SUPREME COURT OF NOVA SCOTIA

Citation: Patient X v. College of Physicians and Surgeons of Nova Scotia, 2013 NSSC 32

Date: 20130125
Docket: Hfx. No. 407509
Registry: Halifax

BETWEEN:

Patient X

Plaintiff

College of Physicians and Surgeons of Nova Scotia

Defendant

D E C I S I O N

Judge: The Honourable Justice Suzanne M. Hood

Heard: December 4, 2012

Written Decision: January 25, 2013

Counsel: Shawna Hoyte, Q.C. and Kate Fairbrother for Patient X
Marjorie Hickey, Q.C. for the College of Physicians and Surgeons of Nova Scotia
Brian W. Downie, Q.C. and Andrew Sowerby for Dr. Y

By the Court:

INTRODUCTION

[1] Both the applicant and a non-party physician seek confidentiality orders in an application for judicial review of a decision of the College of Physicians and Surgeons (the "College").

ISSUES

1. Should the applicant be granted a confidentiality order?
2. Should the physician be granted a confidentiality order/
3. Should the record be sealed and/or redacted?
4. Should the public be excluded from the courtroom during the hearing of the judicial review application?

BACKGROUND

[2] In April of 2009, the applicant consulted a physician, and she alleges that during that visit, the doctor fondled her breasts and made inappropriate and offensive racial comments. The applicant eventually complained to the College, but on August 20, 2012, Investigation Committee "C" of the College dismissed her complaint without referring it to a hearing committee. She has applied for judicial review of that decision.

[3] The applicant now seeks a confidentiality order permitting her to be identified by a pseudonym, banning publication of anything that would reveal her identity, banning publication of her medical information, sealing the record, and excluding the public from the courtroom.

[4] The physician also seeks to be identified by a pseudonym and to ban publication of anything that would reveal his identity. Although he is not a party, I granted him leave to make submissions on the issue.

[5] The College agrees that the applicant and the physician should be permitted to proceed anonymously, but does not want the public to be excluded or publication of the applicant's medical information banned.

[6] The media were notified of both motions pursuant to the court's Notice-of-Applications-for-Publications-Bans-Service. I have received copies of the Notifications from counsel for the applicant and the physician. No counsel appeared to contest the proposed bans.

[7] After the hearing, I orally agreed to grant an order permitting the applicant and the non-party physician to proceed under the pseudonyms Patient X and Dr. Y. In addition, I ordered a ban on publication of their names and any other identifying information. As well I said that I would seal the record in part and order other parts to merely be redacted in order to conceal that same information. However, I did not order the exclusion of the public from the courtroom. These are my reasons for these decisions and my ruling on the partial sealing and redaction of the record.

LAW ON DISCRETIONARY CONFIDENTIALITY ORDERS

[8] Rule 85.04(1) governs motions for confidentiality orders, and it provides:

> **85.04 (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.
> Rule 85.04(2) goes on to list examples of confidentiality orders (including the requested remedies of sealing court documents, banning publication, and permitting the use of pseudonyms).

[9] Section 37 of the *Judicature Act*, RSNS 1989, c. 240 allows a judge to exclude the public from the courtroom when he or she "deems it to be in the interest of public morals, the maintenance of order or the proper administration of justice."

[10] The post-*Charter* test for exercising the discretion to grant confidentiality orders was developed by the Supreme Court in *Dagenais v Canada Broadcasting Corp*, [1994] S.C.J. No. 104 ["*Dagenais*"], and *R v Mentuck*, 2001 SCC 76, and it was adapted for more general purposes in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41.

[11] In *Sierra Club*, Justice Iacobucci wrote at para. 53 that confidentiality orders should only be granted when:

> (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[12] Both branches of the test must be met, and therefore the balancing exercise only needs to be conducted if the necessity branch is satisfied. As Justice Iacobucci stated at para. 48 of *R v Mentuck*, "it is unnecessary to continue the analysis upon a finding that the ban as to operational methods is not necessary[, but] it will often be useful to bolster that conclusion by nevertheless conducting the second part of the analysis."

