CITATION: Danso v. Bartley, 2018 ONSC 4929
COURT FILE NO.: FS-18-003676
DATE: 20180817

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
Martin Kofi Danso	Applicant	Daniel A. Robertson, for the Applicant
– and –		
Chris-Ann Bartley	Respondent	Theodora J. Oprea, for the Respondent
		HEARD: August 14, 2018

REASONS FOR JUDGMENT

F.L. MYERS J.

Background

[1] After hearing this matter, I advised the parties that the application was dismissed for reasons that would follow. These are my reasons for dismissing the application.

[2] The principal issue in this application concerns the paternity of Ms. Bartley's six month old baby. Ms. Bartley says that Mr. Danso is the baby's biological father. Mr. Danso denied paternity.

[3] On July 10, 2018, Mr. Danso commenced this lawsuit asking for the following relief:

a. A publication ban on these proceedings;

b. A mareuva [*sic*] injunction[1] or interlocutory order preventing Ms. Bartley from initiating any proceedings pending receipt of the results of a conclusive paternity test;

c. A paternity test concerning the baby;

d. An order that Ms. Bartley refrain from communicating with Mr. Danso and remain 500 meters away from him;

e. An order that Ms. Bartley not "record, report, or communicate in any way, by words, electronic communication on any social media platform, public forum, online, or to any other person any detail/aspect of these proceedings";

f. An order that any order of the court shall be enforceable by any peace or police officer to whom it is presented;

g. An order for the questioning [examination under oath] of other persons including but not limited to Ms. Bartley; and

h. Certain other ancillary relief.

Interim Order made by Justice Akbarali

[4] On July 17, 2018, Mr. Danso moved before Justice Akbarali for interim relief without notice to Ms. Bartley. He sought a temporary order under s. 70 of the *Children's Law Reform Act*, RSO 1990, c C.12 ("*CLRA*") to seal the court file and ban publication of details of the case.

[5] The nub of Mr. Danso's argument to Justice Akbarali was that he is a prominent public figure and was the subject of a false allegation of paternity made by Ms. Bartley to destroy his reputation.

[6] At para. 8 of his affidavit sworn July 10, 2018, Mr. Danso swore that, "I did not have sexual relations with the Respondent." He also swore that the respondent's claims, "are designed in bad faith to make me pay child support for the child who was fathered by another man."

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[1] The term "*Mareva Injunction*" refers to a pre-trial order freezing a party's assets pending the final outcome of the trial. The applicant here sought an order sealing the court file and a publication ban rather than a *Mareva Injunction*.

[7] Justice Akbarali summarized Mr. Danso's evidence concerning his reputation and success as follows:

> The applicant's evidence is that he is a religious leader with significant commercial interests, including 18 churches in Canada, contracts with five television networks, and he has authored a number of books. He markets his books during his television appearances. He also has a web presence. He works as a life coach and earns income from speaking engagements.

[8] Justice Akbarali accepted that if Mr. Danso's evidence was true, he stood to lose much if Ms. Bartley's claim was publicly disclosed. He could incur financial loss, distress, damage to his marriage, and family. She wrote:

> If in fact his evidence that he was never intimate with the respondent is true, these losses would not be the natural consequence of his actions, but rather, an unfair and devastating injustice.

[9] Justice Akbarali recognized that there may be a public interest at play in light of the applicant's prominence and the question of whether his conduct was in keeping with the morality espoused by his church. She wrote,

> As a result, there might be some public interest in understanding whether his personal conduct is consistent with the public image that he uses to earn his income, including through donations from congregants.

[10] Ultimately, Justice Akbarali determined that, before a final order could be made, it was necessary to balance the possibility of harm to Mr. Danso's interests against the public interest in open courts. To enable the court to engage in that balancing exercise, Justice Akbarali determined that Ms. Bartley was entitled to test Mr. Danso's evidence and to deliver her own evidence if so inclined.

