IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)

Citation: *Jane Doe v. Newfoundland and Labrador*, 2015 NLTD(G) 151
Date: October 30, 2015
Docket: 201501G4702

BETWEEN:

JANE DOE (G.E.B #24)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4708

BETWEEN:

JANE DOE (G.E.B #27)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4913

BETWEEN:

JANE DOE (G.E.B #28)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4700

BETWEEN:

JANE DOE (G.E.B #29)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4703

BETWEEN:

JOHN DOE (G.E.B #117)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4704

BETWEEN:

JOHN DOE (G.E.B #118)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

BETWEEN:

JOHN DOE (G.E.B #119)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4706

BETWEEN:

JOHN DOE (G.E.B #120)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4699

BETWEEN:

JOHN DOE (G.E.B #121)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4701

BETWEEN:

JOHN DOE (G.E.B #122)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4697

BETWEEN:

JOHN DOE (G.E.B #123)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4712

BETWEEN:

JOHN DOE (G.E.B #124)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

- AND -

Docket: 201501G4707

BETWEEN:

JOHN DOE (G.E.B #125)

INTENDED PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

INTENDED DEFENDANT

Before: Justice Gillian D. Butler

Place of Hearing: St. John’s, Newfoundland and Labrador

Date of Hearing: September 24 and October 27, 2015

Summary:

Applications to commence actions using pseudonyms for the Intended Plaintiffs, allowed.

Appearances:

William A.F. Hiscock and Paul A. Kennedy	Appearing on behalf of the Intended Plaintiffs

Authorities Cited:

CASES CONSIDERED: (Re) John Doe, 2005 NLTD 214; **A.B. (Litigation Guardian of) v. Bragg Communications Inc.**, 2012 SCC 46; (**H.) M.E. v. Williams**, 2011 ONCS 2002; **Sierra Club of Canada v. Canada**, [2002] 2 S.C.R. 522; **Canadian Broadcasting Corp. v. Canada (Attorney General)**, 2011 SCC 2; **T. (S.) v. Stubbs** (1998), 158 D.L.R. (4th) 555, 78 A.C.W.S. (3d) 481 (Ont. Ct. J. Gen. Div.); **B. (A.) v. Stubbs** (1999), 175 D.L.R. (4th) 370, 89 A.C.W.S. (3d) 236 (Ont. Ct. J.); **Dagenais v. Canadian Broadcasting Corp.**, [1993] 3 S.C.R. 835; **R. v. Mentuck**, 2001 SCC 76; **Canadian Newspapers Co. v. Canada (Attorney General)**, [1988] 2 S.C.R. 122

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

BUTLER, J.:

INTRODUCTION

Preliminary

[1] In each of the 13 applications ("Applications") under consideration, the Intended Plaintiff/Applicant claims that s/he was the subject of sexual batteries and/or physical/emotional abuse by owners-operators of foster homes in which s/he was placed by the Intended Defendant. The Intended Plaintiffs allege that the Intended Defendant had common-law, equitable, fiduciary and statutory responsibility for and obligations to, the Applicants and that the Intended Defendant was negligent in the exercise of its authority and responsibilities. Each Applicant intends to commence a civil action against the Intended Defendant.

While no draft statements of claim were attached, the Applications provide sufficient information to permit the court to appreciate the nature of the intended claims.

[2] At this stage, each ex parte Application is for an Order directing that all pleadings refer to each Applicant as Jane or John Doe by number. Rule 38.01(1)(d) as well as 49.18(1)(f) of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D provide for the giving of directions and I accept that these Rules could be relied upon for the direction sought in these instances being Applications for the commencement of actions under pseudonyms.

[3] When 12 of these 13 matters were first called before me on September 24, 2015, I advised counsel that I had concluded that applications for anonymity by use of a pseudonym were well recognized as a restriction to the freedom of the press and the open court principle and thus I concluded that they required notice to the media.

