

CITATION: Morrison v. Hatts Off Inc., 2025 ONSC 6992
COURT FILE NO.: CV-23-80958-CP
DATE: 2025-12-16

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JAMAR MORRISON

Plaintiff/Moving Party

- and -

HATTS OFF INC., NAYLOR NINE
HOLDINGS LIMITED, GORDON
NAYLOR, BRONWYN NAYLOR,
ALADINE HANNA, HATTS OFF
SPECIALIZED SERVICES & HATTS OFF
SPECIALIZED SERVICES INC.

Defendants/Responding Parties

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) T. Planeta and A. Ryan, Counsel for the
) Plaintiff and Moving Party
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) S. Zacharias and J. Hunter, Counsel for
) the Defendants and Responding Parties
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) **HEARD:** December 5, 2025
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ENDORSEMENT ON MOTION TO SEAL THE RECORD

On December 5, 2025, I granted an interim sealing order of a portion of the court record with written reasons to follow. These are my written reasons.

The Honourable Justice M. Valente

Overview and Background of the Action

[1] This proceeding is a putative class action. It advances allegations of systemic wrongdoing in children's homes operated by the defendants.

[2] On May 31, 2024, the plaintiff served his certification record. On October 31, 2024, the defendants served their responding record. The responding record includes affidavits by the defendant, Bronwyn Naylor, and a proposed expert, Rhonda Hallberg (respectively, the "Naylor Affidavit" and the "Hallberg Affidavit").

[3] The plaintiff submits that paragraph 5 of the Naylor Affidavit together with Exhibits A-L and LL and paragraph 34 of the Hallberg Affidavit (collectively, the "Sensitive Information") contain personal information that threaten the privacy interests of the plaintiff and other former residents of the defendants' homes who delivered affidavits in support of the certification motion (collectively, the "Affiants"), along with the Affiants' family members and individuals named by the Affiants as victims of the defendants' abuse.

[4] The plaintiff seeks a limited sealing order directing that the Sensitive Information not form part of the public record and that any public materials filed by either party in respect of the certification motion be redacted to omit references to the Sensitive Information (the "Primary Relief").

[5] In the alternative, the plaintiff seeks a declaration that the public filing of the Sensitive Information constitutes a breach of s.286 of the *Child, Youth and Family Services Act*, 2017 S.O. 2017, c.14, Sch 1 ("CYFSA"), and/or ss.110 and 111 of the *Youth Criminal Justice Act*, SC 2002, c.1 ("YCJA") (the "Alternative Relief").

[6] The defendants are not opposed to the Primary Relief provided that the Sensitive Information is available for use at the certification motion and any sealing order regarding the Sensitive Information be made on an interim basis with any permanent sealing order to be decided prior to the commencement of any common issues trial (collectively, the “Defendants’ Conditions”).

[7] On the other hand, the defendants oppose the Alternative Relief.

[8] For his part, the plaintiff does not oppose the Defendants’ Conditions to the Primary Relief.

[9] Notwithstanding the parties’ apparent consensus with respect to the Primary Relief, the open court principle provides that court proceedings should be presumptively a matter of public record and open to the public (see: *Named Person v. Vancouver Sun*, 2007 SCC 43, at para. 2; *Courts of Justice Act*, RSO 1990, c C. 43 (“CJA”). The issue of whether a sealing order ought to be granted is therefore a matter of public interest to be determined by the court.

The Sensitive Information

[10] The Sensitive Information includes and refers to the personal records of the Affiants contained in the files of the defendant, Hatts Off Inc. These records include medical, psychological and academic records, behavioural assessments, social history and discharge reports, accounts of traumatic experiences as well as intimate family history and youth criminal history information. The records contain details regarding the Affiants’ childhood, information about their parents, siblings, and experiences of child

abuse. The information was collected by the defendant, Hatts Off Inc., in its capacity as a service provider under the *CYFSA*.

[11] The Sensitive Information also contains references to youth criminal justice charges that identify both a young offender and a young person as a victim of the offences.

Governing Principles

[12] The onus is on the person seeking to seal all or a portion of the court record to demonstrate that the benefits of the relief sought outweigh the deleterious effects (see: *Kirby v. Woods*, 2025 ONCA 437 (“*Kirby*”), at para. 24).

