Jurisdiction	Category	Case Name and Citation	Facts	Summary of the Decision	Key Takeaways
Quebec	Anonymity- Right to sue under initials in civil cases	*A.B. c. Fondation A.B. v. Jean-François Robillard Dis son nom, and al. And CBC-Radio-Canada*, 2023 Canlii 44068 (SCC) May 25 2023	A.B.- allegedly a well-known person of the Quebec cultural scene- sued in defamation after his name appeared on a list of alleged "sexual offenders" on a website called "say his name" ("dis son nom") A.B. asked the court's permission that he and his Foundation sue in defamation using initials. The Court of Appeal denied the Plaintiffs' Motion. The Court applied the Dagenais-Mentuck-Sherman test and found that the criteria were not met in this case.	The Supreme Court of Canada dismissed the Appeal of A.B. Fondation and Fondation A.B.	
Quebec	Anonymity- Right to sue under initials in civil cases	*S.N. v. Robert G. Miller and Future Electronics Inc.*, 2023 QCCS 2333 June 28 2023	After filing a class action in the name of alleged victims of sexual exploitation, the Plaintiff – an adult woman claiming she was sexually exploited when she was a minor- asked permission to use a pseudonym, instead of her name; the Plaintiff also asked to remain anonymous to the Defendants and their lawyers. The Plaintiff asked that the same permission be granted to all class members to join the class action, in the future.	The Judge granted permission to use pseudonyms to the Plaintiff essentially since she claimed to be a victim of a criminal act (sexual exploitation) and since she was a minor at the time of the events. However, he dismissed the request to remain anonymous to the Defendants. (**Plaintiff was denied leave to appeal the judge's decision to force her to divulge her identity to the Defendants).	The Judge found that the petitioner did not have to administer any proof since the prejudice in this case (women who have been paid for sex when they were minor) objectively meets the criteria of prejudice in Mentuck-Dagenais and, more specifically, Sherman. The Judge followed the precedents in *A.B. v. Bragg Communications Inc.* and other recent decisions.
BC	Anti-SLAPP	*Christman v. Lee-Sheriff*, 2023 BCCA 363	Christman, the Chief Mining Inspector for Yukon, is accused of slandering the principle of a junior mining company at a trade show. The lawsuit concerns three allegations of slander. 2/3 allegations Christman admits the	The BCCA endorsed *Walsh v. Badin*, 2019 ONSC 689 and *Waterton Global Resource Management, Inc. v Bockhold*, 2022 BCSC 499 – two decisions that found: "it is not possible for Mr. Christman to prove that the proceeding arises from an expression he made while simultaneously denying having made the impugned expression. This "inconsistent position" means Christman	An applicant must "admit" making the expression complained of to bring themselves within anti-SLAPP projections. Anonymous speech (*Walsh*) or being wrongly(falsely?) accused of slandering someone is not

			"expression" but denies the defamation. One instance (calling Lee-Sheriff a liar from the back of the room during a presentation) he denies the expression completely – he says he didn't shout or say anything. The chambers judge denied his PPPA/anti-SLAPP application because he did not "admit" to making the expression at issue, which she held to be an aspect of the applicant's threshold burden.	failed to meet the burden of proof under s. 4(1). By denying the expression there is simply no "public participation in the debates of the issues of the day" for the *PPPA* to protect. The proposition that one may benefit from the protection of the *PPPA*, bearing its legislative purpose in mind, while simultaneously denying having ever made the impugned expression, is irreconcilable with that purpose. It is illogical for an individual to claim the defamation suit against them is a silencing attempt, while purporting never to have uttered the expression in the first place.	protected under the anti-SLAPP regime.
Ontario	Defamation (meanings; anti-SLAPP)	*Catalyst Capital Group v West Face Capital*, 2023 ONCA 381	Part of this complex set of appeals arose from a defamation lawsuit by a private equity firm (C) against a media company (DJ) for an article it published stating that regulators were inquiring into whether C committed fraud. The claim against DJ was dismissed on an anti-SLAPP motion.	Before the ONCA, the Court gave one of the clearest appellate discussions yet about distinguishing between statements that authorities are investigating fraud (or have received complaints about fraud), and a statement that a party actually engaged in fraud (see paras 42-47). The Court emphasized that "a reasonably thoughtful and informed reader understands the difference between allegations and proof of guilt". It upheld the motion judge's finding that C had failed to establish its claim against DJ in defamation had substantial merit.	This is a useful and pithy analysis of the key holding from *Lewis v Daily Telegraph* on the topic of 'shades of defamatory meaning'. The ONCA also dismisses Lord Devlin's comment from *Lewis* — where he states "I think it is undoubtedly defamatory of a company to say that its affairs are being inquired into by the police" — as "*dicta* and not a binding proposition of law" particularly when Devlin's opinion is read as a whole and in context (para 43).
Ontario	Defamation (anti-SLAPP)	*Park Lawn Corporation v Kahu Capital Partners Ltd.*, 2023 ONCA 129	This appeal arises from an unsuccessful anti-SLAPP motion brought by the PLC in respect of a counterclaim by Kahu. The underlying counterclaim alleges defamation based on statements made by PLC's CEO in an industry publication conveying the	More interesting than the actual disposition in this case are the ONCA's comments reflecting that it is fed up with the torrent of anti-SLAPP proceedings clogging the lower courts (and "the proliferation of anti-SLAPP appeals" on its own docket as well) (see paras 34-42).	The ONCA decision here reflects frustration with a growing trend of litigants bringing inappropriate anti-SLAPP motions (and appeals) in the hopes of a 'home run' victory, even where the circumstances of the case do not call for it.

			message that Kahu was guilty of a crime, fraud or dishonesty.	In the course of its discussion on anti-SLAPP "practice considerations", the ONCA observed that the practice of bringing anti-SLAPP motions "has evolved into quite a different state than that anticipated by the Legislature and by *Points Protection* and *Bent*"; lamented that they have become "expensive, time-consuming and open to abuse"; and stressed that they are not designed to be "a trial in a box". The ONCA went so far as to say that "the costs of such a motion should not generally exceed $50,000 on a full indemnity basis" (para 39).	The suggested presumptive $50K limit on costs may go some distance towards dissuading plaintiffs from bringing such motions — although it remains to be seen just how much influence that suggestion will have. (Just a few months later, the ONCA itself awarded costs of $275K on an anti-SLAPP motion: *Boyer v Callidus Capital Corporation,* 2023 ONCA 311)
Ontario	Defamation (qualified privilege; anti-SLAPP)	*Thatcher-Craig v Clearview (Township),* 2023 ONCA 96	The Ps wanted to build a microbrewery on their property and had to bring an application to do so. They sued the Township for defamation based on site plan application documents and municipal reports the Township posted online about the brewery, together with letters the Township received from residents opposing the brewery. The Township successfully moved to have the defamation claim dismissed under the anti-SLAPP provisions.	A major issue before the ONCA was whether the comment letters the Township posted were covered by the qualified privilege defence. The Court concluded that they were (or at least there was a "potential success" for such a defence under the anti-SLAPP framework). In its analysis, the ONCA applied the (more lenient) standard of whether the letters were "relevant" to the privileged occasion (the site plan process) — and not whether they were "necessary" (which is the standard the SCC majority adopted in *Bent v Platnick*, 2020 SCC 23). In so doing, the ONCA read *Bent* down significantly in a footnote (FN2), explaining its view that "the necessity criterion is limited to that context" where a particular person is named and whether it is necessary to name the person and "does not arise in this case where the names of the people and their proposed project are the subject of the site plan application upon which the comments were made."	The ONCA's narrow reading of *Bent*'s qualified privilege as only imposing a "necessity" requirement when it comes to naming individuals — rather than imposing "necessity" as an overall requirement that essentially supplants relevance — is obviously helpful to those wishing to rely on the defence (although it is open to debate). At least for those practicing in Ontario, this decision will be a helpful tool to blunt efforts by plaintiffs seeking to impose the more rigorous *overall* "necessity" requirement as part of QP.
Quebec	Anti-SLAPP	*Alain Chenel v. Média QMI Inc.,* 2023 QCCA 642	Media QMI published online articles covering different stages of criminal proceedings involving	The Court of Appeal granted the Appeal and dismissed the Anti-SLAPP motion. The Court reiterated the principle that first instance	The Quebec Court of Appeal maintains that mixt questions of

