W A R N I N G

The court hearing this matter directs that the following notice be attached to the file:

This is a case under the *Youth Criminal Justice Act* and is subject to subsections 110(1) and 111(1) and section 129 of the Act. These provisions read as follows:

> **110. IDENTITY OF OFFENDER NOT TO BE PUBLISHED —**(1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.
>
> . . .
>
> **111. IDENTITY OF VICTIM OR WITNESS NOT TO BE PUBLISHED —** (1) Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.
>
> . . .
>
> **129. NO SUBSEQUENT DISCLOSURE —** No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any person unless the disclosure is authorized under this Act.

Subsection 138(1) of the *Youth Criminal Justice Act,* which deals with the consequences of failure to comply with these provisions, states as follows:

> **138. OFFENCES —** Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published) . . . or section 129 (no subsequent disclosure) . . .
>
> (*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
>
> (*b*) is guilty of an offence punishable on summary conviction.

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ONTARIO COURT OF JUSTICE

CITATION: *Toronto Community Housing Corporation v. R.*, 2018 ONCJ 492
DATE: 2018.07.20
COURT FILE No.: 18-Y182014-03

B E T W E E N :

TORONTO COMMUNITY HOUSING CORPORATION

Applicant

— AND —

HER MAJESTY THE QUEEN

Respondent

— AND —

R.V.

Respondent

Before Justice Alex Finlayson
Heard on June 26, 2018
Reasons for Judgment released on July 20, 2018

Megan Andrews..... counsel for the Applicant

P. Antecott ..... counsel for the Ministry of the Attorney General, ...Crown Law Office Civil

Jeff Carolin ..... counsel for the Respondent, R.V.

ALEX FINLAYSON J.:

PART I: BACKGROUND AND NATURE OF THIS APPLICATION

[1] In mid-September of 2016, R.V. and another young person were charged with various weapons related offences relating to an incident that allegedly occurred on Toronto Community Housing Corporation ("TCHC") property. However, on November

NOTE: This judgment is under a publication ban described in the WARNING page(s) at the start of this document. If the WARNING page(s) is (are) missing, please contact the court office.

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16, 2017, a crown stay was entered. At the time of the stay there was no admission regarding the underlying facts on the record as they each entered into a common law peace bond.

[2] At the time of the alleged offences, R.V. was 16 years old. Although he is now 18, he is a young person within the meaning of section 2(1) of the *Youth Criminal Justice Act, S.C. 2002, c. 1, as amended* (the "*YCJA*") for the purposes of this application[1].

[3] R.V. lives with his mother and his 3 siblings in a TCHC townhouse. He is her son, not an ordinary tenant.

[4] R.V.'s mother's language of origin is Spanish. She speaks very little English. She is a single mother, who works hard in a factory to support her family.

[5] R.V. and one of his siblings self-identify as Black-Hispanic. One of R.V.'s siblings is a university student who works part-time. Another sibling is a 12 year old elementary school student. The home is close to work and school for these two siblings.

[6] Because this is non-profit housing, this family of 5 pays modest rent for their housing given its size. The family cannot afford comparable, non-subsidized housing elsewhere in Toronto.

[7] In this context, TCHC brings an application pursuant to Part VI of the *YCJA* for access to court and police records relating to the alleged offences described above. THCH wants the records to launch a proceeding to evict R.V.'s mother and consequently her four children based on R.V.'s alleged "illegal act" and conduct that it says has "seriously impaired the safety of any person" on TCHC property within the meaning of sections 61(1) and 66 of the *Residential Tenancies Act, 2006, S.O. 2006, c. 17, as amended.* While TCHC's claim, if successful, would give TCHC access to information identifying the young person as having been dealt with under the *YCJA,* TCHC does not seek access to any portion of the records that identify the other young person. He is not a resident in a TCHC property. TCHC is content that the Court make redactions accordingly.

[8] TCHC submits that if the Court denies it access to the records in this case, it will not be able to launch its intended eviction proceeding because all of the evidence upon which it needs to rely consists of information that is protected by the *YCJA.* But TCHC also says this case has broader implications than for just this family.

