

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Doe v. Nova Scotia (Provincial Dental Board)*, 2026 NSSC 46

**Date:** 20260206

**Docket:** Hfx No. 547921

**Registry:** Halifax

**Between:**

Dr. Jane Doe

*Applicant*

v.

Provincial Dental Board of Nova Scotia (now known as Nova Scotia Regulator of  
Dentistry and Dental Assisting)

*Respondent*

<b>MOTION ON CONFIDENTIALITY ORDER</b>
--

**Judge:** The Honourable Justice Scott C. Norton

**Heard:** January 27, 2026, in Halifax, Nova Scotia

**Decision:** February 6, 2026

**Counsel:** Jasmine Ghosn, for the Applicant  
Jason Cooke, KC and Ashley Hamp-Gonsalves, for the Respondent

**By the Court:****Introduction**

[1] The applicant is a dentist who seeks judicial review of the decision of the Board of the respondent regulator on an appeal from a decision of a discipline committee. The discipline committee had decided that a discipline proceeding against the applicant would not be closed to the public and would not proceed against the applicant on an unnamed basis and with a publication ban on the identity of the applicant. The Board decision under review dismissed a motion to allow fresh evidence on the appeal and dismissed the appeal.

[2] The motion for directions on the judicial review is scheduled to be heard March 4, 2026.

[3] The Notice of Judicial Review was accepted by court administration on an anonymized basis pursuant to the authority of the Prothonotary to grant an interim order for confidentiality under *Civil Procedure Rule* 85.04(5) pending the hearing of this motion.

[4] On this motion, the applicant seeks a confidentiality order under *Rule* 85.04(1) directing that she be referred to as “Dr. Jane Doe”; sealing all documents filed in the within proceeding; blocking public access to the proceeding; and banning publication of all aspects of the proceeding. The respondent opposes the motion.

[5] The court was satisfied that representatives of the media were provided with reasonable notice of the motion as required by *Rule* 85.05(1). No media appeared to make submissions on the motion.

**Background**

[6] The matter before the court in the underlying proceeding is the regulation of a registered dentist in Nova Scotia. The statutory framework regulating dentists and dental assistants in Nova Scotia has changed somewhat through the course of the disciplinary proceeding in this matter. The *Dental Act*, SNS 1992, c. 3 and its regulations – the historic statute setting out the regulatory framework for registered dentists and dental assistants in Nova Scotia – was repealed and replaced by the *Regulated Health Professions Act*, SNS 2023, c. 15 (“RHPA”) and its regulations on May 1, 2025. Nomenclature changes followed the enactment of the RHPA. Most

notably, prior to May 1, 2025, the Nova Scotia dental regulator was known as the Provincial Dental Board of Nova Scotia (the “Dental Board”). The Nova Scotia dental regulator is now referred to as the Nova Scotia Regulator of Dentistry and Dental Assisting.

[7] The relevant background for this motion is set out below and in the decision under review appended to the Notice for Judicial Review dated October 22, 2025 (amended on November 12, 2025):

1. On November 25, 2020, the Registrar received a written complaint against Dr. Jane Doe (the “Complaint”).
2. On February 24, 2022, a panel of the Complaints Committee of the Dental Board met to hear the Complaint. The panel resolved to refer the matter to the Discipline Committee of the Dental Board for a hearing and to publish the decision on a named basis (the “First Complaints Decision”).
3. On March 17, 2022, Dr. Doe filed a Notice of Appeal of the First Complaints Decision with the Discipline Committee. Under the *Dental Act*, appeals of Complaints Committee decisions were heard by a panel of the Discipline Committee.
4. On October 26, 2022, the Parties (i.e. Dr. Doe and the Registrar) executed a Consent Order, wherein the Parties consented to the following, among other things (the “Consent Order”):
  - a. Dr. Doe discontinued her appeal of the First Complaints Decision.
  - b. The Complaint was referred back to a differently constituted panel of the Complaints Committee for a meeting of the Complaint *de novo*; and
  - c. Dr. Doe agreed not to appeal the decision of the Complaints Committee arising from the meeting *de novo*.
5. On March 2, 2023, a newly constituted panel of the Complaints Committee met to hear the Complaint *de novo*. The panel resolved to refer the matter to the Discipline Committee and to publish the decision on a named basis (the “Second Complaints Decision”).
6. Notwithstanding the language in the Consent Order, Dr. Doe filed a Notice of Appeal of the Second Complaints Decision with the Discipline Committee on April 16, 2023.
7. A panel of the Discipline Committee dismissed Dr. Doe’s appeal of the Second Complaints Decision on November 15, 2023.
8. Further to the Second Complaints Decision (upheld on appeal), the Parties proceeded with the referral of the Complaint to a hearing before the Discipline

