Jurisdiction	Category Access, Cameras in the Courtroom, Contempt, Copyright Infringement, Defamation, Defamation (Statutory protections), Freedom of Information, Notice to Media, Production Orders, Publication Ban, Sealing Order, Status of Journalists, etc.	Case Name and Citation	Facts	Summary of the Decision	Key Takeaways
BC and Yukon	Defamation	**EB v British Columbia (Child, Family and Community Service), 2021 BCCA 47**	Appeal of decision to strike claim for failure to plead the particulars of the alleged defamatory statements. This was a shot-gun style pleading with every known tort pleaded. The chambers judge found that they did not plead material facts that would establish the three essential elements of defamation, and most critically they did not particularly the allegedly defamatory words.	Court affirmed the chambers judge' decision that a defamation claim was certain to fail. Once again stated that the material facts should generally include the publication alleged to be defamatory; the specific words at issue; the time and place of the publication; the manner of publication; and the recipient. The plaintiff is required to set out the exact words, unless those words are only knowable through further steps in the litigation process.	A plaintiff must set out the exact words alleged to be defamatory unless that is not possible until additional litigation streps have taken place.
	Defamation	**Neufeld v Hansman, 2021 BCCA 222**	Plaintiff was school trustee who posted criticisms on social media regarding teaching resources about sexual orientation/gender identity. Defendant was president of provincial teachers' federation and criticized Plaintiff's post in media interview/published press. The chambers judge dismissed the action pursuant	The BCCA ruled that the Plaintiff's claim should not have been summarily screened out under s. 4 of the PPPA. The chambers judge erred: • in assessing fair comment, he did not address each specific publication in issue (the Weaver v. Corcoran error) • in the assessment of competing public interests, the judge failed	The term "public interest" is used differently in the initial assessment and the final stage. The first stage of the assessment concerns only whether the expression is directed at a topic of public interest, not the quality of the expression or value of its content. In contrast, at the final stage of the analysis, where the protection of free expression is being weighed against permitting

			to s. 4 of the *Protection of Public Participation Act* ("PPPA").	to give full effect to the presumption of damages in defamation and wrongly assumed causation would be difficult to establish. • failed to distinguish between the subject matter of public interest and the actual expression complained of. • failed to consider the chilling effect the comments might have on public debate and the collateral effect of preventing speech.	the action to continue, both the quality of the expression and the motivation behind it are relevant. The judge must assess also the public interest in continuing the proceeding.
	Defamation	**Hobbs v Warner, 2021 BCCA 290**	Appellants brought defamation action against respondent (Mr. Warner), founded on an email sent by Mr. Warner to the Vancouver Police Department expressing suspicion that the appellants were using their business for criminal purposes. Mr. Warner brought an application to dismiss the claim under s. 4 of the PPPA. The chambers judge dismissed the claim on the basis that the appellants had failed to establish that the harm they suffered/would likely suffer outweighed the public interest in protecting Mr. Warner's freedom of expression.	The BCCA ruled that the Plaintiff's claim should not have been summarily screened out under s. 4 of the PPPA because: • the judge failed to give full effect to the presumption of damages in defamation and therefore applied too high a standard of proof of harm. • the judge erred in that she found that a trier of fact could conclude that Mr. Warner was actuated by malice in sending the email, yet she did not account for this important consideration in the weighing exercise • on a balance of probabilities the harm likely to have been suffered as a result of the email was sufficiently serious that the public intertest in permitting the proceeding to continue outweighed the public interest in protecting the expression.	Addressing the harm and, when doing so, considering the presumption of damages is crucial in a PPPA application. Clearly address the specific expression used and how that it is, or is not, in the public interest to protect the specific expression.
	Defamation	**Zhao v Corus Entertainment**	The appellant had sued the respondents for defamation and had his claims dismissed	The trial judge found that "the defence of justification applied because the defamatory sting of the	The defence of justification does not require the truth of each and every word or the literal truth of the

		Inc., 2021 BCCA 408; **Zhao v Corus Entertainment Inc., 2020 BCSC 1533**	by way of summary trial. The plaintiff challenged the judge's findings of fact about what words were spoken, their meaning, and the application of the defences of fair comment and justification.	comments was based on facts that were true, and that the minor errors in the description of the plan did not matter." The court concluded that the plaintiff had not established any basis upon which would interfere with the judge's decision and the appeal was dismissed.	statements, but rather, whether what was said was substantially true; it is sufficient if the substance of the allegation is justified.
	Defamation	**Giustra v Twitter Inc., 2021 BCCA 466** **Giustra v Twitter, Inc., 2021 BCSC 54**	Giustra brought defamation claim against Twitter, Inc.. Twitter applied for an order dismissing the action on the ground that the BCSC did not have jurisdiction over Twitter, or alternatively, staying the action on the ground that the BCSC should decline jurisdiction in favour of the courts of California. Chambers judge found against Twitter on both grounds.	The question raised in the appeal was not whether Twitter could be found properly liable to the plaintiff for defamation, or whether policy considerations should insulate Twitter from liability; the sole question was whether the plaintiff should litigate the his claim in BC or California. BC had presumptive jurisdiction under the CJPTA, as the plaintiff was a BC resident and alleged that Twitter published tweets that defamed him in BC, as well as elsewhere. "The jurisdictional questions that remain are twofold: (1) whether the relationship between British Columbia and the subject matter of the litigation is nevertheless so tenuous as to rebut the presumption of jurisdiction; and if not, (2) whether British Columbia should decline to exercise its jurisdiction on the ground that California is the more appropriate forum under a *forum non conveniens* analysis." The principle of comity was not offended by BC maintaining jurisdiction, and that Twitter had demonstrated neither an error in	This case illustrates the jurisdictional difficulties with internet defamation where the publication of the defamatory comments takes place in multiple countries where the plaintiff has a reputation to protect. Under US federal law, any action brought against Twitter for defamation in the United States was doomed to fail. As the SCC confirmed in *Haaretz.com v Goldhar*, 2018 SCC 28 that the tort of defamation is committed where material has been "communicated," so that the situs of Internet-based defamation is the place where the statements are read, accessed or downloaded by the third party.

				principle nor a misapprehension or failure to take account of material evidence. Appeal dismissed.	
	Defamation	**Pinkerton v Vic Saanich Canadian Dressage Owners and Riders Society, 2020 BCSC 1838**	The plaintiff made a number of allegations against the defendant society. In the course of her dispute with the society, the plaintiff contacted a representative of the national dressage organization asking that he give directions and help to resolve the issues. In the course of his intervention, an earlier letter sent by the society to only the plaintiff (containing defamatory statements) was sent to the representative by the society.	The Court applied the infrequently used defence of consent. The Court held That although the Society "published" the letter to Mr. Barnes, the plaintiff had specifically requested Mr. Barnes' directions regarding the letter and whether she could share the letter with him. This led to a finding of active consent by the plaintiff that the contents of the impugned letter could be read.	Consent is a bar to a recovery for defamation under the general principle of *volenti non fit injuria* or, as it is sometimes put, the plaintiff's consent to the publication of the defamation confers an absolute immunity or an absolute privilege upon the defendant
	Defamation	**Dong v Real Estate Board of Greater Vancouver, 2020 BCSC 2018**	Plaintiff claimed he was defamed by the defendant; defendant submitted that the allegations were statute-barred by the effluxion of time and ought to be struck out as disclosing no reasonable claim.	Under the *Limitation Act*, the two-year limitation period for the commencement of a defamation action is postponed until the plaintiff reasonably knows that injury, loss or damage has occurred, that it was caused by the defendant's act, and that a court proceeding would be appropriate. Plaintiff submitted that material facts were willfully concealed from him; but there was no proper pleading of willful concealment and the facts were known by September 2014. Action was dismissed.	
	Defamation	**Galloway v A.B., 2021 BCSC 320**	Plaintiff brought action for defamation against multiple defendants after he was dismissed from his professorship due to findings that he sexually harassed complainant AB. Defendants brought anti-SLAPP	Applications were made by multiple parties for disclosure of documents related to the dismissal of the application under s. 4 of the PPPA To determine "how deeply a motions judge is to venture in order to assess the evidence under a PPPA application," Hickson C.J.S.C	

			applications under s. 4 of the PPPA to have this action dismissed. AB sought an order to compel the plaintiff to produce documents she contended were necessary and relevant to the determination of the anti-SLAPP application. This included unredacted copies of a 2016 report by retired BCSC Judge Mary Ellen Boyd, in which it was stated that the allegations against the plaintiff were unsubstantiated. The plaintiff contended that these documents were unnecessary for the disposition of the PPPA applications.	turned to *Pointes* (2020 SCC 22). *Pointes* emphasized that "the court is not to allow the motion to become a summary trial, and not to take a 'deep dive' into the evidence, and 'should engage in only limited weighing of the evidence'." Hickson C.J.S.C. held that the submission for unredacted copies of the Boyd report was inconsistent with AB's position that she was entitled to redact portions of documents she produced pursuant to her PPPA application for relevance and other reasons. "The rule in defamation cases is that a defendant must defend the stings sued over, not other alleged misconduct." The plaintiff asserted that the redacted version of the Boyd report that AB already had contained those parts of the report that deal with the defamations sued over. He asserted that if the unredacted version of a report was disclosed, it would violate the law in defamation against introducing evidence of other alleged conduct not sued over. The court held that this part of the application could not be resolved without reviewing the redacted and unredacted versions of the Boyd report and so reserved judgment. AB contended that the requested documents relating to the scope of the grievances pursued by the University were relevant to her Weber defence as well as qualified privilege, absolute privilege, responsible communication on a	

				matter of public interest, and Wigmore privilege. The plaintiff contended that his defamation action was about the publications by AB and the other defendants of these defamations, whereas the grievance, as shown by the grievance letters and by definition, was about a breach of the University's collective agreement. Hickson C.J.S.C. found: delving into the grievance process beyond the two grievance letters already produced would be diving deeper than that contemplated in *Pointes* and dismissed that part of A.B.'s application. AB's application for documents including emails, notes, letters or other information in the plaintiff's possession on or before October 26, 2016 was allowed, in part. The plaintiff's application for the production of unredacted copies of documents produced to him in a redacted form was allowed, in part.	
	Defamation	**Galloway v AB, 2021 BCSC 2344**		This was a defamation action in which the plaintiff asserted that the defendants made statements about him that meant and were understood to meant he was guilty of rape and assault. There are numerous judgments regarding this matter; here, the court set out its analysis and conclusion on whether there were grounds to believe that the plaintiff's claims had substantial merit and there were no valid defences.	