		May 12th 2023 (in appeal from *Alain Chenel v. Media QMI Inc.*, 2022 QCCS 278)	the Appellant who pleaded guilty to several charges of criminal harassment and death threats on his wife. The Appellant sued Media QMI in defamation; he argued that the articles reported falsehoods and were sensationalist. In particular, the Appellant argued that Media QMI had committed a fault by putting defamatory statements in quotation, such as that he wanted to do "just like Guy Turcotte" (a father who was condemned to murdering his two children in the most horrific circumstances)". He argues that the use of quotation leads the public to believe that he had said specifically that. Media QMI brought an Anti-SLAPP motion arguing that the disputed articles were covered by the common law privilege of fair and accurate account of court proceedings. First instance judge awarded the Anti-SLAPP motion, dismissed the lawsuit and declared it abusive.	judges must remain cautious in granting anti-SLAPP motions when the lawsuit raises mixt questions of facts and law. The Court found that first instance judge should not have dismissed the lawsuit since the question of whether the conditions of the privilege of court reporting are met is one for the merits of the case. The common law privilege to report court proceedings is relative, not absolute. The Appellant has a right to his reputation, even though he has been convicted of serious crimes. The Court of Appeal finds that the first instance judge did not really examine the argument of the Appellant regarding the titles (which the Plaintiff argued were sensationalist) of the disputed articles; the court of Appeal also found that some of the defamatory statements did not come directly from proceedings (raising the question of whether they would be covered by the privilege). According to the Court of Appeal, these questions warrant a trial, on the merits and should not be dismissed on an anti-SLAPP motion. The Appellant argued that the use of quotation marks by Media QMI misled the public that he had said certain specific statements. The court of Appeal found that the appeal raises questions on the use of quotation marks by media.	facts and law should not be decided on Anti-SLAPP motions.
Prairies	Defamation	*Romana v Canadian Broadcasting Corporation,* 2023 MBKB 105	Romana sued the CBC in defamation over a 2014 CBC investigation report, published about Romana and his business ventures. The CBC publication indicated that Romana had pitched a business to investors	The Court found the overall sting of the publications to be that Romana was a con-man using his ideas as "investor bait" for ventures. The publications identified Romana and were published. The Court went on to review the specific complaints raised by Romana, such as information reported by CBC on Romana's education, his	Minor inaccuracies, where outweighed by a significant body of accurate reporting, will not defeat the defence of justification.

			with promises of significant returns, which did not materialize. CBC advanced the defences of justification, fair comment, and responsible communication in matters of public interest.	previous criminal record, and that Romana's ideas and businesses were failures. The CBC succeeded on the defence of justification. CBC had undertaken proper due diligence, such as contacting the relevant universities to confirm that Romana did not hold PhD's from those universities. CBC was able to overwhelmingly demonstrate the accuracy of its reporting. The Court found that CBC had incorrectly implied a handful of facts, but found that, individually or cumulatively, these shortcomings in the justification defence did not affect the result and were completely overwhelmed by the accuracy of the majority of the facts that CBC was able to prove. CBC had reported comments attributed to one investor who had died since the publication. Therefore, this investor was not able to give first-hand testimony on his comments, most of which appeared to be conclusory opinions based on his experiences with Romana. The Court found that CBC proved the necessary elements of fair comment with respect to these allegations.	
Prairies	Defamation	*Environmental Defence Canada Inc et al v Kenney et al,* 2023 ABKB 304	The Plaintiffs brought an action against the Alberta Premier and the Government of Alberta ("GOA") in defamation, arising from statements made by Premier Kenney and published on the Government of Alberta websites regarding the findings of a public inquiry into "anti-Alberta energy campaigns". The statements indicated that foreign-funded	The Court dismissed the application for summary dismissal. The Court noted that the Plaintiffs were specifically named in a list that identified them as "participants in anti-Alberta energy campaigns" in the Key Findings document posted publicly to the internet. The document was connected by one or two direct links from the alleged defamatory comments and no other list of organizations appeared. There was nothing in the documents posted that would	Defamatory statements do not need to refer to a plaintiff explicitly or directly. The test for determining if a statement does that does not explicitly mention a party is nonetheless "of and concerning" that party is an objective reasonable person test. Here, a reasonable person who saw the

			misinformation campaigns to landlock Alberta's resources resulted in hardship for workers and their families. The statements included a link to the news release, which included a further link to a "Key findings" document from the public inquiry. This document included the names of the Plaintiffs. Premier Kenney and the GOA applied for summary dismissal of the claim, arguing that the publication did not identify the Plaintiffs.	distinguish the Plaintiffs from other listed participants, which may have had the effect of separating the Plaintiffs from those that were "spreading misinformation". The Court noted it would defeat defamation law if a party were allowed to break their defamatory statement and the identity of the defamed into separate but closely linked statements and then offer the defence raised here.	social media posts would follow the link, which would lead to a News Release that subsequently liked to the Key Findings Documents and its list of participants. The names of the Plaintiffs were two "direct clicks away" from the alleged defamatory statements of the Premier.
Quebec	Defamation	*Steve Bolton v. La Presse, Katia Gagnon and Stéphanie Vallet,* 2023 QCCS 2953 August 1st, 2023	On December 12, 2017, La Presse published the article «Rain of complaints against a star choreographer ». 5 sources on the record and 15 confidential sources claimed Steve Bolton was abusive in the workplace; they claimed psychological harassment. Bolton is a well-known choreographer, with an international reputation. He worked on several TV shows; and had been announced as the judge in an upcoming dance show on TV. The sources were dancers and other artists that had worked with Bolton. Some of them had filed a complaint with the Artists Union and an investigation had been launched. Bolton sued *La Presse* and the two journalists in defamation and	The Superior court judge dismissed the lawsuit. This is the first "me too" case in Quebec. 20 sources say they were victims of abuse; the person they accuse confirms most of the events but has a different interpretation, different perception. The Plaintiff's expert claimed the journalist failed to consider that maybe Bolton's version was the "true story", the correct perception. This decision serves as a precedent in "me too" investigations. The judge found that La Presse and its journalists had acted responsibly, in the context of this type of investigation. Gagnon (one of the impugned journalists) testified that they had decided on a framework for this type for investigations: 1) several complainants; 2) of which at least one person is not a confidential source; 3) who report a "pattern"; 4) parts of the story is corroborated, such as another source who witnessed the events or another source who	**When a journalist says or writes something we wished they had not**. In this case: one of the journalists had said to sources\complainants: "we will not publish until the file is solid enough that he (i.e.: Bolton) does not work again". Everyone involved in the case agreed this statement should not have been said by the journalist (including said journalist). But was it a fault? Did is show bias and lack of "neutrality". The journalist testified that she should not have said it, but there was a context including the fact that she was speaking to somewhat vulnerable sources who feared retaliation. The Judge found that the statement (although it should not have been said) did not affect the integrity of the investigation and did not constitute a fault.