Committee, including the preparation and execution of a Notice of Charge and Hearing which identified Dr. Doe by name.

9. In preparation for the hearing, the Parties identified several preliminary issues as set out below, among others:
  - a. Which statutory regime governs the hearing of the Discipline Committee? That is, will the hearing be governed by the former Dental Act and its Discipline Regulations, the newer Regulated Health Professions Act and its General Regulations, or a combination?
  - b. Should there be any restrictions on publication of the Notice of Charge and Hearing?
  - c. Should the hearing be open to the public? and
  - d. Should there be any restrictions on the publication of the complainant's name?
10. On October 9, 2024, the Discipline Committee granted an Order banning the publication of the complainant's name.
11. On October 24, 2024, the Discipline Committee rendered a decision on the first three preliminary issues, as summarized below:
  - a. Given the scope of the Parties' agreement regarding the existing Discipline Regulations and given the Discipline Committee's answer to the other preliminary issues, it is unnecessary to answer the first preliminary issue.
  - b. The Notice of Charge and Hearing should be published without restrictions.
  - c. The hearing should be open to the public.
12. On November 6, 2024, Dr. Doe filed a Notice of Appeal with the Dental Board pursuant to the *Dental Act*. Dr. Doe appealed: 1) the Order of the Discipline Committee dated October 9, 2024, granting a publication ban of the complainant's name, and 2) the October 24, 2024, decision of the Discipline Committee on the other three preliminary issues.
13. On September 22, 2025, the Board rendered its decision wherein it wholly dismissed Dr. Doe's appeal and provided reasons for its earlier decision to deny Dr. Doe's preliminary motion to introduce fresh evidence in the appeal (the "Board Decision").
14. It is the Board Decision that is under review in the Application for judicial review underpinning this motion as filed by Dr. Doe on October 22, 2025 (Affidavit of Jasmine Mary Ghosn (the "Ghosn Affidavit," Exhibit "A")).
15. Dr. Doe's name has remained unpublished throughout the above-noted processes.

16. On October 22, 2025, Dr. Doe filed this Notice of Motion for an Order for Confidentiality, with amended Notices of Motion filed on October 30, 2025, and November 14, 2025.

## Issues

[8] The sole issue before the court on this motion is whether the applicant, Dr. Doe, should be granted an order for confidentiality pursuant to *Civil Procedure Rule* 85.

[9] Dr. Doe's Second Amended Notice of Motion sets out the relief she seeks as follows:

The Applicant moves for the following Confidentiality Orders pursuant to *Rule* 85:

- (a) sealing all documents filed in the within proceeding, subject to any variation as may be directed or ordered by the Court;
- (b) requiring the prothonotary to block access to all parts of this proceeding, subject to any variation as may be directed or ordered by the Court;
- (c) banning publication of all aspects of this proceeding, subject to any variation as may be directed or ordered by the Court;
- (d) permitting Dr. Jane Doe, a party to this proceeding, to be identified as Dr. Jane Doe, subject to any variation as may be directed or ordered by the Court;
- (e) permitting any patient, who is not a party, to be referred to by a pseudonym, subject to any variation as may be directed or ordered by the Court.

The respondent does not oppose the request that all patients be referred to by a pseudonym and agrees that all patients and any identifying information should be kept confidential. This is consistent with the provincial legislation regarding personal health information.

## Law

[10] *Rule* 85.04 provides as follows:

### **85.04 Order for confidentiality and interim order**

**(1)** A judge may order that a court record be kept confidential only if the judge is satisfied that it is in accordance with law to do so, including the freedom of the press and other media under section 2 of the *Canadian Charter of Rights and Freedoms* and the open courts principle.

