CITATION: Jackson v. OpenAI, Inc., 2026 ONSC 2016
COURT FILE NO.: CL-26-00000003-0000
DATE: 20260408

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: MICHAEL DEAN JACKSON

Applicant

AND:

OPENAI, INC.; OPENAI GP, LLC; OPENAI, LLC; OPENAI STARTUP FUND I, LP;OPENAI STARTUP FUND GP I, LLC; OPENAI STARTUP FUND MANAGEMENT, LLC; OPENAI GLOBAL, LLC; OPENAI OPCO, LLC; OAI CORPORATION; and OPENAI HOLDINGS, LLC

Respondents

BEFORE: KIMMEL J.

COUNSEL: *Daniel Bach and Ellen Yoo*, for the Applicant

Michael Crichton, Marc Crandall & Nevena Cekic, for the Respondents

Jim Lepore, for the Plaintiffs in the Ontario Action

HEARD: February 11, 2026

ENDORSEMENT
(APPLICABILITY OF ONTARIO COURT'S SEALING ORDER)

This Application

[1] The applicant ("Jackson") is a plaintiff in a proposed class action commenced on September 11, 2025, and pending before the Supreme Court of British Columbia against the respondents (the "OpenAI Entities"), SCBC Vancouver Registry Action No. S-246286 (the "Proposed BC Class Action").

[2] Jackson seeks declaratory relief by this application so that, in his Proposed BC Class Action, he can use and rely upon certain evidence that was inadvertently included in a publicly-filed motion record in other proceedings before this court, namely the unredacted affidavit and associated exhibits of Michael Candore dated May 30, 2025 (the "Candore Affidavit"). The Candore Affidavit contained expert opinion evidence tendered by the plaintiffs in another proceeding against the OpenAI Entities pending before this court.

[3] The Notice of Application seeks a declaration that:

a. the "Candore Affidavit given in *Toronto Star Newspapers Limited v. OpenAI Inc*., Court File No.: CV-24-00732231-00CL (the "Ontario Action"), is not subject to the amended sealing order dated December 16, 2025, issued in that action (the "Amended Sealing Order");

b. the Amended Sealing Order does not apply to the Public Motion Record retrieved prior to that sealing order being issued in the Ontario Action;

c. costs of the application, if opposed.

[4] In the applicant's factum on this motion, the relief sought was recast to ask the court to:

a. provide direction that the sealing order issued by this Court on December 5, 2025 (the "Original Sealing Order"), as amended on December 16, 2025 (when referring herein to both the Original Sealing Order and the Amended Sealing Order, the "Sealing Order"), does not apply to the Candore Affidavit;

b. provide guidance as to whether the Sealing Order operates prospectively only, or whether it may be interpreted as imposing confidentiality obligations in respect of materials obtained from the public court record prior to issuance or amendment of the Sealing Order;

c. provide guidance as to whether, and to what extent, the Sealing Order binds or regulates the conduct of non-parties who accessed court materials in good faith before the Scaling Order was issued or amended; and

d. make such further or other directions as this court considered just to ensure clarity, consistency, and procedural fairness with the Sealing Order.

[5] This application was opposed by the OpenAI Entities. The plaintiffs in the Ontario Action took no position.

[6] For the reasons that follow, this application is dismissed. No costs are awarded to either side.

Related Proceedings

[7] The named respondents in this application are the named defendants in the Ontario Action that is being pursued in this court by various media interests. Jackson acknowledges that the allegations in the Proposed BC Class Action are related (in certain respects) to the Ontario Action.

[8] The OpenAI Entities brought a motion in the Ontario Action (the "Ontario Jurisdiction Motion") to challenge the Ontario court's jurisdiction, the outcome of which was determined by a decision released on November 7, 2025: see *Toronto Star Newspapers Limited v. OpenAl Inc.*,

2025 ONSC 6217 (the "Ontario Jurisdiction Decision"). In the context of the jurisdictional challenge, the parties to the Ontario Action exchanged affidavits and conducted cross-examinations.

[9] Prior to serving any evidence for the Ontario Jurisdiction Motion, the OpenAI Entities sought and were granted a protective order in the Ontario Action that was issued on May 6, 2025. In addition, prior to filing any evidence on the jurisdiction challenge in the Ontario Action, the OpenAI Entities sought a partial sealing order in respect of their designated confidential information that they wished to rely upon for the Ontario Jurisdiction Motion. Following a contested motion heard on July 30, 2025 (the "Ontario Sealing Order Motion"), the court in the Ontario Action ordered that certain confidential information of the respondents be sealed, for reasons outlined in a decision released on August 14, 2025: see *Toronto Star Newspapers Limited v. OpenAI Inc.*, 2025 ONSC 4685, 214 C.P.R. (4th) 286 (the "Ontario Sealing Order Decision").