			claimed $250 000 in damages (moral and punitive).	was told of the events by the initial source, more or less at the time they occurred; 5) the allegations concern a person who is in position of authority or power. The journalists testified that their investigation (a total of 44 sources) showed a pattern; several sources were describing similar events.	The judge found that the investigation was impressive and that the one statement did not alter the quality of the work done by the journalists. **Credibility of sources**: a few of the sources were ex romantic partners of the Plaintiff. Plaintiff argued the story was a revenge story. One of the sources was a direct competitor of Bolton. Journalists explained they were aware and considered the fact there could be a potential conflict of interest. They explained that they corroborated these sources' story. Some elements of the story were corroborated by the Plaintiff himself (albeit with a different perception). They also mentioned in their story the emails or text messages from these sources to Bolton which could be interpreted as contradictory (the emails and texts sent after the events described by the sources could be seen as contradictory to their story that Bolton was abusive) The journalists also reported in the story that Bolton argued this was a revenge story. Judge said: human nature is complex, and I can't speculate one of the many reasons why these texts and emails were written. The judge considered the fact the sources had filed formal complaints with their Union and that said Union deemed them

					credible enough to launch an investigation. **<u>Confidential sources</u>**: The journalists were not asked to divulge their sources by opposing counsel. There was no debate on an objection and Wigmore test. Rather, the Defendants chose to have their journalists testify on the way they handled confidential sources. The Defendants filed redacted transcripts of the interviews with confidential sources. They testified to explain why they deemed the sources to be credible. In terms of confidential sources, two things were at issue: the way confidentiality was granted and the fact that the journalist granted confidentiality to their sources (who were "against" Bolton) but refused to grant confidentiality to 5 people they spoke to who were saying positive things about Bolton. The Judge points out by stating that confidentiality should be discussed at the very beginning of a discussion with a source, but in this case the requests had been made at the end of the conversation. In some instances, the confidentiality was granted without being asked by the source. Judge found that the Code of deontology of journalists is not a law. The journalist can choose to

					grant confidentiality even if the source does not request it. Judge does not discuss this is detail. She writes that the complaints filed against Bolton and the number of sources justified the decision to grant confidentiality. Her reasoning is focused on the reasons WHY confidentiality was granted and not so much HOW is was granted. The journalists feared their sources would be intimidated by Bolton given the information shared with the sources from the Artist's Union. Some of the sources were still working as dancers in Quebec and feared the article would affect their ability to work. On the issue of refusing to grant confidentiality to sources who were favorable to Bolton: defendants' expert was crucial. He explained the important distinction between favorable and unfavorable sources. He explained the favorable sources have not much to lose and had not filed a confidential complaint with the union + more weight is awarded to favorable comments when the source is named (which benefits Bolton). **During the interview: Plaintiff was not informed who were the sources.** Judge concludes that even

					though the names were not given, enough details were given; Bolton had a good idea of who the sources were. given the context, that was appropriate. **This case also raises the important question of the relevance of "truth" in defamation cases tried under civil law.**
Quebec	Defamation	*A.B. v. Google LLC*, 2023 QCCS 1167 March 28, 2023 (Under appeal to the Québec Court of Appeal)	A.B.- apparently a reputable and somewhat known businessman- sued Google for its involvement in making a false and defamatory statement publicly available online, through its search engine. A person- identified as "R." in the decision- wrote a blog stating that A.B. had been convicted of child molestation; that A.B. ran an elaborate scheme pretending to be a commercial real estate broker, and many more defamatory and false statements about A.B.. A.B. discovered the false and defamatory post in 2007 after googling himself. Starting in 2007, A.B. communicated with Google in order to convince the company to remove the link to the defamatory post from its search engine. In 2009, Google confirmed it had removed the link from Google.ca, but not Google.com. The link reappeared on Google.ca and was removed again, after A.B. called upon Google to do so. Google's	The Judge granted the lawsuit and awarded 500 000$ in compensatory damages and issued the injunction against Google to ensure that its search results do not list the defamatory blog; this injunction being limited to all users of Google located in the province of Quebec. The judge found that Google had committed a fault since it did not act in accordance with the "standard of conduct of a reasonable internet intermediary". The Court identified the question at issue as: is it a fault for Google to make the link to the defamatory post available **anew** to users in Quebec after the Crookes decision? The key finding in the decision: Google had advised A.B. under section 22 of the IT Framework Act that it considered the blog to be illicit but then failed to ensure it could not be accessed on its search engines. The Court found that a "reasonable internet intermediary in the business of providing search results in response to keywords and website links for those search results does not knowingly spread false information." The Court decided that Google's interpretation of Crookes was incorrect. The issues in dispute were different: is an	This case establishes the "standard of conduct of a reasonable internet intermediary" when an internet provider knowingly spreads false information. This case also raises the issue of the geographical scope of an injunction sought. Google was successful in limiting the scope of the injunction. The Judge refused to grant an injunction that would cover all users of Google, in Canada and the US. The Judge found that Plaintiff was entitled to an injunction that would cover users located in the Province of Quebec (and nowhere else), whether the Quebec users were using Google.ca or Google.com.

			position was that the post was illicit, pursuant to art. 22 of the IT Framework Act. In 2011, the link reappeared (again) on Google and A.B. had to write another letter to Google. In 2015, the link reappeared, (again). In 2015, Google changed its position: it agreed to block the URL to the defamatory post but refused to remove the URL itself (contrary to what it had agreed to do before in 2009). This meant that a user could arrive at the link through a word search and access the defamatory post. This change in position by Google was based on their interpretation of the 2011 decision in Crookes v. Newton. A.B. instituted proceedings against Google in 2016 in damages and injunction (to order Google to ensure that its search results do not list the defamatory blog, whether on Google.ca or Google.com).	internet provider liable when providing access to illicit content under Quebec law, in the case against Google -vs- does the use of hyperlinks by an author consist of "publication" (in *Crookes*)? The Judge found that it was a fault under Quebec law to make the link available to users on the territory of the Province of Quebec since Google had recognized it was illicit under art. 22 of the IT Framework Act. Applicable law: Google argued that US laws applied while A.B. argued that the Quebec laws applied. The judge found the laws of Quebec applied since the injury was suffered by A.B. in the province of his residence, being the province of Quebec.	
Atlantic	Defamation (absolute privilege)	*Bruce v Avis*, 2023 NLSC 62 (Newfoundland & Labrador)	Plaintiff (a lawyer) alleged that the Defendant (also a lawyer) made defamatory comments about him in an email. The Defendant took carriage of a file from the Plaintiff. The Defendant alleged in an email that the Plaintiff had committed	Comments were protected by the doctrine of absolute privilege Absolute privilege provides immunity from liability for the tort of defamation for statements made as part of a legal proceeding. Absolute privilege requires more than the mere possibility of litigation – comments	Absolute privilege protects the occasion of preparing for a proceeding rather than the communication itself.

			criminal conduct by colluding with his client in knowingly filing false affidavits. The Defendant brought an application for summary trial, claiming absolute privilege.	must have been 'incidental' or 'intimately connected' to judicial proceedings. Absolute privilege extends to comments made maliciously. Court found the alleged defamatory comments were made in relation to the Plaintiff's work when he was solicitor of record. Consequently, the Defendant's statements were protected by absolute privilege as they were made in the context of the proceedings and were not too remote.	
Prairies	Defamation, harassment	*Alberta Health Services v Johnston,* 2023 ABKB 209	Kevin Johnston ran a popular online talk show. On his show, Mr. Johnston "spewed misinformation, conspiracy theories, and hate". The targets of much of his commentary during the Covid-19 pandemic were Alberta Health Services (AHS) and Sara Nunn, who was employed by AHS as a public health inspector. AHS and Ms. Nunn alleged they were defamed by Mr. Johnston and further asserted that Mr. Johnston's continued comments constituted tortious harassment.	The Court began by considering whether AHS, was a public entity, could bring a claim in defamation. The Court indicated that democratically elected governments, including municipal governments and band councils could not maintain an action in defamation. It was unsettled as to whether this inability to sue extended to unelected government bodies, and if so, where the line was drawn. The Court held that AHS was Alberta's single health authority. The Minister had significant power and control over AHS, including establishing a health region, giving AHS direction concerning its priorities, and approving the AHS budget. The Minister also had the authority to appoint members of a health region. In light of these factors, the Court found AHS to be a government actor who could not sue in defamation. That left the individual Plaintiff, Ms. Nunn. The Court established a new tort in Alberta, the tort of harassment, which contained the following elements: a. Repeated communications, threats, insults, stalking or other	Entities which are not democratically elected, but nonetheless "public" entities, may be barred from suing in defamation, similar to a municipality or band council. The tort of harassment has been adopted in Alberta and may be pled alongside defamation in appropriate cases.

				harassing behaviour in person or through other means; b. That the defendant knew or ought to have known was unwelcome; c. Which impugn the dignity of the Plaintiff, would cause a reasonable person to fear for her safety or the safety of loved ones, or could foreseeably cause emotional distress; and d. The communications caused harm. The Court found the torts of harassment and defamation were established as against Ms. Nunn. Ms. Nunn was awarded general damages of $300,000 for the defamation and $100,000 in general damages for harassment. In addition, Ms. Nunn was awarded $250,000 in aggravated damages. Punitive damages were not appropriate in light of the large award already made.	
Prairies	Defamation, Injunction	*Peyrow v Kaklin,* 2022 ABKB 823	The Plaintiffs brought an application for an interim injunction, prohibiting the Defendant from defaming the Plaintiffs and requiring her to remove all posts about the Plaintiffs on social media pending the trial determination.	The Court found that the usual tripartite injunction test does not apply for the restraint of an allegedly defamatory publication. Due to the need to protect freedom of expression, the *Liberty Net* test was identified as the correct test. The *Liberty Net* test requires the Plaintiffs to prove two elements: 1. That the impugned statements are clearly defamatory; and 2. That there is no sustainable defence, if the respondent has expressed the intention to raise the defence.	The *Liberty Net* test continues to be the appropriate test where an injunction seeks to restrain defamatory publications. This is a high threshold, which can be very challenging to meet.

