

Andrew Feldstein: Open courts destroy privacy for divorcing spouses

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If you've ever wondered what the real housewives of your local suburb were up to, there's an easy way to find out. Just walk on down to the nearest courthouse and ask to see their file.

What goes on in the confines of your home is expected to stay private. Unfortunately, though, people forget that all the scandalous details of divorce proceedings in B.C. are available to the public. In fact, people seeking divorces face the same issue all across Canada.

The current divorce of Vancouver Canucks owner Francesco Aquilini shines a spotlight on the lack of privacy during a divorce, an unintended consequence of our open court system.

We have already seen this once in 2012. In February, the sordid details of the divorce proceedings of Public Safety Minister Vic Toews were obtained legally in Manitoba by @vikileaks30; someone merely walked in to the courthouse and put in a photocopy order.

For a variety of reasons, this is troubling to those engaged in family-related litigation.

The source of the information in any particular person's file includes, but is not limited to documents such as the application, sworn financial statement, or affidavit. The substance of the information is almost limitless, depending on the circumstances, but you can be certain that an individual's address, employment, banking, social insurance number, date of birth, and income tax information will all be accessible within the file.

The scope of the information often depends on the hostility between the parties and the complexity of their case. For example, if one of the parties is self-employed and has a plethora of income generating assets and/or properties, then experts may be used to determine their income

or to value their business. In such cases, there may be hundreds of financial documents produced and exchanged and filed with the court by way of affidavit evidence.

There are three particularly troubling side effects to the accessibility of the information within a family court file.

First, it exposes people to identity theft, which in our age of technology, is a growing concern. It is only a matter of time before crooks figure out that our open court system is a great source of personal information. Second, it allows anyone out there who is curious to find out exactly how much money you make. Third, it makes a vendor of a business or real estate vulnerable to potential buyers of the businesses or property if the litigant must sell (in order to meet payments, for example).

In this Aquilini case, the estranged Taliah Aquilini is seeking the divorce and in March a judge allowed her to learn the value of her husbands' assets, which are worth about \$5 billion. Depending on the value of Mr. Aquilini's assets before the marriage, and any marriage contracts in place, he could be forced to sell off assets to make payments to his wife, possibly at "fire sale" prices.

The public is always interested in the details of divorces of high-profile individuals, but the question is where does public domain end and privacy begin?

Custody of the Aquilinis' five children is expected to be a central issue in the case. And apparently, there is "real risk" of harm to the children unless there is a ban on court documents.

Having said that, if, unlike the Aquilini family, you have nothing embarrassing or immoral to hide, then freedom of information is not necessarily a problem for you.

However, a party in a family law dispute may air all of their dirty family laundry, which may impact on someone's business or employment, which is not in the best interest of the parties involved.

There are some mechanisms in place to try and protect litigants. For example, certain information can be redacted where a party is legitimately concerned for their safety. Where someone is concerned that their bank account may be compromised, banking information can be disclosed between counsel, with each of them agreeing not to list full account numbers on financial statements.

Despite whatever measures lawyers may take to try and protect their clients' information, most of it is inevitably going to be exposable.

I would suggest it is now time for the courts to ensure that some privacy is maintained. For instance, financial information that is filed with the court should not be made available to the public.

In addition, I would also suggest that it is time that all family law cases be referred to by initials for the parties, or a number, in order to ensure that the private information of the parties is not disclosed to the public.

Andrew Feldstein runs one of the largest family law firms in Toronto.

<http://blogs.theprovince.com/2012/06/11/andrew-feldstein-open-courts-destroy-privacy-for-divorcing-spouses/>