(2) An order that provides for any of the following is an example of an order for confidentiality:

- (a) sealing a court document or an exhibit in a proceeding;
- (b) requiring the prothonotary to block access to a recording of all or part of a proceeding;
- (c) banning publication of part or all of a proceeding;
- (d) permitting a party, or a person who is referred to in a court document but is not a party, to be identified by a pseudonym, including in a heading.

(3) A judge who is satisfied that it is in accordance with law to make an order excluding the public from a courtroom, under Section 37 of the *Judicature Act*, may make an order for confidentiality to aid the purpose of the exclusion.

(4) A party who moves for a confidentiality order may make a motion by correspondence to the prothonotary, or the chambers judge, for an interim order for confidentiality.

(5) A prothonotary, or chambers judge, to whom a motion for an interim order for confidentiality is made may restrict access to the record of the motion, and to any other record sought to be made the subject of the confidentiality order, for such time as is required to give notice of the motion and bring the motion to a hearing.

(6) A judge may extend the time provided by an interim order for confidentiality, and the judge who hears a motion for a confidentiality order, may give directions about access to the records in issue pending determination of the motion.

[11] As set out above, the Court may order that a court record be kept confidential only if it is satisfied that it is in accordance with the law to do so, with particular attention to s. 2 of the *Charter* and the open courts principle.

[12] The Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25, articulated a three-step test for orders of confidentiality and makes clear that all three steps of the test must be met by an applicant in order for the court to exercise its discretion to limit the open court principle. At paras. 37-38, the Supreme Court held:

[37] Court proceedings are presumptively open to the public (*MacIntyre*, at p. 189; *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, [2012] 2 S.C.R. 567, at para. 11).

[38] 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.

Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188, at paras. 7 and 22).

[13] *Sherman Estate* was recently considered and applied by the Nova Scotia Court of Appeal in *Umeshappa v. PJ*, 2025 NSCA 76. At paras. 20 and 21, the Court of Appeal states (footnotes omitted):

[20] As *Rule 85.04* makes clear, discretionary limits to court openness must be in accordance with the law, the *Charter*, and the open courts principle. The relevant considerations were most recently expressed by the Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25 which emphasized the strong presumption in favour of open courts:

[1] 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.

[2] 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 on by the free press.

[3] 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.

[21] *Sherman Estate* modified the *Dagenais/Mentuck* test. The new analysis requires an applicant to demonstrate an open court presents a serious risk to a competing public interest. It recognizes a public interest in the protection of sensitive information – related to the core identity of the individual – the dissemination of which could amount to an affront to the dignity of the person involved. In order to obtain an exceptional order limiting access, applicants must establish this dignity dimension of their privacy is at serious risk. Courts have recognized such a risk may exist in the dissemination of information involving sexual assault or harassment. Beyond this threshold requirement, both necessity and proportionality must be addressed. The *Sherman Estate* principles were recently considered by our court in *Fraser v. Nova Scotia Barristers’ Society*.

[14] In *Buxton v. Nova Scotia (Attorney General)*, 2025 NSCA 67, the Nova Scotia Court of Appeal highlights the exceptional quality of orders for confidentiality:

[13] Confidentiality and sealing orders have been granted by this court in appropriate circumstances. But such orders are exceptional remedies. Court records must be open to the public and proceedings must be accessible both directly by individuals and indirectly through various forms of media access (*Rule* 85.01(1) and (3)). The open court principle is fundamental to our justice system and is supported by a strong presumption in favour of access. ...

[15] At paras. 3 and 23 of *Umeshappa, supra*, the Court of Appeal clearly sets out the evidentiary burden that an applicant must meet in these cases, as set out below:

[3] Dr. Umeshappa appeals, claiming the chambers judge erred in: (1) refusing to adjourn the motion as he requested and (2) granting the publication ban. We are satisfied it is appropriate to grant leave and allow his appeal. It is of utmost importance that limits on the transparency of our justice system only be imposed in accordance with the governing law and based on a sufficient evidentiary foundation.