[11] Justice Akbarali also required Mr. Danso to serve the media with his motion for a publication ban as required by the Court's *Consolidated Provincial Practice Direction Effective June 15, 2018,* Part V, Section (F). In *B.C.P. and L.P. v A.R.P.*, 2016 ONSC 4518 (CanLII), Kiteley J. waived the requirement to notify representatives of the press of requests for a publication ban in parentage cases under the *CLRA*. She made a clear finding in that case that in parentage applications, especially those involving surrogacy, matters involving a child's biological parentage and birthing process are private. Sealing the court file and banning publication in those cases risks causing only an "extremely remote deleterious effect" on any public interest in publication. Akbarali J. found that in light of Mr. Danso's evidence there was a sufficient question as to whether there was an overriding public interest implicated in this case to at least require notice of the application be given to the press.

[12] But, in light of the risk of injustice and harm if Mr. Danso's evidence was true, Justice Akbarali was convinced that a brief sealing order and publication ban was in order to protect Mr. Danso pending hearing from Ms. Bartley and any representatives of the press who might respond. Justice Akbarali therefore adjourned the matter until July 31, 2018 on the following term:

> Accordingly, I order that access to the court file be limited to the court and authorized employees, and the parties and their counsel. I further order that no person shall publish or make public information that has the effect of identifying any person referred to in any document relating to the application that appears in the court file.

[13] I should note that this was not a complete gag order preventing public discussion of Ms. Bartley's allegations generally. Rather, the court's file was sealed and people were prohibited from making public information concerning the identities of people referred to in the sealed court file.

Final Order made by Justice Akbarali

[14] The parties returned to court with a settlement on July 31, 2018. Akbarali J. endorsed the parties' agreement to undergo paternity testing at one of the two labs requested by the applicant in his initial notice of application. The order made by Akbarali J., on consent, included the following term:

> (b) [Ms. Bartley] shall not advise anyone of the date, time or location of the testing until the testing process is complete.

[15] Justice Akbarali once again adjourned Mr. Danso's request for a sealing order and publication ban as he had not yet properly put the media on notice of his request as he was required to do. Justice Akbarali continued the temporary sealing order and publication ban that she made on July 17, 2018 until the press were properly notified.

[16] The substance of Mr. Danso's lawsuit was concluded with the ordering of the DNA test. All that remained open was the question of whether to extend the sealing order and the publication ban after the case was otherwise completed. It is only that remaining aspect of the application that I heard and resolve for these reasons.

The Evolution of Ms. Bartley's Position – She Initially Consented to the Order Sought

[17] In her initial affidavit sworn July 24, 2018, that was before Justice Akbarali on July 31, 2018, Ms. Bartley advised the court that she did not oppose a publication ban. She denied ever threatening to go public. But she confirmed that her counsel had indicated that she was intending to bring a family law proceeding seeking custody and child support from Mr. Danso if the matter could not be settled. However, she expressed her "shock" at Mr. Danso's denial of a relationship with her. She therefore went on to provide evidence that they had an ongoing intimate relationship from the fall of 2014 until the end of May, 2017.

[18] Ms. Bartley's evidence is that when she approached Mr. Danso to tell him that she was pregnant, he asked her to have an abortion. When she declined, she claims that he told her that, "the Lord showed him if I have the child I would die."

[19] Mr. Danso's counsel did not cross-examine Ms. Bartley on her evidence. Neither did her counsel cross-examine Mr. Danso on his evidence.

DNA Testing established that Mr. Danso is the Father

[20] In a further affidavit sworn August 7, 2018, Ms. Bartley exhibits the report of Canadian DNA Services indicating that the lab's DNA testing established a 99.999996% probability that Mr. Danso is the baby's father.

The Evolution of Ms. Bartley's Position – She Now Opposes the Order Sought

[21] As a result of this new development, Ms. Bartley's position on the publication ban has changed. She opposes the sealing and publication ban on the basis that the public interest weighs against sealing the court file. She puts it this way:

> The Applicant is a leader in his church and he presents himself as a moral and family man; however, this is contrary to his actions in his private life. I believe that they [*sic*] are other woman [*sic*] who have endured similar experiences with the Applicant, as I have been advised by female congregants in the church, but they are afraid of coming forward.

