SCC File No. 38695

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

THE ESTATE OF BERNARD SHERMAN AND THE TRUSTEES OF THE ESTATE and THE ESTATE OF HONEY SHERMAN AND THE TRUSTEES OF THE ESTATE

Appellants
(Applicants)

- and -

KEVIN DONOVAN

Respondent
(Respondent)

- and -

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF BRITISH COLUMBIA, CANADIAN CIVIL LIBERTIES ASSOCIATION, INCOME SECURITY ADVOCACY CENTRE, AD IDEM/CANADIAN MEDIA LAWYERS ASSOCIATION, POSTMEDIA NETWORK INC., CTV, A DIVISION OF BELL MEDIA INC., GLOBAL NEWS, A DIVISION OF CORUS TELEVISION LIMITED PARTNERSHIP, THE GLOBE AND MAIL INC. AND CITYTV, A DIVISION OF ROGERS MEDIA INC., BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION and HIV & AIDS LEGAL CLINIC ONTARIO, HIV LEGAL NETWORK AND MENTAL HEALTH LEGAL COMMITTEE

Interveners

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PART I – OVERVIEW

1. In this appeal, this Court will consider the types of interests that are worthy of protection by confidentiality orders under the *Sierra Club* test.[1] In doing so, the Court will set a precedent for all cases where public interests are balanced against the open court principle and freedom of expression under s. 2(*b*) of the *Charter*.[2] The Income Security Advocacy Centre ("ISAC") intervenes to represent the interests of low income and vulnerable individuals in ensuring equal and meaningful access to the judicial system. ISAC's focus is on ensuring that the *Sierra Club* test meets the needs of low income and vulnerable individuals. This includes social assistance recipients who disclose sensitive information in private administrative processes to obtain the necessities of life, and who may be seriously impacted if that information is publicized on appeal.

2. With respect to the necessity branch of the *Sierra Club* test, protecting the privacy interests of vulnerable individuals serves at least two important public interests: (1) prevention of harm, and (2) access to justice. Although the private information to be protected is personal to the applicant, the effect of disclosure engages a public interest in ensuring that individuals are able to access the courts and other public processes without putting themselves at risk of serious harm. This contextual analysis requires an equitable lens that takes into account the circumstances of the applicant, and a flexible evidentiary standard that does not place confidentiality orders beyond the reach of low income and vulnerable people.

3. Under the proportionality branch of the *Sierra Club* test, courts should consider how the purposes underlying the open court principle would be hindered or furthered by a confidentiality order in the circumstances, rather than assuming a negative or significant impact in all cases. To guide this analysis, ISAC proposes three considerations that are relevant to the effect on the open court principle: the importance of the information to the public, the necessity of the information to the court, and the nature of the proceeding. Contextualizing the open court principle ensures that confidentiality orders remain available to low income and vulnerable individuals in appropriate circumstances.

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[1] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53 [*Sierra Club*].
[2] Including under the *Dagenais*/*Mentuck* test, and the test for confidentiality orders under Ontario's *Tribunal Adjudicative Records Act, 2019*, SO 2019, c 7, Sch. 60, s 2.

PART II – STATEMENT OF ISSUES

4. ISAC makes submissions on two issues:

   a. When does protecting private information engage a public interest under the necessity stage of the *Sierra Club* test?

   b. How should courts assess the impact on the open court principle under the proportionality stage of the *Sierra Club* test?

PART III – STATEMENT OF ARGUMENT

A. The Necessity Stage: Protecting the Private Information of Vulnerable People is in the Public Interest

1. Interplay between protecting privacy and the public interest

5. Under the first branch of the *Sierra Club* test, the court must consider whether the confidentiality order sought is necessary to prevent a serious risk to an important interest.[3] The interest to be protected under the necessity branch must be a *public* interest or *general* principle.[4] Since the *Sierra Club* test reflects the substance of the *Oakes* analysis, the "important interest" is analogous to a "pressing and substantial objective" to be balanced against constitutional rights.[5]

6. The fact that the interest to be protected must be characterized as a principle of general application does not, however, mean that the law cannot protect an individual's interest in their private information. To the contrary, case law cited below, including from this Court, confirms that protecting individuals' private information serves at least two important public interests: (1) preventing harm, and (2) ensuring access to and the fair administration of justice (or court process).