[10] Although the Sealing Order was not issued and entered right away, the parties to the Ontario Action generally understood what evidence was covered by the Ontario Sealing Order Decision once it was rendered. The public version of the motion record to be used at the hearing of the Ontario Jurisdiction Motion was thereafter filed in the Ontario court file. It contained redactions that were supposed to correspond with the evidence that the court had ordered be sealed in the Ontario Sealing Order Decision.

[11] The Original Sealing Order was not signed by the court until December 5, 2025, following a case conference that was convened on December 3, 2025 to consider the matter of the costs of both the Ontario Jurisdiction Motion and the Ontario Sealing Order Motion, and to settle the orders from both of those motions.

[12] The Original Sealing Order was formalized on December 5, 2025, when it was signed, issued and entered. It was subsequently amended by the Amended Sealing Order on December 16, 2025. No sealing order was issued or entered by the Ontario court, and there was no sealing order in the public court file in the Ontario Action, prior to December 5, 2025.

[13] Paragraph 2 of the Sealing Order sets out the documents that are the subject of that order. Paragraph 2 also stipulates that "The following non-redacted documents … and any reference to the redacted information therein in subsequently filed Court documents are hereby sealed and shall be segregated from other information, documentation and public record, and shall, subject to further Court order, not be disclosed to anyone". The affidavit of Shantanu Jain sworn April 16, 2025 (the "Jain Affidavit"), tendered by the OpenAI Entities as part of their evidence for the Ontario Jurisdiction Motion, is listed among the sealed documents identified in paragraph 2(b) of the Sealing Order. The Candore Affidavit is not.

[14] Paragraph 3 of the Sealing Order contains a list of documents for which a redacted public copy shall be filed on the Ontario Jurisdiction Motion and sets out the particulars of the redactions. Paragraph 81 of Exhibit 1 to the Candore Affidavit is listed in paragraph 3 of the Amended Sealing Order to be redacted in the publicly filed version of the motion record, but it was not listed in the

Original Sealing Order. Paragraphs 17-19 of the Jain Affidavit are listed in paragraph 3 of both the Original and Amended Sealing Order.

[15] The parties in the Proposed BC Class Action were operating under a consent protective order that was issued by the BC court on December 5, 2025, pending that court's determination of the sealing order motion brought by the OpenAI Entities in the BC court (the "BC Sealing Order Motion") and that was scheduled to be heard on December 5, 2025 (the "December 5th Hearing"). That BC Sealing Order Motion was adjourned on December 5, 2025, as a result of certain events that transpired in court that day. It was later adjourned *sine die*, pending the within decision.

[16] The applicant is arguing that a sealing order is not appropriate in the Proposed BC Class Action for a variety of reasons, including that some of the material that the OpenAI Entities seek to seal is already in the public domain. One example that was identified at the December 5th Hearing of material sought to be sealed in the Proposed BC Class Action that the applicant contends is already public is the Candore Affidavit that the applicant had obtained back in September of 2025 from the public Ontario court file.

The Challenged Confidential Material and Information

[17] The lawyers for Jackson in the Proposed BC Class Action obtained a copy of the publicly filed Motion Record in the Ontario Action on September 8, 2025. This public Motion Record contained what was supposed to be the public versions of all of the affidavits and cross examination transcripts from both sides for the hearing of the Ontario Jurisdiction Motion on September 10, 2025. No sealing order had been issued or entered by the Ontario court on September 8, 2025, although the Ontario Sealing Order Decision had been rendered.

[18] Jackson's lawyers did not file the material they had obtained from the Ontario public court record in the Proposed BC Class Action. However, in the course of the hearing of the December 5th Hearing, an issue arose which resulted in Jackson's lawyers advising the BC court that certain information that the OpenAI Entities were seeking to seal in the Proposed BC Class Proceeding had already been disclosed in the publicly filed motion record in the Ontario Action. In that context, specific reference was made to paragraph 81 of Exhibit 1 to the Candore Affidavit, which refers to information sourced from paragraph 19 of the Jain Affidavit that had been sealed and redacted in the version of that affidavit contained in the public record in the Ontario Action.

[19] The applicant offered to hand up the publicly sourced Candore Affidavit to Justice Brongers at the December 5th Hearing, at which point the OpenAI Entities:

a. immediately objected to the applicant's attempt to file that evidence;

b. advised Justice Brongers and the applicant's counsel that the Candore Report should not have been publicly filed because it disclosed confidential information that was already sealed under the Ontario Sealing Order Decision; and

c. advised all parties and Justice Brongers that they would immediately take steps to rectify the inadvertent disclosure in the Ontario Action, and had in fact already started doing so during the hearing.

[20] Justice Brongers declined to accept the new evidence from the applicant and adjourned the December 5th Hearing.

[21] Although their request for a sealing order had been granted on August 14, 2025 when the Ontario Sealing Order Decision was released, that order was not signed, issued and entered until December 5, 2025, following the December 3, 2025 case conference in the Ontario Action (described above).