[4] Although counsel for the Applicants suggested that if an anonymity Order was granted, the media could be permitted to challenge it at a later date, I concluded that it was important that the judicial protocol and administrative policies of this court be followed in applications of this nature. I therefore ordered that those members of the media who had expressed an interest in being notified in applications in which restrictions to the open court principle are at stake, were to receive five days' notice of the adjourned date for the hearing of these Applications and they were ultimately set over to today's date. File #28 was subsequently added to be considered at the same time.

[5] The members of the media who have expressed an interest in receiving notice of applications that may affect access to justice were notified by our Registry by e-mail on October 21, 2015 in accordance with our protocol and have received the five-day notice ordered by me in September. Neither attended the hearing on October 27, 2015 or made submissions.

The Test to be Applied

[6] Counsel for the Applicants originally suggested in their briefs that the test for applications of this nature was stated in this jurisdiction in the 2005 decision of my colleague Faour, J. in **(Re) John Doe**, 2005 NLTD 214 which I accept represents a thorough review of similar cases from other jurisdictions reported at that time. The intended plaintiff in **(Re) John Doe** had also alleged that he was the victim of sexual assault by a person for whom the intended defendant was vicariously liable. Through the Registry, when the files were first brought to my attention, I asked that counsel be alerted to subsequent Supreme Court of Canada authority on the issue and the Applicant's supplementary brief did therefore address the case of **A.B. (Litigation Guardian of) v. Bragg Communications Inc.**, 2012 SCC 46 which I shall refer to later herein.

[7] Since Faour, J.'s decision in 2005, concern for enforcement of what has become known as the "open court principle" has received considerable attention in both the courts and the media. Albeit in the context of a family law case, the Ontario Superior Court of Justice in **H. (M.E.) v. Williams**, 2011 ONCS 2002 addressed a similar concern when Ms. Williams sought a publication ban relative to her divorce (and related proceedings) with Colonel Williams, who had been convicted of murder. Like the Applicants here, Ms. Williams sought a confidentiality order which she asserted was necessary to protect her fragile health in the aftermath of her husband's notorious conduct.

[8] The Ontario Superior Court in the **Williams** case cited my colleague's decision in **(Re) John Doe**, but relied upon the Supreme Court of Canada case of **Sierra Club of Canada v. Canada**, [2002] 2 S.C.R. 522 for the two-part test for a sealing order (see paragraphs 4 and 5).

[9] To clarify, in **(Re) John Doe** my colleague cited and relied upon two Ontario Superior Court cases of **T. (S.) v. Stubbs** (1998), 158 D.L.R. (4th) 555, 78 A.C.W.S. (3d) 481 (Ont. Ct. J. Gen. Div.) and **B. (A.) v. Stubbs** (1999), 175 D.L.R. (4th) 370, 89 A.C.W.S. (3d) 236 (Ont. Ct. J.) in support of the analytical framework he considered appropriate at that time. Relying on the test for

injunctive relief, both Ontario cases had determined that the applicant must establish a serious issue to be tried, risk of irreparable harm and that the balance of convenience favoured the applicant. Faour, J. substituted "substantial likelihood of harm to the applicant" for the "irreparable harm" component of the test used in the **Stubbs** decisions (at paras. 23, 34, 44 and 53).

[10] The request for a sealing order in **Williams** resulted in the application of a test originally stated by the Supreme Court of Canada in the **Sierra Club** case, re-applied by the Supreme Court of Canada in **Dagenais v. Canadian Broadcasting Corp.**, [1993] 3 S.C.R. 835 and refined subsequently in **R. v. Mentuck**, 2001 SCC 76 as follows:

> 1. Is the confidentiality order necessary to prevent a serious risk to an important interest in the context of litigation because reasonably alternative measures will not prevent the risk?; and
>
> 2. Do the salutary effects of the confidentiality order, including the right of the litigants to a fair trial, outweigh its deleterious effects including the right to free expression (and public interest in open court)?

