IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *C.D. v. Provincial Health Services Authority*, 2019 BCSC 603

Date: 20190415
Docket: S191565
Registry: Vancouver

Between:

C.D.

Petitioner

And

Provincial Health Services Authority (BC Children's Hospital), E.F., G.H., I.J., British Columbia Ministry of Education, Delta School District, barbara findlay, and A.B.

Respondents

Restriction on publication: A publication ban has been imposed by orders of this Court restricting the publication, broadcast or transmission of any information that could identify the parties referred to in these proceedings as "A.B.", "C.D.", and "E.F."; and also restricting the publication of the names of the parties and witnesses referred to by their initials or as "G.H." or "I.J." in relation to these proceedings and any related proceedings regarding A.B. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Madam Justice Marzari

Oral Reasons for Judgment

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Counsel for Vancouver Sun Newspaper and National Post Newspaper:	R.S. Anderson, Q.C. S. Dawson
Place and Date of Hearing:	Vancouver, B.C. March 15, 2019
Place and Date of Judgment:	Vancouver, B.C. April 15, 2019

INTRODUCTION

[1] This is an application for a publication ban to anonymize the names of various health care professionals involved in the care of a transgender child, AB.

[2] The context of this application is as follows: In early February 2019, AB filed a Notice of Family Claim against his father, CD, and his mother, EF, seeking relief under the *Family Law Act,* S.B.C. 2011 c. 25 [*FLA*] that would allow him to proceed with hormone therapy, among other things (the "Family Law Claim"). EF supported the orders AB sought, while CD opposed them.

[3] Subsequent to AB filing the Family Law Claim, AB's father, CD, filed a petition in the civil registry opposing the relief AB sought. Various individuals and organizations providing care to AB, including AB's mother, EF; AB's health care providers; AB's school counselors and officials; and AB's legal counsel, are named as respondents (the "petition"). Among other things, the petition sought an injunction to prevent these professionals from advising, counselling, or providing hormone therapy to AB. I will refer to the Family Law Claim and petition together as the "proceedings".

[4] The proceedings were heard together by Mr. Justice Bowden in late February 2019. AB was successful in his claim, and CD's injunctive relief was dismissed. CD is apparently appealing that decision.

[5] In the current application, a number of health care professionals who are either named parties or witnesses in CD's petition apply for an order that would anonymize their names in both the petition and the Family Law Claim, and any publications relating to these proceedings.

[6] The Vancouver Sun and National Post (the "media respondents"), as well as the petitioner, CD, oppose this relief.

[7] The professionals applying for the anonymization order at this time are all medical or social work professionals that have provided health care services to the child, AB, or have provided evidence in these related proceedings.

PROCEDURAL HISTORY

[8] Originally, this application was before Mr. Justice Bowden on February 19 and 20, 2019, at the same time as the summary trial of the Family Law Claim and CD's petition for injunctive relief, and applications for publication bans with respect to the identity of the parties in both the proceedings.

[9] The court granted the permanent relief sought by AB and declared that it was in AB's best interests to receive the medical treatment he sought. The court also found that it was in AB's best interests that he be acknowledged and referred to as male, both generally and with respect to any matters arising in these proceedings, and that any references to him in relation to these proceedings, now or in the future, employ only male pronouns.

[10] The court denied the injunction sought by CD.

[11] With respect to the anonymization orders and publication bans sought, this court ordered that in both this petition and the Family Law Claim, the names of AB, his father and his mother be anonymized. The publication by any person of any information that may disclose the identities of AB, his father or his mother was prohibited.

[12] At para. 70, the court dismissed the applications of the health care professionals for their names to be anonymized on the basis that "there is no evidence of a direct, harmful consequence to any of those individuals if their name is disclosed in relation to these proceedings. Nor do I consider those individuals to be vulnerable persons…."

[13] Before entry of the order but after the release of Mr. Justice Bowden's decision to the parties, counsel for the health care professionals applied to have

Mr. Justice Bowden reconsider his ruling with respect to the publication ban on the basis of fresh evidence. Mr. Justice Bowden granted short leave for an application to reconsider his ruling but was not available to hear the application. The application then came before me to reconsider the scope of the publication ban applicable to AB's health care providers.