7. **Preventing Harm**: Courts have consistently recognized that protecting an individual's privacy may serve an important public interest in preventing harm. This Court did so in *A.B. (Litigation Guardian of) v. Bragg Communications Inc.*, in which a young victim of sexualized cyberbullying sought an anonymization order. The Court stated that the applicant's privacy interests were "tied to both her age and to the nature of the victimization she seeks protection from.

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[3] *Sierra Club, supra* note 1 at para 53.
[4] *Sierra Club, supra* note 1 at para 55.
[5] *Sierra Club, supra* note 1 at para 40; *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835 at 878, 120 DLR (4th) 12 [*Dagenais*].

It is not merely a question of her privacy, but of her privacy from the relentlessly intrusive humiliation of sexualized online bullying".[6] This Court considered the psychological harm of cyberbullying and the trauma of publishing identifying details to be interests that could outweigh the open court principle.[7] Similar findings have been made in other cases dealing with the interests of children — it is generally recognized that children, as the most innocent and vulnerable members of society, should be protected from additional trauma as a result of their parents' family or criminal law proceedings.[8]

8. Another common example where courts will protect privacy interests to prevent further harm is with respect to victims and complainants in sexual assault cases. Section 486.4 of the *Criminal Code* provides for a *mandatory* order banning publication of information that could identify a victim of sexual assault if sought by the Crown or complainant.[9] This applies equally in the civil context — in a case involving a workplace sexual harassment complainant, the Ontario Superior Court of Justice recognized the high privacy interests of a person who makes an allegation of sexual assault or harassment, and the trauma that may result from her identification.[10]

9. Other circumstance-specific impacts have also resulted in the protection of privacy interests under the *Sierra Club* test. In *Coltsfoot Publishing Ltd. v. Foster-Jacques*, the Nova Scotia Court of Appeal accepted that there was a risk of identity theft where certain information was made public, including unique personal identifier numbers, credit or debit card numbers, account numbers, and potentially even unpublished biographical information, and that such risk could form the basis of access and publication restrictions.[11] In *Adult Entertainment Assn. of Canada v. Ottawa (City)*, although no publication ban was ultimately ordered, the Ontario Superior Court of Justice

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[6] *A.B. (Litigation Guardian of) v Bragg Communications Inc.*, 2012 SCC 46 at para 14 [*A.B. v Bragg Communications*].
[7] *A.B. v Bragg Communications*, *supra* note 6 at paras 20-23, 26.
[8] *Danso v Bartley*, 2018 ONSC 4929 at para 52; *P.P. v D.D.*, 2016 ONSC 256 at para 1; *R. v Hosannah*, 2015 ONSC 380 at para 22 [*R. v Hosannah*]; *R. v Blackmore*, 2018 BCSC 1225 at para 125.
[9] *Criminal Code*, RSC 1985, c C-46, s 486.4(2).
[10] *Fedeli v Brown*, 2020 ONSC 994 at para 9 [*Fedeli v Brown*].
[11] *Coltsfoot Publishing Ltd. v Foster-Jacques*, 2012 NSCA 83 at paras 46-56 [*Coltsfoot Publishing Ltd. v Foster-Jacques*].

accepted that disclosing the names of women who work as adult entertainment performers could result in hardship to them or their families due to public stigma.[12]

10. These cases demonstrate that although privacy interests are personal in nature, protection may still serve the larger public interest in harm prevention. The standard that has emerged in the case law is that the harm must go beyond a mere personal "preference" for privacy, or the general "embarrassment" of media scrutiny resulting from public proceedings.[13]

11. **Ensuring access to and the fair administration of justice:** Courts have also considered whether the protection of private information serves the public interest in access to justice and the fair administration of public processes. This second public interest recognizes that if courts cannot offer adequate protection for sensitive private information, there might be a chilling effect on reporting and participation in public processes as individuals choose to forgo the process entirely.