[22] The OpenAI Entities advised the applicant on December 12, 2025 (after completing a full review of the publicly filed motion record) of their intention to apply to the Ontario court to amend the Original Sealing Order to address what they described as inadvertent public disclosure of confidential information. This included paragraph 81 of Exhibit 1 to the Candore Affidavit and two other instances that the OpenAI Entities identified upon further review of the publicly filed motion record where the same confidential information had been referenced in the public court record in the Ontario Action (collectively, along with paragraph 81 of Exhibit 1 to the Candore Affidavit, the "Confidential Information").

[23] The plaintiffs in the Ontario Action did not oppose the request for the Amended Sealing Order. The Amended Sealing Order was signed, issued and entered on December 16, 2025 by the Ontario court. Paragraph 3 of the Amended Sealing Order specifically recites and authorizes the redaction of the identified Confidential Information that had been omitted from the listed redactions in paragraph 3 of the Original Sealing Order that refer to information derived from paragraph 19 of the Jain Affidavit.

[24] Upon signing the Amended Sealing Order, this court authorized the removal of the previously filed public record and the replacement of any removed materials with new public record materials. These new materials were identical except for the redaction/removal of the specific evidentiary references added to paragraph 3 of the Amended Sealing Order. The court's December 16, 2025, email endorsement confirmed: "The attached Amended Sealing Order signed by me today may be issued, so as to extend the existing Sealing Order to capture additional references to information that is already under seal".

[25] The Ontario court was not advised of the Proposed BC Class Action or the circumstances that had led to the request for the Amended Sealing Order. Jackson and his counsel were not notified of, and did not participate in, the proceedings before the Ontario court to obtain the Amended Sealing Order. Upon being provided with a copy of that order, Jackson offered to voluntarily treat the Candore Affidavit as confidential as if the BC Protective Order issued on December 5, 2025, applied, pending further clarification from the Ontario court.

[26] The parties agree that the Sealing Order must be followed. The applicant has not filed the Candore Affidavit in the Proposed BC Class Action pending clarification from this court. The

applicant sought direction from this court as to the proper treatment of the Candore Affidavit, first by seeking a case conference, and then by commencing this Application.

Issues to be Decided

[27] The most convenient road map for the issues to be decided is derived from the relief requested at the end of the applicant's factum, as follows:

a. Do the Sealing Order and Amended Sealing Order apply to the Candore Affidavit?

b. Do the Sealing Order and Amended Sealing Order operate prospectively only, or can they be interpreted as imposing confidentiality obligations in respect of materials obtained from the Ontario public court record prior to the orders having been issued?

c. To what extent do the Sealing Order and Amended Sealing Order bind or regulate the conduct of non-parties who accessed court materials in good faith before the orders were issued or amended?

[28] The OpenAI Entities identify a single issue for the court to determine on this application:

> Should this Court sanction and enable the exploitation of an inadvertent slip to allow the Applicant to try to defeat the Respondents' confidentiality claims in the sealing order application in BC?

[29] Although articulated differently, the analysis required to answer the single question postulated by the OpenAI Entities first requires consideration of the issues raised by the applicant.

Analysis

Scope of the Sealing Order

[30] The Amended Sealing Order is short and it is central to the determination of this application. I have reproduced some of the relevant provisions below:

> THIS MOTION for a sealing order made by the Defendants was heard this 30th day of July, 2025, at the Court House, 330 University Avenue, Toronto, Ontario, with reasons released the 14th day of August, 2025 and the reasons regarding the costs of this motion released on December 5, 2025.
>
> 2. The following non-redacted documents related to the Defendants' motion seeking an Order setting aside service of the Statement of Claim on the Defendants, and staying or dismissing the proceeding as against the Defendants and any reference to the redacted information therein in subsequently filed Court documents are hereby sealed and shall be segregated

from other information, documentation and public record, and shall, subject to further Court order, not be disclosed to anyone:

Affidavit Confidential Information

a. the affidavit of Robert Wu, dated April 15, 2025;

b. the affidavit of Shantanu Jain, dated April 16, 2025;

c. the affidavit of Colin Reid, dated April 16, 2025;

d. the reply affidavit of Colin Reid, dated June 17, 2025; and,

e. the reply affidavit of Mark Baker, dated June 17, 2025;

Cross-Examination Confidential Information

f. the transcript of the cross-examination of Robert Wu, dated June 25, 2025;

g. the transcript of the cross-examination of Shantanu Jain, dated June 25, 2025; and

h. the transcript of the cross-examination of Colin Reid, dated June 26, 2025.