[14] During the course of argument the applicant's health care professionals abandoned their application for a publication ban on any information that could lead to their identification in relation to these proceedings, and sought only to pursue the orders sought for the anonymization of their names in these proceedings and any publications regarding these proceedings.

ISSUES

[15] In relation to the orders as ultimately sought, I must first consider whether the evidence before me meets the threshold to reopen the publication ban. If so, I must go on to consider whether the applicants have met the requirements for the orders they seek pursuant to the *Dagenais/Mentuck* test.

ANALYSIS

The *Dagenais/Mentuck* Test

[16] The burden on an applicant who seeks to displace the open court principle and obtain a restrictive order has a significant legal and evidentiary burden. This is true of the more limited anonymization ban sought by the applicants before me as well as to the broader publication ban originally sought.

[17] Mr. Justice Bowden laid out the considerations and relevant law, which continue to apply, at paras. 64-69 of his decision, as follows:

> [64] The courts of Canada are presumptively open. There were many individuals in the gallery of the court during these proceedings exemplifying this principle.
>
> [65] The burden of displacing the open court principle lies on those who seek to restrict access and thereby limit freedom of expression.

> [66] Because the presumption is so strong and so highly valued in our society, a judge must have a convincing evidentiary basis for issuing a ban: *R. v. Mentuck*, [2001] 3 S.C.R. 442.
>
> [67] In *Mentuck*, where a one-year ban on the identification of undercover police officers was upheld, Iacobucci J. stated at para. 32:
>
> > 32. A publication ban should only be ordered when:
> >
> > (a) such an order is necessary to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
> >
> > (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.
>
> [68] In *A.B. v. Bragg Communications Inc.*, [2012] 2 S.C.R. 567 [*Bragg Communications Inc.*] the Supreme Court of Canada held that a 15 year-old girl could proceed anonymously in her application against an internet provider for an order requiring the disclosure of a particular IP user. The decision is based in part of the inherent vulnerability of children and the Court's view that in the absence of evidence of a direct, harmful consequence to any individual applicant a court may conclude that there is objectively discernable harm. In that case the court said that it was reasonable and logical to accept that cyber bullying could result from the disclosure of the girl's name.
>
> [69] In *A.B. v. Canada (Attorney General)*, 2016 ONSC 1571, McEwen J. granted confidentiality orders, including a publication ban to protect the identity of physicians and other healthcare providers in an application for physician-assisted death. He stated that the physicians' desire to keep their identities private because of personal and professional implications was "...entirely reasonable…given the publicity and controversy surrounding physician-assisted death." He also accepted the submission that physicians might be less likely to provide assistance to terminally ill patients if their identities were known.

[18] The *Dagenais/Mentuck* framework applies equally to the modified and less extensive anonymization and publication ban sought in this application: see *Vancouver Sun (Re)*, 2004 SCC 43 at para. 31.

Reconsideration of a publication ban ruling

[19] The parties are agreed that a trial judge has the discretion to re-open a case and hear further evidence or argument and vary the reasons as pronounced. In *G.C.H. v. H.E.H.*, 2009 BCSC 4, Mr. Justice Joyce stated at para. 14 that "while the discretion has been characterized as "unfettered" it is also clear from these

authorities that it is to be exercised cautiously so as to prevent an abuse of process." New evidence is not a prerequisite though it is a common basis for such an application.

[20] The parties rely on the summary of the principles applicable to the exercise of such a discretion in *Zhu v. Li*, 2007 BCSC 1467 by Justice Ehrcke as follows:

> 20 From the cases, I conclude that the following principles apply to an application to re-open a trial to adduce fresh evidence:
>
> > 1. Prior to the entry of the formal order, a trial judge has a wide discretion to reopen the trial to hear new evidence.
> >
> > 2. This discretion should be exercised sparingly and with the greatest care so as to prevent fraud and abuse of the court's process.
> >
> > 3. The onus is on the applicant to show first that a miscarriage of justice would probably occur if the trial is not reopened and second that the new evidence would probably change the result.
> >
> > 4. The credibility of the proposed fresh evidence is irrelevant consideration in deciding whether its admission would probably change the result.
> >
> > 5. Although the question of whether the evidence could have been presented at trial by the exercise of due diligence is not necessarily determinative, it may be an important consideration in deciding whether a miscarriage of justice would probably occur if the trial is not reopened.