12. This Court acknowledged this type of public interest in *Sierra Club*. It noted that declining to grant a confidentiality order would prevent the applicant from presenting its case, infringe the right to a fair trial and undermine the public interest in truth seeking and achieving a just result.[14] A potential chilling effect was also central to this Court's analysis in *A.B. v. Bragg Communications*, where it noted that public disclosure increased the risk that children would not report cyberbullying or cooperate with authorities.[15]

13. Ensuring access to the courts is often considered in the jurisprudence. In *M.E.H. v. Williams*, the Ontario Court of Appeal accepted that necessity could be established where "insisting on the openness usually demanded of court proceedings will effectively close the courtroom door to a litigant because of the physical and/or emotional consequences to that litigant".[16] And the risk of the potential chilling effect is not limited to access to court proceedings

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[12] *Adult Entertainment Assn. of Canada v Ottawa (City)*, 2005 CanLII 16571 at para 14.
[13] *M.E.H. v Williams*, 2012 ONCA 35 at para 30 [*M.E.H. v Williams*]; *Coltsfoot Publishing Ltd. v Foster-Jacques*, *supra* note 11 at para 97; *Adult Entertainment Assn. of Canada v Ottawa (City)*, 2005 CanLII 16571 at para 16 (ONSC); *A.B. v Stubbs*, 1999 CanLII 14801 at paras 22-23 (ONSC)..
[14] *Sierra Club*, *supra* note 1 at paras 50-51.
[15] *A.B. v Bragg Communications*, *supra* note 6 at paras 23, 26-27. The same concerns with respect to reporting and participation in proceedings have been recognized in the sexual harassment context: e.g. *Fedeli v Brown*, *supra* note 10 at para 9.
[16] *M.E.H. v Williams*, *supra* note 13 at para 27.

— in *Patient v. Canada (Attorney General)*, the Manitoba Court of Queen's Bench protected the identities of an applicant for physician-assisted death and the health care professionals assisting the patient, based on the potential reluctance of physicians to assist terminally ill patients if they are publicly identified.[17]

14. In sum, the case law demonstrates that the contextual *Sierra Club* inquiry is flexible enough to protect personal privacy interests where the impact of disclosure would undermine a broader public interest, including prevention of harm and access to justice.

2. The court must consider the needs and circumstances of the applicant

15. Although the interest to be balanced with the open court principle must be public and general, determining whether that interest is engaged in the circumstances of each case is necessarily an individualized, contextual inquiry. Courts should approach the test through an equitable lens that accounts for the privacy needs of low-income and vulnerable individuals.

16. Many low-income and vulnerable people rely on social assistance benefits from provincial and federal income security programs, including Ontario Works and the Ontario Disability Support Program ("ODSP"). Both Ontario Works and ODSP have appeal mechanisms to the Social Benefits Tribunal.[18] In appealing an ODSP eligibility decision to the Social Benefits Tribunal, an appellant must provide extensive private information, including detailed work history, income, medical records (including history of mental health disabilities and addiction), family structure, and household composition. In addition, appellants before the Social Benefits Tribunal are often self-represented, and tend to disclose more information than is necessary. Because the information disclosed is often sensitive, proceedings before the Tribunal are private, and filed materials are not accessible to the public.[19] But where an individual appeals from the Social Benefits Tribunal to the Ontario Divisional Court, formerly private documents presumptively become part of the public court record.