				The court found that for the purposes of the PPPA applications, the plaintiff had proven publication for all statements at issue, and that it was the other two required elements of a defamation claim that were at issue. The applications under the PPPA were examined in turn; several were granted, while several were dismissed. “In summary, with respect to each of the Remaining Expressions, I am satisfied that Mr. Galloway has shown that the harm likely to be or have been suffered by him as a result of the Remaining Expressions is sufficiently serious that the public interest in permitting his defamation claims to continue outweighs the public interest in protecting those Expressions.”	
	Defamation	**Marion v Louie, 2021 BCSC 424**	Plaintiff alleged sexual impropriety between her son and his teacher (the defendant’s sister). The defendant wrote letters to a board of directors of which the plaintiff was a member accusing her of conflict of interest and discrimination, and sent a series of text messages and social media posts demanding investigation of incidents of bullying, slander, assault, etc. Plaintiff brought action for damages for defamation, to which the defendant claimed qualified privilege.	There was no question the impugned words were defamatory. Defendant’s claim of qualified privilege was defeated by the facts that 1) her comments exceeded the scope or any interest or duty she had in making the complaint and 2) they contained no specific complaints in relation to the plaintiff in capacity as director. Defendant had no legal, social or moral interest in making the statements. However, breadth of publication was small. The court awarded: General damages: $20,000 Aggravated damages: $10,000	

	Defamation	**Cheema v Young, 2021 BCSC 461**	Defendant published series of comments on his social media alleging, among other things, that the plaintiff was interfering in local government affairs. Application for summary dismissal under PPPA dismissed.	On their face, the comments about the plaintiff did not relate to public interest issues, but rather the impugned comments referred to matters of public interest in a veiled effort to target the plaintiff, a private individual. The defendant failed to show that published comments about the plaintiff respected public interest matter, even given an expansive and generous interpretation of that term.	PPPA exists to protect the type of expression designed to generate fruitful debate and public participation in community affairs.
	Defamation	**Hansra v Joss, 2021 BCSC 805**	In a Rule 7-5 Letter, one of the questions posed to the recipients read: Q Were you aware that Mr. Hansra was arrested in 2010 because a truck he was driving was found to have over 50 kilograms of cocaine inside it? a. If so, did this influence his employment with your company?	Plaintiff sued lawyers in defamation, alleging that the reference implied criminal lifestyle and unsavory character. Defendants brought application to dismiss action, which was granted. The defendant's law firm in writing the letter had acted in the course of pursuing their client's interest and was thus protected by absolute privilege.	Granting absolute privilege to lawyers when they act in the course of their duties to their clients is for the public benefit. It frees lawyers from fear that in advocating their client's cause they will be sued if what they say on behalf of a client is found not to be true.
	Defamation	**Gill v Morgason, 2021 BCSC 874**	Defendant reported a threat made by plaintiff to shoot their supervisor. Plaintiff claimed defendant committed defamation by publishing comments to a co-worker and the police.	Defendants claimed this matter fell within the exclusive jurisdiction of labour tribunals and that the Supreme Court lacked jurisdiction to hear the claim. The Court agreed and the claim was struck.	
	Defamation	**Pineau v KMI Publishing and Events Ltd., 2021 BCSC 1268**	Defendants published article about whistleblowers. Plaintiff alleged the article was defamatory and unfairly wrote things about him that were not true, including an inferential suggestion that he is corrupt, has been involved with or is	The Court determined that the article referred to the plaintiff, was published, and was defamatory. On turning to defences, the Court held that: The report was not fair or accurate and therefore not covered by common law or statutory privilege	Get the facts right.

			capable of retaliatory violence against whistleblowers and is dishonest.	regarding media reporting of court proceedings. The words were not substantially true and that the falsity of the factual foundation defeated the fair comment defence. Notably, there was no effort made to obtain the plaintiff's side of the story and I surmise this is likely why a responsible communication defence was not advanced.	
	Defamation	**Pineau v KMI Publishing and Events Ltd., 2021 BCSC 1952**	This was the assessment of damages in the above matter. Case contains a useful summary on the pleas of reduction of damages based on s.11 and 12 of Libel and Slander Act.	The plaintiff sought a combined award of general, aggravated, punitive, and special damages in the amount of $2.5 million, while the defendants argued that he was only entitled to general damages in the range of $5,000 to $20,000. General damages = $60,000. The court made no award for aggravated or punitive damages because it found that the defendants' conduct did not rise to the level of being malicious, high-handed, or oppressive.	Damages for defamation are presumed once a cause of action is established, but there is no presumption that they be substantial. Quantification is governed by all the circumstances of the particular case. (para 73) Case is a very good summary of law of damages in defamation.
	Defamation	**Port Alberni Shelter Society v Literacy Alberni Society, 2021 BCSC 1754**	The plaintiff waged a defamatory campaign against the Port Albert Shelter Society ("PASS"), claiming, among other things, mismanagement of public funds, manufactured statistics, dishonesty, contribution to homelessness, and human rights abuses causing harm and death. Default Judgment granted.	The question became whether each defamatory statement alleged should be considered to have been made out for the assessment of damages after a default judgment. Court held "where, as here, there is an alleged campaign and the statements are numerous and made as part of a consistent theme or themes, assessment of the statements as a whole and findings about their numerosity, duration, and overall tenor, is appropriate." General damages: $100,000 to each of Mr. Hewitt and Mr. Douglas; $75,000 to Port Alberni Shelter Society	

				Aggravated damages: $25,000 to each of Mr. Hewitt and Mr. Douglas Punitive damages: $15,000 to be shared among the three plaintiffs equally Special damages: $4,720.75	
	Defamation	**Masjoody v Trotignon, 2021 BCSC 1502**	The plaintiff was a former university employee seeking damages against the defendants (three university employees). The plaintiff also made numerous social media posts calling the def's "Feminazis." Some posts were interpreted as attempts to incite violence. The defendants sought an injunction to prohibit the dissemination of these allegations.	A Consent Order was granted to halt the postings. Court concluded that the dispute was governed by the Collective Agreement and that the Court had no jurisdiction to resolve the issues.	
	Defamation	**Bejm v Square One Insurance Services Inc., 2021 BCSC 1513**	Plaintiff alleged that his former insurer (the defendant) breached his privacy and defamed him by describing the plaintiff as "litigious." Defendant sought order dismissing the plaintiff's claims.	1. There is no defamatory meaning to the word "litigious". 2. The second claim that the cancellation of the policy constituted defamation fails because it was the plaintiff, and not the defendant, that published the information about the termination. Plaintiff also claimed breach of privacy or breach of the *Privacy Act* (relies on s. 1(1), that it is a tort, actionable without proof of damage, for a person to willfully violate another's privacy) regarding an email that was sent. Defendant argued that plaintiff gave consent to information being provided. Court agreed, finding that the plaintiff had provided authorization for the insurer to provide information to the landlord.	

	Defamation	**Peterson v Deck, 2021 BCSC 1670**	The plaintiff, a plastic surgeon, performed breast augmentation surgery on the defendant. The defendant, a blogger, was unhappy with the results and posted negative "reviews" on her personal website and on Google Reviews. The plaintiff sought damages for defamation. Both parties filed summary trial applications. Later, the defendant applied to have a dismissal application under s.4 of PPPA heard at the same time.	The court first disposed of the PPPA application. The court held that a consumer review of a plastic surgeon's skills is within the ambit of public interest. However, the PPPA application failed at the second stage. The proceeding had substantial merit, the defendant had no valid defence, and the harm caused to the plaintiff by the Posts was serious enough that society's interest in continuing the proceeding outweighed society's interest in protecting the defendant's expressions. The court found for the plaintiff. Defendant ordered to take down the posts; the plaintiff was awarded $30,000 in damages.	
	Defamation	**Tenshi Seafood Ltd. v Ocean Run Seafood Canada Ltd., 2021 BCSC 2075**	The parties were two competing seafood supply companies. The plaintiffs failed to plead: specific defamatory words, the identity of the person who made the statement, the identity of the persons to whom the statements were published, and the date, time, and place of the publications.	The plaintiff relied upon W*eaver v Corcoran*, 2017 BCCA 160, arguing that greater flexibility can be used when analyzing defamation pleadings in the early stages, and that a *prima facie* case of defamation may stand despite a lack of detailed facts outside the plaintiff's knowledge. The court noted that while this is true, the first step is for the plaintiff to reveal all the particulars within its knowledge. The court found the pleading defective but allowed the plaintiff 30 days to file an amended NOCC provided further particulars.	
	Defamation	**Genex Strategies, Inc. v Keefer, 2021 BCSC 2223**	The plaintiffs in this BC proceeding alleged defamations and abuse of process on the basis of the defendants having given pleadings filed in Arizona	"Assuming for the moment, but not deciding, that a party to litigation distributing its filed pleading to a blogger can amount to an act of defamation based on the content of the pleading, the evidence before	

			which contained the alleged defamatory statements to a blogger thereby defaming them in BC. . The defendants applied to dismiss or stay the action for lack of territorial competence.	me shows that none of the Defendants gave the Arizona pleading to [the blogger].” The filing of a pleading in Arizona in the Arizona litigation carries with it no possible jurisdictional fact linking that conduct to a tort being committed in British Columbia. The action was dismissed.	
	Defamation	**Donyaei v Nyquest, 2021 BCSC 2178**	The plaintiff brought a claim arising out of work and romantic relationship; which included defamation and breach of employment standards. The defamation claim was based on a letter from the defendant’s lawyer to the plaintiff’s lawyer setting out certain allegations of financial impropriety in an ongoing exchange of legal and settlement positions.	The defendant brought an application for summary judgment regarding the employment standards claim. Such a letter could not be the basis for the defamation claim on two bases: such correspondence is not considered publication for the purpose of defamation, and such correspondence is protected by absolute privilege. The defendant’s application to strike the civil claim and for summary judgement was granted.	
	Defamation	**Martin v Tangerine Bank, 2021 BCSC 2545**	At all material times, the plaintiff had an account with the defendant bank. The bank suggested that transactions made by the plaintiff were fraudulent, and she claimed that had to relay these accusations to her employer, and her employment was terminated. The bank argued that the plaintiff’s notice of civil claim failed to plead material facts necessary to make out the elements of a defamation claim, or alternatively that it did	The court concluded that the claim was bound to fail under the Rule 9-6 “because the only communication that the Bank might reasonably anticipate [the plaintiff] making to [her employer] is the statement that the Bank believed the transactions may be fraudulent,” and not that an investigator had accused her of allowing fraudulent transactions to occur. The alleged defamatory statements relate to the nature of the transaction rather than the plaintiff herself, and communications regarding the fraudulent nature of the transactions would foreseeably	

			not disclose a genuine issue for trial.	have no effect on how the employer viewed the plaintiff. As a result, the plaintiff's claim in defamation was bound to fail.	
	Defamation	**Hutcheson v British Columbia, 2021 BCSC 2493**	The plaintiff commenced an action against the defendants, the province and the Kootenay-Columbia School District. He pleaded that, among other things, the School District Superintendent had defamed him in a letter sent to parents of children at another school. The letter did not identify him by name but made reference to an individual who had been arrested. The School District applied to have the action dismissed pursuant to Rule 9-6 or 9-7 of the SCCR.	The court held that it was more appropriate to deal with the application under 9-7 and that it was suitable for summary disposition under 9-7. The court found that the plaintiff's failure to file any affidavit evidence in response to the application to dismiss the defamation claim was fatal. He bore the burden of establishing that the words referred to him but failed to provide any evidence. The defamation claim was dismissed pursuant to Rule 9-7. The court also assessed the School District's submission that the letter was made on occasion of qualified privilege. "The standard for establishing an interest or a duty is an objective one. The court asks whether "persons of ordinary intelligence and moral principle, or the great majority of right-minded persons, would have considered it a duty to communicate the information to those to whom it was published: *Popat* at para. 28." The court concluded that the School District had qualified privilege in sending the letter, as it concerned the matter of children's safety.	
	Defamation	**Canada Easy Investment Store Corporation v MacAskill, 2022 BCSC 202**	The plaintiff corporation and individual claimed they were subject to defamation by the defendant blogger. The plaintiffs successfully applied for an interim injunction, prohibiting the blogger from	Judgment was granted, and damages and a permanent injunction were awarded. Violation of order was found, as was contempt of court on a prima facie basis. Elements of defamatory publication were made out on	

			publishing further allegations against them. The plaintiffs sought judgment on a summary trial basis for violations of injunction; they also applied to have the blogger found to be in contempt of court.	evidence, and the blogger did not establish justification, as facts were not present to support defamatory claims. Fair comment was not available to blogger on facts before the court. General damages: $150,000 total (split two ways) Aggravated damages: $10,000 (split two ways) Punitive damages: $30,000 (split two ways)	
	Defamation	**Durkin v Marlan, 2022 BCSC 193**	The plaintiff brought an action pleading defamation and privacy torts in respect to an article written by the defendant hotel. The defendants applied for dismissal under the PPPA on the basis that the article was expression relating to a matter of public interest and that the plaintiff had not established statutory conditions permitting the proceeding to continue.	The application was granted. It was found that there was substantial public interest in protecting expression in circumstances which outweighed the modest seriousness of harm suffered by the article's publication. The defamation plea was found to have substantial merit under the "bare-bones" Grant requirements, while the claims based on invasion of privacy did not. "Publication is not violation of privacy if matter published is of public interest, and matters in article were of public interest." The novel "false-light" privacy tort pleaded by the plaintiff was found unlikely to succeed because the plaintiff failed to show that he had a "real prospect of success" on the key ingredients of the tort: the requirement of proving that the plaintiff was placed before the public in a *false* light, and that the defendants *knew or acted with reckless disregard* as to the falsity of the publicized matter and the	