[21] The media respondents also accept this statement of the test, and acknowledge that a reopening and reconsideration of the publication ban ruling with respect to the health care professionals in this case is possible, but say that the evidentiary burden is somewhat higher than in first instance.

[22] All parties agree that I stand in the shoes of Mr. Justice Bowden as the trial judge, given his granting of short leave for this application and his lack of availability to hear it.

[23] In addition, the applicants argue that this court has an inherent jurisdiction to consider publication bans regardless of when they arise, and so fresh evidence of harm may always give rise to the authority of this court to consider such a ban on new evidence.

[24] I note that the case law relied upon by counsel generally relates to re-opening trials, and may not apply to the applicable test for re-hearing a publication ban. It is possible that the threshold requirements to trigger a judge's discretion to hear a publication ban request where one has already been denied is lower than the test for allowing reconsideration on fresh evidence at the conclusion of a trial.

[25] However, as the order in the original application has yet to be entered, and the parties argued the application on this basis, I will consider this matter as a reconsideration prior to entry of the order. Even on this stricter test, I have found that the new evidence presented on the hearing before me should be considered and warrants a reconsideration of the publication ban determination with respect to the health care professionals.

[26] When he initially made his findings, Justice Bowden had before him evidence that the applicants were concerned for their safety if they were to become a target for those who do not share their views regarding hormone treatment for youth with gender dysphoria. AB's treating pediatric endocrinologist's evidence was that he was concerned that his physician-patient relationship with other patients could be adversely affected if he was targeted by those who oppose the treatment recommended for AB. However, there was no evidence of any threats of harm or suggestions of harm beyond these stated concerns.

[27] Since the matter was heard on February 19 and 20, 2019, a number of news articles have identified two of the applicants who are named respondents in the petition, in relation to their care of AB. Specifically, two articles were published online by the Federalist, which is a popular and well-subscribed American online conservative magazine. The articles were published online on February 26, 2019 and March 1, 2019 respectively.

[28] The February 26 Federalist article contains a link to a letter written to CD regarding AB's medical status and recommended treatment by AB's doctors. This letter identifies both the healthcare professionals, and the child by his chosen name.

[29] Below the articles in the Federalist, the Federalist has published reader comments. A number of these comments encourage or approve of violence against AB's healthcare professionals. Some of the more egregious posts include:

- All the state actors in this incident (these doctors, etc.) need to be executed for high treason as well as child abuse and child abduction. Stealing a child from his parents to perform sex change perversions on the child is demonic behaviour and must be punished by death.
- When those in positions of power and trust abuse children, parents need to retaliate. And we will start to see that here as the current push continues. I can tell you this though; if I had a daughter who was really struggling and someone in the lab coat told me they were gonna inject her with chemical cocktails (with permanent effects) whether I wanted them to or not, well… Parents have both a right and a duty to kill those who would abuse their kids.
- It would be wise for the dad to take his daughter and flee Canada. This would be unwise because he would not win, but the dad has the moral right to use violence to stop the doctors from administering the testosterone to his daughter. Above all, he has a moral duty to do everything possible to ensure she never gets a(nother) dose.
- If he chooses violence and the doctor dies, that is not murder and it may very well be better than doing nothing.

[30] Online posts relating to this proceeding also appeared on the online forum 4chan. Many of these posts also encourage violence against members of AB's healthcare team. Some of the more egregious comments include the following:

- …massive problem and there is only one solution: <u>kill all the enablers</u> – kill the judge and his family – kill all those who convinced the daughter that she can be a man – torture them violently on HD video to make an example of them once this is done the enablers will be scared and they will stop.
- If the dad murdered the judges <u>and doctors</u> that forced this and I was selected for jury duty in this trial I would not convict him

  [Emphasis added.]

[31] While these are the more egregious exhortations to violence, and the 4chan comments have since been taken down, the evidence also shows substantial online commentary analogizing AB's medical treatment to child abuse, perversion and even pedophilia. While these other comments may not specifically exhort violence against these health care professionals, they portray the professionals as criminals who hurt

children, and therefore give rise to related risks of incitement of violence against them.