[13] In *Dagenais*, *supra*, Chief Justice Lamer stated at para. 98 that "[t]he party seeking to justify the limit of a right (in the case of a publication ban, the party seeking to limit freedom of expression) bears the burden of justifying the

limitation." As such, the onus to satisfy both parts of the test lies on the party seeking a confidentiality order.

[14] Regarding the necessity branch of the test, Justice Iacobucci made three further comments at paras. 54 to 57 of *Sierra Club*.

[15] Firstly, the risk to the important interest must pose "a serious threat" (*Sierra Club*, *supra* at para 54). In *R v Mentuck*, Justice Iacobucci elaborated that this means that "it is a serious danger sought to be avoided that is required, not a substantial benefit or advantage […] sought to be obtained." Further, this risk must be "grounded in the evidence" (*Sierra Club*, *supra* at para 54). However, in *AB v Bragg Communications Inc.*, 2012 SCC 46, Justice Abella stated at para. 16 that: "absent scientific or empirical evidence of the necessity of restricting access, the court can find harm by applying reason and logic."

[16] Secondly, for a commercial interest to be sufficiently important, it "cannot merely be specific to the party requesting the order," but must instead be framed as a public interest in maintaining confidentiality (*Sierra Club*, *supra* at para 55). Although Justice Iacobucci confined his comments to commercial interests, they

have since been interpreted to mean that *any* interests must have a public interest component before they can attract a confidentiality order: *Osif v College of Physicians and Surgeons of Nova Scotia*, 2008 NSCA 113 at para 17 ["*Osif*"]. As noted by Justice Abella at para. 13 of *AB v Bragg Communications Inc*, *supra*, "there are cases in which the protection of *social* values must prevail over openness" (emphasis added).

[17] Thirdly, Justice Iacobucci noted that "[t]he phrase 'reasonably alternative measures' requires the judge to consider not only whether reasonable alternatives to a confidentiality order are available, but also to restrict the order as much as is reasonably possible" (*Sierra Club*, *supra* at para 57).

[18] That test governs "*all* discretionary court orders that limit freedom of expression and freedom of the press in relation to legal proceedings" (*Toronto Star Newspapers Ltd v Ontario*, 2005 SCC 41 at para 7). As such, although the orders sought by the applicant and the physician vary in degree, the test to be applied is the same, with the following exception. When it comes to excluding the public from the courtroom, section 37 of the *Judicature Act*, *supra*, limits the types of interests which could justify such an order to those respecting "public morals, the

maintenance of order or the proper administration of justice." Additionally, when the Supreme Court considered exclusion of the public in *Canadian Broadcasting Corp v New Brunswick (Attorney General)*, [1996] 3 SCR 480, they stated at para. 60 that "the public should only be excluded from the part of the proceedings where public access would offend against the proper administration of justice." Closing the courtroom substantially infringes the open courts principle and can only be justified by equally substantial salutary effects.

CONFIDENTIALITY ORDER – APPLICANT

[19] The applicant seeks an order permitting her to use a pseudonym, banning publication of her identity and her medical information, sealing the record, and excluding the public from the courtroom. The College believes that it is unnecessary to ban publication of medical information or exclude the public from the courtroom, but otherwise supports the applicant's position. Dr. Y takes no position on any of the applicant's submissions.

Is there a serious risk to an important interest?

[20] The applicant submits that there are two important public interests that need to be protected by a confidentiality order: (1) the confidentiality of medical records; and (2) the willingness of individuals to report misconduct by physicians, particularly sexual misconduct.

[21] With respect to the confidentiality of medical records, the applicant relies on *Osif v College of Physicians and Surgeons of Nova Scotia*, *supra*, in which Justice Oland held at para. 22 that:

> There is no question that the public considers that their medical records are confidential and expects that, except in limited circumstances, they will remain confidential. The confidentiality of such records is an important public interest.