				false light in which the plaintiff would be placed. Two defamation defences were relied on by the defendants: responsible journalism and fair comment. " The responsible journalism defence was found to have a real chance of success.	
	Defamation	**Sun v Mercedes-Benz Financial Services Canada Corporation, 2022 BCSC 443**	The plaintiffs alleged damages for breach of a motor vehicle lease agreement, and also sued in defamation and involuntary bailment. When the plaintiffs had refused to pay out their lease, the defendant company reported the default to two credit agencies pursuant to its standard practice. These reports were the bases of the plaintiffs' defamation claim.	The information given by the defendant was found to be true, and the defendant was also found to be protected by a qualified privilege (the court cited the Ontario Court of Appeal decision *Cusson v. Quan*, 2007 ONCA 771, paras. 38–40, in which information provided by businesses for purposes of credit reports was held to be protected by qualified privilege).	
	Defamation	**Andreasen v Malahat Nation, 2022 BCSC 363**	The plaintiff applied for leave to further amend her notice of civil claim, while the defendant applied to strike out the existing ANOCC. The defendant said that the pleadings against her were based on her submission of a claim to the Chartered Professional Accountants of British Columbia ("CPABC") and barred on the grounds of absolute privilege.	The court held that the circumstances of the defendant submitting a claim to the CPABC fell squarely within the policy reasons underlying the absolute privilege confirmed in *Hung v Gardiner*, 2003 BCCA 257. The strong public interest in ensuring that matters can be brought to the attention of regulatory bodies like the CPABC requires that complainants be able to communicate without fear of reprisal. The ANOCC was struck with leave to amend. The plaintiff's application was adjourned generally.	
	Defamation	**McKerracher v Neustater, 2022 BCSC 389**	The plaintiffs and the defendants were former joint owners of a property in a	The court applied the *Grant v Torstar Corp.*, 2009 SCC 61 factors required to prove defamation, and	

			communal living arrangement. Upon the breakdown of this arrangement, the plaintiffs sought damages for defamation, while the defendants filed a counterclaim for the same. The plaintiffs claimed that the defendants defamed them when they posted to Facebook and Instagram and inferred that the plaintiffs were guilty of child abuse, criminals, and dangerous people.	on balance were not satisfied that the posts lowered the reputation of the plaintiffs. The defendants advanced the defences of qualified privilege, justification, and fair comment. The court found that qualified privilege was a full answer to the defamation claim and that the alternative defences need not be addressed. As for the counterclaim, the plaintiffs had put up a series of posters in town describing the defendants as extortionists and police informants. The court held that the defendants had established that the plaintiff published a statement about them that was defamatory and untrue. The defendants did not seek damages.	
	Defamation	**Thunderstruck Resources Ltd. v Bonga Xploration Drilling Supplied Ltd., 2022 BCSC 404**	This case involved an application by the defendant to dismiss the case on the basis of jurisdiction simpliciter. The plaintiffs had brought an action seeking damages for various causes including defamation. Thunderstruck Ltd., one of the plaintiffs, was a BC public company that did business in Fiji through a wholly-owned Fijian subsidiary. The plaintiff and defendant had entered into a service contract by which the defendant was to provide drilling and other services to the plaintiff. The plaintiffs sought damages for defamation and libel, based on Internet postings and later email communications regarding the “theft” of the defendant’s equipment.	The plaintiffs relied on the presumptive connecting factor that the defamation claim concerned a “tort committed in BC” (CJPTA, s. 10(g)). The court looked to previous cases to determine where the tort of defamation had been committed. The court concluded here that the defamatory statements were published in BC and that the Plaintiffs suffered damage as a result in BC. The BCSC was found to have jurisdiction simpliciter with respect to the defamation claim.	

	Defamation	**Skyllar v The University of British Columbia, 2022 BCSC 439**	The plaintiff, a former UBC student, brought a defamation claim against the University after one of her former professors made statements about her during an ICBC investigation that she said negatively impacted her settlement claim.	The communications occurred because the plaintiff consented to them in her motor vehicle lawsuit and were found to be protected by absolute privilege, which applies to statements made by prospective witnesses to potential or ongoing litigation regarding the subject matter of that litigation.	
	Defamation	**Stuart v Doe, 2021 YKSC 12 Judgment Date: February 19, 2021**	College student posted complaint of sexual assault by an unnamed instructor on Facebook. She then wrote to the instructor demanding compensation in exchange for not commencing civil proceeding. The instructor brought defamation claim. Student counterclaimed for damages for assault. Application for production of records related to student's treatment, hospital records, etc.	Case "raised the need to balance the privacy interest in a litigant's health care records with the interest in the pursuit of truth and fairness in the conduct of the litigation." The court held that the student must disclose the health care records she relied on in claim for damages from harms suffered.	
	Access	**Ganapathi v The Law Society of British Columbia, 2020 BCCA 340**	Family lawyer was found by Law Society to have resolved proceedings through improper means amounting to professional misconduct. The lawyer brought an application for stay pending appeal and sealing order.	The Court walked through the test for "confidentiality orders" laid out in *Shalin v Nature Trust of BC*, which it held is essentially the widely accepted *Dagenais/Mentuck* framework. The protection of children was held to be a competing public interest that may displace the open court principle. A sealing order was granted, of which the salutary effects included protection of the public.	

	Sealing order and publication ban	**R v Mehl, 2020 BCCA 344**	Application by Crown for sealing order and publication ban on identity of juror whose alleged conduct formed ground of appeal on conviction of first-degree murder.	A sealing order had previously been made by the Court to protect the identity of the juror. The Court revisited the order because 1) fresh evidence had been filed that identified the juror and 2) the Court felt it was necessary to tailor the order previously made to better reflect both the nature of the order sought by the Crown, and the commitment to the open court principle. Held that the sealing order and publication ban were necessary, not only to protect the juror's privacy interests, but to advance the important public interest identified.	
	Access	**R v Moazami, 2020 BCCA 350**	Case concerning the constitutionality of the Court of Appeal's "Record and Courtroom Access Policy" that addresses access to criminal appeal records. This policy requires media and the public to provide the Court Registry with a written request for access to certain criminal appeal matters, and to follow specific guidelines.	The constitutionality of this policy was challenged here by Postmedia Network Inc and the Canadian Broadcasting Corporation, who took the position that the policy created restrictions on access to material filed with the court without anyone having applied for those restrictions, thereby infringing the open court principle and s. 2(b) Charter rights. The media applicants had sought access to the appeal files of a sexual assault case, which Defence and Crown counsel both objected to. The court held that freedom of expression and press are not compromised by the requirement that journalists file an application to view court records. The open court principle does not promise unfettered public access to courts. "To favour accessibility by providing	Generally a sad day when this decision was rendered which included the statement that "automatic and immediate access is not the promise of the open court principle".

				automatic access to court records in all cases would be to thwart court's jurisdiction and obligation to protect social values of superordinate importance."	
	Sealing Order	**GEA Refrigeration Canada Inc. v Chang, 2020 BCCA 361**	Defendants (former employees of plaintiff) had written agreements requiring them to maintain confidentiality over information belonging to the plaintiff. Defendants formed competing company and plaintiff brought action alleging they used confidential information to design competitive products. Trial judge found defendants liable.	Plaintiff obtained without notice an order sealing Supreme Court file, so as to protect his confidential information. Defendants brought appeal to set aside sealing order. The court found the existing sealing order to be overly broad and ordered that it be unsealed, except for the Appeal Book and the Transcript that contain confidential materials.	
	Sealing order and publication ban	**R v Orr, 2021 BCCA 42**	Trial judge sealed excerpt from a justice of peace training manual provided to him at trial. The Attorney General of BC ("AGBC") highlighted the confidential nature of its contents, as it was a document specific to judicial training that is not ordinarily available to the public. After conviction, the appellant successfully applied in the trial court to lift the sealing order for purposes of his appeal. The AGBC sought and was granted an interim sealing order that applied to the excerpt. The OCJ here requested that the order be made permanent, and sought a publication ban over the text of the training manual expert.	In applying the *Mentuck* analysis, the court asked whether 1) the order was necessary to prevent a serious risk to the proper administration of justice, and 2) the salutary effects of the publication ban outweighed the deleterious effects on the rights and interests of the parties and the public. The court held that, standing alone, the content of the excerpt is innocuous. It only made up a small portion of the training manual, and much of it was already publicly available. The court was not convinced that access to the excerpt posed a serious threat to the proper administration of justice, nor that the salutary effects of denying public access outweighed the deleterious effects. The court therefore dismissed the application	

				for a permanent sealing order and a publication ban.	
	Sealing order	**Mother 1 v Solus Trust Company Limited, 2021 BCCA 112**	Mother claimed she was entitled to spousal share of deceased's estate; her claim was denied and she began appeal proceedings. Respondents brought application for a sealing order. At trial the judge granted a publication ban that prohibited the publication, broadcast, or transmission of any information that could identify the descendants of the deceased. The interest being protected was the privacy interests of the affected minor children.	BCCA practice is to give effect to any publication ban made in the BCSC unless and until the order is varied by a court of competent jurisdiction. The purpose of the sealing order was to provide additional protection of the identities of the children. As some of the affected parties lived outside of BC, a publication ban "may not be sufficient to protect them because the information could be accessed from the court file and communicated to media outside the jurisdiction." The court held that it would not be appropriate for it to make a permanent sealing order, as that application should be made before the division hearing the appeal. However, to support the publication ban the Court made an interim order that the relevant transcript be sealed until the determination of the appeal. Exhibits to certain affidavits filed in support of application were also ordered to be sealed from public view.	
	Sealing order	**Mother 1 v Solus Trust Company Limited, 2021 BCCA 461**	This follows the above March 2021 judgment, where the court had temporarily sealed the transcripts filed in this appeal, the unredacted appeal books, and the exhibits attached to certain affidavits. The administrators of the estate here asked that the temporary sealing order be made permanent.	The court applied the Sherman Estate framework to the appeal, and was not persuaded that the high bar for a permanent sealing order was met. The evidence adduced in support of the administrators' application did not establish a real and substantial risk that poses a serious threat to the proper administration of justice *specific to the appeal*.Lesser	

				and more proportionate protective measures were available.	
	Access	**Party A v The Law Society of British Columbia, 2021 BCCA 130**	The law society issued a citation against a lawyer alleging professional misconduct. The lawyer requested that the citation be issued anonymously. The executive director of the law society refused. The chambers just issued an order of mandamus restraining the law society from publishing the lawyer's name. The law society appealed.	The chambers judge erred by establishing a test for the law society to apply to requests for anonymization, and by substituting her own assessment of relevant factors in making the mandamus order, as she went beyond the proper role of a reviewing court in doing so. However, the decision of the director was held to be unreasonable. The court upheld the chambers judge's order quashing the director's decision, but departed from the judge regarding the appropriate remedy and remitted the matter to the Law Society for reconsideration.	
	Sealing order	**A Lawyer v The Law Society of British Columbia, 2021 BCCA 284**	The applicant applied for an order anonymizing appeal proceedings and for a sealing order.	The applicant needed to demonstrate that such an order was necessary to prevent a "serious risk to an important interest". Here, at issue was reputational harm to the applicant, the firm, and the firm's employees. The question came down to whether the information sought to be sealed was sufficiently sensitive and "bears on their dignity" in such a way as to displace the strong presumption in favour of the openness of court. Was the risk to the applicant's reputation, and that of the firm and its employees, not only an important public interest, but one that necessitated a partial sealing order and anonymization of the names? The court held that it was. With respect to proportionality, the salutary effects were held to include protection of reputation. The	