[32] Furthermore, while not all of the health care professionals were named in the comments, all of the health care professionals involved in AB's care may reasonably be concerned that they are a part of the group of "enablers" or "state actors" to which these threats pertain.

[33] On February 26, 2019 the two healthcare professionals specifically named as respondents in CD's petition received a direct email from an anonymous address calling them a "child abuser," stating that they should not be permitted near children, and that they belonged in prison. The emails contain a link to the February 26 Federalist article. Both have since felt compelled to make security changes at their practices and clinics, and are concerned about their safety and that of their other patients.

[34] Despite working publicly for numerous years in the area of gender dysphoria, the evidence shows that these doctors had not received threats similar to those currently being directed at them prior to being named in relation to AB's healthcare in these proceedings.

[35] In addition, a local organization known as Culture Guard has posted the names of a number of the healthcare professionals on its website, with comments suggesting that the doctors and respondent school employees ought to be jailed.

[36] Overall, I find that the new evidence on this application establishes that there have been direct incitements to violence against the health care professionals involved in AB's case, both overtly and also indirectly through the comparison of the medical treatments they provide to child abuse.

[37] At the threshold level of allowing the consideration of the fresh evidence and re-opening the hearing, I consider that this evidence is capable of changing the result in this case, and specifically that it moves the analysis undertaken by Justice

Bowden from no direct evidence of harm against the health care professionals to the presence of such evidence.

[38] I find that most of this evidence came into existence after the hearing before Justice Bowden, and so could not have been obtained through due diligence, and that there is no issue with respect to the credibility of this evidence.

[39] I will now go on to consider whether the anonymization and publication ban sought are warranted on the basis of this fresh evidence pursuant to the *Dagenais/ Mentuck* test. I will specifically consider:

1. Whether the order as sought is necessary;

2. Whether there are reasonable alternatives to the order as sought; and

3. Whether the order sought is proportionate to the harms it seeks to address.

1. Is the order sought necessary?

[40] The burden is on the applicants to establish that the order they seek is necessary in order to prevent a serious risk to the proper administration of justice because reasonable alternative measures will not prevent the risk. The objective of a publication ban authorized under the rule is to prevent real and substantial risks of trial unfairness -- publication bans are not available as protection against remote and speculative dangers: *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at p. 880. The test requires evidence that there is a genuine and not merely speculative risk to the administration of justice requiring the restriction of openness.

[41] Before any balancing of the principles and interests that arise in this case, the applicants must show that the interests at stake are sufficiently compelling to warrant a restriction on freedom of the press and the openness of the courts: see *A.B. v. Bragg* at para. 13. The interests at stake can be case-specific or broader.

[42] While I have found that evidence of risk exists in the form of online comments and direct emails warrants re-consideration of the publication ban request, I must still consider whether this evidence makes the anonymization order sought *necessary* to protect the applicants and the administration of justice.

[43] I note that risks to the administration of justice include considerations of harm to its individual participants. Although there is no evidence that the applicants would refuse to participate as witnesses, the bar is not so high. It is sufficient that the publication of their name in relation to the legal proceedings creates a risk of harm to them personally: see for example, *C.W. v. L.G.M.*, 2004 BCSC 1499. Both objectively discernible harm and direct harmful consequence to an individual applicant are relevant to the analysis: see *A.B. v. Bragg* at paras. 15-16.

[44] Counsel for the media say that threats and incitements to violence in online chat rooms and in commentary of online publications are now so commonplace in any media-worthy story that they should not amount to the type of harm that gives rise to the necessity for a publication ban. If they did, there would be almost no newsworthy story that did not also give rise to a publication ban on the identity of the actors.

[45] The media argues further that the worst of this commentary has either been taken down (in the case of the 4Chan commentary) or is so buried on the Federalist site in the comments section that it does not give rise to any real risks of violence.

[46] I agree that these types of online chatrooms and comments are often ugly, rude and even threatening, and that such evidence alone may not be enough to establish evidence of harm that meets the threshold requirement for a publication ban.