				The Court emphasized that it must be proved "beyond doubt" that there are no defences. The threshold for granting any injunction in a defamation case is high. This threshold has been described as requiring that the defences being "wholly unfounded" or "obviously impossible to justify". The Court noted that this threshold is high, but not insurmountable. The Defendant had adduced some evidence in her affidavit to support the defence of truth. The defence was not wholly unfounded, and it was not clear on the record that the defence would fail. Therefore, the Court declined to grant the injunction.	
BC	Defamation Injunctions	*Surrey Animal Hospital Ltd. v Veira*, 2023 BCSC 1298	Surrey Animal Hospital sought an injunction for the takedown of defamatory social media posts. Gensis of dispute was the neutering of Ms. Viera's 71lb Akita named Charlie. After the operation Charlie developed a rash. TikTok video viewed 800,000 times/receptionist assault allegations/allegations of animal abuse/ "I brought my dog to a slaughterhouse" etc. Ms. Viera even posted a video of her receiving call from the RCMP regarding her threats made against clinic.	Court confirmed higher test for defamation injunction: injunction should only issue where the words complained of are so manifestly defamatory that any jury verdict to the contrary would be considered perverse by the Court of Appeal. The above standard—i.e., contemplating speech that is manifestly defamatory and impossible to justify—will only be satisfied in the rarest and clearest of cases:	The strongest statements made by Ms. Veira in her Posts were her reference to the Clinic as a "slaughterhouse" and her comment that the Clinic "abuses animals." Both descriptions of clinic found to be manifestly defamatory. Vet clinic not literally a slaughterhouse, but the string of statement was that it offered bad veterinary services. Court found that it was not impossible that Ms. Veira could succeed in her defence of that comment.
Atlantic	Defamation (jurisdiction)	*Watts v Hunter*, 2022 NBKB 230 (New Brunswick)	Self-repped Plaintiff, long-time ON resident, incarcerated in 2003 for manslaughter and sex crimes.	Action stayed for lack of jurisdiction	To prove jurisdiction, the plaintiff must also show that the words

			T'ferred to NB facility in Aug 2019. Media wrote about Pf and crimes. Pf commenced NB action, alleging he was threatened and lived in fear while incarcerated in NB due to articles published by defendants. By time of hearing, Pf had been t'ferred back to ON. Defendants brought a motion to stay the action for lack of jurisdiction.	Court applied the *Club Resorts* test to determine jurisdiction. Factually, there was very little tying the action to NB. – Pf had never been an independent resident of NB; – None of the corporate Defendants had registered offices in NB; – None of the individual defendants resided in NB; – None of the alleged defamatory articles identified in the pleadings were published in NB. – The criminal activities referenced in the articles occurred in ON. The Plaintiff was unable to prove the alleged tort of defamation was committed in NB. Only possible nexus between NB and the publications at issue was the possibility that a NB resident could have reviewed online content. The Plaintiff was unable to provide evidence of this having occurred.	were spoken or published in the applicable jurisdiction. The possibility that someone could have reviewed online content was found to be insufficient to meet the threshold requirement of the Defendants' "carrying on business" in NB pursuant to *Club Resorts.*
Ontario	Defamation (meanings)	*Corion v Plummer*, 2023 ONSC 3249 (Divisional Court, on appeal from small claims court)	P sued D for defamation after D sent a message to members of a church saying P was "gay" and therefore engaged in "devil worship". P alleged that this message lowered his reputation in the eyes of the church community and the community in general.	Applying the "reasonable person" standard, the message was not defamatory. Although the message did lower P's reputation in the eyes of the church community (given its attitudes towards homosexuality), it did not do so from the perspective of the broader public. To say someone is "gay" in 2018 is not a defamatory statement. Prior cases finding that calling someone "queer" or "homosexual" could be defamatory reflected outdated attitudes.	An interesting and insightful discussion of how to assess the requirement of whether words would tend to lower the reputation of the P in the eyes of a reasonable person.

Atlantic	Defamation (Parliamentary privilege)	*Edward Joyce v Sherry Gambin-Walsh,* 2022 NLSC 179 (Newfoundland & Labrador)	Member of the NL House of Assembly brought an action against three other members and Premier for role in a Complaint Process against him. Defamation alleged against two Defendants (Gambin-Walsh and Chaulk) Gambin-Walsh spoke to media, acknowledging she had brought a complaint against the Plaintiff. The other claims of defamation related to report produced following the Complaint Process. Defendants applied to strike pleadings.	Majority of pleadings struck; Plaintiff permitted to amend pleadings re alleged defamatory comments made to media The Necessity Test applies to provincial legislative assemblies. Majority of claims found to fall within the scope of the House's parliamentary privilege to discipline its members; parliamentary privilege of free speech; or Crown Prerogative and were struck for disclosing no reasonable cause of action. Pleadings insufficiently particularized claim re Gambin-Walsh's comments to media, to know the case against her. Plaintiff given leave to amend.	Not all comments made by politicians about political matters will be protected by parliamentary privilege. Gambin-Walsh's comments to media were not part of the complaint process. As a result, even though these comments related to same subject matter, they were not protected by parliamentary privilege.
Quebec	Defamation (request for documents made by Media to a third party to obtain documents relating to the defamation case)	*Groupe TVA Inc. And al. v. André Boulanger and al.,* 2023 QCCA 687 May 23, 2023 (In appeal from the decision *Boulanger v. Groupe TVA Inc.*, 2022 QCCS 1642)	Two police officers with the Quebec police force (Sûreté du Québec) instituted a 12-million-dollar lawsuit against several media outlets and named journalists. Both Plaintiffs were members of the anti-corruption unit. In 2017, they were assigned with investigating leaks of confidential information on the unit's major investigations to media outlets. In 2019, the Defendants collectively published over 250 articles, tv and radio stories about the leaks and the investigation led by the Plaintiffs. The Plaintiffs argue that the Defendants falsely raised suspicion that they were the authors of the leaks.	The Court of appeal granted the appeal, quashed the first judgment and returned the file to the superior court to decide whether any privileges applied on the documents (step 2 of the motion). The Court of Appeal found the judge had made a revisable error: Plaintiffs alleged that the media had published false information and the media were entitled to test these allegations. In order to do that, they needed the documents pertaining to the investigations. The Court also found that the first instance judge failed to consider that truth-vs-falsehood is one of the factors to be considered in defamation lawsuits under Quebec law.	This case raises the question of the importance of proving that the impugned statements are "true" to establish a fault in defamation cases, in Quebec. In some instances, Media argue that "truth" is not so much a factor (in defamation cases against a media) and is irrelevant. Rather, the standard to establish fault is whether the journalist acted responsibly or not. It was precisely what the first instance judge found in this case. This argument raises the issue of whether Prudhomme (and its 3 categories of situations that consist of defamation) applies in lawsuit against journalists or media. The Court of Appeal, in this case, overturned the first instance judge and concluded that truth is

			In 2019, they sued in defamation claiming that the media had reported false information regarding their work on the investigation, regarding the investigation itself and the investigative techniques used by the Plaintiffs. The media filed a motion to obtain a list of documents from a third party (namely, the anti-corruption unit of the Quebec police force) based on article 251 of the *Code of Civil Procedure*. The parties agreed to proceed on the motion in two steps. The first step was to debate whether the requested documents were relevant as understood in article 251 CCP ("A third person holding a document relating to a *dispute* (…) is required, if so ordered by the court, to disclose it (…)"). On April 2022, a superior court judge dismissed the media's motion (2022 QCCS 1642). The judge found that the documents were not relevant to the defamation lawsuit since the question in dispute is not whether the statements made by the media are true or false, but whether the media handled and presented the information they gathered according to the standards and practices.		relevant in a defamation lawsuit against a media.