Mr. Danso's Response

[22] Mr. Danso's counsel delivered two new affidavits at the opening of the hearing; one from Mr. Danso and the other from Kimberly Adjei Benyarko an administrator of Mr. Danso's church who works in its media department. Counsel for Ms. Bartley objected but did not ask for an adjournment to respond. The court offered Ms. Bartley's counsel the opportunity to cross-examine the two affiants. Both were present in the courtroom for the hearing. Ms. Bartley's counsel declined the opportunity.

[23] Mr. Danso swears that he was "shocked" by the outcome of the DNA test. But, he now admits to having been seduced by Ms. Bartley. He says that being married, he offended his marriage vows and was too frightened to admit his limited contact with Ms. Bartley. He referred to their relationship as a mistake that should not have occurred. Ms. Bartley has produced contemporaneous text messages from Mr. Danso that suggest that Mr. Danso may have thought otherwise at the time. However, nothing turns on this credibility issue.

[24] The bulk of the rest of Mr. Danso's new evidence deals with his fear of suffering commercial harm at the hands of Ms. Bartley, her family, and her ex-boyfriend. Mr. Danso fears that he will be ruined financially by threats to publicize Ms. Bartley's allegations especially as made by her ex-boyfriend. He refers to Ms. Bartley's unsubstantiated allegations regarding other women and characterizes them as an attempt "to permanently destroy my career in the church." He swears that it is not in the public interest to allow Ms. Bartley to irreparably harm his reputation before trial and final disposition of the proceedings.

[25] However, procedurally, there will be no trial or other final disposition of the proceedings. These proceedings are over. Ms. Bartley has not yet brought proceedings for child support. Her counsel indicates that she intends to do so in the Provincial Court if Mr. Danso does not voluntarily

accept his responsibility and legal obligation to pay child support. Mr. Danso's counsel advises that Mr. Danso intends to bring libel and slander proceedings against Ms. Bartley and others. Mr. Danso asks for the temporary sealing order and publication ban to continue until both of those proceedings are concluded.

No Sealing Order or Publication Ban for Proceedings that have not yet been brought

[26] I deal with the request to seal the file and ban publication of these DNA test proceedings below. If other proceedings are brought before the Provincial Court, that court is well able to deal with the manner in which its file is handled and any limits on publication of its proceedings. Mr. Danso's counsel asks for an interlocutory injunction now in support of future defamation claim that Mr. Danso may bring in this court. Apart from issues under *Anti-SLAPP* legislation that may affect such a proceeding,[2] there is no basis for this court to grant an injunction today against unknown defendants, for proceedings that have yet to be brought. One cannot sue for defamation in relation to things written in a lawsuit. Whatever has been written in this case is subject to absolute privilege and cannot be a basis for defamation liability. Moreover, an injunction cannot be available in a defamation case to prevent speech that is true (and therefore not defamatory). The facts that Mr. Danso sued for a DNA test, lied about his relationship with Ms. Bartley in sworn testimony, and has been found to be the father of the child, are indisputably true. To sue for defamation, Mr. Danso may find himself faced with having to prove that his reputation was damaged by other, untrue things said about him outside of this litigation rather than by publication of those true facts. I am not determining that Mr. Danso cannot bring a defamation action for things said or written about him outside of this lawsuit. But he has a very long and difficult legal road to travel to prove that he has been defamed and is entitled to relief. He has not yet even brought proceedings to try to do so.

[27] As I am not inclined to grant orders in relation to future proceedings that have not yet been commenced and may never be commenced, I turn to the applicable law for the sealing of the court file and making the publication ban in this proceeding for a DNA test.

The Law

[28] The application for a DNA test was made under s. 17.1 of the *CLRA*. Section 17.3 of the statute makes the sealing provisions of s. 70 of the *CLRA* applicable to these types of cases. Section 70 provides, in part:

> 70 (1) Where a proceeding includes an application under this Part, the court shall consider whether it is appropriate to order,
>
> (a) that access to all or part of the court file be limited to,

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[2] See sections 137.1 to 137.5 of the *Courts of Justice Act*, RSO 1990, c C.43 – *Prevention of Proceedings that Limit Free Expression on Matters of Public Interest (Gag Proceedings)*

(i) the court and authorized court employees,

(ii) the parties and their counsel,

(iii) counsel, if any, representing the child who is the subject of the application, and

(iv) any other person that the court may specify; or

(b) that no person shall publish or make public information that has the effect of identifying any person referred to in any document relating to the application that appears in the court file. 2009, c. 11, s. 18.