[47] However, in this case the evidence goes beyond mere commentary. Within days of the first Federalist article, both AB's pediatric endocrinologist and his psychologist had received anonymous emails referencing that article and calling them child abusers. While posting online threats may be so commonplace as to not

give rise to a reasonable apprehension of harm, taking the step to contact the doctors directly for the purposes of intimidating them is a significant further step. In my view, the commentary and the emails together give rise to a reasonable and significant apprehension of harm.

[48] I note the evidence of both AB's pediatric endocrinologist and his psychologist that, although they have been outspoken about the significance and availability of the medical treatments they offer, they have never received these types of emails before.

[49] Finally, it is not merely the direct incitements to violence that are of concern in this case. While these are a minority of the comments, a significant amount of the commentary on these two websites draws connections between the medical service provided to AB and serious crimes that give rise to strong emotional responses and societal consequences, such as child abuse. While not directly inciting violence, this commentary is connected to that incitement. These comments are relevant to the harm not only to AB's treating pediatric endocrinologist and his psychologist, but also the other health and social work professionals that have a lesser involvement in this case but may nevertheless be considered "enablers."

[50] I find that the evidence as a whole establishes that the risk of harm is significant enough that consideration of anonymization of the applicants is necessary to protect the proper administration of justice.

2. Are there reasonable alternative measures to address the risk?

[51] The media respondents suggest that, in the event I accepted that the fresh evidence meets the first element of the *Dagenais/Mentuck* test, that there are reasonable orders, short of a publication ban, that would adequately address the risk of harm.

[52] In particular, the media respondents propose an order prohibiting the publication of threats or incitements to violence against AB's health care providers. In response to my questions, they also agreed that a prohibition of the publication of

contact information of the health care professionals in relation to AB's treatment would not interfere with the media's ability to share this case with the public.

[53] The media respondents say that such an order would be minimally impairing to their ability to cover the story and at the same time sufficient to address the concerns of the health care professionals.

[54] This argument is a compelling one, but ultimately I find I must reject it in this case because of the challenges it would raise in its interpretation, enforceability and ultimately its breadth. While all publication bans pose challenges in this regard, the proposed alternative order requires an evaluation of the content of various publications to determine the extent to which they might incite violence. I have noted above my concern that it is not only the direct references to killing and torture that might meet this definition, but also comparisons between the child's medical treatments and child abuse or other criminal acts. Furthermore, this court has already found that publicly describing the child as female harms AB and constitutes family violence, which, although not a threat of harm to the applicants, may also be caught by such an order.

[55] While not ruling such an order out on a proper application with proper evidence, in the context of this application I find that the order proposed by the media respondents could restrict media coverage *more* than the anonymization of the names of the health care providers in publications related to AB's treatment and care. It is therefore not an appropriate alternative to anonymization.

3. Is the order proportionate in its response to the harms at issue?

[56] Having found that the anonymization order sought is necessary in order to prevent a serious risk of harm, and that reasonable alternative measures will not prevent the risk, I must go on to consider whether the positive effects of the orders sought outweigh the negative effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right to a fair and public trial, and the efficacy of the administration of justice.

[57] The applicants says that the salutary effects of the orders sought are to protect them from threats of violence and harm.

[58] AB's mother, EF, submits that there is an additional benefit, and that is to ensure that medical practitioners more generally are not intimidated or otherwise dissuaded from providing these essential services: see *A.B. v. Canada (Attorney General)*, 2016 ONSC 1571 at paras. 26, 33.

[59] The media respondents say that these positive effects are significantly outweighed by the negative effects on the openness of the courts, the freedom of the press and expression. Specifically they say that the names of AB's pediatric endocrinologist and his psychologist, in particular, are a significant part of the public discourse already in existence about the broader issue of the availability and desirability of hormone treatments and therapies for adolescents. They go so far as to say that these two doctors *are* "the story". They reference the significant public, media and social media presence of these doctors in relation to the issue of gender dysphoria and related treatments.

[60] The media respondents also say that the horse is so far out of the barn with respect to AB's endocrinologist being involved in these broader issues that there is little utility, or "salutary effect" of the order sought with respect to him. His evidence was filed in related Provincial Court proceedings, and he has also given press interviews in the context of this case (though not about AB's treatment recommendations or as AB's treating doctor).