[13] The court’s jurisdiction to seal any court file arises from s.137(2) of the *CJA*. That provision states that “a court may order that any documents filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record”.

[14] In *Sherman Estate v. Donovan*, 2021 SCC 25 (“*Sherman Estate*”), the Supreme Court established a three-part test to determine whether a confidentiality and sealing order should be granted. *Sherman Estate* instructs that to succeed, a party seeking to limit court openness must establish that:

- a. court openness poses a serious risk to an important public interest;
- b. the order is necessary to prevent the serious risk to the identified interest because reasonable alternative measures will not prevent the risk; and

- c. as a matter of proportionality, the benefits of the order outweigh its negative effects (at para. 38).

[15] The Supreme Court recognized that the protection of the privacy of young persons is important in respecting their dignity, personal integrity and autonomy (see: *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, at para. 18). In *R. v. Canadian Broadcasting Corporation*, 2024 ONCA 765, at para. 64, the Court of Appeal held that the protection of young person's privacy records accords with society's deepest values embedded in rights guaranteed under the *Charter* and that constitutional protections of privacy apply equally, if not more strongly, to young persons.

[16] Although the *CYFSA* and the *YCJA* do not address sealing orders, they do recognize the importance of protecting the personal information of young persons. Section 286 of the *CYFSA* imposes strict limits on the collection, use and disclosure of young persons' personal information by service providers. Additionally, the *YCJA* prohibits the publication of information that would identify a young person who is subject to the *Act* or a person who is a victim of an offence alleged to have been committed by a young person.

[17] Sections 110(3), (4) and (6) under the *YCJA* also make it clear that the protection of young person's information does not necessarily cease to be important when a young person reaches the age of majority. Those sections provide that information protected by s.110 is protected indefinitely unless otherwise agreed by the former youth themselves or authorized for release by the Youth Justice Court.

[18] On the other hand, the permitted use and disclosure of information under ss.291(1)(i) and 292(1)(i) of the *CYFSA* for the purpose of a legal proceeding suggests that there is a public interest served in such circumstances. Similarly, s.110(2) of the *YCJA* suggests that there is a public interest in the disclosure of information under that legislation where it is made in the course of the administration of justice.

[19] In assessing whether a privacy risk is real and substantial, the Supreme Court in *Sherman Estate* held that “[t]he question in every case is whether the information reveals something intimate and personal about the individual, their lifestyle or their experiences (at para. 77).

[20] The loss of privacy flowing from the protection of a minor’s health information has been found to be a real and substantial risk warranting a sealing order (see: *Athwal v. Mather*, 2019 ABQB 676, at para. 19).

[21] The third branch of the test for a sealing order requires that the salutary effects of the order outweigh any deleterious effects, including any effects on the public interest in open and accessible court proceedings (see: *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at para. 53).

[22] This court has recognized that “an order which represents a ‘fairly minimal intrusion’ into the open court principle may not have significant deleterious effects on that principle (see: *Carroll et al. v. Natsis*, 2020 ONSC 3263, at para. 27).

[23] At least one recognized salutary effect of a sealing order is the enhancement of trial fairness (see: *Edmonton (Police Service) v. Law Enforcement Review Board*, 2013 ABCA 236, at para. 13).

Analysis

[24] The defendants concede that there is a strong public interest in protecting the privacy of children.

[25] In *Sherman Estate*, the Supreme Court observed that where privacy severs to protect individuals from an affront to their dignity by prohibiting the dissemination of personal information in open court, it is an important public interest relevant to the determination of the appropriateness of a sealing order (at para. 33).

[26] The Court of Appeal in *Kirby* found that children's privacy in particular is an important public interest (at paras. 17-21).

[27] I find that the Sensitive Information "reveals something intimate and personal" about the Affiants such that the publication of the information will pose a real and substantial risk to their privacy.

[28] Further, in my view, the defendants' proposed redactions to remove youth criminal history information from the Sensitive Information are insufficient to prevent the risk to the privacy interests of the Affiants.

[29] On the other hand, an order banning the Sensitive Information from being filed at all is equally unacceptable measure because that order would deny the defendants from relying on this evidence that they assert to be relevant to certification.