The applicant submits that this interest is engaged because the record for judicial review contains her detailed medical information.

[22] *Osif*, *supra*, is not directly on point since all of the medical records in that case were of patients who were not parties to the dispute. The public interest in the

confidentiality of medical records generally has force only when a person does not consent to their disclosure. Once a party puts his or her own medical information in issue in a dispute, he or she waives confidentiality. Accordingly, the public interest in maintaining confidentiality wanes considerably. Indeed, court records are full of parties' medical information (eg. personal injury claims), and their mere presence does not automatically attract the protection of a confidentiality order.

[23] However, this situation is different from a personal injury suit in that the applicant is not seeking a private law remedy. If the College had agreed with Patient X and eventually ended up in this court in a dispute with Dr. Y, then Patient X's identity would be entitled to protection in accordance with *Osif*, *supra*. As Justice Oland noted at para. 23 of that case, the use of confidential information that is collected for the investigation and hearing processes ought to be limited to those regulatory purposes. If Patient X's allegations are accurate and the investigation committee denied her natural and substantive justice, then it is unfair that their failure should also cost her the confidentiality to which she would otherwise remain entitled.

[24] This line of reasoning is reinforced by the applicant's second submission that the public has an important interest in encouraging patients to report the misconduct of physicians. Patient X states in her affidavit that she is "concerned about being identified as an individual who was the victim of sexual assault" and fears that any publication of the incident would be embarrassing to her.

[25] She relies on *Canadian Newspapers Co v Canada (Attorney General)*, [1988] S.C.J. No. 67, in which Justice Lamer (as he then was) recognized at para. 15 that "[e]ncouraging victims [of sexual assault] to come forward and complain facilitates the prosecution and conviction of those guilty of sexual offences." Further, at para. 18, he held that

> [O]f the most serious crimes, sexual assault is one of the most unreported. The main reasons stated by those who do not report this offence are fear of treatment by police or prosecutors, fear of trial procedures, and fear of publicity or embarrassment.

He went on to say that: "since fear of publication is one of the factors that influences the reporting of sexual assault, certainty with respect to non-publication at the time of deciding whether to report plays a vital role in that decision." In other words, the fear of publicity and embarrassment, the same fears established by

Patient X's affidavit, pose a real risk to the public interest since it contributes to the under-reporting of sexual assault**.**

[26] I agree with the applicant that, by analogy, encouraging the reporting of sexual misconduct by doctors is of equal public importance. Indeed, the legislature has recognized that by its inclusion of section 64 in the *Medical Act*, SNS 1995-1996, c 10. It provides:

> 64 A hearing committee shall, on the request of a witness, other than the member or associate member, whose testimony is in relation to allegations of misconduct of a sexual nature by a member or associate member involving the witness, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness.

That section requires that the hearing committee ban publication of the identity of any non-member witness who alleges sexual misconduct and seeks confidentiality. The College agrees with the applicant on this issue and submits that the purpose of section 64 would be frustrated if the identity of a complainant alleging sexual misconduct becomes public on a judicial review of the College's own processes.

[27] Of course, the absence of confidentiality orders on applications for judicial review poses a lesser risk to under-reporting than in the criminal context, in that it

ought not to affect any initial decision to complain. After all, a victim would only expect to have to complain to the College, and his or her medical information would be kept confidential at that stage pursuant to sections 50 and 64 of the *Medical Act*, *supra*. The possibility that a complainant's identity might be revealed if the College dismisses the complaint *and* the complainant applies for judicial review should not have a chilling effect on his or her decision to make the initial complaint, only on his or her decision to apply for judicial review.