[23] Applying *Sherman Estate* to the evidence offered on the motion, we are of the view that it falls short of satisfying the test. While the authorities reveal a spectrum of evidence that may meet the legal requirements, *Sherman Estate* tells us that although harm may be identified through logical inferences, “this process of

inferential reasoning is not a licence to engage in impermissible speculation [...] An inference must still be grounded in objective circumstantial facts that reasonably allow the finding to be made inferentially”. In the present case, the evidence offered was an affidavit from counsel citing the plaintiff’s concern about the potential negative impact. Speculative evidence of this kind is insufficient. Further to this point, we would adopt the caution provided by Jamieson, J. in *A.B. v. United Kingdom (Attorney General)* [ 2019 NSSC 289 at para. 31, rev’d on other grounds 2020 NSCA 75]:

[31] The practice of a solicitor making an affidavit that swears facts going to the merits of the motion must be avoided as, invariably, it leads to counsel arguing the case on the basis of their own affidavit. Although, in the present case, a Solicitor’s Affidavit was filed, cross-examination was not requested and Mr. Dull did not argue the motion. Regardless, Solicitors’ Affidavits should be limited to purely procedural content and should not contain assertions of facts that may be in issue. Clearly, an affidavit from the Plaintiff is preferred where there are factual assertions of the Plaintiff being advanced.

[16] The guiding case law affirms that it is the utmost importance that limits on the transparency of our justice system only be imposed in accordance with the governing law and based on a sufficient evidentiary foundation. Speculative evidence in the form of a solicitor’s affidavit is clearly insufficient to support motions of this kind.

[17] The requirement for a sufficient evidentiary basis in confidentiality motions was further explored by this court in *Fraser v. Nova Scotia Barristers’ Society et al.*, 2024 NSSC 173 (affirmed, 2025 NSCA 26). The court denied the applicant’s motion for a confidentiality order because of a lack of sufficient evidence, at paras. 154-156 (footnotes omitted):

[154] Having considered the submissions of the parties, and the evidence, I am not persuaded that the entirety of the Record must be sealed, as there is an insufficient evidentiary basis to establish a real and substantial risk to an important public interest. In reaching this conclusion, I am mindful of Justice Fichaud’s comments in *Coltsfoot Publishing Ltd.* that a “sufficiently evidentiary basis should include more than just a conclusionary assertion.” In other words, the facts that go to support a confidentiality order must be established by evidence and not by bald assertions or generalizations. Moreover, I also mindful of Justice Kasirer’s comments, in *Sherman Estate*, which are apposite:

2 [T] here 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.

[155] I agree with the Society's submission that while the Applicant may be unhappy with the allegations, he has failed to show a real and substantial risk grounded in evidence that poses a serious threat to his interest. A court file should not be sealed in its entirety every time a party makes allegations or includes mischaracterizations and attacks on the character of the other party.

[156] I also agree with the Society that given that the Applicant makes serious allegations against the Society that he did not receive procedural fairness and that the Society is biased against him, it is in the interests of justice for these allegations to be made in an open court proceeding.

## **Analysis**

### Lack of Evidence

[18] Entitlement to a confidentiality order must be established by evidence, not by bald assertions or generalizations. The discomfort that a party may experience as a result of public scrutiny is not, as a general matter, enough to rebut the strong presumption of the open courts principle. This is particularly in cases, such as the one before the Court in this motion, where the applicant makes serious allegations of procedural fairness and bias. It is in the interests of justice for these allegations to be made in an open court proceeding.

[19] Dr. Doe has failed to meet each mandatory constituent element of the three-step test in *Sherman Estate*.

[20] There is no evidence before the Court that court openness poses a serious risk to an important public interest. Pursuant to *Umeshappa* and *Fraser*, a sufficient evidentiary foundation is required for the Court to assess whether the *Sherman Estate* test has been met and an order granting the exceptional remedy of confidentiality can issue. The presumption that court proceedings are to be open and the interests of justice where there are allegations of procedural unfairness and bias have not been rebutted in this matter.

