

CITATION: Askary v. Information and Privacy Commissioner 2026 ONSC 2563
DIVISIONAL COURT FILE NO.: DC-25-00000849-00JR
DATE: 20260430

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: SIMRA ASKARY, by her Litigation Guardian and Legal Representative,
MOHAMMAD ASKARY Applicant

AND:

INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO and
TORONTO METROPOLITAN UNIVERSITYTHE CITY OF TORONTO
Respondents

BEFORE: L. Brownstone J.

COUNSEL: Simra Askary, self-represented

Linda Chen, for Information and Privacy Commissioner of Ontario

Daniel Michaluk, for Toronto Metropolitan University

HEARD: In writing

ENDORSEMENT

[1] This request for a sealing order arises in the context of an application for judicial review brought by Simra Askary against the Information and Privacy Commissioner and Toronto Metropolitan University. The application relates to TMU’s refusal to release documents and IPC’s closure of the file because of a lack of authorization for Ms. Askary’s father to act on her behalf.

[2] The IPC initially sought the sealing order. The IPC and Ms. Askary were ultimately able to agree on terms of the order. The proposed order would seal the following documents in the IPC’s record of proceedings:

- a. Psychoeducational Report of the Applicant, dated June 2, 2016
- b. Individual Education Plan of the Applicant, dated November 19, 2020

- c. Medical note from the Applicant's family physician, dated February 19, 2025
- d. Medical note from the Applicant's Clinical and Counseling Psychologist, dated March 5, 2025
- e. Toronto Metropolitan University Student Transcript of the Applicant, dated May 5, 2025

[3] In addition, the order would require the sealing of portions of documents that contain Ms. Askary's:

- a. date of birth
- b. student identification numbers and other unique identifiers
- c. signature images
- d. medical, disability and mental health information
- e. academic grades and transcript line items
- f. personal addresses or telephone numbers other than those identified on the Notice of Application

[4] Upon review of the proposed order, I asked the parties for submissions on whether the sealing of the educational materials is warranted under the three-part test set out in *Sherman Estate v. Donovan*, 2021 SCC 25.

[5] TMU took no position on the order.

[6] The IPC replied as follows:

While the IPC notes that it has statutory confidentiality obligations under [*Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31] (s. 55(1)) and that the educational materials may constitute personal information under *FIPPA*, the IPC takes no position on whether the applicant's educational materials meet the legal test for sealing.

[7] Ms. Askary submitted that the legal test was met. She submitted that the order requested was necessary to preserve the fairness and integrity of her application and to protect her dignity, privacy, and access to justice. Ms. Askary submitted that disclosing the materials without important contextual factors, including the denial of accommodations, would create a misleading and harmful public narrative. In her submission, the documents cannot be properly understood isolated from her personal characteristics. Further, the application is not about academic merit and

disclosing the materials would not assist in a public understanding of the issues before the court. On the other hand, the prejudice to her would be long and lasting.

[8] As noted by the Supreme Court of Canada in *Sherman Estate* at paras. 2, 3, and 7, there is a strong presumption in favour of open courts. Inconvenience, embarrassment, and intrusion into private lives may result from accessing the courts. That is not generally enough to overturn the strong presumption that court proceedings and records are open to the public. Exceptional circumstances may exist where competing interests justify a restriction on the open court principle.

[9] The person seeking to infringe on the open court principle by obtaining a sealing order is required to meet the high bar of demonstrating that openness presents a serious risk to a competing interest of public importance, that the order is necessary to prevent the risk, and that the benefits of that order outweigh its negative effects.

[10] The Supreme Court of Canada in *Sherman Estate* also instructs as follows:

- a. Protecting human dignity from serious risk may constitute a competing interest of public importance that warrants an exception to the open court principle (para. 7).
- b. The court may protect the dissemination of information related to core aspects of individuals' personal lives of a highly sensitive nature that bears on their dignity (paras. 33 - 35).
- c. Dignity will be at risk in only limited cases (para 63).
- d. It may include a loss of control over a "highly sensitive aspect of who they are that they did not consciously decide to share" (para. 71).
- e. The information must relate to a person's biographical core (para 75)

[11] I agree that almost all the information the parties have identified in their draft order meets this bar. All the information other than the transcripts comprises information about Ms. Askary's "biographical core" – it is intimate, personal and confidential health and biographical information. I agree, too, that the order sought with respect to this information is necessary to prevent the risk of its dissemination. The order is crafted to focus only on the information at issue; in this sense it is drafted in a narrow and focused manner. Given the interest at stake, the nature of the information, and the narrow drafting of the order, I am satisfied that the benefits of the order outweigh its negative effects.

[12] I reach a different conclusion with respect to the transcript (item (e) in each of paragraph 2 and 3 above.). As noted above, Ms. Askary submits that disclosure of the transcript will lead to a misunderstanding of her situation. She states that disclosure of the transcript without the full context of her situation contained in the medical and other notes would create a false and stigmatizing impression of her abilities and history. Further, she submits that her academic results

are not the subject-matter of her application, so that disclosing them would not enhance the public's understanding of his case.

[13] In my view, the transcripts do not comprise information that go to Ms. Askary's "biographical core". The concerns that she has with respect to their release are concerns about embarrassment and distress. These concerns do not take precedence over the open court principle (*Sherman Estate* at para. 27).

[14] I acknowledge that these records may constitute personal information under *FIPPA*. However, in my view, that on its own is insufficient to meet the *Sherman Estate* test. Nor is this a case in which failing to seal the information pre-determines the application and renders it application moot, which is the case in some applications involving the IPC.

[15] Given the nature of this information, I find the request for sealing the transcripts does not meet the test in *Sherman Estate*. The sealing order is granted other than with respect to the items in paragraphs 2 and 3 (e) above. As discussed and agreed to by the parties, the order also includes a provision amending the title of proceedings to reflect the removal of "by her Litigation Guardian and Legal Representative, Mohammad Askary".

[16] I have signed the order as amended.

[17] The parties shall confer on a revised schedule for the exchange of materials. They may send their draft schedule to me for approval. The issue of mootness shall be addressed in the parties' application materials.

L. Brownstone J.

Released: April 30, 2026