[30] The third branch of the test for the granting of a sealing order requires the court to weigh the salutary and deleterious effects of the order.

[31] I find that the primary salutary effect of the proposed sealing order is the protection of the Affiants' youth privacy interests. Another recognized salutary effect of the sealing is the enhancement of trial fairness to the extent that the proposed sealing order would permit the defendants the opportunity to rely on the Sensitive Information at certification without infringing on the privacy of the Affiants.

[32] In addition, I find that because the Sensitive Information represents a small portion of the defendants' responding record (127 pages of a 4,676-page record), the only deleterious effect of the requested order is a limited infringement on the open court principle which is not significant and is otherwise outweighed by its salutary effects.

[33] I also accept the plaintiff's submission that the open court process is designed to ensure transparency of our system of justice and not to publish the sensitive personal information of young people which risks exploiting their vulnerabilities in society.

[34] On the other hand, I accept as appropriate the defendants' submission that any sealing order I might grant be made on an interim basis to expire prior to the commencement of any common issues trial (see: *Behold Control Equipment Inc. v. Race Mechanical Systems Inc.*, 2024 ONSC 6098).

[35] For all of these reasons, an interim sealing order limited to the Sensitive information will issue.

[36] In light of my finding that a sealing order is appropriate in the circumstances of the matter before me, I find it unnecessary to consider the plaintiff's Alternative Relief.

Conclusion

[37] An interim sealing order will issue in the form agreed to by counsel and attached as Schedule A to this Endorsement.

Justice M. Valente

Released: December 16, 2025

SCHEDULE A

Court File No.: CV-23-00080958-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE FIFTH
)
)
JUSTICE VALENTE) DAY OF DECEMBER, 2025

B E T W E E N :

JAMAR MORRISON

Plaintiff

- and -

**HATTS OFF INC., NAYLOR NINE HOLDINGS LIMITED, GORDON NAYLOR,
BRONWYN NAYLOR, ALADINE HANNA, HATTS OFF SPECIALIZED SERVICES &
HATTS OFF SPECIALIZED SERVICES INC.**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

ORDER

THIS MOTION brought by the Plaintiff for an order that certain documents be treated as confidential, sealed, and not form part of the public record was heard this day.

ON READING the [materials filed by the parties](#) and on hearing their submissions,

1. **THIS COURT ORDERS** that this Order is made on an interim basis to facilitate the filing of materials in respect of the Plaintiff's Certification Motion (the "Certification Motion");

2. **THIS COURT ORDERS THAT:**

(i) paragraph 5 of the Affidavit of Bronwyn Naylor, affirmed October 29, 2024, and Exhibits "A"- "L" thereto; and

(ii) paragraph 34 of the Affidavit of Rhonda Hallberg, sworn October 31, 2024;

are designated as "Protected Information" for the purposes of this Order, and all references thereto contained in the materials filed by the parties for the Certification Motion shall not form part of the public record, subject to the terms of this Order;

3. **THIS COURT ORDERS** that any public materials filed by either party in respect of the Certification Motion must redact or remove reference(s) to the Protected Information;

4. **THIS COURT ORDERS** that the parties may file unredacted versions of the materials that reference the Protected Information by providing electronic copies of those materials to the Assistant Trial Coordinator, with the portions of those materials containing Protected Information highlighted or otherwise identified;

5. **THIS COURT ORDERS** that any party seeking a permanent sealing order, or other Order relating to limitations on access to the Protected Information, must seek such relief, and such relief shall be determined, prior to the commencement of any common issues trial;

6. **THIS COURT ORDERS** that the relief herein is without prejudice to the Plaintiff's right to move at any time for a permanent sealing order in respect of the Protected Information at any

common issues trial or otherwise, and without prejudice to the Defendants' right to contest such a motion. Nothing in this Order prevents any party from seeking, consenting to or opposing such relief in the future. Nothing in this Order prevents or affects the ability of a party to move before the Court for further orders or directions with respect to the use or disclosure of information in this proceeding;

7. **THIS COURT ORDERS** that no costs shall be awarded on this motion.

Date of issuance

The Honourable Justice Valente

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

Proceeding under the *Class Proceedings Act, 1992*

ORDER

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Justice Valente

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