				deleterious effects to the open court principle by way of a partial sealing order and anonymization were found to be minimal, and the court held that the salutary effects of sealing and anonymization orders outweighed its deleterious effects. The Court held that the new *Sherman Estates* test had been met, and the applications were granted.	
	Publication ban and sealing order	**Doe v AB, 2021 BCSC 651**	The plaintiff alleged that the defendant perpetrated sexual assault upon her when she was a minor. There were cross-applications made by the plaintiff and the defendant seeking anonymization, a publication ban, and partial sealing orders.	The court said that the general awareness of the potential for harm to plaintiffs through the disclosure of their identity in sexual abuse claims has reached a point where it can take judicial notice of the potential for harm. The court held that the plaintiff met the requisite standard for a publication ban and limited sealing order. The defendant sought his own anonymity, which was opposed by the plaintiff. The court held that the defendant provided sufficient evidence of potential harm to both him and his family, which supported a conclusion that the administration of justice would be undermined by the further production of his name. The court maintained that the orders would not create material chilling effect on advancement of claims from sexual abuse victims.	
	Access	**R v Al, 2021 BCSC 434**	Prior to a sexual assault trial, the accused successfully applied under ss. 276(2) and 278.92(2) of the Criminal Code to admit evidence of post-offence sexual assault allegations that the Crown	Parliament made a conscious decision to make an exception to the open court principle by providing for a statutory publication ban that could only be lifted in certain circumstances. The ruling and reasons related to the	The court enunciated the following conclusions on the scope of the court's power and criteria which need to be met to lift a publication ban imposed by s. 278.95(1): a) Section 278.95 does not provide for any exceptions to the ban on

			chose not to charge. The ruling and reasons regarding the admissibility of evidence were subject to publication bans. The Crown then stayed charges against the accused, and the accused applied under s. 278.95 of the Code to lift the publication ban.	admissible evidence could be published. The fact that the trial wasn't held should not weigh against lifting the ban, and that the complainant's privacy rights could be sufficiently safeguarded with appropriate redactions. The decision from the s. 278.93 hearing could be published while the ban under s. 486.4 remained in place, and rulings and reasons would be subject to redactions to remove any information that could identify the complainant.	publication of the application filed under s. 278.93, or the proceedings held at the stage 1 and stage 2 inquiries. b) The court must take into account the balancing of the complainant's right to privacy and the interests of justice when considering whether to publish the decision from the stage 1 inquiry. c) If the court has made a determination following a stage 2 inquiry that evidence is admissible, it can publish the determination made and the reasons provided, without the need for any further analysis, subject of course to any other statutory provisions such as a publication ban under s. 486.4. d) If the court has made a determination following a stage 2 inquiry that evidence is not admissible, it can nevertheless publish the determination made and the reasons provided, after taking into account the balancing of the complainant's right to privacy and the interests of justice.
	Access	**Capital City News Group Ltd. V Her Majesty the Queen, 2021 BCSC 479**	Capital City News Group, and independent media company, filed an application seeking an order terminating or varying thirty-five sealing orders concerning the still ongoing investigation of the murder of Lindsay Buziak. Counsel for the media company sought	The parties disagreed on whether the *Dagenais/Mentuck* test applied to the release of unredacted material to counsel on undertakings, in an ongoing investigation, where no charges have been laid. The court held that the case law made it clear that the test applies to "all discretionary	

			production of the unredacted material to counsel on undertakings in order to present argument on the merits of the application.	court orders that limit freedom of expression and freedom of the press in relation to legal proceedings." As this was a discretionary judicial decision that limits court openness, albeit only to the degree of counsel access, the /*Mentuck* test was found to apply. The court held that the redacted materials and the context of the redactions would not prevent counsel from testing the basis for the redactions, and that any disadvantage that arose would be outweighed by the nature of the sealed information and the sensitivity of it. "While the risk of inadvertent disclosure may be small, that is in my view outweighed by the possible ramifications should it occur, and the resulting damage to the administration of justice. The more individuals within the "circle of privilege" the more the risk of inadvertent disclosure increases."	
	Access	**HN v The Board of Education of School District No. 61 (Greater Victoria), 2021 BCSC 1096**	Plaintiff brought claim related to alleged sexual assault and abuse when he was a minor. He brought an application for order for anonymity.	The court applied the *Mentuck* framework to be applied to all discretionary judicial orders limiting the openness of the court system. It found that there was very little to no risk to the open-court principle that would arise from granting the order requested, and that to do otherwise would inflict further harm on an individual.	
	Sealing order	**Further Detention of Things Seized (Re), 2021 BCSC 1323**	This application arose in the context of an investigation of events surrounding a house fire that involved two children. Issue 2: should there be a sealing order with respect to	The Crown originally sought an order sealing all supporting materials. The Court held that as an alternative to a full sealing order, there would be a publication ban on information identifying children and	

			the affidavit filed in support of the application?	a limited sealing order with respect to certain details of the investigation. The details were so private and sensitive that any disclosure would "meaningfully strike at the individual's biographical core in a manner that threatens [her] integrity" as discussed in *Sherman Estate v. Donovan"*	
	Sealing order	**Schuetze v Pyper, 2021 BCSC 2599**	The defendant sought an order sealing the court file in a civil action, or alternatively an order anonymizing the trial decision. The plaintiff had brought a claim for damages based on the tort of battery in the presence of her young children. It was found in the trial decision that the defendant had committed a serious battery of the plaintiff. The defendant claimed that a sealing order was necessary to protect the privacy interests of the children.	Without denying the children's privacy interests were engaged, the plaintiff took the position that the orders sought are unnecessary and suggested instead an order anonymizing the children's names only. The court referenced the recent SCC case of *Sherman Estate v Donovan* where the legal requirements for a discretionary order that limits the openness of the court were reviewed. Turning to the test in *Sherman Estate*, the court accepted that the privacy interests of the parties' children constituted an important public interest, and that the much more difficult question was whether a serious risk to their interests was made out in the full factual context of the case, as required by *Sherman Estate*. The court concluded that a sealing order or anonymity order as requested by the defendant was not necessary to prevent a serious risk to the children's privacy, and that a much more tailored order that redacted information that identified the children would strike the appropriate balance between protecting the public interest in the	

				children's privacy and the open court principle.	
	Access	**Turpin v TD Asset Management Inc., 2022 BCSC 125**	HSBC applied to access and copy certain expert reports in the court record of the ongoing action. CIBC brought a parallel application seeking the right to access and copy the same expert reports. Neither HSBC nor CIBC were parties in the current action, but rather they made their respective applications as members of the public.	The court made reference to the SCC's recent treatment of the open court principle in *Sherman Estate v Donovan*. The court here affirmed that once a party lists an expert report on the party's LOD without stating grounds for a claim of privilege, litigation privilege is lost. "Other than exceptions falling within the *Sherman Estate* three criterion, I can see no harm in the public or the media understanding proceedings in an action contemporaneously or before judgment is delivered." The court ruled that the applicants were entitled to copies of the expert reports.	
	Access	**British Columbia (Environmental Management Act) v Canadian National Railway Company, 2022 BCSC 135**	This was a judicial review in which three decisions of the Environmental Appeal Board were challenged. One of the issues regarded the EAB granting a confidentiality order over certain documents, and hearing evidence in the absence of the public and the media. The Railways had appealed the orders of the Director to provide information about the shipment of crude oil and diluted bitumen. "The basis of the Railways' application to the EAB was their concern that some information ("Confidential Documents" and "Confidential Paragraphs") required for the hearing before the EAB raised issues about the gathering and	The court considered whether the EAB's decisions to issue a confidentiality order and proceed in camera for the evidence of certain witnesses was reasonable. The court concluded that it was unreasonable for the EAB to equate the Railways' personal interest with a public interest because it resulted in an undervaluing of the principle of open hearings. The remedy in this case includes that the EAB is directed to reconsider and determine the two confidentiality decisions. The Railways claimed that publication of the information required by the impugned legislation would trammel the core of their federal undertaking as	

			analyzing of security intelligence and the ability of the Railways to protect shipment by rail.	interprovincial railways. The Petitioners said that any disclosure of information under the impugned legislation would be subject to the FOIPPA. The court concluded that, pursuant to s. 5 of the JRPA, the security issues raised by the Railways and the related evidentiary issues must be referred back to the EAB for reconsideration and determination.	
	Access	**Capital City News Group v AG, 2021 BCPC 57**	Application brought forward be a media organization ("the Capital") seeking access to a document marked as an exhibit in concluded sentencing proceedings of the respondent. The document was an assessment prepared by the Correctional Services of Canada. The court cited *R v Moazami* as emphasizing the supervisory role of the court over its records	The respondent's counsel was concerned that disclosure of the information would prejudice his right to a fair trial and may adversely impact both his safety and privacy interests. The judge was unable to conclude that access to the Assessment would constitute a real risk of compromising the respondent's right to a fair trial but was mindful that there would be a "very real risk for mischief" if the document was released and circulated. It was determined that the Capital should be allowed to view but not copy a redacted version of the assessment.	
	Privacy	**Schmidt v LinkedIn Corporation, 2021 BCSC 739**	Class Action: Defendant was a professional networking service where members could access accounts using tablet or mobile phone. Plaintiff's claim arose from software beta testing which revealed that on some devices the application was continuously accessing clipboard without users' direction, in breach of users' privacy rights. Plaintiff asserted causes of action under multiple provincial	The defendant asserted that no violation of privacy could have arisen from the App accessing users' clipboards in circumstances where the App neither stored nor transmitted the information contained on them. The court agreed LinkedIn provides the anticipated evidence with respect to the operation of the App, then the legal issue before the court at a summary trial application will be extremely narrow and discrete: is it a breach of a person's privacy for	

			Privacy Acts and the common law tort of intrusion upon seclusion on behalf of class members residing in provinces where there is no statutory tort. Defendant sought leave of court to have its application for summary judgment determined in advance of plaintiff's application for certification.	an application to access personal information, in circumstances in which that personal information is not copied, stored, transmitted, or read? The summary trial application was scheduled to proceed in advance of the application for certification.	
	Privacy	**Minicucci v Liu, 2021 BCSC 1640**	The parties lived in homes on adjacent lots. The defendant asked for permission to trim trees along the property line, which the plaintiff denied. While the plaintiff was away, the defendant topped the trees. The plaintiff filed a notice of civil claim seeking damages and relief for trespass, while the defendants filed a counterclaim seeking damages for nuisance and breach of privacy when the plaintiff installed security cameras to record the defendant's backyard.	The counterclaim presented the issue of whether the plaintiff was liable to the defendant for breach of privacy. The defendant submitted that the security camera violated their right of privacy under s.1 of the *Privacy Act.* The Act states that an act will not constitute breach of privacy if it was incidental to the exercise of a lawful right of defence of person or property. The Court found that the installation of the camera was not an unreasonable step taken merely to provoke or annoy the defendants but rather was installed as a direct result of the defendant's trespass and topping of plaintiff's trees. The defendant's claim for the tort of breach of privacy was dismissed.	
	Privacy	**T.L. v British Columbia (AG), 2021 BCSC 2203**	The petitioner challenged the constitutionality of s. 96 of the Child, Family and Community Service Act, which empowered the Director of Child Protection to obtain information from public bodies in order to perform statutory duties under the Act. This power was used to seek medical records about the petitioner in the context of	The petition was dismissed. The petitioner had a reasonable expectation of privacy in respect of her personal health information sufficient to engage s. 8 of the Charter; however, the Director's s. 96 search and seizure power was not criminal in nature and was not directed at obtaining information in respect of suspect with view to conducting investigation that may	

