the Defendant did not seek to strike any portions of the Solicitor's Affidavit. During its submissions, the Defendant indicated the Solicitor's Affidavit, filed on the Plaintiff's motion, contained hearsay. As this motion is procedural in nature, hearsay evidence is permissible provided the deponent establishes the source and the witness's belief of the information, as was done here (Civil Procedure Rule 22.15). However, even without the several statements of belief concerning the Plaintiff that are contained in the Solicitor's Affidavit, I would have found there was sufficient other evidence (including the media articles attached to the affidavit and the details in the prior criminal proceeding decision) and, combined with logic and reason, it would still meet part one of the test in the present circumstances.

[33] The second part of the *Dagenais/ Mentuck* test is whether the salutary effects of the order 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

[34] Freedom of the press is constitutionally protected. Media access to the court and coverage of its proceedings is absolutely fundamental and essential to the proper functioning of our justice system, particularly the promotion of transparency through our open court principle. However, there is societal interest in ensuring that legitimate privacy risks do not prohibit people from accessing our courts. If the significant risk to the privacy of sexual assault victims means they are fearful of accessing the courts, this becomes an access to justice issue. Protecting the privacy of a Plaintiff who is alleged to be a victim of sexual assault, in circumstances where there is a legitimate concern of harm, facilitates access to justice.

[35] As Justice Abella said in ***A.B. v. Bragg***, *supra*, at para. 25:

> 25 In the context of sexual assault, this Court has already recognized that protecting a victim's privacy encourages reporting: *Canadian Newspapers Co. v. Canada (Attorney General)*, [1988] 2 S.C.R. 122 (S.C.C.). It does not take much of an analytical leap to conclude that the likelihood of a child protecting himself or herself from bullying will be greatly enhanced if the protection can be sought anonymously…

[36] In ***Dagenais v. Canadian Broadcasting Corp.***, [1994] 3 SCR 835, Chief Justice Lamer for the majority, indicated that ordering bans can protect vulnerable

witnesses, including victims of sexual offences, and encourage the reporting of sexual offences, at para. 87:

> … The analysis of publication bans should be richer than the clash model suggests. Rather than simply focusing on the fact that bans always limit freedom of expression and usually aim to protect the right to a fair trial of the accused, it should be recognized that ordering bans may:
>
> …
>
> maximize the chances that witnesses will testify because they will not be fearful of the consequences of publicity;
>
> protect vulnerable witnesses (for example, child witnesses, police informants, and victims of sexual offences);
>
> preserve the privacy of individuals involved in the criminal process…;
>
> …
>
> encourage the reporting of sexual offences.

[37] Justice Dickson, writing for the majority, in ***Macintyre v. Nova Scotia (Attorney General)***, [1982] 1 SCR 175, said:

> 63 In my view, curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance. One of these is the protection of the innocent.

[38] Sexual assault proceedings involve intensely-personal information. There is a real potential for dissuading similarly-situated Plaintiffs from accessing the court for fear of having the intimate details of the alleged sexual assault connected to their names, in perpetuity, on the internet. Such information could be easily accessed by prospective employers, a litigant's children, other family members, friends, etc.

[39] As has been held in other cases, I accept that victims of sexual assault are deemed to be among the category of the "innocent" deserving protection. (See ***J. Doe v. T.B.H***. [1996] O.J. No. 839; ***Jane Doe v. Excobar*** [2003] O.J. No. 3509; ***John Doe P.A.B.D.#1*** 2005 NLTD 214 at para. 20). I am of the opinion, to use the words of Justice Dickson, there is a need to protect social values of superordinate importance when dealing with proceedings involving those who are alleging sexual assault. This is a strong salutary factor in favour of the pseudonym order. We must be careful to ensure that an overly strict adherence to the open court principle does not sacrifice the significant societal interest in access to justice for victims of sexual assault.

[40] The Defendant states, in its brief:

> … The Plaintiff pursued charges of sexual assault and battery against four of the team members. Charges were dropped/withdrawn against two of the team members, stayed for medical reasons (without re-institution) against a third team member and fully dismissed against a fourth team member pursuant to a January 18, 2019 decision of the Hon. Justice Duncan. . . .