17. In these circumstances, confidentiality orders are an important tool to ensure that sensitive information is adequately protected and that social assistance recipients are not left with a choice

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[17] *Patient v Canada (Attorney General)*, 2016 MBQB 63 at para 54.
[18] *Ontario Works Act, 1997*, SO 1997, c 25, Sch. A; *Ontario Disability Support Program Act, 1997*, SO 1997, c 25, Sch. B.
[19] *Ontario Disability Support Program Act, 1997*, SO 1997, c 25, Sch. B, s 66.

between risking the harms of disclosure, and forgoing their right to appeal and access to justice in the courts. In assessing whether a confidentiality order is necessary to protect the public interest, courts must consider the circumstances of the applicant, including the nature of the interests being advanced, the sensitivity of the information, and the impact of disclosure.

18. As a starting point, the fact is that low-income and vulnerable individuals must rely on administrative and court proceedings for necessities of life. Those seeking social assistance or other publicly-administered benefits are *required* to seek assistance through administrative processes, which in turn exposes them to increased public scrutiny. Because of the important nature of the interests being advanced in these proceedings and the correspondingly serious impact on those who are denied access, there is a heightened public interest in ensuring that low-income and vulnerable individuals are not deterred from asserting their rights in court.

19. Second, in assessing the risk of harm in disclosure, courts should consider the sensitivity of the information that the applicant is seeking to protect and the potential impact that disclosure would have on the particular applicant. Disclosure of some information may be inherently harmful; for example, personal information that enables identity theft, or the names and ages of children. Disclosure of other information may have a more or less severe impact depending on the circumstances of the applicant. Information that would be merely "embarrassing" for some, such as a history of a mental health disability or substance use/abuse, may have devastating impacts on others, especially if they are low-income, vulnerable or otherwise marginalized. The impacts could be discrimination, stigma and harassment; prejudice in employment and housing opportunities; state apprehension of their children; or serious immigration consequences such as deportation.

3. Establishing risk does not require an unduly onerous evidentiary burden

20. The requirement at the necessity stage that there be a serious risk to the public interest which is "well-grounded in the evidence"[20] does not translate into an unduly onerous evidentiary burden that has the effect of excluding low-income and vulnerable people from accessing confidentiality orders. A contextual inquiry does not mean that the assessing court will require expert evidence on the precise impact of disclosure. In many circumstances, the risks of disclosure will be inherent or readily apparent to the court through logic and reasoning.

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[20] *R. v Mentuck*, 2001 SCC 76 at para 34; *Sierra Club*, *supra* note 1 at para 54.

21. This "logic and reasoning" approach was taken in *A.B. v. Bragg Communications*, where this Court dealt with a concern that there was no evidence of harm from the child victim herself about her own emotional vulnerability.[21] The Court found that the harm could be objectively discerned: "absent scientific or empirical evidence of the necessity of restricting access, the court can find harm by applying reason and logic".[22] This aligns with the Court's existing approach in *Oakes* cases, which does not require the government (as the party seeking to limit a *Charter* right) to lead scientific evidence to support a common sense inference.[23] The civil burden of proof remains unchanged — this approach simply recognizes that that burden will be met where the risk can be established through logical inference, without resorting to expert evidence.

22. Reason and logic will generally be sufficient to establish harms to low-income and vulnerable individuals that would arise from the publication of private information. Courts already recognize an inherent risk in publishing identifying details for certain groups, such as child victims and sexual assault survivors.[24] Administrative schemes that protect private information disclosed by an applicant, like at the Social Benefits Tribunal, can also support a common sense inference of risk. Courts may also turn to articulations of harm in the case law or take judicial notice of indisputable social facts in assessing whether a confidentiality order is necessary.[25]

23. Ensuring that applicants are not faced with the undue evidentiary hurdle of leading expert evidence is important to maintain equal access to confidentiality orders for those who are unable to shoulder such a burden. Low-income individuals seeking to assert their rights in court will not be able to access appropriate confidentiality protections if they are required to retain experts who will attest to the risks of disclosure on members of vulnerable groups. As one court noted, "litigating publication bans, particularly if experts are required, <u>will tend to mean that the affluent are much more likely to be able to shelter under publication bans</u>".[26] Given that low-income and vulnerable individuals are often those most impacted by disclosure of private information, lack of