			an investigation as to whether measures were necessary to protect the petitioner's children. The petitioner stated that s. 96 of the Act unauthorized unreasonable searches and seizures of private information and therefore breached her s. 8 Charter rights.	culminate in prosecution or punishment, but rather was designed to gather information for use in making administrative child protection decisions guided by the best interests of the child. The relevant mechanism used by the Director was minimally intrusive, and the lack of requirement for judicial pre-authorization was not fatal to the constitutional validity of the provision given the existence of other procedural safeguards. The court held that s. 96 of the Act struck a reasonable balance between the state's interest in ensuring child protection and an individual's privacy interest in medical information provided to public bodies.	
	Privacy	**Severs v Hyp3R Inc., 2021 BCSC 2261**	The plaintiff brought an application for relief, including certification of the action as a class proceeding. The essential allegation underlying the plaintiff's claim was that the defendant corporation had collected, retained, and exploited social media platform user's personal information without notice or consent in contravention of the platform's policies. An action was sought to hold the defendant accountable for that conduct to platform's users in Canada (except for Quebec). The defendant's actions were alleged to constitute a breach of the *Privacy Act* in four provinces, as well as the tort of intrusion upon seclusion in the	The action was certified as a class action. It was found that the defendant had violated the privacy of class members in the four provinces with privacy statutes, both through unauthorized collection of information and through the use of names and photographs of class members for commercial purposes. The conduct was intentional and there was no consent on the part of class members. With respect to the tort of intrusion upon seclusion, the conduct of the defendant was intentional in that it involved the invasion of class members' privacy without lawful justification. The court concluded that a reasonable person would regard that invasion as highly offensive and would be	

			remaining provinces and territories.	caused distress, humiliation, or anguish. Aggregate award: $24,921,378.00 $10.00 per class member was found appropriate for the calculation of the aggregate damage award, as reduced by 75% to account for users who had placed their settings to private.	
	Privacy	**Chow v Facebook, Inc., 2022 BCSC 137**	In this action, the plaintiffs alleged that Facebook "scraped", i.e., extracted call and text data from users of its applications for its own purposes and without the knowledge or consent of the users. They claimed that these wrongful acts violated the *Privacy Act* and constituted the tort of unlawful means. Canadian users sought to hold Facebook accountable in this suit. "Before considering the statutory criteria for certification, I will address what I consider to be a fatal flaw in the plaintiff's claim, that being the absence of any evidence to indicate that Facebook used, or misused, the plaintiffs' information for its own benefit."	The essential elements of the *Privacy Act*, section 1 tort that must be established by a plaintiff are that: (i) a person (ii) wilfully (iii) without a claim of right and (iv) violated the privacy of another. Facebook submitted that the plaintiffs simply made bald allegations in the ANOCC of these essential elements but failed to plead the materials facts underlying their assertions. The court disagreed. "I am satisfied that the plaintiffs have adequately and properly pleaded both the essential elements of the s. 1 tort as well as sufficient material facts underlying the claim […] The same cannot be said for the claim under s. 3(2) of the *Privacy Act*. The essential elements of that tort are that: (i) a person (ii) used the name or portrait of another (iii) for the purpose of advertising or promoting the sale of, or other trading in, property or service and (iv) without consent. I agree with Facebook that the plaintiffs do not plead that it actually *used* the name or portrait of any member of the proposed class nor do the plaintiffs plead that any such use was for the purpose of advertising or promoting the sale	

				of, or other trading in, property or services. I also agree with Facebook that the plaintiffs have not pleaded material facts to support a claim under s. 3. As such, the pleading is deficient and fails to disclose a cause of action. The claim under s. 3(2) is therefore bound to fail." In order to determine whether impugned conduct constitutes a breach of privacy under s. 1 of the Act, the court must consider what is "reasonable in the circumstances" (s. 1(2)) and must have regard for the "nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties" (s. 1(3)).	
	Privacy	**Thomas v ByteDance Ltd., Tiktok Ltd., 2022 BCSC 297**	There were two actions commenced in BC relating to the privacy interests of users of the TikTok app. One alleged that Tiktok collected private information from underaged users without proper consent and sought damages under the *Privacy Act*, the *Infants Act*, and at common law. The other action claimed that TikTok deliberately collected users' MAC addresses in breach of Google's policies and users' privacy.	A settlement was reached and reduced to a written agreement. The agreement set out that notice was to be provided to class members, including via email. Counsel encountered privacy concerns when attempting to fulfill this requirement. "On the evidence before me, I accept that the privacy risk posed by the delivery of millions of emails through three separate service providers, two of which had inadequate privacy assurances, outweigh the comparatively low benefit of delivering the email notices in addition to the notice already provided." The court noted that, since the filing of these cases, a number of privacy claims had been unsuccessful in	

				obtaining certification, which would appear to confirm that the prospects for certification in a contested proceeding in a common law province of the breach of the privacy claim in that case were poor. The court found the scope of the release in the case at hand to be reasonable in the circumstances.	
	Privacy	**Proctorio, Incorporated v Linkletter, 2022 BCSC 400**	This case involved online education during the pandemic. The plaintiff had developed a software product to monitor students remotely during examinations on their personal computers. The defendant, a UBC employee, was highly critical of the plaintiff company online. He expressed his distrust of the "surveillance software" publicly on Twitter. He created a fictitious academic course and designated himself as the instructor so he could access software videos and share them on Twitter. The plaintiff company brought an action against the defendant. The defendant sought to have the action dismissed under s. 4 of the PPPA.	On balance the court was not persuaded that the action had "all the hallmarks of a classic SLAPP suit." The court concluded that the plaintiff's "freedom of expression does not include a right to decide for himself what, among [the defendant's] confidential information, the public should be allowed to see," and the application under s. 4 of the PPPA was refused.	
	Privacy	**Fet Fine Foods Ltd. (Fets Whisky Kitchen) v British Columbia (Liquor and Cannabis Regulation**	The petitioner operated a restaurant in Vancouver. Inspectors employed by the BC Liquor and Cannabis Regulation Branch entered the restaurant and seized bottles of scotch whiskey valuing $40,000. The petitioner sought, among other things, disclosure of documents that it	The question in this case was whether the petitioner was denied procedural fairness by being denied access to documents that were potentially relevant to the argument it sought to advance. The court found that the petitioner was entitled to fully argue the issue based on a complete evidentiary	

		Branch), 2022 BCSC 410	unsuccessfully applied to obtain during the original Branch proceedings. The petitioner had previously received documents from which much of the content had been redacted. Those redactions were made by the Office of the Information and Privacy Commissioner pursuant to various sections of *FOIPPA*. The Hearing Delegate's original decision was upheld by the Reconsideration Delegate, who found that the petitioner was given the relevant documents "pertaining to the administrative action that was proposed in the NOEA" and that Fets was "in possession of the documents it needed to make its arguments about the application of section 44 of the [*LCLA*]."	record and that the denial of full access to documents relating to the Branch's investigation was a breach of procedural fairness. The court therefore ordered the Branch produce to the petitioner the documents it sought in its application before the Hearing Delegate.	
	Privacy	**Brown v Howard, 2021 BCPC 34**	Realtor (plaintiff) was investigated by the Real Estate Council of BC (defendant). The plaintiff filed a complaint with the Office of the Information & Privacy Commissioner (the "OIPC") that the defendant had inappropriately disclosed his personal information in contravention of the Freedom of Information and Privacy Act. The plaintiff sought punitive damages and damages for pain and suffering. The	The plaintiff asserted that the defendant acted in bad faith and deceit, and committed professional negligence by violating provincial enactments causing him to suffer emotionally and psychologically. The Court responded that if the defendant acted in bad faith in disclosing personal information, the claim against him must be one for breach of privacy. The tort relating to invasion of privacy is found under s. 1 of the Privacy Act and must be heard and determined by the BCSC. Therefore, even if the	

			defendant sought to strike the claim.	defendant acted in bad faith when disclosing information, the BC Provincial Court court had no jurisdiction to hear the plaintiff's claim for damages.	
	Privacy	**Maraj v Commissioner of the Yukon Territory, 2022 YKSC 3**	A biologist's request for data from the environmental department of the provincial government was refused. The biologist requested review of that decision by the Information and privacy Commissioner, who made recommendations regarding disclosure of data requested by the biologist. The biologist then commenced an appeal process regarding the disclosure of data. By the time the biologist understood she needed to serve a notice of appeal on the provincial government, she was outside of the 30 days following the biologist's receipt of a letter from the Deputy Minister of Environment to Commissioner regarding her request. The provincial government applied to strike the notice of appeal on the basis that the appeal was time-barred.	The application was dismissed; the government's argument was premised on its characterization of letter as decision not to follow Commissioner's recommendations under s. 58 of the *Access to Information and Protection of Privacy Act*; however, this letter was ambiguous and inconclusive, and suggested that no decision had yet been made. There had been no direct communication between the Ministry of Environment and the biologist, and the biologist had advised the commissioner several times of her intention to appeal if the commissioner's recommendations were refused. The biologist relied on the commissioner to explain the appeal process to her. Significantly, the biologist had never received notice from the Ministry of Environment of her right to appeal.	
Prairies	Cameras in the Courtroom	*Glover* (Manitoba Queen's Bench File No. C1 21-01-33174); building on Broadcast	Application by CTV News. Global Television, City TV, and the Canadian Broadcasting Corporation to broadcast an election challenge	Application was granted, using the Broadcast Protocol created during the Nygard extradition hearing with minor modifications.	Use of broadcast protocols now well established in Manitoba as a basis for future broadcasts

		Protocols from *Nygard*			
	Defamation	*Chak v Levant*, 2021 ABQB 946	Action against Ezra Levant and Sun Media arising out of a broadcast where he suggested the Plaintiff shot up a nightclub. Decades earlier the Plaintiff had been charged, but not convicted of a nightclub shooting. The Defendants plead justification and attempted to prove the nightclub shooting on a balance of probabilities.	Trial judge refused to admit the transcript of the preliminary inquiry as evidence where witnesses to the nightclub shooting could not be located or attend at trial. Evidence of remaining witnesses "could support the theory" that the Plaintiff was the shooter, but was not "of sufficient quality to establish the identity" of the Plaintiff as the shooter. In addition to $40K in general damages for very limited publication (no evidence of online republication), $20K in aggravated damages based on Levant having been asked to cease making similar accusations against the Plaintiff in the past.	Cannot rely on transcripts or evidence from past criminal proceedings to establish truth in a defamation trial without reliable first-hand evidence (which may not include former testifying in shackles…)
Ontario	Defamation (anti-SLAPP)	*Levant v DeMelle*, 2022 ONCA 79 *Rebel v Al Jazeera*	Levant and the Rebel brought a defamation claim against D. Separately, the Rebel brought a claim against Al-Jazeera. The claims were based on two different sets of statements. D's statements called Levant a "disgraced neo-Nazi sympathizer". After receiving a notice of libel, D removed these words. The statements from Al-Jazeera suggested that Levant/Revel were	Appeal dismissed. With respect to Al Jazeera, the motion judge did not err in finding the defence of responsible communication could succeed. There is no burden on a journalist to interview every individual who might conceivably have something to offer on the subject being written on. On the weighing of public interests, any presumed harm is limited because Rebel is a corporation, and also because the Rebel's reputation cannot be said to be unblemished. With respect to D, the motion judge was right to find no valid defences, but	Goes further than any other Ontario decision in terms of taking pre-existing (poor) reputation into account when weighing the public interest in letting the litigation proceed. Adopts a line of reasoning that suggests when someone enters the fray on a controversial issue, they should perhaps reasonably expect a "forceful rebuttal" (which weighs in favour of rejecting the claim). The BCCA recently released a decision adopting almost diametrically opposed reasoning (*Neufeld v Hansman*, 2021