			The media were granted leave to appeal the decision to the Quebec Court of Appeal.		
BC	Human Rights/Advertising	*Nachbaur and another v. Black Press Media and others*, 2023 BCHRT 160	The Nelson Star, a community newspaper, refused to publish a Halloween-themed anti-Abortion advertisement in its paper, for business reasons, citing community backlash. The Nelson Right to Life Society, a Catholic faith organization, brough a Human Rights Complaint on the basis of religious discrimination.	The Tribunal found that the Society could at a hearing demonstrate that they are religious group, adversely impacted by a service customarily offered by the Newspaper (advertising) and that religion was a factor in that adverse impact. However – at the second stage of the analysis - the Tribunal found that the Newspaper could justify their decision by proving they adopted the "no-abortion advertising standard" in good faith, for a purpose rationally connected to their function/standard reasonably necessary to accomplish that legitimate purpose. Tribunal was reasonably certain that the Newspaper could justify decision to stop publishing abortion ads, therefore the complaint had no reasonable prospect of success and was dismissed.	The "good faith" element does not require that the Newspaper be neutral in its views on abortion (internal emails indicated the editors were critical of these "tasteless" ads). The requirement of good faith is that the Respondents made their decision in good faith, believing that it was necessary to fulfil their legitimate purpose, namely to preserve their "acceptance and role as a medium of news" in the local community. The Newspaper also led expert evidence on the harmful impact of anti-abortion advertising on women which was well received by the tribunal
Quebec	Provisional Injunction to prevent publication	*Cégep de St-Hyacinthe and al. v. Le courier de Saint-Hyacinthe*, 2023 QCCS 2093 May 4, 2023	A CEGEP filed a provisional injunction to prohibit a local news paper from publishing the content of an internal report (which had been leaked) containing defamatory statements on one of its employees.	The Court dismissed the injunction. The criteria for the issuance of an injunction against a media are well establish and are very stringent. The injunction should only be granted in the most obvious cases and should remain extremely rare. The judge found the injunction was not warranted and that he could not assume the journalists would not act according to the standards and practices; therefore, it was not one of the 'obvious cases' that could warrant an injunction.	
Ontario	Journalistic sources	*R v Edmundson* 2023 ONSC 4236	The accused is charged with sexual assault arising out of an incident on a navy ship. One of	The OCJ ordered the records to be produced. On appeal by CBC, a key point of debate in the decision was whether or not it	This is one of the few reported decisions dealing with the new *CEA* regime instituted as a result of the

			two main Crown witnesses is XX (who is not the complainant). Months before charges were laid, CBC published a story that describes having interviewed a source who confirmed the complainant went missing around the time of the alleged assault. This is consistent with info XX provided to police during her interview. It is not known for certain whether CBC's source is XX. CBC received a subpoena requiring it to deliver all records in its possession "constituting communications with the unnamed witness, if that witness is XX". CBC challenged the subpoena under s. 39.1 of the *Canada Evidence Act*. Defence counsel wants to see CBC's notes and records to see if they align with what XX told police. It was agreed that CBC and the journalist were "journalists" and the individual who provided information was a "journalistic source" within the meaning of s. 39.1 of the *CEA*. The only question was whether the privilege should be overridden under the analysis set out in s. 39.1(7).	was proper for the OCJ to rely on the inference that the unnamed source in the CBC story was probably XX. The SCJ dismissed the appeal. It found that it was not improper to consider the high probability XX was the source as part of the 39.1(7) analysis, which requires considering whether "the information or document cannot be produced in evidence by any other reasonable means" and whether the public interest in requiring production outweighs the interest in preserving the confidentiality of the journalistic source, having regard to the importance of the information or document to a central issue in the proceeding (as well as freedom of the press and the impact on the journalistic source and the journalist). The SCJ upheld the OCJ's conclusion that the information sought by the defence (i.e. particulars of what the source told CBC, if the source was indeed XX) could not be found by other means, and found this to be both central and important in a case of historical sexual assault. The SCJ also upheld the OCJ's conclusion that if XX was the source, the fact that she has given a non-confidential statement to authorities and will be a witness for the Crown means the interests of protecting her identity as a source is no longer significant.	*Journalistic Sources Protection Act* — and, unfortunately, yet another case that tilts against source protection.
Ontario	Journalistic sources	*Toronto Star Newspapers Ltd v Cavey*, 2023 ONCA 630	The accused is charged with sexual assault against a complainant (RT) and seeks production of records from the *Star* as part of a third-party records application in an ongoing	The ONCA dismissed the appeal. The Court helpfully clarified and confirmed that a *certiorari* application by the media in these circumstances engages a "broader" right of review than for the Crown or the	This decision suggests that where a trial court decides to proceed by taking *JSPA*-type arguments into account as part of the s. 278 analysis—rather than as a first step ahead of that analysis—that

			criminal trial before the OCJ, pursuant to s. 278.3 of the *Code* (the *Mills* regime). The *Star* published a story about a woman under a pseudonym, "Alanna", where the woman alleged sexual assault by the accused. The accused alleges Alanna is RT. On application by the accused, the OCJ issued a subpoena for copies of any records of the Star's interviews with RT to be produced to the Court. The *Star* argued that the material is presumptively privileged under s. 39.1 of the *CEA* and sought to have the subpoena quashed via *certiorari* before the SCJ. The SCJ dismissed that application and the *Star* appealed to the ONCA.	accused, which includes not just errors of jurisdiction, but also "errors of law that are apparent on the face of the record" (para 6). However, the ONCA disagreed that *certiorari* ought to have been granted because the records were subject to regime for journalistic sources under s. 39.1 of the *CEA*, rather than the s. 278 application: "[T]he appellants have standing under s. 278 to assert their privacy interest in the records and their claim to journalistic privilege. They will have a full opportunity to make submissions on the issues before the trial judge" (para 8).	decision will not fall into the narrow circumstances that would warrant *certiorari.* (By contrast, in *Edmunson*, the parties agreed that the *JSPA* issue would be determined and ruled on first, ahead of the s. 278 application: see 2023 ONSC 4236 at para 8)
BC	Privacy	*Insurance Corporation of British Columbia v. Ari*, 2023 BCCA 331	An ICBC employee sold private information linking 78 customers' license plates to their home addresses. 13 of 78 customers (who parked their vehicles outside BC's Justice Institute) were then targeted with arson and shooting attacks. The buyer of the information was targeting persons he believed were police officers. ICBC was found liable for its employee's breach of privacy of ICBC customers. The action is a class action.	ICBC appealed the finding of liability – damages were not assessed at trial. ICBC asserted the information accessed was not private – mere contact information that people regularly provide to others. The trial judge rejected that argument. The reasonable expectation was that ICBC would only use customer info for legitimate business purposes. Customers had a reasonable expectation that the information they provided ICBC would only be used for legitimate ICBC business purposes, and they otherwise had the right to control use of their personal information.	The question of whether the common law breach of privacy tort exists in BC is unsettled but does not arise on this appeal Cases involving alleged s. 8 *Charter* breaches and tort breaches of privacy are not separate and mutually exclusive silos of analysis. There is no authority concluding that the statutory tort is limited to "highly sensitive" information at the biographical core of individuals. The language of the *Privacy Act* is not so narrow. The statutory tort expressly requires consideration of the entire context to determine what is a reasonable

					expectation of privacy in the circumstances ICBC argued that its attempted compliance with *FOIPPA* acted as a defence and shield to liability under the *Privacy Act*. However the existence of a statute protecting against the misuse of data is concurrent privacy protection that does not subtract from the privacy statutory tort regime.
Atlantic	Publication Ban (Lifting)	*R. v Wilson,* 2023 NSSC 61 (Nova Scotia)	Crown brought an application to lift a publication ban on behalf of the complainant who had been the victim of the accused's predatory sexual behaviour. The ban would remain in effect with regards to other victims.	Publication ban partially lifted Applied test for lifting publication bans that was reframed in *Canadian Broadcasting Corp v Manitoba,* 2021 SSC 33: 1. Has there been a material change in circumstance? 2. Would that change, if known at time of the initial order, resulted in a different order? On the facts, the only change in circumstances was the individual's desire to lift the ban. The complainant was now an adult, sought legal advice, was fully aware of the ramifications of her decisions; said would feel empowered by regaining her voice.	Once in place, a ban will only be lifted in limited circumstances. Courts are unlikely to lift a publication ban if the individual making the request is underaged or if doing so could lead to the identification of other complainants
Atlantic	Publication Ban	*Jane Doe (#24) v Newfoundland and Labrador,* 2022 NLSC 158 (Newfoundland & Labrador)	The Plaintiff was an off-duty police officer who was sexually battered by another police officer. The Plaintiff brought an action against the provincial Crown,	Publication ban not granted. The court applied the 3-part *Sherman Estate* test, finding the Intervenor failed to meet any element of the test. 1) Public Interest at Risk? The court acknowledged that the dissemination of the	Some personal information may be sufficiently sensitive to justify an exception to the open court principle, such as evidence of psychological harm following a sexual assault, but expert evidence is required.