[61] The father, CD, agrees with the media respondents and goes farther to say that the issues in these proceedings are ultimately for the public to decide, and that the names of the doctors are an essential part of that public decision-making process. The father says that the broader societal issues he seeks to raise in opposition to hormone therapy treatment is more compelling in the specific context of his child's story, including the names of his child's doctors.

[62] Indeed, the father has been active in providing interviews to various media and social media sites, including the Federalist and Culture Guard, and has been keen to publicize these proceedings.

[63] These latter arguments fundamentally mistake the nature of family law proceedings. While I understand that family law proceedings can and often do have broad and societal impacts, the decision in AB's case is specific to the evidence in court and AB's best interests as a child. There is no role for the public in deciding his case, and the publicity brought to his case may in fact endanger him.

[64] While AB's pediatric endocrinologist and his psychologist both have significant public and online profiles, there is very little evidence that that these doctors have been publicly linked to AB's treatment (other than the coverage based on interviews with the father discussed above). Further public links between AB and AB's case and these doctors is not in AB's best interests. Finally, the threats and risk of harm to the applicant professionals have not arisen from their work generally, but from their public linkage to AB.

[65] Finally, I am not convinced by the media respondents' position that the doctors' names are essential to the story they seek to cover. Their names in connection to AB's case are only one "sliver" of information: see *A.B. v. Bragg*, at para. 28; *B.G. et al v. H.M.T.Q. in Right of B.C.*, 2004 BCCA 345, (*sub nom. G.(B.) v. British Columbia*) 242 D.L.R. (4th) 665 at para. 26. Anonymization of the identity of participants in family proceedings for the protection of a child is common and minimally impairing.

[66] With respect to the other health care and social work professionals, there is no suggestion that they have any public or online presence that makes their names important to the public discourse, or that diminishes the utility of an anonymization order in their case. While the threats against them are less active and explicit than those against the respondent doctors, the importance of reporting their names is also significantly less. The media respondents concede that the name of these

witnesses and care providers are not an important part of the public discourse or "story".

PROCEDURAL DIRECTIONS

[67] On March 7, 2019, Mr. Justice Bowden directed that the Petition be treated as family law proceeding pursuant to the *Supreme Court Family Rules* [*Family Rules*] with respect to the issue of access to the file. It is not clear whether that was an interim order, but all parties present at the hearing before me agreed that greater clarity is required in this regard.

[68] Rule 22-8(1) of the *Family Rules* limits access to family files to parties, lawyers, and persons authorized in writing by a party or their lawyer, unless a court otherwise orders.

[69] As often is the case with these proceedings, this issue was pled and addressed by counsel for AB, CD and EF during the course of an application in the Family Law Claim, and not this Petition. In order to resolve that application, I requested that all counsel involved in the Petition be canvassed so as to have their position.

[70] I have now received those responses. Most of the petition respondents take the position that the petition is legally a family law case, which is defined in Rule 1-1 of the *Family Rules* as any case where orders are sought under the *FLA* (among other things):

> **"family law case"** means a proceeding in which one or more of the following orders is sought:
>
> …
>
> (b) an order under the *Family Law Act*;

[71] The only petition respondent that does not directly support the application to have the petition declared a family law case is the Ministry of Education, which takes no position.

[72] In principle, CD supports greater access to the files of both proceedings to the media, and was unsure about other implications of treating the petition as a family law case. However, in argument CD conceded that the stated legal basis of the petition is the *FLA* and that he relies primarily on the portions of that *Act* that address his rights as a parent and the best interests of his child. He was unable to suggest any other legal basis for the filing or advancing of the Petition. As such, CD concedes that the Petition would appear to fall within the definition of a family law case under the *Family Rules*.

[73] The media respondents initially took the position that the Petition should not be treated as a family file, and indeed that the Family Law Claim also should not be subject to the *Family Rules*' restrictions on public access. They modified that position before Justice Bowden and before myself, stating that they would agree to both proceedings being treated as family law cases for the purpose of access, provided that the National Post and Vancouver Sun reporters would have unfettered access to those court files. Furthermore, they took the position that the parties agreed to this arrangement before Justice Bowden.