			"driving some of [their viewers] to acts of violence". Each set of defendants brought an anti-SLAPP motion and were successful at first instance. Levant and the Rebel appealed.	was wrong to consider the statement of a "neo-Nazi sympathizer" to be one of fact. It was clearly a matter of comment, but the defence falters because the comment was not one that any person could honestly make on the proved facts. On the weighing of interests, there is no inference of serious reputational harm to Levant given the state of his reputation. When a person injects themselves into public debate over a contentious topic, they must expect that they are going to be met with some measure of rebuttal, perhaps forceful rebuttal.	BCCA 222) and the issue is now going to the Supreme Court.
	Defamation (anti-SLAPP)	*Sokoloff v Tru-Path Occupational Therapy Services*, 2020 ONCA 730	Defendant stood outside plaintiff's law office on two occasions holding a sign claiming plaintiff "won't pay" their bills, has "seized" $1.3 million owed to the defendant. The plaintiff sued in defamation. Defendant brought an anti-SLAPP motion, which was dismissed on the basis that the claim did not arise from expression related to a matter of public interest. The defendant appealed.	Appeal dismissed. For something to relate to a matter of public interest, it's not enough to just make reference to something that is of public interest. The inquiry is contextual, but the quality of the expression, the matter of communication and the motivation of the speaker are irrelevant. Here, the defendants were pressuring the plaintiff to pay monies they claim they are owed. The fact the parties are members of a regulated profession does not make their dispute a matter of public interest. The public has an interest in the ethical conduct of lawyers, but not every lawyer transaction is a matter of public interest. The expression at issue here is really about a private commercial dispute between the appellants and	Rare case where the low threshold of expression 'relating to a matter of public interest' is not met, complete with a good discussion of the relevant principles. Suggests that where thrust of the expression is about a personal/commercial dispute then the threshold may not be met, even if there is a potentially broader public interest angle due to the fact a profession is regulated.

				the respondents, who just happen to be lawyers.	
	Access to information	*AG Ontario v CBC and IPC*, 2022 ONCA 74	Requester sought access to Premier's "mandate letters" to his Cabinet. Cabinet refused to provide access on the basis of exemption in s. 12(1) of Act, which exempts records that would disclose "substance of deliberations" of Cabinet. Information and Privacy Commissioner ordered the records disclosed, concluding there was no evidence the letters or their contents were ever discussed by Cabinet, nor is it clear from the face of the letters themselves that they would be the subject of future Cabinet deliberations. Ontario brought an application for judicial review. Upon that application being dismissed, Ontario sought and obtained leave to appeal to the ONCA.	Appeal dismissed (2-1). The IPC decision was reasonable. In particular, IPC was reasonable to adopt a reading of s. 12(1) that was not as broad as Ontario's preferred "illustrative" approach. Under this approach, any record would be exempt so long as it is analogous to the list of specific records exempted in subparagraphs 12(1)(a)-(f) – regardless of whether those records would tend to disclose the substance of deliberations.	Reflects an access-friendly approach to exemptions under the Ontario legislation, and rejects the far more expansive "illustrative" approach. Accords significant deference to IPC in making these determinations.
	Defamation	*Soliman v Bordman*, 2021 ONSC 7023	The Plaintiff, Walied Soliman, is a corporate lawyer and the Canadian Chair of Norton Rose Fulbright, and an influential voice in the federal and provincial Conservative Party. Soliman alleged that he had been defamed by the Islamophobic hate speeches of the Defendant, Daniel Bordman. Bordman used	Perell J. granted summary judgment against Bordman, finding he had no defence to the defamation claim. He awarded Soliman general and aggravated damages of $500,000, and ordered that Bordman remove any media he controlled and attempt to have removed any media controlled by others that he has published in the public domain that refers to Mr. Soliman. He permanently enjoined	The decision discusses the line between defamation and hate speech, though Perell J declined to decide the hate speech issue on a summary judgment motion: "Mr. Bordman's statements and continuing statements are defamatory, and the manner in which Mr. Bordman expressed his statements does evoke and motivate

			social media and alternative news media to publish statements attacking Soliman for e.g., supporting terrorist Islamic organizations and being a secret anti-semite. Soliman asserted that Bordman, in addition to being a defamer, is a hatemonger, a racist, and a member of the alt-right community of demagogues, hatemongers, conspiracy theorists, and Islamophobes. Soliman brought a motion for summary judgment. Bordman argued there were numerous genuine issues that require a trial.	Bordman, or anyone acting on his behalf or with him, from disseminating, posting on the Internet, publishing, or broadcasting any statements concerning Soliman other than an apology, the text of which must be approved by Soliman. Perell J rejected Bordman's defence of fair comment on the basis that his statements were not comments or opinions but false statements posed as facts. If they were comments or opinion, they were not supported by facts, not "fair" as an opinion a person could honestly hold on the facts, and published maliciously. He rejected Bordmans' defence of responsible communication because: "(a) reasonable steps were <u>not taken</u> Mr. Bordman to ensure the overall accuracy of the factual assertions; and (b) reasonable steps were <u>not taken</u> by Mr. Bordman to ensure the fairness of the making of the statements." On the latter point, Perell J found that Bordman's words were malicious in the sense that he made his statements with reckless disregard or indifference to the truth.	hate speech, but as already mentioned, on this summary judgment motion, it is not necessary nor appropriate nor fair to make any finding that Mr. Bordman's speech was hate speech or that Mr. Bordman is a racist, demagogue, xenophobe, *etc*." Perell J. commented on the role of character evidence in a defamation action, finding that while some of the evidence led by Soliman about Bordman was relevant to the issues, other evidence was more in the nature of "character assassination" and was not necessary. Perell J. wrote that an absolute ban on Bordman making a statement about Soliman and not just defamatory remarks is necessary because Bordman cannot distinguish between non-defamatory and defamatory remarks: "Insofar as Mr. Soliman is concerned, Mr. Bordman before and during the litigation has demonstrated that he is not a responsible journalist of any type".
	Sealing order	*Turner v DIOC*, 2021 ONSC 6625 (Div Court)	This decision is in the context of the first judicial review of a decision of the Death Oversight Investigation Council (DIOC). DIOC was established after the Goudge Inquiry and the Charles	The case was briefed over the time period that the Sherman Estate decision was released. **On the autopsy file**, by the time of the hearing it was agreed that the	Autopsy photographs may be the kind of information the court in *Sherman Estate* had in mind when referring to highly sensitive information the dissemination of which could lead to an affront to personal dignity, in this

			Smith and Motherrisk scandals to provide oversight and transparency for the death investigation system in Ontario. The case involves a complaint made about the Chief Pathologist by another pathologist – Dr Turner - essentially alleging that he has a bias for finding child abuse as the cause of death and this was the case in two specific infant deaths investigations where he allegedly tried to impose his view. DIOC investigated Dr Turner's complaint and interviewed 17 witnesses, including a large number of forensic pathologists. DIOC led them to believe their interview was confidential. On judicial review, DIOC sought to seal much of this record before the Divisional Court – including to seal entirely the autopsy files related to the two infants, and to redact any and all identifying information of the professional witnesses who were interviewed. This was opposed by the Toronto Star and Hamilton Spectator, and the CCLA also intervened with respect to the professional witnesses in particular.	identifying information of the babies and families could be sealed. With respect to the rest of the file, the Divisional Court held that "the personal information in the autopsy files relating to the infants and their families is of such a sensitive nature that its dissemination would occasion an affront to human dignity that the public would or should not tolerate, even in service of open court proceedings." However, a sealing order over the entire autopsy files was not necessary to prevent a serious risk to personal dignity in this case because reasonably alternative measures, i.e., the redaction of identifying information, would prevent the risk to personal dignity. On the issue of whether the names of the **professional witnesses** interviewed by DIOC should be sealed, DIOC argued they should based on *Sherman Estate.* DIOC argued for privacy-related redactions in a couple of different ways: • It argued there is an important public interest in protecting the **privacy of non-parties** who are drawn into legal proceedings. • DIOC also argued that there was a **"privacy aspect to professional reputation"**	case for the parents of the deceased infants. However, the Court rejected attempts by DIOC to expand *Sherman Estate* into merely confidential information – the names of witnesses who were interviewed under apparent confidentiality – where there was no true privacy interest at stake (in the sense of highly sensitive information impacting dignity).

				• Seems to have been a take off from Kasirer J's statements in *Sherman Estate* about professional standing sometimes being recognized as something there's a public interest in protecting • DIOC also relied on cases that involved stigmatized work, where there was vulnerability or the stigmatization was related to personal characteristics. • Though the Court didn't specifically address these arguments in the decision, the panel didn't accept them and denied a sealing order over the witness names.	
	Access to exhibits	*CBC v Chief of Police*, 2021 ONSC 6935 (Div Court)	One of convicted serial murderer Bruce McArthur's early interactions with police occurred in 2016, when he was arrested after a man called 911 alleging that McArthur violently choked him during sexual encounter. McArthur was interviewed by police, but he was released on the same day because the police believed that the complainant had consented to being choked.	The central issue on this application for judicial review was whether in the circumstances of this case it was an error in principle to allow the video exhibit to be withdrawn from the record. The Court held that the video was part of the record and was made the subject of a publication ban without a determination of whether the proper test set out in *Dagenais-Mentuck test* was met. The exhibit was then	**A party cannot avoid the open court principle by withdrawing an exhibit from the record once it has been entered**. The Court rejected the argument that openness principles are not engaged because the video exhibit never was part of the record, not having been physically produced and not having been viewed or relied upon in the proceeding before it was withdrawn.

			McArthur went on to murder his eight victims. The police investigator who interviewed and promptly released McArthur in 2016, Sergeant Gauthier, was charged with two counts of professional misconduct in February 2019. The disciplinary hearing was heard virtually between May 17 and 21, 2021. It was attended by numerous members of the media and was the subject of extensive contemporaneous reporting. Sergeant Gauthier was ultimately found not guilty of any misconduct. At the outset of the hearing, the prosecutor and counsel for Sergeant Gauthier agreed, on consent, to introduce the video of Sergeant Gauthier's 2016 interview of McArthur. In consenting to the video being made an exhibit, counsel for Sergeant Gauthier stated that it was "part and parcel of the case." After the video was made Exhibit 19, counsel jointly sought a publication ban on the basis that the video contained intimate details of sex acts between McArthur and the victim and was necessary to protect the victim. The Hearing Officer found that a publication ban was necessary to protect the intimate details, the	improperly withdrawn after the applicants were granted permission to make submissions regarding the inappropriateness of a publication ban but before they were able to do so. To grant the publication ban without applying the correct test and then to allow the exhibit to be withdrawn after the applicants sought to challenge the publication ban engaged openness principles, was an error in principle and plainly wrong. There is no basis for a publication ban under the test in *Dagenais-Mentuck*. After redacting any reference to the victim's name, the video should be made available to the public without limitation on its use. Failure to produce the exhibits until after the hearing concluded contravened the open hearing principle in the circumstances of this case. Going forward, the Toronto Police Service would be required to provide exhibits in quasi-judicial police discipline hearings during the hearing except in exceptional circumstances.	The Court affirmed that the fact that information in a court record might offend public sensibilities is not a basis for imposing a publication ban, referring to *MEH* and *Sherman Estate*. The Court also confirmed the right to access exhibits in a **timely manner**: "Part and parcel of the right to access exhibits is the right to access them in a timely manner. Providing hearing exhibits days or weeks after the hearing has concluded ensures that those exhibits will not form part of the media's reporting and for all practical purposes public access is denied. To submit that there are insufficient resources or that there are other priorities is not a justification for an infringement of the open hearing principle. There was no evidence in this case that the exhibits could not have been made available while the hearing was still pending. Producing the exhibits after the hearing concluded contravened the open hearing principle. Going forward, the Toronto Police Service shall be required to provide exhibits in police misconduct hearings during the hearing except in exceptional circumstances..."

			privacy and the identity of the victim. There was already a publication ban in place preventing the victim from being identified. The Hearing Officer granted the publication ban without hearing argument on the factors to be considered in the applicable test set out in *Dagenais-Mentuck.* After members of the media requested the opportunity to make submissions about the publication ban, counsel for both parties advised that they were no longer agreeing to enter the video as an exhibit and instead were tendering a summary. The withdrawal was allowed.		
	Sealing order/publication ban	*P1 v. XYZ School*, 2021 ONCA 901	Motion to quash Toronto Star's appeal of a publication ban and sealing order. The underlying action was brought by a minor and their litigation guardian parents. The claim arises out of an alleged sexual assault on the child by classmates during an overnight school trip. The claim is against the classmates, the school and three school employees who – it is alleged – failed to protect and adequately respond to the assault. The minor defendants moved for a publication ban and sealing	Confirmed a sealing or publication ban order is final against the media (not interlocutory requiring leave). A final order must deal with substantive rights. All orders directed to non-parties are not necessarily final, but can be. To be final, an order directed to non-parties must determine the non-parties' substantive rights. • The Toronto Star has no interest in the outcome of the litigation between the plaintiffs and the defendants. The Toronto Star's interest is to be able to perform its	An appeal by the media from a sealing order or publication ban does not require leave.