			alleging it was vicariously liable for the sexual battery. The Intervenor, the police officer alleged to have committed the sexual battery, sought a publication ban on his name and identifying information.	Intervenor's name would lead to embarrassment but found it did not rise to the level of harming human dignity as it would not reveal anything "intimate" about the Intervenor that strikes at his "biographical core". 2) Required to prevent serious risk? The Intervenor argued that a publication ban should survive a finding that he had committed sexual battery. This argument was found to be inconsistent with the Intervenor's claim of innocence. 3) Benefits outweigh negative effects? The administration of our police force is a general public interest that outweighs benefits to Intervener's privacy rights.	Confirmation that *Sherman Estate* has significantly narrowed the exception to the open court principle on the basis of protection of privacy such that previously accepted grounds for a publication ban (such as protection of the innocent) may no longer be grounds for seeking a ban. Third parties' privacy concerns regarding serious unproven allegations may not override open court principle.
BC	Pub Bans	La Presse Inc. v. Quebec, 2023 SCC 22 (APPEAL from a decision of the British Columbia Supreme Court *R. v Coban*, 2022 BCSC 880	Coban was charged (convicted) with several Criminal offences including extorting and criminally harassing Amanda Todd, an underage girl, as well as possession and distribution of child pornography. Pursuant to s.648(1) the trial judge imposed a publication ban on all pre-trial (pre- jury-empanelment) applications. Numerous pre-empanelment proceedings occurred over a 15-month period, including a constitutional c The CBC and other media outlets applied for a declaration that the s. 648(1) ban applies only ***after*** the jury is empanelled and therefore did not prohibit the	Section 648(1) of the Code provides: Restriction on publication 648 (1) After permission to separate is given to members of a jury under subsection 647(1), no information regarding any portion of the trial at which the jury is not present shall be published in any document or broadcast or transmitted in any way before the jury retires to consider its verdict. Trial courts have been divided on the interpretation of s. 648(1). Some courts have held that s. 648(1) applies only after the jury is empanelled, others have found that it applies only to certain kinds of hearings, others have read down the phrase "no information" such that only information that would be prejudicial to the accused is captured by s. 648(1) when it applies before the jury is empanelled.	"After" means "before" and there is no other possible interpretation. Interpreting s. 648(1) under the **modern approach** to statutory interpretation reveals that the provision applies before the jury is empanelled to prohibit the publication of any information from hearings held pursuant to the jurisdiction provided under s. 645(5). All indicators of legislative meaning — text, context, and purpose — **admit of only one interpretation of s. 648(1):** that it applies not only after the jury is empanelled but also before the jury is empanelled with respect to matters dealt with pursuant to s. 645(5).

			publication of information about the constitutional challenge.		
Quebec	Publication bans	*Martin Roussin Bizier et al. C. Le Roi*, 2023 QCCQ 5041 February 24, 2023	Two men were charged with sexual assault. Both elected to be tried by a judge alone. One of the accused requested a separate trial. The other accused asked for a pub ban on the entirety of the proof made at the motion for separate trial. All parties agreed to the pub ban. Members of the media were present, but none of them intervened. The petitioner argued that, unless the pub ban was granted, the media would report proof made by his co-accused which would influence and contaminate the witnesses in his trial.	The Judge distinguished the facts of the case with the fact in Savard c. La Presse, 2017 QCCA 1340 where the requested pub ban was granted over statements made in ITOs, no charges had been brought and the investigations was ongoing. Here, the judge refused to order a pub ban essentially since the accused had not proven a serious harm. The Judge also found that there were other means to prevent witness contamination.	In her reasons to dismiss the pub ban, the judge explains that regardless of the agreement and absence of contestation, the court must apply the principles and follow the recent Court of Appeal decision in *Designated Person v. Q.* (the "secret trial").
Quebec	Pub ban (on the names of several lawyers and judges subject of defamatory and false statements made by the accused in a video filed as evidence)	*Mario Roy v. Sa majesté Le Roi*, 2023 QCCS 215 January 9, 2023	The accused was charged with several counts of criminal harassment. Several videos of him on social media were filed as evidence by the Crown. The Crown asked for a pub ban to be issued. In the videos filed as evidence, the accused made several statements regarding sitting judges and members of the Quebec Bar. The Crown argued the statements were false and highly defamatory. Some of them were associated with allegations of corruption,	The Judge issued a pub ban on the names of the people identified on the videos (mostly lawyers and judges). The Judge applied Dagenais-Mentuck-Sherman and found that the issuance of the pub ban was warranted, in part because of the importance for lawyers and judges to maintain a good reputation and because the statements made about them appeared to be clearly frivolous.	

			conspiracy to kidnap children and other criminal activities related to their work. *** It should not be noted (although this is not mentioned in the decision to issue the pub ban) that Mario Roy sued La Presse in defamation for reporting statements made by Roy on the "conspiracy" led by lawyers and judges working in child protection. Roy's lawsuit was dismissed in November 2022 (*Mario Roy v. Teisceira-Lessard and La Presse*, 2022 QCCS 4053).		
Quebec	Pub ban (on names of witnesses in criminal case)	*R. c. Wilfred Mbounou and Media QMI and Groupe TVA Inc.*, 2023 QCCQ 2332 February 10, 2023	The accused was charged with several counts of fraud and conspiracy to commit fraud commonly known as ("*black money scam*"). Two witnesses requested a pub ban on their names. One of the witnesses pleaded he was an established professional, that he had fallen in love with the accused who defrauded him of large sums of money; and that wanted to keep his sexual orientation private. The other witness was the wife of the accused who had inadvertently helped the accused in his frauds by renting Airb&b. Media QMI and Group TVA contested the request.	The judge granted the motion. Applying the Dagenais-Mentuck-Sherman test, he found that these were "very special circumstances" and justified the issuance of the pub ban to avoid a serious harm to the victims of this type of scam. He considered that the victims of these crimes are particularly ashamed of falling for the scam.	
Quebec	Pub ban (motion to modify a pub ban by Media)	*D.G. v. Mario Lajoie and CBC-Radio-Canada*, 2023 QCCS 3068	CBC presented a motion to modify a pub ban issued on any	The motion was not contested.	The superior court has the power to modify and quash pub bans when there is a change of