[28] However, as Justice Oland held at para. 23 of *Osif*, *supra*, the public also has an important interest in ensuring that the College's mechanisms and processes for dealing with complaints operate adequately and efficiently. Victims of sexual misconduct by physicians should have access to judicial review if the College has failed in its duty to discipline its members. The threat that their identities and confidential medical information must be disclosed in order to do so poses a serious risk to that public interest. For that reason, I am satisfied that the risk is sufficiently grave that some measure of confidentiality is warranted.

What is the least restrictive way to protect those interests?

[29] However, I do not agree with the applicant's submissions as to the extent of the confidentiality order that is necessary to protect that interest. In her affidavit, Patient X states her fears as: "I am concerned that if this personal information were to be publicly accessible, it may impact my ability to seek employment, accommodation, and other services in the future." She goes on to state that "publishing the details of the incident, *associated with my name and identifying information*, would be embarrassing" *(emphasis added)*. I am satisfied that the only reasonable way to address those concerns is by permitting the applicant to use a pseudonym, sealing or redacting all identifying information in the record (which I will consider hereinafter), and banning publication of her identity.

[30] Once those measures are in place, however, then there could be no fallout from potential employers, landlords, or other service providers. Neither could any publication of the incident be traced back to her and embarrass her. As such, I agree with the College that it is unnecessary to ban publication of the applicant's medical information. In *AB v Bragg Communications Inc*, *supra*, the Supreme

Court of Canada dealt with a case where a minor, A.B., was bullied online through the creation of a fake Facebook profile. Justice Abella held at para. 15 that:

> [O]nce A.B.'s identity is protected through her right to proceed anonymously, there seems to me to be little justification for a publication ban on the non-identifying content of the fake Facebook profile. If the non-identifying information is made public, there is no harmful impact since the information cannot be connected to A.B.

Similarly, once Patient X is allowed to proceed anonymously, I see no reason to keep her medical records confidential since few people, except perhaps the doctors who created the records, could connect them back to her. Even in *Osif*, *supra*, where Justice Oland decided to seal the appeal book, the concern was less with the medical information itself and more with the names and identifying information. Indeed, she recognized at para. 27 that a suitable alternative would be a redaction "to excise identifiable personal information such as names and contact particulars." She only decided to seal the appeal book instead because it consisted of "several hefty volumes" and a redaction would have been impractical, time-consuming, and costly, not because the medical information alone had to be protected even when it was divorced from identifying particulars.

[31] Lastly, the applicant in this case submits that exclusion of the public is necessary because the Halifax area is really quite a small community. Her counsel submitted at the hearing that Patient X is worried that someone who knows her will enter the courtroom, identify her, and thus connect the incident back to her. This seems rather unlikely and there is no evidence as to the probability that it will occur. However, counsel submits that such a concern could possibly dissuade her from attending the hearing. In her oral submissions, counsel for the applicant argued that this interferes with Patient X's right to participate in the hearing, which is all the more important here since one of her complaints in the judicial review is that she was denied natural justice.

[32] In assessing that submission, I note that an order to exclude the public under that rationale is not necessarily precluded by section 37 of the *Judicature Act.* The objectives of encouraging reporting of professional misconduct, publicly assessing the College's procedures, and ensuring full participation of parties at a hearing are all aimed at improving the administration of justice.

[33] Nevertheless, the applicant's argument does not satisfy me that exclusion of the public is necessary. An order to exclude the public is an extraordinary order

and requires proof of the risk. I cannot conclude that it is probable that someone who knows Patient X will wander in to the courtroom. Nor am I satisfied she will choose not to attend the hearing because she is concerned that might happen. The applicant has not proven that it is necessary to exclude the public from the courtroom. As such, her request is denied.

Do the order's salutary effects outweigh the deleterious effects?