[11] The primary differences in the approaches taken are therefore the requirement of proof of a "strong likelihood of irreparable harm" (**T. (S.) v. Stubbs** and **B. (A.) v. Stubbs**) or "substantial likelihood of harm to the applicant" (**(Re) John Doe**) on the one hand, and proof of "a serious risk to an important interest in the context of litigation" (**Williams**, **Sierra Club**, **Dagenais** and **Mentuck**) on the other hand. The latter enquiry is broader and is not restricted to the applicant's own concern for privacy but also to public interests at risk.

[12] The next and perhaps most significant decision is also from the Supreme Court of Canada in **Bragg Communications**. There, the applicant sought the right to proceed anonymously in an action against the internet service provider on whose service a Facebook fake profile had been posted allegedly causing her to suffer harm (at para. 3). Consistent with the Order that I made on September 24, 2015, the press in the **Bragg Communications** case had been automatically notified of the request and a newspaper and a television station opposed the requests.

[13] The request for anonymity in **Bragg Communications** was denied by the trial division on the basis of insufficient evidence of specific harm to the applicant (see paragraph 5). The Court of Appeal agreed that the Applicant had not discharged the onus of showing that there was a real and substantial harm to her which justified restricting access to the media, but the Supreme Court of Canada overturned the order on the basis that both courts had erred in failing to consider the objectively discernable harm to the Applicant (see paragraph 9). At paragraph 11, the court confirmed that the test (inquiry) was as stated in **Dagenais**-**Mentuck**.

[14] The authorities that I have reviewed support the following:

1. The open court principle is strongly supported as fundamental to a free and democratic society;

2. Confidentiality orders (including approval of use of a pseudonym) are examples of restrictions on the open court principle;

3. In its September 27, 2012 decision, the Supreme Court of Canada in **Bragg Communications** confirmed that it is the **Dagenais**-**Mentuck** test that applies to applications for confidentiality orders;

4. The open court principle has evolved to warrant notice to the media before the application is heard or, allowing the ruling to be revisited if an order is given that restricts access in any form without the media being notified; and

5. Each case must turn on its own specific facts and the evidence provided to support the grounds for the restriction.

ANALYSIS

The Test as Confirmed in Bragg Communications

[15] I proceed therefore on the basis that the test to be applied is as stated at paragraph 10 herein. The risks to important issues in the litigation are to be balanced against the principles supported by an open court.

[16] In **Bragg Communications**, the Supreme Court of Canada explored first the "interests said to justify restricting access" and concluded that there were two distinct interests. The first was identified as privacy and the second as the protection of children from cyber bullying. The court confirmed that these interests must be shown to be "sufficiently compelling to warrant restrictions on freedom of the press and open courts." The court acknowledged that there would be cases in which the protection of social values must prevail over openness (as para. 13).

[17] On the facts in **Bragg Communications**, the court concluded at paragraph 14 that the applicant's privacy interests were tied to both her age and the nature of the victimization, which Abella, J., at paragraph 14, on behalf of a unanimous court described as "relentlessly intrusive humiliation of sexualized online bullying." I note that in the context of sexual assault generally, the Supreme Court of Canada confirmed at paragraph 25 that it had previously recognized that a victim's privacy encouraged reporting.

[18] I note that the applicant in **Bragg Communications** had not provided evidence of harm respecting her own emotional vulnerability but the court nevertheless concluded at paragraph 15 that there was objectively discernable harm to her. Thus, absent scientific, medical or empirical evidence of the necessity of restricting access the court held that courts can and should apply reason and logic (at para. 16). The Supreme Court of Canada concluded that:

1. Children have inherent vulnerability that is well recognized in law (at para. 17);

2. Privacy of young persons participating in the justice system is important (at para. 18) and measures designed to support such privacy have been held to be constitutionally valid;

3. It is logical to infer that children may suffer harm through cyber bullying (at paras. 20-22); and

4. In addition to harm from cyber bullying, there is another inevitable harm to both children and the administration of justice if the children decline to take steps to protect themselves because of a risk of further harm from public disclosure (at para. 23).