		July 19 2023	information that would identify the Plaintiff. In 2019, the Plaintiff sued the defendant in damages claiming he had been sexually assaulted when he was still a minor. Before filing his lawsuit, Plaintiff had obtained a pub ban on his identity. In 2023, Plaintiff wished to tell his story to a CBC reporter.	The judge recognized CBC's interest in filing the motion to quash the pub ban and granted the motion The Judge found that there was a change in circumstances (which justified the quashing of the pub ban) since Plaintiff now wishes to speak publicly about the facts of the case.	circumstances, even after having rendered a final judgment. The judge found that the fact the Plaintiff who initially sought the pub ban now wished to speak publicly about it constitutes a change of circumstances.
Quebec	Pub ban (motion to modify a pub ban by Media)	*Boudreau v A.G. Quebec and CBC-Radio-Canada*, 2023 QCCS 251 February 1, 2023	CBC presented a motion to cancel a pub ban previously issued on "any information that would identify Plaintiff". In 2019, the superior court had issued a pub ban on the identity of Plaintiffs in a class action taken in the name of all victims of sexual assault by members of religious congregations (the victims were minors at the time of the assaults). The alleged victims are referred to as "the Duplessis orphans". In 2020, the authorization to proceed with the class action was denied. In February 2023 (when CBC made its request to cancel the pub ban), a motion for leave to appeal to the Supreme Court of Canada was pending. In support of its motion, CBC filed an affidavit signed by the Plaintiff explaining that she no longer wished to remain anonymous;	The judge granted the motion and quashed the pub ban. The Judge found that there was a change in circumstances (which justified the quashing of the pub ban) since Plaintiff now wishes to speak publicly about her story.	The decision addresses the issue of jurisdiction of a lower court to modify a pub ban when the file has reached a higher level (in this case, a motion to appeal to the Supreme Court was pending). The judge applied the findings in *Société Radio-Canada v. Manitoba* (2021 SCC 33) and found it had the jurisdiction to modify the pub ban.

			and that she wished to tell her story as part of a healing process, as a survivor of sexual assault.		
Quebec	Pub ban (648 Cr.c.)	*La Presse Inc. v. Quebec (Silva)* *CBC v. His Majesty The King and Aydin Coban*, 2023 SCC 22 October 6, 2023	La Presse was granted leave to appeal the Court of Appeal's decision in Silva (2022 QCCS 881).	The Supreme Court of Canada dismissed the media's appeal: the automatic pub ban in article 648 Cr.c. applies not only after the jury is empanelled but also before the jury is empanelled with respect to matters dealt with pursuant to s. 645(5) Cr.c. which confers upon trial judges the jurisdiction to deal with certain matters before the empanelment of the jury. According to the SCC, the words of s. 648 are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the criminal code and the intention of Parliament. The plain meaning of the text is not in itself determinative and must be tested against the other indicators of legislative meaning- context, purpose, and relevant legal norms. A provision is only ambiguous if its words can reasonably be interpreted in more than one way after due consideration of the context in which they appear and of the purpose of the provision. Proposed but abandoned amendments are of no assistance in identifying the meaning of the legislation.	S. 648 Cr.c. applies before and after the jury is empanelled. S. 648(1) applies before the jury is empanelled only when a judge is exercising jurisdiction traceable to s. 645(5) to deal with a matter that would ordinarily or necessarily be dealt with in the absence of the jury after it has been sworn. The Court's analysis in *R. v. Litchfield* (1993) 4 S.R.C. 333, provides a useful framework for assessing whether a matter is being dealt with by virtue of s. 645(5) or whether it could always have been dealt with, even in the absence of of s. 645(5), before the jury was empanelled.
Quebec	Pub ban (648 Cr.c.)	*La Presse Inc. v. Frédérick Silva*, 2022 QCCS 881 March 11, 2022	Silva was charged with four counts of murder and one count of attempted murder. In August and October 2021, the court of Quebec issued pub bans following two judgments rendered in the context of two separate voir-dire, before the empanelment of the jury:	The Court dismissed La Presse's motion and maintained the pub bans in place. The judge found that article 648 applied even when the jury has not yet been selected. For this reason, the court need not apply the Dagenais-Mentuck test to decide whether the pub bans should be lifted or modified.	Until Silva, there were conflicting decisions regarding the scope or article 648 Cr c. Some decisions

			1) one judgement in which the court dismissed the accused's motion to stay the proceedings (and issued a pub ban); 2) a second judgement in which the court dismissed a Garofoli motion (and issued a pub ban); Both pub bans were rendered under 648 (1) Cr.c. The trial for four of the five counts started in September 2021. Two months later, the accused recognized that the Crown had met its burden on the four counts (murder and attempted murder). The accused was condemned to four counts. The trial for the remaining count (second degree murder) started in May 2022. La Presse asked the court to lift the two pub bans issued in the two *voir-dire* six months before. La Presse argued that the findings in the case Bebawi (i.e.: article 648 Cr. C applies only AFTER the empanelment of the jury) should be applied in this case. La Presse also argued that the fact the accused recognized that the main elements had been proven (without admitting to his guilt) were a change in circumstances justifying the lifting of the pub bans.	The judge put aside the reasoning in the case Bebawi (i.e.: article 648 Cr.c. applies only AFTER the empanelment of the jury). The judge found that the purpose of article 648 Cr.c. is to ensure that the proceedings ahead of trial do not contaminate the fairness of the upcoming trial (for the accused and the Crown). Article 648 is essentially designed to protect an accused's right to a fair trial based on evidence heard at trial (in the presence of the jury). The Judge found that the above was in line with the way criminal trials proceed, including hearing of preliminary motions before the empanelment of the jury. In 1972, when article 648 was enacted, almost all preliminary motions were heard AFTER the selection of the jury. When articles 551 and following were added changed this way of doing things. Now, most preliminary motions are heard BEFORE the selection of the jury. The judge applied the principle established in R. v. Malik (2002 BCSC 80) in which the court found that article 648 applied to motions before selection of the jury because of article 645(5) Cr.c. Article 645(5) provides the trial judge with the discretion to conduct pre-trial maters prior to the empanelling of the jury. The judge made a parallel between the purpose of article 648 Cr. c. and the purpose of articles 517 and 539 Cr. c.	

			The Crown's argument: there was no change in circumstances given that the accused still had to undergo a trial for the fifth count (second degree murder) and the pub bans would still have an effect (even if article 648 only applied after the empanelment of the jury, which they also contested). They argued the risk of contamination of the jury for the upcoming trial, unless the pub bans remained in place.		
Prairies	Publication Bans	*R v Dawn Walker,* Information 991214757	Dawn Walker was the subject of an extensive missing person search after she staged the deaths of herself and her minor son, and fled into the United States. Ms. Walker was ultimately located in Oregon and now faces a number of criminal charges, including child abduction. A discretionary publication ban was granted pursuant to s. 486(2.1) of the *Criminal Code,* preventing the publication of information which could identify Ms. Walker's son. Media sought clarification on whether this also prevented publication of Ms. Walker's identity. Ms. Walker and her son did not share the same last name.	The Crown indicated that they had spoken with the father of Ms. Walker's son who sought the publication ban for the benefit of the son, as hearing his mother's name in the news would be detrimental to the son's mental health. No evidence was provided which spoke to the impact of publication on the son. The Court adjourned the matter to allow the Crown to file evidence pertaining to any adverse impacts on the son. While adjourned, the Crown, Media, and Defence reached a consent order that any information which could identify Ms. Walker's minor son shall not be published. However, the Media was permitted to publish Dawn Walker's name and the fact that one of the victims was her child.	Evidence of the anticipated detrimental impact on minor victims is required where the publication ban sought is discretionary, pursuant to s. 486(2.1). Where the accused does not share a last name with the minor victim, it may still be permissible to publish the accused's name and relationship to the victim.
Prairies	Publication Bans	*R v Ross McInnes,* Court file 210293619Q1	Crown sought a publication ban pursuant to s. 486.5 of the *Criminal Code,* banning publication of the identity of a victim who was alleged to have	The Crown and Media reached a consent order, whereby the Media would be permitted to report on the victim's identity and the fact that there is an allegation of sexual assault or sexual violence causing bodily harm. The Media would not be	We are likely to see increasingly frequent applications of this nature, given the direction of senior Crown Prosecutors in Alberta to seek a publication ban in