3. Public (redacted) versions of each of the affidavits listed above shall also be filed concurrently with the filing of the confidential (non-redacted) versions. The redactions in such public versions shall be as follows:

a. With respect to the affidavit of Robert Wu, dated April 15, 2025: paragraph 32 (third sentence);

b. With respect to the affidavit of Colin Reid, dated April 16, 2025: paragraph 14;

c. With respect to the affidavit of Shantanu Jain, dated April 16, 2025: paragraphs 17, 18 and 19;

d. With respect to Exhibit "1" to the affidavit of Michael Candore, dated May 30, 2025: paragraph 81;

e. With respect to the reply affidavit of Colin Reid, dated June 17, 2025: paragraphs 4 and 14; and,

> f. With respect to Exhibit MB-A to the affidavit of Mark Baker, dated June 17, 2025: paragraphs 15 (two bullet points) and 63 (fourth, ninth, and tenth sentences);
>
> *Cross-Examination Confidential Information*
>
> [particulars intentionally omitted]
>
> 5. This order is effective as of the date first above written with amendments (identified by track changes) effective on the date of signing of this Amended Sealing Order.

[31] The timing and sequence of events related to this order are relevant. As is reflected in the first preamble to the order, the motion was heard on July 30, 2025, and decided by reasons released on August 14, 2025. Costs of the Sealing Order Motion were decided on December 5, 2025, which is when the Original Sealing Order was finalized and signed. After the December 5th Hearing in BC, the parties to the Ontario Action attended on a case conference on December 12, 2025 that resulted in the Amended Sealing Order being signed on December 16, 2025. The Original and Amended Sealing Order are both dated August 14, 2025, the date on which the court released its decision on the Sealing Order Motion. The decision was not changed, but the Amended Sealing Order was updated to clarify that the Candore Affidavit's reference to the sealed paragraph 19 of the Jain Affidavit should be redacted.

[32] The Jain Affidavit is the source of the confidential information that was to be sealed. It is identified as one of the affidavits covered by paragraph 2 of the Sealing Order. Paragraph 19 of the Jain Affidavit was one of the paragraphs of that affidavit that was to be redacted in publicly filed motion record, such that: "[the Jain Affidavit] … and any reference to the redacted information therein in subsequently filed Court documents are hereby sealed and shall be segregated from other information, documentation and public record, and shall, subject to further Court order, not be disclosed to anyone".

[33] There were no amendments to paragraph 2 of the Original Sealing Order, which always included the Jain Affidavit. The sealing and redaction of paragraph 19 of the Jain Affidavit was always in effect under paragraphs 2 and 3 of the Original Sealing Order. Paragraph 2 of the Original Sealing Order also sealed and any reference to the redacted information therein in subsequently filed court documents. The Candore Affidavit was delivered after the Jain Affidavit and paragraph 81 of Exhibit 1 to the Candore Affidavit makes specific reference to redacted information contained in paragraph 19 of the Jain Affidavit. Accordingly, it should have been listed for redaction in paragraph 3 of the Original Sealing Order and that was rectified by the Amended Sealing Order.

[34] As the court stated in the December 16, 2025, email endorsement that accompanied the signed Amended Sealing Order when it was transmitted to counsel in the Ontario Action: "The attached Amended Sealing Order signed by me today may be issued, so as to extend the existing Sealing Order to capture additional references to information that is already under seal".

[35] The Amended Sealing Order simply identified the corresponding redactions that should have been made in the Candore Affidavit (sworn May 30, 2025), which relied upon and was delivered by the plaintiffs subsequent to the delivery of the Jain Affidavit (sworn April 16, 2025). The scope of the Original Sealing Order was never changed. The Amended Sealing Order was simply a clarification of the required redactions of the Confidential Information corresponding with the source information from paragraph 19 of the Jain Affidavit that was already sealed.

[36] The interpretation that the applicant seeks to impose on the words of the Amended Sealing Order, that it is document specific and only the mentioned documents are protected by it, is too narrow and fails to account for the purpose and context of the Sealing Order. It also seeks to impose a narrow and inflexible interpretation of the words in paragraph 2: "and any reference to the redacted information therein in subsequently filed Court documents". The Jain Affidavit and the Candore Affidavit were only filed at the same time as a matter of convenience because all of the materials for the Ontario Jurisdiction Motion were filed together in a single public Motion Record after the Sealing Order Decision was rendered. The Candore Affidavit is a subsequently-filed court document relative to the Jain Affidavit, technically by virtue of their sequencing in the public Motion Record but also substantively because it was sworn after and clearly refers to redacted information in the sealed and redacted paragraph 19 of the Jain Affidavit.

[37] I agree with the OpenAI Entities that the proper interpretation of the Sealing Order is straightforward: the specific portions of their evidence that were identified as confidential were to be sealed, and any reference to that sealed evidence in later documents forming part of the Ontario court record was also to be sealed. It is as simple as that. There are no ambiguities to resolve.

[38] Even if there were some ambiguity, applying the contextual or purposive test for interpreting an order that the applicant relies upon from *Aizic v. Natcan Trust Company*, 2025 ONCA 719, 179 O.R. (3d) 288, at paras. 25, 28, leads to that same conclusion. The Candore Affidavit was a secondary document, not the primary source of the confidential information that was the subject of the Sealing Order.

