COURT OF APPEAL OF NEW BRUNSWICK

COUR D'APPEL DU NOUVEAU-BRUNSWICK

135-25-CA

B E T W E E N:

MAUREEN BELL

APPELLANT

- and -

WORKPLACE HEALTH, SAFETY AND COMPENSATION COMMISSION

RESPONDENT

E N T R E :

MAUREEN BELL

APPELANTE

-et-

COMMISSION DE LA SANTÉ, DE LA SÉCURITÉ ET DE L'INDEMNISATION DES ACCIDENTS AU TRAVAIL

INTIMÉE

2026 NBCA 25 (CanLII)

Bell v. Workplace Health, Safety and Compensation Commission, 2026 NBCA 25

Bell c. Commission de la santé, de la sécurité et de l'indemnisation des accidents au travail, 2026 NBCA 25

Motion heard by:
The Honourable Justice Robichaud

Motion entendue par :
l'honorable juge Robichaud

Date of hearing:
February 26, 2026

Date de l'audience :
le 26 février 2026

Date of decision:
March 16, 2026

Date de la décision :
le 16 mars 2026

Counsel at hearing:

Maureen Bell on her own behalf

For the Respondent:
Kelly T. VanBuskirk, K.C.

Avocats à l'audience :

Maureen Bell en son propre nom

Pour l'intimée :
Kelly T. VanBuskirk, c.r.

# DECISION

## I. Background

[1] The Appellant has appealed a decision made by the Workers' Compensation Appeals Tribunal under the *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act*, S.N.B. 1994, c. W-14.

[2] The Appellant has also filed a motion requesting an order:

a. Permitting her to be identified by initials only in the style of cause and in any publicly accessible records, endorsements, and reasons in this appeal;

b. That the Appellant's full name not appear in any published decision or online database arising from this proceeding, except where required for internal court administration.

[3] The grounds for the motion are outlined as follows:

a. The appeal record and submissions include extensive and sensitive medical information, such as detailed discussions of the Appellant's health, symptoms, treatment history, and contested diagnoses.

b. Public identification of the Appellant by full name in connection with this medical information would expose the Appellant, a person with a disability, to serious and disproportionate harm, including stigma and professional prejudice.

c. The Appellant's livelihood and professional activities depend on public trust and online searchability, and permanent indexing of detailed medical findings under the Appellant's full name would cause irreparable and unnecessary harm unrelated to the legal issues on appeal;

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d. The relief sought is narrow and proportionate, limited solely to the use of initials, and preserves the open court principle while protecting the Appellant from undue harm; and

e. The Court has inherent jurisdiction to control its own process and to order anonymization where required in the interest of justice.

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[4] The affidavit submitted in support of the Appellant's motion essentially reiterates the grounds outlined in her Notice of Motion. The nature of the medical information in the record before this court is not specified, nor is the Appellant's profession. The affidavit does indicate that the Appellant is not requesting a publication ban, a sealing order, or the anonymization of the entire record, but only of the style of cause and this court's decisions.

[5] The Respondent did not oppose the motion.

[6] For the reasons that follow, the motion is dismissed.

## II. The Open Court Principle and Anonymization

[7] In *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R 480, [1996] S.C.J. No. 38, the Supreme Court said the following:

> The principle of open courts is inextricably tied to the rights guaranteed by s. 2(b). Openness permits public access to information about the courts, which in turn permits the public to discuss and put forward opinions and criticisms of court practices and proceedings. While the freedom to express ideas and opinions about the operation of the courts is clearly within the ambit of the freedom guaranteed by s. 2(b), so too is the right of members of the public to obtain information about the courts in the first place. […] [para. 23].

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[8] I can do no better than quote the Supreme Court in the very first paragraphs of *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 S.C.R. 75:

> This Court has been resolute in recognizing that the open court principle is protected by the constitutionally-entrenched right of freedom of expression and, as such, it represents a central feature of a liberal democracy. As a general rule, the public can attend hearings and consult court files and the press — the eyes and ears of the public — is left free to inquire and comment on the workings of the courts, all of which helps make the justice system fair and accountable.
>
> Accordingly, there is a strong presumption in favour of open courts. It is understood that this allows for public scrutiny which can be the source of inconvenience and even embarrassment to those who feel that their engagement in the justice system brings intrusion into their private lives. But this discomfort is not, as a general matter, enough to overturn the strong presumption that the public can attend hearings and that court files can be consulted and reported upon by the free press.
>
> Notwithstanding this presumption, exceptional circumstances do arise where competing interests justify a restriction on the open court principle. Where a discretionary court order limiting constitutionally-protected openness is sought — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — the applicant must demonstrate, as a threshold requirement, that openness presents a serious risk to a competing interest of public importance. That this requirement is considered a high bar serves to maintain the strong presumption of open courts. Moreover, the protection of open courts does not stop there. The applicant must still show that the order is necessary to prevent the risk and that, as a matter of proportionality, the benefits of that order restricting openness outweigh its negative effects. [paras. 1-3]

[9] In *Jayde Scott v. Regional Health Authority B and Nicole Ruest*, 2022 NBQB 135, [2022] N.B.J. No. 144 (QL), the New Brunswick Court of King's Bench stated:

> Absent a legislative enactment limiting the open court principle (provisions found in the Criminal Code, for example), applications for discretionary orders, such as publication bans or confidentiality orders, are governed by the legal framework developed by the Supreme Court of Canada *in Dagenais v. Canadian Broadcasting Corp*., [1994] 3 SCR 835 ("*Dagenais*"); *R. v. Mentuck*, 2001 SCC 76 ("*Mentuck*"); *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 ("*Sierra Club*") and *Sherman Estate v. Donovan*, 2021 SCC 25 ("*Sherman*"). [para. 20]

[10] The legal framework was expressed in *Sherman* in these terms:

> The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:
>
> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects. […] [para. 38]

[11] Even when requesting only a minimal impairment of the open court principle, the applicant must still prove it is necessary to prevent a serious risk to an important public interest before it can be granted: *United Kingdom of Great Britain and Northern Ireland (Attorney General) v. L.A.,* 2020 NSCA 75, [2020] N.S.J. No. 399 (QL). See also *C.D. v. Provincial Health Services Authority*, 2019 BCSC 603, [2019] B.C.J. No.

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674 (QL), at para. 40. Anonymization is an impairment of the open court principle and requires applying the test from *Sherman*: *Law Society of Ontario v. A.A.*, 2026 ONCA 47, [2026] O.J. No. 262 (QL).

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[12] Although the respondent does not oppose the motion, a party cannot waive the application of the open court principle, as it is not the privilege of a particular litigant but a right of the public at large. This right stems from the constitutionally entrenched right to freedom of expression and aims to protect a core feature of liberal democracies—the public scrutiny of open courts: *Law Society*, at para. 196, referring to *Sherman*, at paras. 1-2.

III. Application to the Case at Hand

A. *Does court openness pose a serious risk to an important public interest?*

[13] Privacy has been recognized as an important public interest, but to obtain an order that makes an exception to the open court principle, an applicant must demonstrate a serious risk to that interest. In *Sherman*, the Supreme Court stated:

> This public interest in privacy appropriately focuses the analysis on the impact of the dissemination of sensitive personal information, rather than the mere fact of this dissemination, which is frequently risked in court proceedings and is necessary in a system that privileges court openness. It is a high bar — higher and more precise than the sweeping privacy interest relied upon here by the Trustees. This public interest will only be seriously at risk where the information in question strikes at what is sometimes said to be the core identity of the individual concerned: information so sensitive that its dissemination could be an affront to dignity that the public would not tolerate, even in service of open proceedings.
>
> I hasten to say that applicants for an order making exception to the open court principle cannot content themselves with an unsubstantiated claim that this public interest in dignity is compromised any more than they could by an

> unsubstantiated claim that their physical integrity is endangered. Under *Sierra Club,* the applicant must show on the facts of the case that, as an important interest, this dignity dimension of their privacy is at “serious risk”. For the purposes of the test for discretionary limits on court openness, this requires the applicant to show that the information in the court file is sufficiently sensitive such that it can be said to strike at the biographical core of the individual and, in the broader circumstances, that there is a serious risk that, without an exceptional order, the affected individual will suffer an affront to their dignity. [Emphasis added; paras. 34-35]

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[14] The burden of rebutting the strong presumption in favour of court openness falls on the party submitting the application. There must be a sufficient evidentiary basis for the judge to review the application and to exercise their discretion properly: *Canadian Broadcasting Corp*, at paras. 71-72. The judge needs a convincing evidentiary foundation to impose a ban: *Mentuck* at para. 39.

[15] As stated in *Rhyno v. Nova Scotia Barristers’ Society*, 2019 NSCA 67, [2019] N.S.J. No. 335 (QL), citing *Coltsfoot Publishing Ltd. v. Foster-Jacques*, 2012 NSCA 83, [2012] N.S.J. No. 441 (QL), at para. 32:

> […] in [*Globe and Mail v. Canada (Attorney General)*, 2010 SCC 41, [2010] 2 S.C.R. 592], Justice LeBel for the Court (paras 92-94, 99) rejected the “bald assertions, without more”, with “no tangible proof” of the supposed serious risk that was advanced for the requested publication ban. [para. 11]

[16] As noted, I have received no evidence regarding the nature of the serious risk to a public interest if the Appellant’s name is not anonymized, except for a bald assertion that the file contains medical information that would expose the Appellant, a person with a disability, to serious and disproportionate harm, including stigma and professional prejudice. There is no evidence about the nature of the medical information, the disability affecting the appellant, or her profession and the potential stigma.

[17] The first part of the *Sherman* test has not been satisfied. I do not need to consider the other parts.

[18] The motion is dismissed. Consistent with the Court's longstanding practice in workers' compensation cases, no costs are awarded.

[19] As the appeal is scheduled to be heard shortly, and with the approval of the Chief Justice, s. 24(2) of the Official Languages Act, S.N.B. 2002, c. O-0.5 is invoked, and this decision shall be published in the first instance in English and, thereafter, at the earliest possible time, in the other official language.

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