			been murdered in the course of a sexual assault. The Crown took the position that s. 486.4 of the *Criminal Code* would have been available to the victim, had she not died in the course of the assault. The Crown asserted that the victim should not be deprived of protections to her dignity on the basis that she died in the course of the sexual offence. In discussions with the Crown, the Crown advised that the direction from senior Crowns in Alberta is to automatically seek a publication ban over the identity of a victim, where that victim dies in the course of a sexual assault.	permitted to report on the details of the alleged sexual assault or sexual violence as against the deceased.	these circumstances as a matter of course.
Prairies	Publication ban, Sealing order, Anonymity Order	*Canadian Taxpayers Federation, John Doe, Jane Doe v Alberta (Election Commissioner); Alberta (Chief Electoral Officer); Alberta (Minister of Justice and Solicitor General),* 2023 ABKB 161	The Applicant purchased two political billboards through the Canadian Taxpayers Federation (CTF). The Applicant and CTF intentionally withheld the Applicant's identity from public registration, contrary to the *Election Finances and Contributions Disclosure Act,* for the express purpose of challenging the constitutionality of the *Act.* In the context of the Court challenge to the constitutionality of the *Act,* the Applicant sought: a sealing order, publication ban, public exclusion order and anonymization order. The Applicant feared that publication of his identity would risk government contracts held by his business. The Applicant	The Court noted that the Applicant chose to participate in court proceedings that are subject to the open court principle. Disclosure of the Applicant's identity would reveal that he supports the CTF, a non-partisan group which does not promote any political party or candidate. It does not follow that the disclosure of this information reveals who the Applicant votes for. It was not reasonable for the Applicant to rely on a privacy statement published by the CTF, that information provided to it would be confidential. That privacy statement was provided in the context of the Canadian judicial system, which operates on the presumption of open courts. The Applicant was not required to participate in the court proceedings for the constitutional issues to be adjudicated. The	The focus of the *Sherman Estate* analysis is not whether the information is personal to the individual, but whether a larger societal interest requires protection (hopefully limiting the scope of *Doe v Canada*). An expectation that confidentiality is guaranteed in spite of the common law requiring public participation in court proceedings is not a reasonable one.

			further argued that publication was akin to removal of a secret ballot, as it would disclose his political affiliations.	Applicant admitted there are other CTF donors willing to publicly participate in the litigation. This is not a case where the Applicant's participation in the court proceedings was required to advance the claim.	
Prairies	Publication Bans and Sealing Orders	*R v Lysak, Olienick, Carbert, and Morin,* Court File No. 220151286Q2 (Decision by Justice Hartigan)	The Media brought an application to unseal a number of ITOs which were filed in support of search warrants executed in the course of a protest occurring at the border crossing in Coutts, Alberta. The protest was centered around opposition to government restrictions during the Covid-19 pandemic. The Media brought an application to unseal the ITOs in the Provincial Court of Alberta. That application was heard by Judge Ailsby. After submissions had been made before Judge Ailsby, but prior to a decision being rendered, the Accuseds sought a publication ban over the information contained in the ITOs (#1-4), in the event they were unsuccessful in defending the application in front of Judge Ailsby.	The Accuseds had initially sought a publication ban over the entirety of the ITOs. The Media took the position that, in order to meaningfully respond to the Accuseds application, the Accuseds needed to identify which specific paragraphs posed a serious risk to an important public interest, and what that risk was. The Court agreed with this submission, and the Accuseds identified a more limited number of paragraphs (136 paragraphs) which they asserted posed a risk to their fair trial rights. The Media agreed that approximately 80 of these paragraphs posed a risk to the fair trial rights of the Accuseds. The Court commented that the fact that the Accused could identify a more limited number of paragraphs was indicative of the fact that a ban over the entirety of the ITOs were not necessary. The Court found that the language attributed to the Accuseds in the ITOs did not cast the Accuseds in a favourable light. However, it was not content which led inexorably to a conclusion of guilt, such that a potential juror's impartiality would be compromised. Further, there was a lack of evidence of any risk of prejudice to potential jurors which was not curable by other means, such as a strong jury instruction.	Evidence which, on its face, it likely to taint potential jury members must "lead inexorably to a conclusion of guilt". The presumption of jury impartiality is crucial. Directions to jurors or a challenge for cause can likely mitigate any risk to a fair trial in many cases.

Prairies	Publication Bans and Sealing Orders	*R v Lysak, Olienick, Carbert, and Morin,* Court File No. 220151286Q2 (Decision by Justice Labrenz)			
Prairies	Publication Bans and Sealing Orders	*R v Fouani,* Court File No. 220570832P1	Mr. Fouani was charged with various offences in connection with the seizure of significant quantities of methamphetamine and cocaine in Alberta. Mr. Fouani was one of many individuals charged with crimes following this police investigation. Some time after Mr. Fouani was charged, him and partner were shot in the driveway of their home. Mr. Fouani's wife did not survive the attack. Mr. Fouani believed that this attack was connected with the charges against him, and asserted that he feared for his safety. At the time of the hearing, Mr. Fouani intended to plead guilty but hold a contested-fact hearing with respect to the facts found for sentencing. Mr. Fouani sought a publication ban over any information which could identify himself, and an Order that any hearings associated with the proceedings, including the contested-fact and sentencing hearing, be held *in camera.* Mr. Fouani argued that publication of the details of his court proceedings would pose a further risk to his physical safety, as well as trigger PTSD and other	The Court recognized that it may be possible to infer that Mr. Fouani was at some risk of harm. However, the issue was not whether Mr. Fouani was at risk, generally, but whether he faces that risk as a result of open court proceedings. There was no evidence before the Court which would allow it to infer that publication of the proceedings would increase a subsisting risk to safety. No evidence was placed before the Court about what facts were likely to arise during the sentencing hearings and how that would pose a risk to Mr. Fouani's safety. Therefore, Mr. Fouani had not met his burden under the *Sherman Estate* test. The Court accepted that Mr. Fouani suffered from trauma, but that this was associated with his unfortunate life circumstances, and not with publication of the proceedings. Finally, the Court found that Mr. Fouani was not a justice system participant, as the term is used in s. 486.5 of the *Criminal Code*. If Mr. Fouani ultimately provided evidence in a subsequent proceeding associated with the charges against him, he could bring an application in the context of that proceeding.	In the context of the *Sherman Estate* test, any assertion of harm must be caused by publicity associated with the proceeding, as opposed to other adverse life circumstances facing the parties. An accused is not also a justice system participant, as that term is understood in the context of s. 486.5 of the *Criminal Code.*

			psychological impacts stemming from the shooting.		
Atlantic	Sealing Order	*Canadian Broadcasting Corp. v Canada (Border Services Agency),* 2023 NSPC 6 (Nova Scotia) Related decision: *Canadian Broadcasting Corporation v. Canada (Border Services Agency),* 2021 NSPC 15 (Merits Decision #1))	Second "Merits Decision" re CBC application to lift sealing order over ITOs in Portapique mass shooting. Following first Merits Decision court issued 41 Orders releasing previously redacted materials. This decision dealt with remaining 1,020 of 20,000 redactions. Remaining redactions re identifying information of innocent third parties and victims.	Court only released a small number of redactions. Declined to apply *Sherman Estate,* saying *Sherman* neither expanded *Dagenais/Mentuck* test nor created new law within the context of a valid legislative enactment: s. 487.3 of the *Criminal Code.* Crown has burden of providing evidence to limit the open court principle. Evidence can include: 1) unredacted ITOs; 2) submissions of counsel, and 3) logical inferences. Privacy: The public has the right to know the "what", "why", and "when" of judicial authorizations, but no further information here can be garnered by identifying 3rd parties. Releasing identities of innocent 3rd parties would have long lasting and negative impact on "people who are simply conduits of information to the police and nothing more." Statement of Victims Views: *Sherman Estate* does not diminish the rights of victims – currently redacted material falls squarely within the concept of dignity.	*Sherman Estate* does not alter the *Dagenais/Mentuck* test within the context of legislative enactments.
BC	Sealing Order	*Fibreco Export Inc. v AG Growth International Inc.,* 2023 BCSC 1719	Applicant sought an inherent jurisdiction sealing order in a multi-party commercial case concerning construction defects.	Applying Sherman Estate the court recognized that there is an important and general commercial interest in protecting information covered by contractual confidentiality obligations and settlement privilege. An exception to settlement privilege applied here: disclosure being necessary to ensure	Settlement privilege not always an "important public interest" that warrants granting a sealing order in cases where a settlement agreement involves a degree of cooperation between parties who would otherwise be adversarial to

				trial fairness because the settlement changed the adversarial relationship between the parties.	each other to an extent not set out in the pleadings. In a multi-party proceeding, a party must not prejudice another party through misleading statements or silence, such that the pleadings suggest two parties are adverse in interest when, in fact, the parties are cooperating.
Prairies	Justice Renke Decision?	Justice Renke Decision?			