[39] Interpreting the scope of the Sealing Order to include any later documents that refer to the undisputably sealed and redacted confidential information contained in paragraph 19 of the Jain Affidavit adopts an appropriately narrow but purposive contextual and structural approach consistent with what the Court of Appeal countenanced in *Aizic* (see for examples, paras. 36-37, 39-44).

Retroactive Effect of Sealing Order

[40] The Original Sealing Order included paragraph 19 of the Jain affidavit in both paragraphs 2 and 3. The confidential information contained in that paragraph was always sealed and redacted. There is no need to consider retroactivity as it relates to that aspect of the court's Sealing Order.

[41] When the Amended Sealing Order was signed, the court directed in its email endorsement of December 16, 2025, that the OpenAI Entities "provide instructions to the intake and filing office at the court for the removal of the previously filed public record and to replace any materials so

removed with new public record materials that are the same save for the redaction/removal of the specific evidentiary references now sealed by this Amended Sealing Order."

[42] When the Amended Sealing Order was signed, the court, of its own accord, also added paragraph 5, which makes the amendments effective on the date of signing of the Amended Sealing Order, December 16, 2025, rather than as of the date of the order itself, which was August 14, 2025. That allowed for the possibility that something not originally redacted and therefore in the public court record might have been accessed, in which case the court would have to consider the implications of such.

[43] That is precisely the situation now faced: paragraph 81 of Exhibit 1 to the Candore Affidavit, redacted as of December 16, 2025, refers to sealed Confidential Information that was not redacted when counsel for the applicant in the Proposed BC Class Action accessed the publicly-filed motion record on September 8, 2025.

[44] The redactions cannot be applied retroactively to material that was accessed in the public court file, but that is not the end of the inquiry for purposes of this motion. This situation is distinguishable from the situation in *R. v. CITY TV* (2000), 49 O.R. (3d) 756 (S.C.), where the respondent failed to avail itself of protections that it could have when a search warrant was executed. The result was that the police had already made copies and notes from the seized video footage over which confidentiality was later asserted. Police investigators had used the footage during their investigations, and arrests had been made based on the seized video footage. The court found, at para. 12, that it was "in practical terms, too late to put the genie back into the bottle". The court found in that case that the unique privacy interest no longer existed since the police had viewed the tape and used it in their investigation.

[45] The issue that this case raises is whether the genie can be put back into the bottle once the Confidential Information was inadvertently disclosed in a publicly-filed Motion Record that the lawyers for the applicant accessed.

[46] In contrast to the situation in *CITY TV*, while the lawyers for the applicant have seen the Confidential Information, the applicant has not used or relied upon it in any way. The applicant did not include the Confidential Information obtained from the Ontario court file in its material filed for the BC Sealing Order Motion. Counsel for the applicant only sought to file it with the court and rely upon it for the first time during the December 5th Hearing.

[47] The applicant's factum describes the following sequence of events that then ensued:

a. Justice Brongers (who was presiding over the December 5th Hearing in the Proposed BC Class Action) declined to receive the materials and indicated that His Honour did not want to receive information that was covered by the Sealing Order. Justice Brongers adjourned the sealing order application to February 10, 2026. It was later adjourned *sine die* pending the outcome of this application.

b. Once the confidentiality issue was identified by the OpenAI Entities at the hearing, the applicant did not attempt to file the material in the BC proceeding. The applicant requested that the respondents provide a copy of the issued Sealing Order.

c. Following an exchange of correspondence, on December 16, 2025, the OpenAI Entities advised the applicant that the Ontario court had issued the Amended Sealing Order. They provided a copy of that order and asserted that the applicant was required to refrain from filing or relying in the BC proceeding on the Confidential Information that had been obtained from the public Motion Record in the Ontario Action.

d. On December 18, 2025, upon reviewing the amended Sealing Order, the applicant offered to voluntarily treat the Candore Affidavit as confidential, as if the BC Protective Order issued on December 5, 2025, applied, pending further clarification from the Ontario court.

e. On January 7, 2026, the parties attended a case planning conference in BC before Justice Brongers. During that conference, it was confirmed that (a) neither the Candore Affidavit nor any allegedly confidential information had been filed in the BC Action; (b) the applicant would continue to refrain from doing so pending clarification of the Sealing Order; and (c) interpretation of the order would be sought from the issuing judge in Ontario.

f. Following a further exchange of correspondence and case conferences attended in Ontario, this application was scheduled, at the request of the applicant.

[48] This course of conduct was the responsible way for the applicant to proceed. This allowed the containment of the Confidential Information, pending this court's determination of the scope of the Amended Sealing Order and its application to the material obtained from the Ontario public court file by the applicant's counsel prior to December 16, 2025.

[49] The applicant emphasizes that an inadvertent "slip" presupposes that the material was confidential or sealed when it was disclosed. The applicant's position is largely predicated on the fact that the Candore Affidavit was not sealed at the time it was retrieved from the court file, and suggests that, in such a circumstance, there is nothing for equity or procedure to "restore".