			order. Following a full hearing on the issue, the motion judge imposed a publication ban over the identity of the school and sealed the court file. He concluded that the terms of previous orders "shall remain in place, subject to further order of the Court."	function as the "eyes and ears" of the public. • The legal nature of the order under appeal finally determined the constitutional rights of the media and thus was a final order for the purposes of appeal.	
	Defamation/Tort of Internet Harassment	*Caplan v. Atas*, 2021 ONSC 670	*Caplan* dealt with four lawsuits against the defendant, Nadire Atas, claiming defamation and in two of the cases, harassment. Between them, the plaintiffs brought three motions for summary judgment and one motion for default judgment. At issue were thousands of anonymous internet posts, published over many years on multiple online forums, accusing the plaintiffs, their family members, friends and associates of engaging in professional misconduct, fraud and even sexual criminality. Atas posted or communicated anonymously or under fake names or through another person to respond to grievances she had against other people starting as early as the 1990's. In the course of the litigation, some actions spanning more than a decade, Atas had been declared	Corbett J. granted the plaintiffs' motions for summary judgment and default judgment, concluding that the defendant carried out egregious online campaigns of malicious harassment and defamation against the plaintiffs, their families and their associates over many years. While he found that the motions for summary judgement on the basis of defamation were made out, he also held that defamation law insufficient to address the defendant's persistent and egregious conduct. In the absence of legislation to address the issue, it was time to **recognize a new common law tort of internet** harassment – and that's what he did. Corbett J. concluded that Atas' systematic campaign of repeatedly publishing vicious, malicious and defamatory falsehoods was undertaken with the intention to "harass, harry and molest" the plaintiffs	The new tort of internet harassment was recognized to "fill a gap" arising from cyberstalking and online harassment that the law didn't really address – it "cr[ied] out for a remedy". In terms of why Corbett J felt it appropriate to go beyond defamation: • He held that the circumstances of this case illustrated inadequacies in the current legal responses to internet defamation and harassment. • This relates to a distinction between defamation in the traditional sense, and persistent online harassment or bullying – which can require a different suite of potential remedies to assist victims.

			a vexatious litigant and had multiple interlocutory injunctions issued against her to restrain her from, among other things, publishing statements of any kind about the plaintiffs on the internet. She even spent 74 days in jail for contempt after violating court orders. That was not enough to deter her.	and others close to the victims "to cause fear, anxiety and misery". The Court accepted the stringent test for the new tort of internet harassment from American case law, proposed by the plaintiffs: • the tort of harassment will be made out where the defendant **maliciously or recklessly engages in conduct so outrageous in character, duration, and extreme in degree, so as to go beyond all possible bounds of decency and tolerance, with the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff, and the plaintiff suffers such harm.** Accordingly, "[i]t is only the most serious and persistent of harassing conduct that rises to a level where the law should respond to it." The Court held that the facts of *Caplan* met that test. In terms of remedies, it was difficult in this case for the Court to devise an adequate remedy. Atas has shown that she is not deterred by ongoing litigation and has repeatedly refused to comply with court orders. Damages (including punitive or aggravated damages) were also not a viable deterrent in this case: the	• Defamation law is about balancing FOE with the right to reputation. • Online harassment of the kind in *Caplan* is different from cases involving public interest speech. Most defamation defences are designed to protect public interest speech. • Justice Corbett noted that: "… the tort of internet harassment should be recognized in these cases because Atas' online conduct and publications **seek not so much to defame the victims but to harass them. Put another way, the intent is to go beyond character assassination…"** • He also referred to defamation litigation having been called the "sport of kings" for a reason. It is notoriously complex and expensive relative to the financial interests usually at stake. • In a defamation action, you don't typically get injunctions except in very rare cases, and you don't typically get injunctions protecting non-parties. There were other

				defendant was impecunious and had made an assignment in bankruptcy on the eve of the motions, which the Court found to be tactical. This led the plaintiffs to abandon their claims for damages and costs so that the proceedings could continue. Ultimately, the Court granted, among other things, a permanent injunction from posting internet communications involving not only the plaintiffs, but all "other victims of her defamation and harassment, together with their families and related persons, and business associates." The Court also made affirmative findings of fact about the falsity of the posts, even though the plaintiffs didn't need to meet this burden to establish defamation. The plaintiffs specifically requested this, because a finding of falsity is needed to secure removal of posts in some American jurisdictions, to avoid the need to relitigate these issues in another forum. On the issue of an apology, the Court held that it would have no utility in this case because (among other reasons) the defendant was not a public person whose word carried credibility or weight, and in any event she would almost certainly not comply.	unusual remedies here, including the Court agreeing to vest title of the internet posts with the plaintiffs, with ancillary orders enabling them to take steps to have the content removed. The Court recognized that an order that the defendant remove her posts would be ineffective, because she just wouldn't do it.
Quebec	*In camera* hearing, sealing order	*Personne désignée* c. *R.*, 2022 QCCA 406	A police informer was charged with a crime. The entire trial was kept secret. No file was opened, and no hearing was held at the courthouse. The nature of the	The level of secrecy surrounding the trial was excessive. A file should be open with the Court of Appeal and	Although confidentiality orders can be issued to protect sensitive information, the existence of the trial itself cannot be kept confidential.

			crime was not revealed. The identity of all actors (accused, prosecutor, judge) was kept secret. The trial existed "only in the memory of those involved". The police informer appealed. The entire appeal process was kept confidential, and no files were initially opened at the Court of Appeal.	redacted version of the reasons will be made public. Although the Criminal code allows for the exclusion of the public in some circumstances, some minimal level of publicity is required. The Court makes a distinction between the information heard at trial, which may be protected by confidentiality orders, and the existence of the trial itself. A secret trial runs afoul of modern criminal law and of the constitutional rights of the accused and of the medias. Remarkably, the Court of Appeal does not justify some of the redactions made. Notably, the Court chose to keep the identity of the lawyers and judge involved confidential.	
	Sealing order	*Résidence Mont-Champagnat inc.* c. *Fontaine*, 2021 QCCS 3644	A retirement home sued its contractor for improper construction work. The retirement home requested a sealing order on the discoveries conducted, alleging that information regarding the current state of the apartments could harm its reputation in a highly competitive market.	The plaintiff failed to show one of the exceptional grounds that would justify a sealing order on presumptively public discoveries.	A sealing order on discoveries remains subject to exceptional circumstances. The test described in *Sierra Club* applies to such a motion. The risk of further lawsuits based on the facts revealed during the discoveries is insufficient, as is the risk of financial losses.
	Sealing order and publication ban	*Boulanger* c. *Bureau des enquêtes indépendantes*, 2021 QCCS 3563	The BEI is conducting a major investigation on information leaks to journalists regarding police investigations. The plaintiffs are two high ranking provincial police	The Court conducts a detailed review of each ground of opposition to publication by each intervener. Nominative information is to be redacted. Solicitor-client does not	Despite having been removed from the court record, the document remains subject to a *Dagenais/Mentuck/Sherman* analysis.

			officers suspected in this investigation. A document prepared by the officers to detail their position (and opposition) in the context of the investigation was placed under seal.	apply in this instance, nor does the confidentiality undertaking by policemen. Unknown information of a personal nature regarding several people involved in the investigation is to remain confidential because their privacy interests are strongly engaged, as per *Sherman*.	
	Sealing order	*Élément AI inc.* c. *Servicenow Canada inc.*, 2021 QCCS 3491	In the context of a plan of arrangement, an order was issued on January 4, 2021 between the parties approving the plan itself. The short-form judgment explicitly referred to the full plan as Exhibit R-1 . R-1 and order exhibits were placed under seal and later "withdrawn" by the parties. Indeed, the parties proceeded electronically, and the documents were never physically deposited in the Court record. A news media sought access.	Documents made enforceable by a judgment must remain part of the Court's record. The court issues an injunction to force the production of the document. As for the sealing order, there is no evidence of higher public concern that would justify such a measure.	"documents made enforceable or homologated by a judgment should always be found in the court dossier, whatever the type of file. Otherwise, how is one to know what is to be enforced? Their absence leaves a body without a head." Thus R-1 is part of the judgment and must be kept in the Court record. The Court can thus be ask to issue an injunctive relief to order a party to file a copy of the document in the Court record.
	Sealing order	*Benoit-Gagné* c. *Procureur général du Québec*, 2021 QCCA 1115	Plaintiff sought a declaration of unconstitutionality regarding the civil union provisions of the Civil Code of Quebec. He was unsuccessful and now seeks an order of anonymity so that this matter could not be linked to other pending court cases.	The anonymity order is refused. Plaintiff is allowed to redact information in his proceedings to remove the name of his spouse and specific references to his pending matters,	Plaintiff's allegations of risk were mere speculation. The Courts' justification for allowing a redacted version of the proceedings to be filed in the Court record is unclear but probably justified by the specific rules in place to ensure confidentiality of family law cases.
	Sealing order and publication ban.	Personne C c. Gaumond et al…, C.S. du Québec, May 31, 20-21,	Person C is a physician under investigation by his professional corporation and the police for the suspected murder of a patient. The Crown was seeking a court	In a standard application of the Dagenais/Mentuck test, the Court orders a publication ban regarding Person A's identity. A debate regarding the existence of a privilege invoked by	Standard application of Dagenais/Mentuck in an exceptional factual context.

		540-36-001132-215.	order allowing a search and seizure in the professional corporation's file. Person C, whose identity is protected by a publication ban, sought a sealing order and publication ban on various information. Person A is a witness in the same proceedings.	the professional corporation regarding Person A will be heard later in the year. Failing to grant the order would render the question moot before it was heard. Person C's motion to pan the publication of the factual allegations regarding the investigation is dismissed. There is no proof of harm, considering notably that Person C's identity is covered by a publication ban. There is no evidence of risk to Person C's eventual fair trial rights.	
	Publication ban, stay of execution for appeal	Personne C c. Gaumond et al…, C.S. du Québec, 13 septembre 2021, 540-36-001132-215.	Person C is a physician under investigation by his professional corporation and the police for the suspected murder of a patient. The Crown was seeking a court order allowing a search and seizure in the professional corporation's file. Person C, whose identity is protected by a publication ban, sought a sealing order and publication ban on various information, which was refused by the Court. A 30 days stay of execution was ordered to allow for an eventual appeal. Person C is seeking another stay pursuant to section 65.1 of the *Supreme Court Act.*	The Court dismisses the application. Although the first two criteria for a stay of execution are present, the petitioner failed to show any evidence of irreparable harm. There was no testimony or affidavit evidence presented in support of the application. The harm alleged is speculative, especially since Person C's identity is protected by a publication ban. In the absence of evidence of harm, granting another stay would run counter to the media's 2b) rights.	This is one of the rare cases where a stay of execution to preserve appeal rights is denied.
	Publication ban	*Marquis* c. *Doe*, 2021 QCCS 657, appeal was heard on December 10,	Plaintiff's name was added to the Defendants' list of "presumed sexual harassers" published anonymously on social media. He brings an action for defamation	Here, Plaintiff is a third party to A.A., he is not his alleged harasser. He is in fact ready to admit to the fact that she was a victim of sexual harassment. She still wishes to speak of her aggression in	There is no automatic right to anonymity for (alleged) victims of sexual harassment. This would have required a legislative intervention.