[19] Thus, privacy and protection from cyberbullying were held to be not merely private interests of the alleged victim, but also important to public interests in the administration of justice (because they encouraged reports of sexual assault and encouraged children to take steps to help themselves).

[20] At paragraph 28 of **Bragg Communications**, the court concluded that the competing interests were "… the countervailing harms to the open courts principle and freedom of the press …." Relying on its earlier decision in **Canadian Newspapers Co. v. Canada (Attorney General)**, [1988] 2 S.C.R. 122, it characterized the effect of the use of a pseudonym as a confidentiality order that would have a minimal impairment on the media's rights. At paragraph 20 it stated:

> 20 While freedom of the press is nonetheless an important value in our democratic society which should not be hampered lightly, it must be recognized that the limits imposed by s. 442(3) on the media's rights are **minimal**. … Nothing prevents the media from being present at the hearing and reporting the facts of the case and the conduct of the trial. Only information likely to reveal the complainant's identity is concealed from the public. ... [My emphasis added.]

[21] Finally, on the question of balance between the conflicting interests, the court concluded that the benefits of protecting sexual assault victims through anonymity outweighed the minimal impairment on the freedom of the press (at para. 29) and in the result, the court allowed the use of the pseudonym but denied a publication ban on the non-identifying content of the fake Facebook profile (at para. 30).

Risks to Important Interests in this Litigation

[22] I start first with the recognition that each case must turn on its own facts and the evidence that is put before the court. One need look no further than the two **Stubbs** decisions referred to earlier herein to see how, on identical applications for use of a pseudonym in civil actions against the same physician defendant, the Ontario Superior Court reached different conclusions on whether potential harm had been established.

[23] Applying the guidance of the cases I have reviewed to the Applications before me, the first competing interest I must consider is each Applicant's right to privacy and the harm that may be suffered by either or all of the Applicants if their identity is revealed. The Supreme Court of Canada's conclusions in **Bragg Communications** on the inherent vulnerability of children and protection of privacy interests of young persons in the justice system have limited relevance because the Applicants in the cases before me are now all adults. However, I note that they were children when the alleged abuse occurred.

[24] The Supreme Court of Canada held that it was able to make its conclusion on the harm which may be suffered by the sole applicant in **Bragg Communications** without direct evidence of such harm to her. However, in each of the cases before me, I was supplied with specific evidence of the direct harm that could be caused to each Applicant from publication of his/her identity. In each file, counsel provided as a Schedule to the Application a report of the social worker, psychiatrist, psychologist or clinical pastoral counsellor who had interviewed each of the 13 Intended Plaintiffs. I note that in only one case (#24),

the report was accompanied by a separate affidavit, which is preferred. In each case, this evidence was not challenged.

[25] This is not a situation of boilerplate reports relied upon to support the required individual assessment. Each of the reports of Rhonda Fiander, M.S.W., Dr. Sarah Noble, Psychiatrist, Dr. Jeff Cunningham, Psychologist, Cindy Parsons, Social Worker and Reverend John Tonks, Clinical Pastoral Counsellor, are specific to each alleged victim's circumstances.

[26] In file #24, Ms. Fiander's report (supported by an affidavit) speaks of the alleged victim's sense of empowerment and purpose that could be in jeopardy if her name were made public.

[27] In #27, the report focuses on the anxiety and stress that would result from the close scrutiny to which the victim would be subjected and the risk of psychological de-compensation and risks to the victim's professional life and public profile that would result from publication of her name.

[28] In #28, Dr. Noble addressed her patient's predisposition towards instability in her self-esteem, explained how her patient had worked very hard to overcome her problem and Dr. Noble expressed her clinical opinion that her patient's psychiatric condition would de-stabilize if her own name were used in the action.

[29] In #29, the report of Dr. Jeff Cunningham, Psychologist, addressed how unintentional or coerced disclosure of the alleged victim's name would effectively recreate the experience of violation and helplessness and would intensify his patient's clinical symptoms.