[50] The applicant's analysis ignores the context and secondary nature of the Candore Affidavit, which refers to and repeats the undisputably sealed and redacted confidential information contained in paragraph 19 of the Jain Affidavit. The Confidential Information replicated in the Candore Affidavit had been sealed and redacted in the original source document (paragraph 19 of the Jain Affidavit) – that is the confidentiality that needs to be restored in this case.

[51] The court has some experience dealing with how to correct inadvertent disclosure of confidential information. This arises in cases where the court must determine whether privilege has been waived by inadvertent disclosure, and how to preserve the privilege where it is found not to have been waived. Those cases are instructive in the circumstances here.

[52] Privilege is not necessarily waived by disclosure, where the party making the disclosure did not intend to waive privilege and was not authorized to do so: see *L'Abbé v. Allen-Vanguard*, 2011 ONSC 7575, at paras. 34-39; see also *Chan v. Dynasty Executive Suites Ltd.* (2006), 30 C.P.C. (6th) 270 (S.C.), at paras. 30-31. Privilege can be restored following inadvertent disclosure that is corrected in a timely manner: see *Canadian National Railway Company v. Holmes et al*, 2022 ONSC 1682, 28 B.L.R. (6th) 163, at paras. 41, 49-50.

[53] The protocol for doing so is summarized in *Chan*, at para. 74: once receiving counsel is advised that privileged documents were produced inadvertently, counsel must promptly return the material-uncopied and if possible, unread. A failure to do so can have significant consequences to allow the privilege to be preserved, ranging from disqualification of counsel to expunging documents from the record: see *Chan*, paras. 80-89; *Aviaco International Leasing Inc. v. Boeing Canada Inc.* (2000), 9 B.L.R. (3d) 99 (S.C.), at para. 13.

[54] Confidentiality is an essential element of privilege: see *Canadian National Railway*, at para. 41. If privilege can be restored, then confidentiality can also be restored through appropriate measures of containment: see e.g. *Chan*, at para. 105; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1082, 93 Imm. L.R. (3d) 219, at paras. 1, 42, var'd, 2011 FCA 223, 336 D.L.R. (4th) 63; for an example of restoring confidentiality, see also *Lukacs v. Canada (Citizenship and Immigration)*, 2023 FCA 36, 94 Imm. L.R. (4th) 1, at paras. 37-38.

[55] There is no evidence that the OpenAI Entities ever intended to waive the confidentiality that they asserted over the information contained in paragraph 19 of the Jain Affidavit. The court does not require negative evidence (confirming a lack of intention to waive confidentiality) to infer (and I do so infer) that disclosure of the sealed Confidential Information was inadvertent. The applicant is critical of the OpenAI Entities for not filing direct evidence of this inadvertence but I do not consider that to be necessary where the inadvertence is obvious and apparent from the circumstances of this case.

[56] The Jain Affidavit, filed by the OpenAI Entities, was properly redacted to prevent disclosure of the designated confidential and sealed information contained in paragraph 19 of the Jain Affidavit. This was as provided for in the Ontario Sealing Order Decision and implemented by paragraphs 2 and 3 of the Sealing Order. Inadvertently, the references to that sealed confidential information contained in a subsequently delivered expert report from the plaintiffs in the Ontario Action (the Candore Affidavit) were not identified for redaction when it was included in the publicly filed Motion Record for the Ontario Jurisdiction Motion.

[57] Nor is there any evidence, or even a suggestion, that the OpenAI Entities authorized Candore or the plaintiffs to disclose the Confidential Information that they had specifically and intentionally redacted in paragraph 19 of the publicly filed version of the Jain Affidavit.

[58] As soon as the OpenAI Entities adverted to this redaction oversight during the December 5th Hearing in BC, they took action. They asserted that the Candore Affidavit, which the applicant referred to for the first time during the December 5th Hearing in BC, was confidential by virtue of

the Sealing Order, and objected to that material being filed or relied upon in the Proposed BC Class Action.

[59] The Amended Sealing Order does have retroactive effect from when it was signed on December 16, 2025, insofar as the source information contained in paragraph 19 of the Jain Affidavit was always and remains sealed and its confidentiality has been protected from and after the date of that Order, being August 14, 2025. To the extent that the confidentiality was briefly compromised through the inadvertent disclosure of the Confidential Information in the publicly filed Motion Record in the Ontario Action, it can be restored and preserved, which it has been through the replacement of the publicly filed record in Ontario. This has been done through the now redacted version of the Candore Affidavit (as provided for in the Amended Sealing Order) and the undertaking of the applicant in this case not to file what was obtained from the Ontario court file in the BC court file. The Confidential Information is no longer in the public domain.

[60] Pursuant to paragraph 5 of the Amended Sealing Order, the redaction of the Confidential Information was only effective as of December 16, 2025, when that order was signed and the physical record in the court file was replaced. That is nothing more than an acknowledgment that what was in the physical public court file back in September 2025 cannot be retroactively changed. That does not prevent the preservation and restoration of the confidentiality asserted by the OpenAI Entities over the Confidential Information, as provided for herein. In the circumstances of this case, the genie can be put back in the bottle.