Considerations

(2) In determining whether to make an order under subsection (1), the court shall consider,

(a) the nature and sensitivity of the information contained in the documents relating to the application under this Part that appear in the court file; and

(b) whether not making the order could cause physical, mental or emotional harm to any person referred to in those documents.

[29] Mr. Danso argues that he and his family will suffer emotional harm from the release of information about this case. The allegation was simply asserted with no specificity apart from their obvious embarrassment at his indiscretion. His main argument, however, is that he will suffer financial harm which is not a criterion for a remedy set out in the statute. Mr. Danso also raises a concern about the baby suffering harm in future if he learns about the issues in this case. That is a matter of concern to which I will return below.

[30] The statutory test under s. 70 of the *CLRA* is not the only question before the court. Where someone asks to seal court records or to prevent publication of court proceedings, the issues are affected by the constitutional "open courts" principle. The open courts principle protects the public's right to know about court proceedings in Canada. In *R. v. Mentuck,* 2001 SCC 76, Justice Iacobucci of the Supreme Court of Canada explained the purpose of the constitutional protection of the right to a public trial at para. 52 of his reasons:

> The right to a public trial is meant to allow public scrutiny of the trial process. In light of that purpose, the observations of Cory J. in discussing the right to freedom of expression are also apt when applied to the right to a public trial:
>
> > It is exceedingly difficult for many, if not most, people to attend a court trial. Neither working couples nor mothers and fathers house-bound with young children, would find it possible to attend court. Those who cannot attend rely in large measure upon the press to inform them about court proceedings – the nature of the evidence that was called, the arguments presented, the comments made by the trial judge – in order to know not only what rights they may have, but how their

> problems might be dealt with in court. . . . Discussion of court cases and constructive criticism of court proceedings is dependent upon the receipt by the public of information as to what transpired in court. Practically speaking, this information can only be obtained from the newspapers or other media.
>
> (*Edmonton Journal v. Alberta (Attorney General)*, 1989 CanLII 20 (SCC), [1989] 2 S.C.R. 1326, at pp. 1339-40)

[31] *Mentuck* was a criminal law case. The Supreme Court's discussion of the open courts principle in that case was informed by and infused with issues concerning the accused's right to a fair criminal trial and the particular importance of public scrutiny of the exercise of the police power of the state. In 2002, the year after it decided *Mentuck*, the Supreme Court of Canada revisited the question of sealing the court file in a civil context. In *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII), the court considered whether protecting a commercial interest in confidentiality of business information in civil litigation ought to be subject to the same open courts principle that applies in criminal law cases. Iacobucci J. wrote:

> 51 Thus, the interests which would be promoted by a confidentiality order are the preservation of commercial and contractual relations, as well as the right of civil litigants to a fair trial. Related to the latter are the public and judicial interests in seeking the truth and achieving a just result in civil proceedings.
>
> 52 In opposition to the confidentiality order lies the fundamental principle of open and accessible court proceedings. This principle is inextricably tied to freedom of expression enshrined in s. 2(*b*) of the *Charter*: *New Brunswick*, *supra*, at para. 23. The importance of public and media access to the courts cannot be understated, as this access is the method by which the judicial process is scrutinized and criticized. Because it is essential to the administration of justice that justice is done and is seen to be done, such public scrutiny is fundamental. The open court principle has been described as "the very soul of justice", guaranteeing that justice is administered in a non-arbitrary manner: *New Brunswick*, at para. 22. [Emphasis in original.]

[32] Justice Iacobucci formulated the constitutional test to deal with requests to protect publication of court proceedings involving commercial interests as follows:

> 53 Applying the rights and interests engaged in this case to the analytical framework of *Dagenais* and subsequent cases discussed above, the test for whether a confidentiality order ought to be granted in a case such as this one should be framed as follows:
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> A confidentiality order under Rule 151 should only be granted when:
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> (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.