[30] In #117, Social Worker Cindy Parsons' report concluded that the alleged victim was in the high-risk category for violence and at moderate risk for suicide. In this case, his anxiety and stress have already been exacerbated by disclosure of

the abuse and in her opinion, the alleged victim would suffer adverse psychosocial impacts if his real name were used in the litigation.

[31] In #118, Social Worker Rhonda Fiander reported that her alleged victim had made tremendous progress from a diagnosis of depression and anxiety and symptoms of insomnia and nightmares. In this particular case, she reports that the alleged victim's workplace has become his safehaven, where he feels confident and worthy. The Social Worker's report suggests that to make his name public would risk the progress that he has made in his emotional health.

[32] Similarly, in #119, Ms. Fiander spoke of her alleged victim's sexual, emotional and physical abuse and how he suffers from grief and flashbacks but nevertheless manages full-time work and a long-term marriage. In this particular instance, the alleged victim does not want his children to be subjected to what he endured and Ms. Fiander concluded that disclosure of his name could cause him irreparable harm.

[33] In #120, Cindy Parsons described her alleged victim as a very private person who struggles with drug and alcohol abuse related to the abuse he suffered. This alleged victim has been diagnosed with moderate to severe depression and, in her opinion, is in the medium-risk category for violence and sees his psychiatrist monthly. The probability of re-victimization for this alleged victim from publication of his name would, in her opinion, cause him to experience increased psychosocial effects.

[34] In #121, Social Worker Cindy Parsons spoke of an alleged victim who had turned to drug and alcohol abuse as a coping mechanism and who was diagnosed with mild to moderate depression and was also in the low-risk category for violence and low-risk category for suicide. In this case, his relationship with family was his coping mechanism and his Social Worker attested to the fact that adverse psychosocial impacts in areas of addiction and anxiety would result from publication of his name.

[35] Similarly, in file #122, Rhonda Fiander described the sexual and physical assaults that had been reported by the alleged victim and which led to feelings of shame and degradation. This alleged victim had resorted to violence to solve his problems and she reported that the alleged victim believed that his shame and humiliation would be passed on to his children were they to learn of his own victimization. In her opinion, this would put the alleged victim at enhanced risk for increased depression.

[36] In #123, Cindy Parsons explained the alleged victim's exposure to traumatic events including neglect, emotional and physical abuse. In her assessment of his symptoms, she concluded that he experienced very high stress, severe depression and a high degree of post-traumatic stress disorder symptomatology but low risk of suicide. It was the adverse psychosocial impacts in areas of addition, anxiety and depression that, in her opinion, could be exacerbated in his case if publication of his name were allowed.

[37] In #124, Reverend John Tonks' report spoke of his counselling of the alleged victim since 1989 and the success that he had achieved in assisting the alleged victim in coping without resort to alcohol and drugs. Reverend Tonks' opinion was that his patient's feelings of shame, guilt, anger and worthlessness were not far from the surface and were at risk of increasing if a John Doe designation was not given, a designation that Reverend Tonks felt was vital to his alleged victim's welfare.

[38] Finally, in #125, Social Worker Cindy Parsons described an alleged victim with multiple physical health problems but also suffering from significant anxiety, a high degree of post-traumatic stress disorder symptoms and a substantial level of alcohol dependency, as well as a moderate risk of suicide but a low risk of violence. In this case, it was her opinion that increased adverse psychosocial impacts in these areas were predicted if the court action was commenced in his own name.

[39] Similar to **Bragg Communications**, I conclude that there is a second important interest and risk in the litigation. I accept that it can be inferred that there is inevitable harm to victims of sexual, physical and emotional abuse in general (and not just young persons) as well as to the administration of justice should such victims decline to report such abuse and/or decline to take steps to protect themselves because of a risk from future harm from public disclosure. In this context, the **Canadian Newspapers** case on which the Supreme Court of Canada relied in **Bragg Communications** had made reference to a victim's privacy, not a child victim's privacy.