[61] The parties in both the Ontario Action and the Proposed BC Class Action contemplated that confidentiality could be restored in circumstances of inadvertent disclosure. The protective orders in both Ontario and BC allow for the outside litigation counsel and certain party representatives and independent experts to review the designated confidential information under specified restrictions, that prevented them from filing it in open court or sharing it beyond the permitted recipients, pending the court's further directions. Those protective orders provide that "the inadvertent failure to designate any materials as Confidential Information shall not be deemed or construed to be a waiver of confidentiality".

[62] The fact that the outside litigation counsel for the applicant (plaintiff in the Proposed BC Class Action) has now also seen the Confidential Information that was sealed in Ontario does not compromise the integrity of the confidentiality beyond the conceptual bounds of the parameters that already existed for its protection. Because counsel for the applicant gave their undertaking and acted responsibly in this instance, there is no need to consider other possible outcomes or consequences. Further, now that the scope of the Sealing Order in Ontario has been confirmed, counsel for the applicant has said they will abide by that order.

Binding Effect of Sealing Order on Third Parties Without Notice

[63] It was confirmed during oral argument on this application that what the applicant is really seeking is an order that the Amended Sealing Order, and specific redactions to be applied to paragraph 81 of Exhibit 1 to the Candore Affidavit, does not apply to the material that the applicant obtained from the public court file in September of 2025. In other words, the applicant seeks a

direction or declaration that the applicant would not be offside in using and relying upon that Confidential Information in his Proposed BC Class Action, notwithstanding the provisions of the Amended Sealing Order.

[64] The applicant seeks to be distinguished from third parties in other cases who were prevented by the courts from using and relying upon confidential sealed information that they came into possession of, with knowledge that access to that information was restricted: see *Ivandaeva Total Image Salon Inc. v. Hlembizky* (2003), 63 O.R. (3d) 769 (C.A.), at paras. 6, 10-11, and 16. In such circumstances, "equity, as a court of conscience, directs itself to the behaviour of the person who has come into possession of information that is in fact confidential, and was accepted on that basis, either expressly or by implication", and will impose its remedies: see *Cadbury Schweppes v. FBI Foods Ltd.*, [1999] 1 S.C.R. 142, at paras. 16, 19, 26. It is the case here that the applicant did not have knowledge of the Sealing Order when the public court record in the Ontario Action was accessed.

[65] Where documents were lawfully acquired from a court file in family law proceedings and relied upon by a third party before an order restricting their disclosure was made, the BC Court of Appeal held that the mutual conduct order made in the family law proceedings that restricted the broadcast, distribution, delivery or sharing of materials from those proceedings did not retroactively bind a third party employer who had already obtained the documents lawfully and in good faith and acted on them: see *Chellappa v. Kumar*, 2016 BCCA 2, 394 D.L.R. (4th) 115, at paras. 20, 24. However, in that case the order in question was interpreted not to have retroactive effect on a third party that had taken steps in reliance upon the information obtained before the order was made.

[66] In this case, the applicant has not used or relied upon the Confidential Information. Importantly, it has also been determined that the Amended Sealing Order and the confidentiality it protects can and does retroactively bind the third-party applicant. This is not due to any criticism of the applicant or to prevent the applicant from knowingly taking advantage of a slip, but rather, it is because the applicant and his lawyers handled the situation appropriately and did not behave in a way that requires equity to step in, because the court has been able to restore the confidentiality.

[67] Now that it has been signed, issued and entered, the Amended Sealing Order is binding on any person with notice of it, including third parties who are not a named party or direct target of the order: see e.g. *Ivandaeva*, at paras. 8, 10, 46 and 51. While Jackson and his counsel could not be criticized for having obtained the Confidential Information from the public Motion Record in the Ontario Action in September of 2025 months before either the Original or Amended Sealing Order was signed, they are not at liberty to use and rely upon that Confidential Information today.

[68] The applicant is not in the position of a *bona fide* purchaser for value without notice of an asserted claim against property lawfully obtained. No consequential steps have been taken as a result of having the Confidential Information. The applicant did not presumptively use the Confidential Information, but rather sought directions from the court about whether it can do so.

The court has said no, the applicant cannot. Now that the issue has been determined, the applicant must abide by the terms of the Amended Sealing Order.

Did the Applicant Exploit an Inadvertent Slip to try to defeat the Respondents' Confidentiality Claims?

[69] The OpenAI Entities are critical of the applicant because, rather than accepting the interpretation of the Amended Sealing Order asserted by the OpenAI Entities (now confirmed by the court), he sought to have this court provide advice and directions regarding the scope and effect of the Amended Sealing Order vis a vis the Confidential Information the applicant obtained prior to either the Original or Amended Sealing Order being signed.