[33] Justice Iacobucci went on to describe how judges are to make this assessment in a commercial context. He wrote:

> 54 As in *Mentuck*, I would add that three important elements are subsumed under the first branch of this test. First, the risk in question must be real and substantial, in that the risk is well grounded in the evidence, and poses a serious threat to the commercial interest in question.
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> 55 In addition, the phrase "important commercial interest" is in need of some clarification. In order to qualify as an "important commercial interest", the interest in question cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in confidentiality. For example, a private company could not argue simply that the existence of a particular contract should not be made public because to do so would cause the company to lose business, thus harming its commercial interests. However, if, as in this case, exposure of information would cause a breach of a confidentiality agreement, then the commercial interest affected can be characterized more broadly as the general commercial interest of preserving confidential information. Simply put, if there is no general principle at stake, there can be no "important commercial interest" for the purposes of this test. Or, in the words of Binnie J. in *F.N. (Re)*, [2000] 1 S.C.R. 880, 2000 SCC 35 (CanLII), at para. 10, the open court rule only yields "where the public interest in confidentiality outweighs the public interest in openness" (emphasis added).
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> 56 In addition to the above requirement, courts must be cautious in determining what constitutes an "important commercial interest". It must be remembered that a confidentiality order involves an infringement on freedom of expression. Although the balancing of the commercial interest with freedom of expression takes place under the second branch of the test, courts must be alive to the fundamental importance of the open court rule. See generally Muldoon J. in *Eli Lilly and Co. v. Novopharm Ltd.* (1994), 56 C.P.R. (3d) 437 (F.C.T.D.), at p. 439.

Analysis

[34] Even if the terms of s. 70 of the *CLRA* are met, prior to ordering a sealing of the file or a publication ban under that section, the court is required to consider the balancing of interests mandated in *Sierra Club*. However, s. 70 provides an important context for applying the constitutional balancing. That is, the legislation shows a heightened awareness and sensitivity to the risks of harm in cases involving children. In balancing the risks of harm of publicity against the possible negative effects of a publication ban, the court should put extra emphasis on the public interest in protecting children and scrutinize closely claims that there is a real public interest in publication of the details of such claims.

[35] I do not deal with the requirements of s. 70 in any detail below. Even if the test set out in the section is met, in my view, the overriding balance of public interests in this case prevents sealing the court file or banning the publication of identities of people referred to in this case.

[36] Mr. Danso has filed a significant amount of evidence establishing that there is an existing and substantial public interest at play. He is the leader of a large, multi-national religious and business organization. He holds himself out as a religious leader to followers and members of the public. In addition to his religious works, he earns substantial revenue from congregants and members of the public by selling books and soliciting donations among other things. He markets his church and himself broadly to the public by television and otherwise referring to himself as a "prophet". His evidence confirms that his character and reputation are vitally important to his public standing as a religious leader and to his business success.

[37] Mr. Danso has been contacted by people who provided information, possibly from Ms. Bartley's sister and her ex-boyfriend, concerning the timing of the court-ordered DNA testing. Justice Akbarali expressly ordered Ms. Bartley not to tell anyone the timing or location of the test before it was concluded. Mr. Danso asks for a negative inference to be drawn against Ms. Bartley for breaching the order made by Justice Akbarali.

[38] Ms. Bartley's counsel advises that Ms. Bartley denies any breach of the Justice Akbarali's order. Moreover, she points to some weaknesses in the written, internet and text message evidence relied on by Mr. Danso. In all, the strength of the evidence as to the source of the information turns on the credibility and reliability of the evidence of Mr. Danso and Ms. Benyarko. As all of the evidence is untested and was provided at the very last minute, I am not in a position to draw any inferences.

[39] Mr. Danso accuses Ms. Bartley's ex-boyfriend of putting information about the paternity test on Snapchat. The ex-boyfriend is also alleged to have uttered threats to physically harm Mr. Danso. He has quite properly contacted the police in respect of those allegations.