[40] While the various reports of the professionals engaged in each of the cases before me did not speak of the direct risk of harm to the administration of justice if anonymity is denied, relying on the Supreme Court of Canada in **Bragg Communications**, I am satisfied that risk of harm to the administration of justice if anonymity is denied can and should be inferred for each of the 13 Applications before me.

[41] On the risks to important interests in this litigation I conclude therefore that:

- Each of the alleged victims in the cases before me has met the onus of establishing the potential harm to their own health and well-being should their request for use of a pseudonym be denied;

- It is logical to infer that victims of sexual assault in general are vulnerable to re-victimization on publication of their identity and that the right of protection will disappear for many victims if there is not protection of anonymity; and

- The evidence supports the inference that in each of the cases before me, there is risk to the public's interest in the administration of justice if the Intended Plaintiffs are not permitted to proceed using a pseudonym because it would not encourage either reports of sexual assault or that children take steps to protect themselves.

Risks to Principles Supported by an Open Court

[42] I turn now to the competing interest to be considered in this litigation being the risk of harm to either the freedom of the press or the open court principle.

[43] This court has done considerable work on access to justice principles in recent years. Our Access to Justice Committee has developed judicial protocols and administrative policies and these are reflected on the court's website. The public, viewing the website, would note that we are committed to the openness principle which we believe serves several purposes stated as follows:

- It ensures public confidence in the integrity and fairness of the court system;
- It improves the public's understanding of the court process; and
- It ensures that the court system is open to public scrutiny.

[44] Our website also explains that openness can be restricted by legislation or by a judge's order and examples such as sealing a court file, closing a courtroom or prohibiting publication are referenced. While use of a pseudonym is another example of a restriction on openness, I agree that it is not specifically referenced in either of our protocols or on the website.

[45] The second factual matter which I consider important when considering this competing public interest is the nature of the order sought. The Applicants are not seeking to seal the entire file as was the initial request in **Williams**; nor do they ask to have their proceedings held "in camera" free from media or public scrutiny. They seek, like the applicant in **Bragg Communications**, a far less restrictive type of relief, namely, to use a pseudonym.

[46] The risk of harm to the competing public interest of freedom of the press and the open court principle when use of a pseudonym is requested has already been determined by the Supreme Court of Canada at paragraph 28 of **Bragg Communications** to be "minimal" harm because the media and the public will still be able to attend and report on all proceedings. I accept this conclusion.

Balancing the Two Competing Interests

[47] Turning finally to the balancing exercise, based on the conclusions I have reached, the alleged victims' significant risk of harm from publication of their identity and the potential risk of harm to the administration of justice that could result from refusal of an anonymity order far exceed the minimal risk of harm to the freedom of the press and the open court principle when all that is sought is the use of a pseudonym. Notwithstanding the factual differences between the **Bragg Communications** case and those here (which I have earlier noted), I therefore draw the same conclusion on how the competing risks of harm compare.

ORDER

[48] I conclude that each of the Applicants have established that it is reasonable to allow him/her to proceed using a pseudonym in this future litigation.

[49] I would direct counsel in any future applications of this nature to ensure that any professional reports used in support of the anonymity order be supported by a separate affidavit from the social worker, psychologist, physician or counsellor.

[50] The Applicants' draft Orders require modification. Paragraphs 1- 2 and 4-7 are satisfactory. Paragraph 3 should not extend to sealing all records but rather should reference that the Applicant's name and any identifying information shall be redacted from all documentation filed as either pleadings or provided as exhibits.

[51] In addition, two separate paragraphs 8 and 9 shall be added to each Order as follows:

8. The clinical report appended as a Schedule to each Application shall be sealed on the basis that it contains opinion evidence that has been relied upon for the purposes of the anonymity order only and is not to be considered on the merits of the future actions contemplated. Should the author be called as a witness at trial, the admission of their evidence in any form would be a matter for the trial judge.

9. There shall be no Order as to costs.

GILLIAN D. BUTLER
Justice