### Court openness poses a serious risk to an important public interest

[21] Based on her submissions, Dr. Doe's arguments about the first step of the *Sherman Estate* test appear to be as follows:

- (a) The identifiable public interest in this matter is to “follow fair procedures,” relying on *Saskatchewan v. Abrametz*, 2022 SCC 29.
- (b) The applicable legislation mandates and contemplates confidentiality, as does past precedent of the dental regulator in disciplinary matters.
- (c) This matter remains in the investigatory stage or “confidentiality stage,” thus entitling Dr. Doe to some heightened entitlement to continued confidentiality.
- (d) Dr. Doe’s reputation is at stake.
- (e) If a confidentiality order is not awarded, certain grounds in the application for judicial review will be moot.
- (f) There are concerns of “unfair prejudice, conflict of interest on the part of the decision maker, contributing to overall systemic bias and apprehension of bias” due to the transition from the *Dental Act* to the RHPA.

[22] These arguments fail to demonstrate that court openness poses a serious risk to an important public interest in this matter. I will explain.

(a) *The identifiable public interest in this matter is to “follow fair procedures”*

[23] The court accepts, as did the court in *Abrametz*, that there may well be a public interest in following fair procedures in the context of professional regulation. In *Abrametz*, the applicant sought (and was denied) a stay of a disciplinary proceeding based on an allegation of delay and abuse of process.

[24] However, Dr. Doe fails to demonstrate how any public interest in following fair procedures has any nexus with the matter before the court, or how court openness poses a serious risk to such interest.

[25] The panel of the Discipline Committee found that it should be for the newly constituted Discipline Committee that is hearing the Complaint to determine whether the hearing on the merits of the Complaint should be open to the public and whether its decisions should be published on a named basis.

[26] In its decision dated October 24, 2024, the newly constituted panel of the Discipline Committee decided that the Notice of Charge and Hearing should be published on a named basis and that the hearing should be open to the public. It is

not this Discipline Committee decision that is being considered in the underlying judicial review as asserted by Dr. Doe. It is the Board's Decision denying Dr. Doe's appeal of the Discipline Committee decision that is under review.

[27] It is not clear how Dr. Doe's unsubstantiated assertions regarding the underlying disciplinary process have any nexus to the issue before the Court in this motion or the first step of the *Sherman Estate* test.

[28] In addition, Dr. Doe has not provided any evidence that there is a serious risk to the alleged public interest of following fair procedures, nor any others. In fact, Dr. Doe has provided no evidence at all in support of this motion. The Court is unable to make the requisite fact-based findings in support of the first step of the *Sherman Estate* test. As such, Dr. Doe's motion must necessarily fail.

*(b) The applicable legislation mandates and contemplates confidentiality, as does past precedent of the dental regulator in disciplinary matters*

[29] Dr. Doe appears to argue that the applicable legislation mandates or contemplates confidentiality, which is supported by past precedent of the Nova Scotia dental regulator in disciplinary matters. It is unclear how this argument is relevant at all to the first step of the *Sherman Estate* test: this argument does not identify a public interest, nor does it assert any serious risks to same. In addition, Dr. Doe's assertions on this point are not accurate.

[30] Not only does the *Discipline Regulations* not mandate confidentiality, but it also contemplates that a decision of the Complaints Committee may be published on a named basis, as was ordered in both the First Complaints Decision and the Second Complaints Decision of the respective panels of the Complaints Committee in this matter.

[31] While decisions by the former Complaints Committee and Discipline Committee could be published on either a named or unnamed basis as ordered by the respective committee, neither the *Dental Act* nor its *Discipline Regulations* either mandates or contemplates that certain statutory processes must occur confidentially, as suggested by the Applicant.

[32] There are no provisions in the *Dental Act* or the *Discipline Regulations* that mandate that a registrant's name be kept confidential. On the contrary, the legislation contemplates that a registrant's name may be published during the disciplinary process, and the registrant potentially identified during a civil proceeding.

[33] Dr. Doe’s arguments in the underlying disciplinary matter have been exclusively that the former *Dental Act* governs this proceeding. Nevertheless, she argues, at page 6 to 8 of her brief, that the RHPA “contains clear provisions mandating confidentiality and prohibiting the publication of information arising from the regulatory process.” Notwithstanding the inconsistency with her earlier position, Dr. Doe’s statement is not accurate.