[74] I have reviewed the transcript of the recent proceedings before Justice Bowden referred to by the media respondents. I have also heard directly from the parties. It appears that if any such agreement existed, it is no longer in place. While the parties are agreed that Mr. Anderson, as counsel for the media respondents, would have access to both files under the *Family Rules*, they do not agree to media access generally, or to access to *reporters* as opposed to counsel.

[75] In any event, the application of the Rules is not subject to or based on the agreement of parties or counsel.

[76] I find that the petition is a family law case under the *Family Rules*. It is entirely unclear to me why it was filed in the civil registry as a petition, given that it does not fall under *Supreme Court Civil Rules*, R. 2-1(2), and the main enactment relied upon to ground the relief sought in the Petition is the *FLA*.

[77] Furthermore, the petition is largely duplicative of CD's Application Response filed in the Family Law Claim, and CD has relied upon the petition and petition materials to respond to the relief sought by AB in the Family Law Claim and related applications. The relief sought and materials filed in the Petition is directly related to the relief sought in the Family Law Claim filed by AB.

[78] I therefore declare that the petition is a family law case within the meaning of the *Family Rules*. The petitioner shall attend at the Registry and bring the petition into compliance with the *Family Rules*, including re-filing the petition as a family law case. The re-filed materials shall comply with all other orders of this court regarding the proper parties and anonymization of names.

[79] The original petition as filed in the Civil Registry will remain sealed, and access to the re-filed petition as a family law case shall be governed by the *Family Rules.* I note that this would not preclude access to the file by Mr. Anderson as counsel, but does preclude direct access by reporters and other third parties.

SUMMARY OF ORDERS

[80] For the reasons stated above, I find that the anonymization orders sought are necessary and proportionate.

[81] I grant the orders sought at paras. 1 and 2 of AB's pediatric endocrinologist's application, and at paras. 1-8 of the Public Health Services Authority's ("PHSA") and AB's psychologist's application.

[82] Due to the desirability that the consecutive letters in the alphabet should be reserved for named parties, I direct the following alternative initials be used:

1. For AB's pediatric endocrinologist who is a named respondent, his name shall be replaced with the initials "G.H." in the style of cause and throughout the petition, and in any pleadings or reasons for judgment;

2. For AB's psychologist who is a named respondent, his name shall be replaced with the initials "I.J." in the style of cause and throughout the petition, and in any pleadings or reasons for judgment;

3. With respect to the other orders sought by the PHSA with respect to the other various health professionals, those applicants' names shall be replaced by their initials in the body of the petition, and in any pleadings or reasons for judgment.

[83] In addition, I order a publication ban on the use of the names of these parties and witnesses in connection with these proceedings and any related proceedings regarding AB's care and counselling, including the Family Law Claim (Vancouver Action No. E190334). Publication of their contact information in relation to this proceeding or AB's care more generally is also prohibited. This order should be entered in both proceedings.

[84] This publication ban comes into force immediately.

[85] The publication, dissemination, or transmission of copies, hyperlinks or descriptions of previous publications containing non-anonymized party and witness names is prohibited. This order extends to any links to or copies of prior versions of Mr. Justice Bowden's reasons for judgment.

[86] I declare that the petition is a family law case within the meaning of the *Family Rules*. The petitioner shall attend at the Registry and bring the petition into compliance with the *Family Rules*, including re-filing the petition as a family law case, and shall comply with all other orders of this court regarding the proper parties and anonymization of names.

[87] The original petition as filed in the Civil Registry will remain sealed.

[88] The style of cause of the petition shall be amended and any new filings, as well as the ordered refiling of the petition, shall comply with this order and all previous orders.

[89] I note that the style of cause should also reflect the discontinuance of the petition against AB's elementary and high school counsellors. It should also reflect the agreement that AB be a named respondent to the petition.

[90] I want to thank counsel. I want to thank Mr. Anderson in particular for his helpful submissions on behalf of the National Post and the Vancouver Sun. Although I have made the anonymization order sought by the applicants in this case, I appreciate the important role of the accredited media in ensuring that the open court principle is only restricted where necessary, and only to the extent necessary to protect participants in the justice system from harm. This is one such case, and I appreciate his client's thoughtful contribution and ultimate respect of these orders.

"Marzari J."