[34] The importance of open courts is difficult to overstate. In *Canadian Broadcasting Corp v New Brunswick (Attorney General)*, *supra*, Justice La Forest wrote at para. 22 that:

> The open court principle, seen as "the very soul of justice" and the "security of securities", acts as a guarantee that justice is administered in a non-arbitrary manner, according to the rule of law. In *Attorney General of Nova Scotia v. MacIntyre*, [1982] 1 S.C.R. 175, openness was held to be the rule, covertness the exception, thereby fostering public confidence in the integrity of the court system and understanding of the administration of justice.

Practically, these benefits accrue to the public through the vehicle of the media and freedom of the press. As Justice La Forest went on to say at para. 23 of *Canadian Broadcasting Corp v New Brunswick (Attorney General)*, *supra*, "the right of the

public to information relating to court proceedings, and the corollary right to put forward opinions pertaining to the courts, depend on the freedom of the press to transmit this information." Any confidentiality order necessarily lessens the effects of the above-described benefits, and so it should not be ordered lightly.

[35] However, as was established at page 133 of *Canadian Newspapers Co v Canada (Attorney General)*, *supra*, and confirmed at paras. 28-29 of *AB v Bragg Communications Inc.*, *supra*, the impact on the openness of the courts and freedom of the press by protecting the identities of sexual assault complainants is minimal. It does not diminish the ability of the public to understand the proceeding, nor is the media much restricted in communicating its importance. As such, I find that the salutary effects of the confidentiality order outweigh its deleterious effects.

[36] With respect to the request to close the courtroom, even if I had decided it was necessary, I accept the submissions of the College that the salutary effects of such an order would be outweighed by its deleterious effects. The open courts principle is an important one in a democratic system. In addition, as the College points out, it is important that the public understand and trust the College's process for dealing with complaints. Those interests are fostered by keeping the courtroom

open when those processes are judicially reviewed. I am thus unable to justify such a significant derogation of the open courts principle.

CONFIDENTIALITY ORDER – PHYSICIAN

[37] Dr. Y seeks an order permitting him to be referred to by a pseudonym and banning publication of his name and identifying information. Implicit in his oral submissions was a request that his name and identifying information also be redacted from the record, but he does not seek to have the entire record sealed. The applicant takes no position on the issue, but the College fully supports Dr. Y's motion.

Is it necessary to prevent a serious risk to an important interest?

[38] Dr. Y fears that publication of his identity in connection with these allegations would greatly damage his personal and professional reputation, injure the trust of his patients, and reduce referrals for his services from other physicians. He draws attention to the decision of *Re Canadian Broadcasting Corp*, 2005 NLTD 126, in which Justice Adams held at para. 31 that:

> [T]he stigma attached to allegations of sexual assault against a physician would be difficult if not impossible to erase even if they were later proved to be untrue. It cannot be presumed that every person who heard of the initial charges would hear of the later exoneration. And despite the constitutional right to the presumption of innocence, in my respectful view it is human nature for some people to believe that there must be some element of truth to such allegations or they would not have been made.

Although in this case any publicity would likely also mention that the allegations were dismissed by the College and so harm his reputation less than otherwise, the analysis is on point. Moreover, this case has not received any media attention to date and Dr. Y swears that he has never before been accused of misconduct of this kind, so some confidentiality order could meaningfully protect his reputation. Therefore, there is a serious risk to the private interests of Dr. Y if his identity is not protected.

[39] However, it is still unclear whether those interests have a sufficiently public component to attract a confidentiality order. Counsel for Dr. Y addresses this by submitting that "[t]here is a public interest in protecting the privacy of an individual who is the subject of allegations that have been investigated and dismissed." I agree with this submission. The public has an interest in protecting the innocent; people who have done nothing wrong should not have their

reputations and livelihoods unnecessarily damaged. This was recognized in the pre-*Dagenais* case *Attorney General of Nova Scotia v MacIntyre*, [1982] 1 SCR 175 at 187, and the result in that case has since been approved by Justice La Forest in *Canadian Broadcasting Corp v New Brunswick (Attorney General)*, *supra* at para 39. It especially applies where a person occupies a position of trust, such as in this case, since not only would Dr. Y be harmed but so too would his patients if they are unjustifiably dissuaded from accessing his much-needed services. For those reasons, I am satisfied that there is a serious risk to an important public interest.