		2021. See 2021 QCCA 623.	and to have the social media page/list removed. One of the Defendants alleges to have been a victim of sexual assault (not by Plaintiff). She asks that her name be anonymized and any information that could identify her be covered by a pub ban.	support of her defense that the list of "presumed harassers" was of public interest. But his argument can be made without telling the story of her aggression. Granting a right to be sued anonymously because of A.A.'s choice to speak of her aggression, particularly since it is not necessary to her defense, would equate to reversing the order of things and allow a party to go a certain route of her choosing for her defense, route that creates a situation that would allow for anonymity, and then grant this right of being sued anonymously *ex post facto*. The situation does not warrant departing from the general principle that court proceedings are public.	When the situation does not entail a question of preventing someone from making a full answer and defense, and it is rather a wish to tell her story, although it is not necessary for her defense, raising the fact that the person was a victim of sexual harassment is not enough.
	Publication ban	*Douville* c. *St-Germain*, 2021 QCCS 3374, appeal was be heard on April 1st, 2022. See 2021 QCCA 1525.	Plaintiff is a comedian and a public figure. He was named by Defendants in a Facebook publication alleging improper sexual conduct. He sued for defamation. One of the Defendants, who claim to have been a victim of sexual assault by Plaintiff, aks for a wide-ranging confidentiality order.	There is no evidence of significant risk, despite Defendant's allegations. Furthermore, the matter was already covered by journalists. The motion was premature since no significant information of a sensitive nature was exchanged between the parties. The confidentiality order sought was to broad and failed the proportionality test.	To my knowledge, this is the first judicial decision to use non-binary pronouns in French regarding a party. Not relevant, but still neat! Despite being presented as an injunction, the motion must be reviewed under the criteria of Dagenais/Mentuck/Sherman since it effectively seeks a publication ban. Sherman did not change the essence of the Dagenais/Mentuck test.
	Publication ban	*L.B.* c. *J.S.*, 2021 QCCA 1593	Defendant was sued by Plaintiff for damages caused by sexual assaults. Plaintiff's identity was	The Superior Court's order was unjustified in law. Defendant's allegations were generic and unsupported by the evidence. The first	Failure to apply the Sherman test is an error in law. So is granting a

			protected by a court order at the outset. Defendant's request for a publication ban on his identity was granted by the Superior Court. The Court of Appeal reversed the order.	step of the Sherman test was not met. The Superior Court even failed to mention the Sherman test in its order.	publication ban without evidence of harm to an important public interest.
	Publication ban	*A.B.* c. *Robillard*, 2021 QCCS 2550, appeal was heard on April 1st, 2022, see 2021 QCCA 1526.	A.B. is a public figure. He was named in a Facebook page dedicated to outing sexual aggressors. He sued both the alleged victim and the administrators of the Facebook group for defamation. He sought a confidentiality order.	The petition for a confidentiality order is dismissed.	In this case, the right to dignity of the Plaintiff had a public interest component as described in Sherman. However, the public nature of the proceedings did not infringe that right. Notably, Plaintiff's name had already circulated publicly. He did not show that he would be prevented from seeking assistance of the Court without a confidentiality order.
	Publication ban	*T.M.* c. *Dis son nom*, 2020 QCCS 3938, permission to appeal dismissed in 2021 QCCA 48.	T.M. was named in a Facebook page dedicated to outing sexual aggressors. He sued the administrators of the Facebook group for defamation. He sought a confidentiality order.	The petition for a confidentiality order is dismissed.	Whereas confidentiality orders may be issued for victims of sexual assault, it will rarely be the case for perpetrators. There is no evidence that the order is required to avoid a serious risk to the administration of justice.
	Publication ban	*La Presse inc.* c. *Silva*, 2022 QCCS 881	Silva stands accused of four counts of murder and of count of attempted murder. The jury has yet to be formed and the trial judge is currently hearing pre-trial motions. He issued publication bans under section 648 C. cr.	There is currently a debate across Canada on the application of section 648 C. cr. The trial judge in this instance is of the view that the publication ban found in s. 648 C. cr. is imperative and applies before selection of the jury. He declines to apply his colleague's reasoning to the contrary exposed in *R.* c. *Bebawi*, 2019 QCCS 594.	The debate on the proper interpretation of section 648 C. cr., which for a beautiful few months was thought settled in Quebec, still rages on.

			La Presse requested that the publication bans be lifted.	The crux of the trial judge's reasoning is that a mandatory publication ban is necessary at this stage to protect the accused right to a fair trial: *The purpose of [section 648] is to avoid that the fairness of the trial be compromised by information which has not been proven in accordance with the rules applicable to a criminal trial.*	
	Defamation	*Lehouillier-Dumas* c. *Facebook inc.*, 2021 QCCS 3524	Plaintiff was named in a Facebook page dedicated to outing sexual aggressors. He filed a class action against Facebook on behalf of all people who reputation was tarnished by these publications.	The motion for authorization to file a class action is dismissed.	A platform manager is not responsible for the content published by users on its platform, unless it failed to take timely action once informed of the objectionable content. However, this duty to remove content is triggered only by *prima facie* illicit content, including clearly (and not potentially) defamatory content.
	Defamation	*Carle* c. *CBC/Radio-Canada*, 2021 QCCS 486	Plaintiff is a self-proclaimed "National Grand Chief" of the Confederation of Aboriginal People of Canada, a non-profit dedicated to the promotion of aboriginal people across Canada. A series of news report showed that Plaintiff's integrity was questionable, as were his methods. The cards he issued were routinely misused by the	The action was declared abusive and dismissed.	Standard application of the law with regards to SLAPP actions in Quebec.

			members to obtain unjustified tax credits. He sued to 930M$ and for injunctive relief. He joined several dozen other plaintiff to his action.		
	Defamation	*Lalli* c. *Gravel,* 2021 QCCA 1549	Plaintiff was the subject of a news broadcast discussing his ties with the Montreal mafia. The trial judge dismissed the claim, finding that the allegations made in the broadcast were true.	The Court of Appeal held that the trial judge had failed to consider the "general impression" from the broadcast in assessing fault. This notion of "general impression" is particularly important when the author of the defamatory statements is a journalist. The Court holds that the use of hidden cameras to record Plaintiff was unjustified, but that the main problem was in the presentation of the information, which was insufficiently nuanced. Notably, the broadcast led the viewer to think that Lalli was a member of the Montreal Mafia, whereas he merely had ties with its foremost actors. The Court of Appeal granted the Appeal and ordered the CBC and its journalist to pay Lalli $60,000 in damages.	Even when each statement made by a journalist is independently true, the general impression one gets from a news report must also be exact and nuanced. Otherwise, the result may be defamatory.
Atlantic	Publication Ban	*R.R. v Newfoundland and Labrador*, 2022 NLSC 46 (not yet on CanLII)	R.R , a lawyer, charged with sexual assault. Applied for a common law publication ban on identity, on basis it would deprive him of the presumption of innocence, negatively affect his	No ban. The Applicant did not meet the test for a common law publication ban. His engaged interests amounted to no more than personal and professional embarrassment and possible loss of business. These concerns did not meet	Personal embarrassment and business interests do not meet high bar for "public interest" warranting divergence from open court principle.

			reputation and undermine his dignity. CBC and CTV opposed application as unwarranted interference with open court principle and freedom of press.	the high bar of constituting an important public interest to which court openness would pose a serious risk.	
	Publication Ban Sealing Order	*Canadian Broadcasting Corporation v Canada (Border Services Agency)*, 2021 NSPC 15	On April 18–19, 2020, Gabriel Wortman committed multiple murders in Nova Scotia, killing 22 people and injuring three others before he was shot and killed by RCMP. CBC applied to lift sealing order over redacted portions of ITOs supporting various police searches. In particular, media wanted the names of 16 individuals and businesses that provided information relating to the ITOs.	Names of innocent lay informants to remain redacted. The has right to know the "what," "when," and "why" of the judicial authorizations. Not necessarily the "who." Privacy is a core value of such significance that s. 487.3(2)(a)(iv) specifically references "prejudice of the interests of an innocent person" as a consideration when a judicial officer is faced with the initial sealing application. This specific reference establishes interests of innocent persons as a core value. That certainly would be applicable in an "unsealing" application as well. Serious risk to innocent third parties should their names be released. Not an imaginary risk given the local, national and international interest in this mass murder. Releasing names of people who cooperated with investigation simply because they knew or knew of shooter could and likely would lead to speculation, public analysis and perhaps marginalization of people who	Court placed more emphasis on substance of information provided, than on the identities of those providing it. No consideration of media's right or ability to (eg) further explore informants' stories, consider veracity of the sources, or possibility informants would provide more or different details to media than to police.

				were simply conduits of information to police. Identity of an expert witness does not fall within same class of innocent third-persons; name released in accord with open court principle.	
	Sealing Order	*Canadian Broadcasting Corporation v Canada (Border Services Agency)*, 2021 NSPC 48	Nova Scotia mass shooting case. CBC applied to lift sealing order over ITOs. Crown argued *Canadian Victims Bill of Rights* requires court to consider victims' rights to security, privacy and protection of identity.	The *Canadian Victims Bill of Rights* applies to an unsealing application. Crown argued the CVBR applied. CBC argued CVBR was not triggered in this case: investigation over, no one asking for protection of identity, and CC s.486.5 already permits application for ban. The CVBR gives every victim a right to have their security, privacy and identity protected. For proper administration of justice, victims' rights must be considered throughout criminal justice system. Much broader than s.486.5. Following extensive statutory interp'n exercise, court rules the CVBR applies to unsealing applications, and such rights are both procedural and substantive.	The *Canadian Victims Bill of Rights* applies to an unsealing application. The decision does not, however, provide a structure for the CVBR analysis, or review how it is to be applied.
	Publication Ban Sealing Order Privacy	*Canadian Broadcasting Corporation v Canada (Border Services Agency)*, 2022 NSPC 5	Nova Scotia mass shooting case. CBC sought unsealing of informants' identities in ITOs. Court declined (decision above). Following release of *Sherman Estate* decision, CBC sought to make further submissions,	Pub bans and sealing orders will only be reconsidered on narrow grounds. *Sherman* ruling not material change; distinguishable. [*Sherman Estate*: court can grant a sealing order over personal info, "that reveals something intimate and	Decision finds *Sherman Estate* privacy analysis not applicable to s.487.3 sealing order. Rationale, however, difficult to see.

			arguing *Sherman* changed the law on privacy, a "material change in circumstances" warranting reconsideration.	personal about the individual." Sets a high bar.] Application for reconsideration of Merits decision failed because material change in circumstance under law not met Court concludes Sherman distinguishable: *Sherman* applicants sought a common law ban in a probate case. Decision provides test "subject to statutory enactments." ITOs sealed per statutory regime superseding *Sherman* test.	
	Defamation Privacy / Public Disclosure of Private Facts	*Racki v Racki*, 2021 NSSC 46	Plaintiff and defendant in acrimonious divorce Defendant published book referring to plaintiff's past drug addiction and suicide attempts. Plaintiff brought action seeking damages for public disclosure of private facts — Action allowed	Invasion of privacy tort, 'public disclosure of private facts,' recognized in NS. Existing causes of action, such as defamation, do not address circumstances arising from public disclosure of private facts Elements of tort: publicity of facts communicated to public at large to become matter of public knowledge; reasonable expectation of privacy around those facts; and publicity given to those private facts must be considered, viewed objectively, as highly offensive to reasonable person, causing distress, humiliation or anguish.	Public Disclosure of Private Facts tort recognized as cause of action in NS.
	Defamation	*Olumide v. Police Commissioner and Human Rights*	PEI Guardian published story re Alberta decision declaring Olumide a 'vexatious litigant.' He complained, and paper	Appeal dismissed. Olumide's appeal failed to identify a legal error, sought redress neither the	Canadian media still face frivolous litigation, wasting not just court resources, but media budgets.

	Frivolous, Vexatious, Abusive litigation	*Commission,* 2021 PECA 4	unpublished story. Human Rights Commission and Police declined his demands to investigate. Appellant's application for judicial review summarily dismissed as frivolous, vexatious and abuse of process. Court of Appeal agreed.	court nor the tribunals can grant, and were replete with scandalous, vexatious and irrelevant accusations. At court below, unpublishing was not interpreted as admission, but a "reasonable settlement" of the issue.	