[34] The RHPA does not mandate confidentiality. The RHPA contemplates:

1. the publication of decisions of the Registrar and statutory committees (Sections 39, 49, 76, 88, 107(2)(c), 108, 110(4), 112(3), 114, 115, and 118(3))
2. notice to the public of a hearing (Section 97)
3. that professional conduct hearings are presumptively open to the public (Section 98); and
4. committees imposing publication bans where it is in the public interest (Sections 82(1)(f), 88, and 158).

[35] Not only do neither the *Dental Act* nor the RHPA mandate or provide any legitimate expectation of confidentiality once a matter has been referred to a hearing before the Discipline Committee or Professional Conduct Committee (the current stage of this disciplinary matter), neither does any past precedent of the Nova Scotia dental regulator.

[36] The applicable statutory regime and past precedent of the Dental Board do not mandate confidentiality. Instead, it is clearly demonstrated that openness and publication is the presumption and that past contested hearings have been open to the public. This reality is consistent with best practices in professional regulation, the *Charter*, the open courts principle, and the considerations set out in *Sherman Estate*.

(c) *This matter remains in the investigatory stage or “confidentiality stage,” thus entitling Dr. Doe to some heightened entitlement to continued confidentiality*

[37] Dr. Doe argues that the underlying disciplinary matter is in a “confidentiality stage”. As set out above, there is no concept of a “confidentiality stage” in the statutes or otherwise. The First Complaints Decision and the Second Complaints Decision both ordered that the decision to refer the Complaint to the Discipline Committee for a hearing be published on a named basis. The Discipline Committee

decided the Notice of Charge and Hearing should be published on a named basis and the hearing should be open to the public (subject to a publication ban in favour of the Complainant). This Discipline Committee decision was upheld on appeal before the Dental Board.

[38] The fact that the applicant's name has not yet been published is largely due to her relentless appeals and reviews of the multiple decisions finding that her name should be published, not as a direct result of the legislated process. The applicant is not entitled to confidentiality, nor is there any reasonable or legitimate expectation of confidentiality at this stage of this matter.

*(d) Dr. Doe's reputation is at stake*

[39] The applicant argues that her reputation is at stake and she is seeking an order for confidentiality as an opportunity to protect her reputation. The law is abundantly clear that speculative reputational impact is inadequate to ground an order for confidentiality, whether on this motion or at the judicial review proper.

[40] As set out in *Sherman Estate*, mere personal feelings of disadvantage, distress, discomfort, embarrassment, or inconvenience arising from public scrutiny secondary to the open court's principle is not enough to overturn the strong presumption of the open court principle (paras. 3, 7, 56, 63, 75, and 84 of *Sherman Estate*).

[41] As Dr. Doe has offered no affidavit on this motion, there is no evidence before the Court on this issue whatsoever. Moreover, the applicant is not asserting a public interest of privacy in this matter. This argument clearly fails to meet the first step of the test in the *Sherman Estate*.

*(e) If a confidentiality order is not awarded, certain grounds in the application for judicial review will be moot*

[42] Potential mootness of some issues at the judicial review proper is not on its own sufficient to support an order for confidentiality. The applicant has provided no legal authorities in support of this argument.

[43] In addition, the fact that the applicant's name has not yet been published, does not entitle her to benefit from confidentiality that has never been ordered in her favour. As set out above, the fact that the applicant's name has not yet been published is largely due to her continued appeals and reviews of decisions finding that her

name should be published, not because she was able to convince any decision-maker that a confidentiality order could appropriately issue.

[44] Dr. Doe argues that orders for confidentiality would provide an opportunity to maintain the *status quo*. There is no *status quo* of confidentiality to maintain. The current governing order of the Discipline Committee is that the Notice of Charge and Hearing be published on a named basis and that the hearing be open to the public, subject to a publication ban with respect to the complainant. Dr. Doe is seeking to benefit from the circumstances resulting from continued appeals of her unsuccessful motions for a publication ban. Dr. Doe now attempts to use “mootness” and the “*status quo*” as a sword, instead of a shield, by asking this court to order exceptional remedies to her benefit, which she has never been awarded nor entitled.