What is the least restrictive way to protect those interests?

[40] The only way to prevent the damage to Dr. Y's reputation is to order that he be referred to only by a pseudonym, to ban publication of his name and identifying information, and to redact the same from the record. Anything less has the potential of irreversibly injuring his reputation.

Do the salutary effects outweigh the deleterious effects?

[41] In *Dagenais*, *supra*, Chief Justice Lamer listed at paras. 83-84 a number of relevant effects that ought to be considered when determining whether a publication ban should be ordered, and among them he included: "[to] preserve the privacy of individuals involved in the criminal process (for example, the accused and his or her family as well as the victims and the witnesses and their families)." By analogy, when balancing the effects of the confidentiality order, I am entitled to consider that the salutary benefits of the order include both the personal benefits that accrue to Dr. Y and the benefit to the public interest.

[42] Dr. Y submits that the deleterious effects are minimal since the scope of the order he seeks is quite limited. Therefore there is not a substantial derogation of the open courts principle. The College agrees.

[43] However, there is a further deleterious effect which should not be glossed over. For the same reason that it is important to maintain the public trust in physicians, it is necessary to identify physicians who breach that trust. If the allegations against Dr. Y are true, then it is of crucial importance that members of

the public know who he is so that they can protect themselves. Moreover, hiding his identity could conceivably weaken overall trust in the medical profession, as now anybody who learns of this case must ponder whether their own doctor is the person about whom these allegations are made. Additionally, as recognized by Chief Justice Lamer at para. 84 of *Dagenais*, *supra*, ordering a ban could reduce "the chances of individuals with relevant information hearing about a case and coming forward with new information." Those are serious deleterious effects that attach to hiding the name of a physician accused of professional wrong-doing which simply does not attach to hiding the name of a complainant. Ordinarily, it is not obvious that those interests are less important than protecting the physician's reputation.

[44] However, in this case, the allegations against Dr. Y have been dismissed by the investigation committee of the College. In my view this increases the weight to be assigned to the public interest in protecting the innocent. In *X v Southam Inc.*, 2003 BCCA 647, Justice Braidwood held at para. 42 that a decision of the College of Physicians and Surgeons of British Columbia to dismiss a complaint was "strong evidence indicating that there is no harm to the public." Additionally, these are the only allegations of this nature to come against Dr. Y in his years of practice.

Without pre-judging the merits of the application for judicial review, the fact that the College has investigated and dismissed the complaint on its face indicates that the on-going risk to the public is less significant than the irreparable harm to Dr. Y's reputation. As such, I am convinced that the salutary effects of the confidentiality order outweigh its deleterious effects.

SEALING THE RECORD

[45] As acknowledged above, any information that identifies either Patient X or Dr. Y must be removed from the record. The question then becomes whether that information can simply be redacted from the record or whether it is necessary to seal it altogether. Both the applicant and the College submit that the entire record is rife with identifying information, and that it would be impractical to go through it line-by-line and redact it. They rely on *Osif*, *supra*, and submit that there is no reasonable alternative but to seal the record. Dr. Y takes no position on this issue but at the hearing his counsel indicated that any process of redaction would need to be very careful, saying that some data which seems innocuous, such as Dr. Y's specialization, could tend to identify him.

[46] I am required to restrict the order as much as is reasonably possible, and therefore I must consider whether redaction would be a reasonable and practical alternative to sealing the file: *Osif*, *supra* at paras 27-29. Neither party has presented any affidavit evidence as to how cumbersome or costly redacting the record would be. However, counsel for the College has provided me with a copy of the complete record for my review.