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[21] *A.B. v Bragg Communications*, *supra* note 6 at para 15.
[22] *A.B. v Bragg Communications*, *supra* note 6 at paras 15-16.
[23] *RJR-MacDonald Inc. v Canada*, [1995] 3 SCR 199 at para 82, 111 DLR (4th) 385.
[24] *A.B. v Bragg Communications*, *supra* note 6 at para 17.
[25] *Coltsfoot Publishing Ltd v Foster-Jacques*, *supra* note 11 at paras 46-48.
[26] *R. v. Hosannah*, *supra* note 8 at para 40 [emphasis added].

access to appropriate confidentiality orders caused by an undue evidentiary hurdle will only exacerbate the harms they face in public processes.

B. The Proportionality Stage: The Impact on the Open Court Principle must be Considered in Context

24. At the proportionality stage, the court balances the salutary effects of the confidentiality order against the deleterious effects, including the impacts on the open court principle and the right to free expression.[27] Although there is a presumption of openness, courts should fully assess how the open court principle, and the purposes that it serves, will be impacted by a confidentiality order in the circumstances of the case. Assuming a negative or significant impact in all cases may unduly restrict access to confidentiality orders for those in need of protection.

1. The court should consider the underlying purposes of the open court principle

25. As a preliminary matter, the openness of public proceedings is not an end in itself, but is a means to further the truth seeking function of the courts and the legitimacy and independence of the judicial system. Chief Justice McLachlin summarized the three purposes of the open court principle: (1) it assists the search for truth and is essential to the effective exercise of the right to free expression and freedom of the press; (2) it enhances judicial accountability; and (3) it permits the community to see that justice is done.[28] Underlying and unifying these three purposes is the preservation of public confidence in the administration of justice.

26. These underlying purposes of the open court principle, and the salutary or deleterious effects that a confidentiality order would have on each, should be considered in the proportionality analysis. Importantly, confidentiality orders may in some circumstances align with and strengthen the objectives underpinning the open court principle. In *Dagenais*, this Court recognized that confidentiality orders and the open court principle are not necessarily in conflict. Publication bans can be consistent with the right to a fair hearing by allowing witnesses to testify without fear of publicity, protecting vulnerable witnesses, and preserving the privacy of individuals and their families.[29] In ensuring that applicants have access to and are willing to participate in court

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[27] *Sierra Club*, *supra* note 1 at para 53.
[28] Beverley McLachlin, "Courts, Transparency and Public Confidence – To the Better Administration of Justice" (2003) 8:1 Deakin L Rev 1 at 6.
[29] *Dagenais*, *supra* note 5 at 882-83.

processes, publication bans may also further the goals of the open court principle, including the search for truth and public's interest in seeing justice be done.

27. Recognizing that confidentiality orders may be consistent with the open court principle is particularly important where the public interest being served is the prevention of harm or access to justice. If disclosing information prevents applicants from asserting their rights in court, this does not further the public's interest in truth-seeking, continuing public discourse, or accountability of the justice system. Nor does it further the search for truth and justice if parties and witnesses are not candid in disclosing relevant information to the court. In the context of social benefit regimes, fear of disclosing information that helps the decision-maker determine appropriate benefits hurts recipients and undermines the public interest goals of social assistance.

28. For these reasons, the Court's analysis should leave room for the notion that confidentiality orders are not always in contradiction with the open court principle, contrary to what is often implied by courts in jurisprudence under the *Sierra Club* or *Dagenais*/*Mentuck* framework.[30] Rather, the *Sierra Club* test requires the court to carefully consider and balance the actual harm to the open court principle if the confidentiality order sought was granted, as well as the potential benefits of protecting private information.[31]

2. The proportionality analysis should be guided by contextual factors

29. In conducting the proportionality analysis under *Sierra Club*, the court should use an equitable lens. This means considering the potential impact on the applicant, other justice system participants and the public interest that would result if the information is disclosed, and taking into account the sensitivity of the information and the circumstances of the applicant. The court's contextual inquiry conducted under the necessity branch, as set out above, will ground its analysis of the salutary effects of the confidentiality order and the impact of disclosure on the applicant.