[45] Irrespective of the legal arguments she advances on this point, the applicant must still meet the high threshold set out in the *Sherman Estate* test to succeed in this motion. To grant the relief sought by Dr. Doe in these circumstances, without her having satisfied the applicable legal test (or providing any evidence in support of her motion) would offend the administration of justice.

*(f) There are concerns of “unfair prejudice, conflict of interest on the part of the decision-maker, contributing to overall systemic bias and apprehension of bias” due to the transition from the Dental Act to the RHPA*

[46] In her submissions, the applicant states that her concerns with alleged “unfair prejudice, conflict of interest on the part of the decision maker, contributing to overall systemic bias and apprehension of bias” in the underlying disciplinary process provide novel questions for the court at the judicial review hearing.

[47] It is not clear how this argument is relevant to the first step of the *Sherman Estate* test. In addition, this Court hears and decides issues of conflict of interest, apprehension of bias, and procedural fairness regularly in a completely open process.

[48] As set out above in *Fraser*, where an applicant makes serious allegations against a regulator that they did not receive procedural fairness and that the regulator is biased against them, it is in the interests of justice for these allegations to be made in an open court proceeding (para. 156). The applicant’s argument that there are serious issues of procedural fairness and bias supports the dismissal of her motion.

The applicant has failed to provide any argument or evidence regarding proportionality or necessity

[49] As set out above at para. 21 of *Umeshappa, supra*, “both proportionality and necessity must be addressed.” Proportionality and necessity are central to the second and third steps of the test in *Sherman Estate*. Dr. Doe provides only brief, conclusory statements about proportionality and necessity at pages 12 to 13 of her brief. Dr. Doe fails to provide any substantive argument or any evidence at all about the second and third steps of the *Sherman Estate* test.

[50] Throughout her brief and in oral argument, the applicant cites at some length the case *A Lawyer v. The Law Society of British Columbia*, 2021 BCCA 284. While it is unclear what findings in *A Lawyer* the applicant is relying upon in support of her position in this matter, *A Lawyer* is clearly distinguishable from the matter before the Court in this motion:

1. In this motion, Dr. Doe is arguing that the important public interest engaged is “following fair procedures,” not privacy or reputational harm.
2. There is no evidence from Dr. Doe at all in support of her motion, either about reputational harm or anything else.
3. The disciplinary proceeding relating to Dr. Doe is not at an early, investigation stage. It is at the disciplinary stage. The investigation stage ended with the referral of the Complaint for a hearing before the Discipline Committee. The applicable statutes in this matter do not mandate confidentiality at any stage of the disciplinary process, whether investigation or discipline.
4. Dr. Doe is seeking extraordinary relief (i.e. a full sealing order and publication ban of the entirety of the record and documents in the proceeding) with no contemplation of necessity or proportionality.

[51] As set out above, *A Lawyer* is distinguishable from the matter before this Court and does not appear to assist the applicant in this motion. If anything, what *A Lawyer* does demonstrate are the kinds of issues which are sufficient to constitute important public interests in the context of regulated professionals, and the quality and cogency of the evidence required to demonstrate that such public interest is at a serious risk should a confidentiality order not issue. Against the backdrop of *A Lawyer*, it is difficult to imagine how this court would determine that a confidentiality order is appropriate here.

## **Conclusion**

[52] Orders for confidentiality are exceptional and extraordinary and must be justifiable considering the well-established and fundamental principle that Canadian courts must be open to the public. While this Court possesses the discretion to restrict public access to court-filed documents and proceedings themselves (among other powers), such discretion is only appropriately exercised where an applicant meets the test set out in *Sherman Estate*.

[53] Dr. Doe has not met any of the three prerequisites set out in *Sherman Estate*. These prerequisites are mandatory. Without satisfying any or all of them, this Court cannot exercise its discretion in a way that limits the open court presumption.

[54] The motion is denied. The Prothonotary's interim confidentiality order is rescinded.

[55] If the parties are unable to agree on costs, I direct them to provide me with written submissions of not more than 5 pages double spaced with any authorities hyperlinked (or by an electronic book of authorities emailed to my assistant). Any evidence shall be limited to 20 pages. The materials shall be filed with the court within two weeks of the receipt of the decision.

Norton, J.