[47] In *Osif*, *supra*, redaction was held to be impractical and unreasonable, and for that reason the appeal book was sealed. However, in that case, the transcript alone ran to almost three thousand pages. Here, the record is only around one hundred and twenty pages and it is not immediately obvious that it would be impractical to redact.

[48] While it would certainly be more convenient to seal the entire record, doing so would jeopardize the important goal of allowing the public to comprehend the proceedings. In my view, it is neither necessary nor desirable to hide from the public the decision of the College, the substance of the complaint, or Dr. Y's response to it. Without that data, the public cannot assess either the complaint or the College's process for dealing with it. Moreover, I am not convinced that the

redaction process would cause any serious delay, considering that this matter is not scheduled to be heard until April 9, 2013.

[49] Nonetheless, upon reviewing the record, I am of the opinion that the content of tab 7 ought to be completely sealed. Almost all of the material in that tab is identifying and would need to be redacted, which would be painstaking and prone to error especially since there are a lot of handwritten notes. Additionally, once redacted, the only relevant data remaining is reproduced elsewhere in the record.

[50] Additionally, tabs 1 and 12 should be partially sealed. Tab 1 contains the formal complaint along with attachments. It would not be appropriate to remove the initiating document from the record since, without it, the public would not be able to assess the College's response to the complaint. However, the attachments are mostly sensitive medical records rife with identifying information. The exceptions are a short excerpt on racism in Nova Scotia from what appears to be Wikipedia and an editorial on the same subject. The other attachments would require significant redaction and, aside from the consultation report from Dr. Y, are not necessary to understand the complaint. As such, they should be redacted from Tab 1 in the public copy of the record. All that should remain are the complaint

(which comprises the first seven pages of the tab), the Wikipedia entry, the editorial, and a heavily redacted version of Dr. Y's consultation report following the April 2009 visit.

[51] Tab 12 consists of the applicant's letter regarding Dr. Y's initial response, and it too has a number of attachments. For similar reasons, only the letter (which comprises the first three pages in the tab) should remain in the public copy of the record and the attachments can be redacted.

[52] The remainder of the record, along with the portions of tabs 1 and 12 that were not redacted, should be scanned and any information that tends to identify either Patient X or Dr. Y be redacted.

[53] I am mindful of the concern that there might be disagreements between counsel as to what material must be redacted, so I will attempt to provide some guidance here.

[54] For Patient X, the material to be redacted includes not only her name, contact details (addresses, phone numbers, etc.), health card number, age, and date-of-birth,

but also any information that identifies her relatives and any description of her occupational history, her home environment, her neighbourhood, and any other like-circumstances which would tend to identify her. However, the fact that Patient X is an African-Canadian woman, while that could be identifying information, should not be redacted since otherwise the substance of one of the complaints against Dr. Y is incomprehensible.

[55] For Dr. Y, the redactions should include not only his name, contact details, age, and date-of-birth, but also his specialty and the locations where he practises. However, the relevant details of his examination of Patient X cannot be redacted from the record since otherwise his defence becomes difficult for the public to assess. There is likely other identifying information which should be redacted and which is not contemplated here. I leave that to the discretion of counsel. However, counsel should be cautious about redacting anything if its absence would make the essence of the complaint or the reasons for the College's decision incomprehensible. If there is a need for a further order from me to resolve any outstanding issues (of which I hope there will be none), I will accept written submissions.

[56] The above result will satisfy the public interests which recommend anonymity and minimally impact freedom of the press and the open courts principle.

CONCLUSION

[57] In the result, the applicant's motion is granted in part and the physician's motion is granted in full. The applicant's name shall be replaced with Patient X in all court documents and proceedings, and the physician shall be called Dr. Y. The record shall be partially sealed and redacted to protect their names and identifying information, and there will be a publication ban on the same information. However, the applicant's request to ban publication of her medical information is denied, as is her request to exclude the public from the hearing.

[58] I would like to thank all counsel for their able and fair-minded assistance on these issues, especially in the absence of opposition from the media.

Hood, J.