[40] Mr. Danso also testifies that the church received a telephone message indicating that "the whole church knows about the scandal with Chris-Ann Bartley."

[41] Supporting the truth of that statement, Mr. Danso testifies that attendance numbers at his churches in Toronto, Scarborough, Ottawa, and Edmonton are diminishing rapidly. The scandal is apparently known and having an effect across the country already. He says that if the declines continue, his churches could go bankrupt.

[42] Justice Akbarali's orders did not gag all discussion. They were limited to banning publication of information concerning the identities of the people named in the court file in this legal proceeding for a DNA test and the details of the testing appointment (before it was completed). People are allowed to discuss the issues otherwise if they know about them. However, even if some of the harms claimed by Mr. Danso have been caused by breaches of Justice Akbarali's order, which is unproved, the only answer in my view is openness and truth. Suppression of truth and public court proceedings after widespread attention across the county does not protect anyone. Mr. Danso should be free to respond to whatever is already affecting his

reputation in his congregations. If members of a congregation know of the paternity issue, I cannot see any harm to the members or to the congregation of knowing that Mr. Danso sued for a DNA test and the DNA test proves the allegation of paternity is true. It is in the public interest that whatever discussion may be ongoing in the church and elsewhere, among congregants, donors, and potential congregants and potential donors, be based on true facts rather than rumours and allegations.

[43] If people go to court to seek a judicially-imposed solution to their civil legal problems, especially those that have a public interest dimension, it is fundamentally important that the public be able to look to the court for truthful information about its proceeding. The court is empowered to enforce an outcome to peoples' civil problems. Part of the reason why society gives the court this authority is that the public is entitled to review and critique the court's proceedings.

[44] The public, including potential and actual congregants and donors, are having an important discussion. The court's findings will likely, and quite fairly, be expected to be credible and truthful additions that may settle or help to settle aspects of the debate. Preventing this use of court proceedings deprives the public of a vital benefit that underpins society's tacit agreement to empower civil courts.

[45] This is especially the case in matters involving public figures facing a potential scandal. Secrecy in such cases in particular risks making the court appear to be a private preserve.

[46] Mr. Danso's counsel was not able to point to any public interest in the continued suppression of information. Rather, as Justice Brandeis famously wrote, sunlight disinfects.[3]

[47] Moreover, Mr. Danso does not simply ask for suppression of unproven allegations concerning the possibility of other women having had similar experiences. He argues that to protect his reputation all of his activities with Ms. Bartley and within the church must be suppressed. In my view this mischaracterizes the issue in the case. Section 70 of the *CLRA* does not authorize such a broad gag order. Nor do I believe that an order of such magnitude would have any practical effect. As noted above, nothing stops Ms. Bartley or others from making public truthful statements concerning Mr. Danso. As Mr. Danso's own evidence confirms, there is a broad public interest in the religious and commercial activities of his churches and business organizations. The issue under s. 70 of the CLRA and Justice Akbarali's temporary order is just whether, in discussing the church and Ms. Bartley's claims, people may refer to the identities of people referred to in documents filed in this lawsuit.

[48] I want to make clear that there is absolutely no proof before this court that there are any other women involved in the issues in this proceeding. Moreover, I do not think that the allegations

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[3] "If the broad light of day could be let in upon men's actions, it would purify them as the sun disinfects." *Brandeis and the History of Transparency*, online: Sunlight Foundation <https://sunlightfoundation.com/2009/05/26/brandeis-and-the-history-of-transparency/ >

concerning the possibility of others were necessary or even relevant to the key issue of DNA testing in this proceeding. But, for better or worse, Mr. Danso chose to act pre-emptively by seeking a publication ban and thereby engaged the court in a weighing of the effect of such a ban on the public interest. Apart from other reasons to decline a publication ban in this case, the possibility that others may be emboldened to come forward either against Mr. Danso or others in similar important positions is at least one positive aspect of the public interests that may be affected by this case. The suppression of the court file in this case would have a deleterious effect on that aspect.