[70] The circumstances of this case are highly unusual because of the timing of when the orders were signed, many months after the Sealing Order Decision was rendered in August of 2025 and after the Motion Record for the Ontario Jurisdiction Motion was publicly filed and accessed by the applicant in September 2025. It was entirely appropriate for the applicant to seek the court's guidance and directions about the scope and implications of the Sealing Order in these circumstances.

[71] In circumstances where it would be blatantly obvious to a recipient that information or documents they received were intended to be confidential and were provided in error, the court is justifiably concerned about the exploitation of an obvious slip. In such cases, the court may step in to prevent the recipient from taking advantage of that slip, and that third party's future conduct regarding the material, if it cannot be "unseen", may be subject to the court's oversight and direction: see *Aviaco*, at paras. 11-14.

[72] However, in this case, I reject entirely the suggestion by the OpenAI Entities that the applicant has tried to take advantage of an obvious slip or inadvertence. Quite to the contrary, the applicant's counsel lawfully obtained publicly filed material from the court file in the Ontario Action, did not publicly file it in the Proposed BC Class Action and undertook not to do so upon being advised that it was the position of the OpenAI Entities that it was covered by the Amended Sealing Order, pending further directions from this court.

[73] I find the further assertion by the OpenAI Entities that counsel for the applicant should have figured out that there was an inadvertent inclusion of Confidential Information in the public court file in the Ontario Action and brought it to the respondents' attention to be perplexing. This was not a straightforward situation. The Sealing Order was not even signed until December 5, 2025, or amended until December 16, 2025, long after the applicant's counsel had accessed the public court file. If the OpenAI Entities did not realize that there was Confidential Information in the public court file that was to be sealed under the Ontario Sealing Order Decision, it is illogical for them to suggest that the third party applicant should have discovered this and brought it to their attention.

[74] Nor do I find there to be any evidentiary foundation for the assertion that the lawyers for the applicant behaved in a manner inconsistent with the Law Society of Ontario's Rules of Professional Conduct. To the contrary, and as already noted, they behaved exactly as the court

would have expected them to in a situation of uncertainty. This was caused by the inadvertence of the OpenAI Entities and the fact that the Original Sealing Order and Amended Sealing Order were not formalized until many months after the Sealing Order Decision was rendered and the Confidential Material was to be sealed.

Costs

[75] The OpenAI Entities provided a Costs Outline certifying their all-inclusive partial indemnity costs of this application to be $55,535.70. The applicant provided a Costs Outline certifying his all-inclusive costs of the application to be $47,154.16.

[76] The appropriate scale of costs, if they were to be awarded, would be partial indemnity costs. Ordinarily, the successful party is entitled to an award of partial indemnity costs to partially indemnify them for the expense that they incurred in the context of a civil proceeding such as this. Partial indemnity costs are awarded barring extraordinary circumstances that might warrant a higher scale of costs, which do not exist here.

[77] However, costs are discretionary under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. That discretion can be exercised with regard to the factors set out in r. 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[78] The OpenAI Entities contend, among other things, that this application was unnecessary, should never have been brought and was an attempt to take advantage of a temporary and inadvertent disclosure of their Confidential Information. I have already rejected this contention for the reasons outlined earlier in this endorsement. The application was necessary, but not because of any conduct on the part of the applicant. It was the OpenAI Entities that did not settle and formalize their Sealing Order until December 5, 2025, after having inadvertently filed the public Motion Record that contained the Confidential Information that was not ordered redacted until the Amended Sealing Order was later signed.

[79] Furthermore, the OpenAI Entities obtained the Amended Sealing Order without disclosing to the Ontario court the events at and after the December 5th Hearing that had precipitated their request for the amendment. They also did not invite the applicant to participate in the proceedings before the Ontario court (later taking the position that the applicant had no standing to do so, thus leading to this application being commenced).

[80] There might have been a more straightforward way of dealing with the immediate concern that caused the OpenAI Entities to seek the Amended Sealing Order, if the specific concern had been raised directly with the court; namely, that there had been a third party that accessed the publicly filed record without redactions. The determination of the scope and effect of the Amended Sealing Order could have been made at that time, rather than after the fact. While none of that changes the outcome of this application, it is relevant to costs.

[81] The OpenAI Entities also made serious allegations of professional misconduct against the applicant's lawyers, which were not supported nor substantiated.

[82] I will not go so far as to award costs under r. 57.01(2) against the OpenAI Entities, who were the successful parties on the application, but I am not going to award any costs in their favour because, as between them and the applicant, it was their conduct that necessitated this application. It might have been avoided but for their inadvertence, and ultimately their refusal to take a pragmatic approach when the Amended Sealing Order was sought, which would have been to involve the applicant and put all of the facts and circumstances before the court.

Final Disposition

[83] The relief sought in this application is denied and the application is dismissed and no costs are awarded to either side. The parties shall all bear their own costs of this application.

Kimmel J.

Date: April 8, 2026