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[30] See *Magnotta Winery Corporation v The Alcohol and Gaming Commission (Ontario)*, 2015 ONSC 2612 at para 2; *Fraleigh v Great-West Life et al.*, 2010 ONSC 2501 at para 4; *Ontario Psychological Association v Mardonet*, 2015 ONSC 1286 at para 43.
[31] *Sierra Club, supra* note 1 at para 74.

30. With respect to assessing the benefits and impacts on the open court principle, ISAC proposes that the following considerations, adapted from the Court's decision in *Sierra Club*, are relevant for the decision-maker to weigh:

a. The importance of the information to the public: If the information is central for the media and general public to understand the proceeding and the court's decision, the impact of restricting access may be higher, as this will more significantly impair the purposes of the open court principle.[32]

b. The necessity of the information to the court: If declining to grant the confidentiality order would effectively mean that the court will be deprived of relevant information or evidence, this will impair the court's truth-seeking function and undermine the fairness of the proceeding.[33]

c. The nature of the proceeding: If the proceeding has a wider significance to the public that transcends the immediate interests of the parties and the general interest in the administration of justice, the impact on the open court principle will be more serious than matters of a largely personal or private nature.[34] As the Court noted in *Sierra Club*, public interest does not always equate with *media* interest.[35]

PART IV – SUMISSIONS ON COSTS

31. ISAC does not seek costs and asks that no order as to costs be made against it.

PART V – ORDER

32. ISAC takes no position on the outcome of this appeal.

PART VI – SUBMISSIONS ON PUBLICATION

N/A

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[32] *Sierra Club*, *supra* note 1 at para 78.
[33] *Sierra Club*, *supra* note 1 at para 77.
[34] *Sierra Club*, *supra* note 1 at para 83.
[35] *Sierra Club*, *supra* note 1 at para 85.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of March 2020.

Per: _____
Ewa Krajewska

PART VII – AUTHORITIES

Caselaw:

No.	Authority	Paragraph Reference
1.	*A.B. (Litigation Guardian of) v Bragg Communications Inc.*, 2012 SCC 46	7, 12, 21, 22
2.	*Adult Entertainment Assn. of Canada v Ottawa (City)*, 2005 CanLII 16571 (ONSC)	9, 10
3.	*A.B v. Stubbs*, 1999 CanLII 14801 (ONSC)	10
4.	*Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835, 120 DLR (4th) 12	5, 26, 28
5.	*Danso v Bartley*, 2018 ONSC 4929	7
6.	*Fedeli v Brown*, 2020 ONSC 994	8, 12
7.	*Coltsfoot Publishing Ltd. v Foster-Jacques*, 2012 NSCA 83	7, 9, 10, 22
8.	*Fraleigh v Great-West Life et al.*, 2010 ONSC 2501	28
9.	*M.E.H. . Williams*, 2012 ONCA 35	10, 13
10.	*Magnotta Winery Corporation v The Alcohol and Gaming Commission (Ontario)*, 2015 ONSC 2612	28
11.	*Ontario Psychological Association v Mardonet*, 2015 ONSC 1286	28
12.	*P.P. v D.D.*, 2016 ONSC 256	7
13.	*Patient v Canada (Attorney General)*, 2016 MBQB 63	13
14.	*R. v Blackmore*, 2018 BCSC 1225	7
15.	*R. v Hosannah*, 2015 ONSC 380	7, 23
16.	*R. v Mentuck*, 2001 SCC 76	20
17.	*RJR-MacDonald Inc. v Canada*, [1995] 3 SCR 199, 111 DLR (4th) 385	21