[49] While I suspect that some of Mr. Danso's evidence concerning his financial prospects and attendance numbers at his churches are exaggerated, I accept for the purposes of this discussion that he has very substantial commercial interests at risk. As noted by Justice Iacobucci, the simple risk of loss of business to Mr. Danso is not a countervailing *public* interest. However, the risk also affects the church and its congregants. I do not see how they are protected by keeping truthful information about their spiritual leader from them.

[50] If Mr. Danso is harmed by publications concerning these proceedings, as Justice Akbarali discussed, it will be "the natural consequence of his actions." As Mr. Danso's evidence concerning his relationship with Ms. Bartley was not truthful, any harm to him does not flow from an "unfair and devastating injustice" brought about by false allegations as Justice Akbarali was told. The basis on which she gave temporary relief has now disappeared.

The Best Interests of the Child

[51] There was regrettably little discussion of the best interest of the baby in the submissions that I heard and read. Mr. Danso's concern for his commercial interests was paramount although he allowed that if he is financially harmed, that could impair his ability to support the baby as well (not that he has offered to do so).

[52] The law recognizes the obvious and important public interest in protecting vulnerable children from suffering trauma caused by their parents' legal proceedings. *P.P. v. D.D.*, 2016 ONSC 256 (CanLII) at para. 1. Moreover, I am very cognizant of the context of this case involving a child as discussed above. Counsel for Ms. Bartley suggested that I could require that her client and the baby be referred to only by their initials in reports of this proceeding. But these proceedings involve two consenting adults. Unlike the case in *P.P.*, the details are not particularly salacious. If I anonymize Ms. Bartley and the baby, I leave all arrows pointing at Mr. Danso. The baby, or others, will still be able to find references to Mr. Danso on the internet and piece the rest together some day. If I anonymize Mr. Danso too, the public interest in the availability of the facts and identities involved in the case is lost just as if a ban was in effect.

[53] This application involved two parents arguing over parentage and, in effect, whether they had an intimate relationship or not. While some years from now the baby might find his parents' private details referred to on the internet, this is no different than the rest of the world in this internet age. There is no evidence before me that this would be traumatic or more traumatic to the baby than the risks to any child caught up in the multitude of nasty family law proceedings that

are reported online. The baby was born with a public figure father and will suffer the benefits and burdens of that happenstance. That is beyond the reach of the court.

[54] It would be pure speculation to guess at whether emotional harm will be caused to the baby some years from now if he reads about the case online. Others who know about the "scandal" may tell him anyway. His parents have many years to prepare him with appropriate professional assistance if necessary. No medical or psychological evidence was filed by either party. I cannot find a sufficient basis in the evidence before the court to conclude that there is a real risk of harm to the baby sufficient to outweigh the deleterious effects on the public interest if these proceedings are suppressed.

[55] In most cases involving the parentage of a child one need not find definitive harm to a child to find the risk of harm to the child more important than the risk of harming the public interest by preventing disclosure. As cases like *BCP* demonstrate, there is usually little or no public interest at all in the publication of the details of such cases. I am not to be taken to be requiring a high degree of proof of harm to children in the normal case where there is no substantial countervailing public interest. This case is very different and exceptional. As discussed above, in this case there is clear evidence establishing an identifiable and important public interest that will be harmed by the publication ban and sealing order sought.

[56] In this unusual case, and even with the understanding that the law favours protecting vulnerable children, in my view, for the reasons discussed previously, the constitutional balancing of interests requires the rejection of Mr. Danso's request for a further sealing order and publication ban.

Summary

[57] Overall, in my view, the risk of 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, weigh in favour of declining the publication ban and sealing order sought. Important discussions are occurring among members of a church and the public concerning the conduct or misconduct of the spiritual and business leader of the church. Suppressing the facts in this case will not reduce a proven risk of harm to the baby, enhance any other public interest, and can only prejudice important public discussions.

[58] Why Mr. Danso chose to put this matter into the public realm is a mystery given his knowledge that he had had an intimate relationship with Ms. Bartley. But I note that the parents do have the ability to put their child first and protect him from any further details escaping by quickly settling if they are so minded.

F.L. Myers J.

Released: August 17, 2018

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