[41] The Defendant also refers to comments by Justice Duncan in ***R v. Smalley***, *supra*, concerning the credibility and reliability of the Plaintiff. If these comments are intended to indicate that, as a result of that decision, the Plaintiff should no longer be considered in the category of "innocents," as Justice Dickson described above, I disagree. What the decision in the criminal proceeding did was to conclude the Crown had not proven each of the essential elements of the offence beyond a reasonable doubt -- nothing more, nothing less. Justice Duncan's decision, at para. 248, indicates this when he states:

> . . . it is impossible to know where the truth begins and ends in this matter. The Crown must prove the absence of consent beyond a reasonable doubt. Obviously, something of a sexual nature occurred in that room. Maybe it was a criminal offence, maybe it was not. Without credible evidence it is unsafe to convict.

[42] In the present case the allegations in the criminal matter remain as they were before the trial -- they are simply unproven. The British Columbia Court of Appeal, in a civil context, said in ***G.B. v. British Columbia,*** 2004 BCCA 345:

> … In the absence of any clear findings of fraud or perjury on the part of the Plaintiffs, matters remain as they were before trial. Their allegations are simply unproven.

[43] I note there were no submissions from the media on this motion. One representative of the media, Mr. Blair Rhodes of CBC, appeared at the motion indicating they were not opposing the motion. The media received notice of this motion.

[44] The Supreme Court of Canada, per Justice Abella for the majority, at para. 29 of ***AB v. Bragg,*** *supra,* indicated that the benefit of protecting the identity of victims of sexual assault can outweigh the risk to the open court principle:

> 28 The answer to the other side of the balancing inquiry — what are the countervailing harms to the open courts principle and freedom of the press — has already been decided by this Court in *Canadian Newspapers*. In that case, the constitutionality of the provision in the *Criminal Code* prohibiting disclosure of

> the identity of sexual assault complainants was challenged on the basis that its mandatory nature unduly restricted freedom of the press. In upholding the constitutionality of the provision, Lamer J. observed that:
>
> > While freedom of the press is nonetheless an important value in our democratic society which should not be hampered lightly, it must be recognized that the limits imposed by [prohibiting identity disclosure] on the media's rights are *minimal*.... Nothing prevents the media from being present at the hearing and reporting the facts of the case and the conduct of the trial. Only information likely to reveal the complainant's identity is concealed from the public. [Emphasis added; p. 133.]
>
> In other words, the harm has been found to be "minimal". This perspective of the relative insignificance of knowing a party's identity was confirmed by Binnie J. in *F.N.* where he referred to identity in the context of the Young Offenders legislation as being merely a "sliver of information": *N. (F.), Re*, [2000] 1 S.C.R. 880 (S.C.C.), at para. 12.
>
> 29 The acknowledgement of the relative unimportance of the identity of a sexual assault victim is a complete answer to the argument that the nondisclosure of the identity of a young victim of on line sexualized bullying is harmful to the exercise of press freedom or the open Court's principle. ***Canadian newspapers*** clearly establishes that the benefits of protecting such victims through anonymity outweigh the risk to the open Court principle.
>
> [Emphasis added]

[45] There is very little public benefit to naming the Plaintiff in the present circumstances. The Plaintiff is not seeking to close the court. She is seeking a measure by which the intimate details of her allegations of sexual assault will not be associated with her name forever in the internet world in which we reside. The request to proceed by pseudonym would only minimally affect the public interest. The level of openness of the court will still be significant. The impact on the open court principle will be minimal in comparison to the potential for harm to the Plaintiff. I fail to see any real impact on the rights and interests of the Defendant in this matter and none was raised at the motion. The use of a pseudonym in the present case will not impair the Defendant's ability to properly defend its interests.

[46] When the salutary and the negative effects of the proposed use of a pseudonym are balanced, I conclude that the former outweigh the latter. I am satisfied that using a pseudonym in the specific circumstances of this proceeding is necessary. There is no reasonable alternative measure to protect the interests engaged and it will only minimally impair the open court principle.

[47] I note that, if the request by the Plaintiff was to seal the record, hold in-camera proceedings, etc., my decision would be very different without additional affidavit evidence.

Conclusion

[48] I am satisfied that the use of a pseudonym in this proceeding is necessary and will only minimally impair the open court principle. The Plaintiff's motion is granted. I would ask Mr. Dull to prepare the Order.

[49] Given the Plaintiff would have been required to bring this motion regardless of whether the Defendant consented, there will be no costs on the motion.

Jamieson, J.