No.	Authority	Paragraph Reference
18.	*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41	1, 2, 3, 5, 9, 12, 24, 28, 29, 30(a), 30(b), 30(c)

Secondary Sources:

No.	Secondary Source	Paragraph Reference
1.	Beverley McLachlin, "Courts, Transparency and Public Confidence – To the Better Administration of Justice" (2003) 8:1 Deakin L Rev 1.	25

Statutes, Regulations, Rules, etc.:

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	*Criminal Code* , RSC 1985, c C-46	Section 486.4 Section 486.4(2)
	Code criminel, LRC 1985, c C-46	Article 486.4 Article 486.4(2)
2.	*Ontario Disability Support Program Act, 1997*, SO 1997, c 25, Sch. B.	Generally
	Programme ontarien de soutien aux personnes handicapées (Loi de 1997 sur le), LO 1997, c 25, annexe B	Généralement
3.	*Ontario Works Act, 1997*, 1997, SO 1997, c 25, Sch. A	Section 66
	programme Ontario au travail (Loi de 1997 sur le), L.O. 1997, chap. 25, annexe A	Article 66
4.	*Tribunal Adjudicative Records Act, 2019*, SO 2019, c 7, Sch. 60	Section 2
	documents décisionnels des tribunaux (Loi de 2019 sur les), LO 2019, c 7, annexe 60	Article 2

Tribunal Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sch. 60, section 2	documents décisionnels des tribunaux (Loi de 2019 sur les), L.O. 2019, chap. 7, annexe 60, article 2
Adjudicative records public 2(1) A tribunal shall make those adjudicative records in its possession that relate to proceedings commenced on or after the day this section comes into force available to the public in accordance with this Act, including any rules made under section 3. **Confidentiality orders** (2) A tribunal may, of its own motion or on the application of a person referred to in subsection (3), order that an adjudicative record or portion of an adjudicative record be treated as confidential and that it not be disclosed to the public if the tribunal determines that, (a) matters involving public security may be disclosed; or (b) intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public. **Who may apply** (3) The following persons may apply to the tribunal for a confidentiality order in respect of an adjudicative record: 1. A party to a proceeding to which the adjudicative record relates. 2. A person who would be affected by the disclosure of the information contained in the adjudicative record or a portion of the adjudicative record. **Scope of order** (4) A confidentiality order may apply to adjudicative records regardless of when the	**Mise à disposition des documents décisionnels** 2(1) Le tribunal met à la disposition du public les documents décisionnels en sa possession qui se rapportent aux instances introduites à partir du jour de l'entrée en vigueur du présent article, conformément à la présente loi, notamment aux règles adoptées en vertu de l'article 3. **Ordonnances de confidentialité** (2) Le tribunal peut, de sa propre initiative ou sur requête d'une personne visée au paragraphe (3), ordonner que tout ou partie d'un document décisionnel fasse l'objet d'un traitement confidentiel et ne soit pas divulgué au public s'il décide que, selon le cas : a) des questions intéressant la sécurité publique pourraient être révélées; b) le document contient des informations concernant des questions financières ou personnelles d'ordre privé ou d'autres questions qui sont telles que l'intérêt du public ou de la personne servi par la non-divulgation l'emporte sur l'importance d'adhérer au principe selon lequel le document doit être mis à la disposition du public. **Requérants autorisés** (3) Les personnes suivantes peuvent présenter au tribunal une requête en ordonnance de confidentialité à l'égard d'un document décisionnel : 1. Une partie à une instance à laquelle se rapporte le document décisionnel. 2. Une personne qui serait touchée par la divulgation des informations contenues dans tout ou partie du document décisionnel. **Portée des ordonnances**

***Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60, section 2**	**documents décisionnels des tribunaux (Loi de 2019 sur les), L.O. 2019, chap. 7, annexe 60, article 2**
proceeding to which they relate was commenced.	(4) Une ordonnance de confidentialité peut s'appliquer aux documents décisionnels quel que soit le moment où a été introduite l'instance à laquelle ils se rapportent.