[9] TCHC is unaware of any other reported decision in Canada in which a social housing landlord, or any landlord for that matter, has sought access to youth records for the purposes of commencing eviction proceedings. TCHC has referred to this case as both "novel" and a "test case". TCHC says that if the Court denies its request for

[1] Section 2(1) defines a "young person" as "a person who is or, in the absence of evidence to the contrary, appears to be twelve years or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under this Act."

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access to the records in this case, it may also be precluded from fulfilling its "community safety mandate" in the future in circumstances involving young persons charged with offences committed on TCHC property.

[10] R.V. disputes that the case has such broad implications. Regardless, he submits that his privacy interest in the records outweighs TCHC's interest in accessing the records.

[11] R.V. also relies on what he refers to as TCHC's delay in bringing the application as a factor militating against access. TCHC commenced this application on January 10, 2018, less than 2 months after the charges against him were stayed. However, this was 16 months from the date he was charged. R.V. asks the Court to consider that he has not engaged in any illegal or dangerous behavior in the 16 months since the charges. He says this application is causing him stress and anxiety. TCHC's delay has exacerbated that stress and anxiety.

[12] The Crown takes no position respecting this application.

[13] R.V. concedes that TCHC has a "valid interest" in the records. However, as the balancing act upon which I must embark only follows if there is a finding that TCHC has the valid interest, and because, in my view, the nature of TCHC's "valid interest" is relevant to what must be balanced, I nevertheless considered whether TCHC has a "valid interest" in the records despite the concession. I am finding that TCHC does have a "valid interest". Below, I briefly comment on the nature and extent of its "valid interest".

[14] Given the finding that TCHC has a "valid interest" in the records, this case calls on the Court to determine whether an order granting TCHC access the records to pursue what it refers to as its "community safety mandate" is "desirable in the interest of the proper administration of justice" according to the test set out in section 119(1)(s)(ii) of the *YCJA.* This requires the Court to balance TCHC's "valid interest" against versus R.V.'s constitutionally protected privacy interest in the records.

[15] For the reasons that follow, I am unable to find that it is "desirable in the interest of the proper administration of justice" that TCHC be given the access to the records that it seeks. Therefore, I am dismissing TCHC's application.

PART II: PRIOR PROCEEDINGS

[16] There were a number of appearances before me on this application prior to argument. I summarize these appearances briefly for context.

[17] This matter first came before me on February 8, 2018. As I indicated in my reasons dated February 14, 2018 that I released after the February 8, 2018 attendance, when it first brought this application, TCHC had reason to believe that various records existed, but it could not confirm this for certain without access to specific information. Without knowing the specific offences with which R.V. was charged, the date of the charges and their disposition, TCHC did not know whether to make submissions for

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access to the records pursuant to the test articulated in section 119(1)(s)(ii) of the *YCJA* or pursuant to the test in section 123.

[18] Consequently, I followed the approach of Justice Sheilagh O'Connell in *Boyer v. Huang,* [2017] O.J. No. 2188 (C.J.). On February 8, 2018, (and again on March 9 and March 20, 2018), I made Orders and/or issued a subpoena directing that the sought after records be delivered to the Court for my review.

[19] On February 14, 2018, I made an Order providing TCHC and R.V. with the following limited information, on terms, to permit each to prepare for and argue the application[2]. I confirmed that the statutory access period was one year from the date the charges were stayed pursuant to section 119(2)(d) of the *YCJA,* and I confirmed that the applicable test to gain access to the records is that set out in section 119(1)(s)(ii) of the *YCJA.* And, given the issues at stake, as a matter of procedural fairness, I also directed that R.V. and his former counsel in the prior youth proceeding be given further notice of this current proceeding and a copy of my February 14, 2018 ruling. See *Toronto Community Housing Corporation v. R., 2018 ONCJ 100.*

[20] R.V. had counsel in attendance by March 20, 2018. On that day, on consent, I released the records the Court had received[3] pursuant to the prior Orders and subpoena to R.V.'s counsel for his review also.

PART III: EVENTS PRECIPITATING THIS APPLICATION

A. A Description of TCHC

[21] According to documentation filed by TCHC from its website, TCHC is the largest social housing provider in Canada and the second largest in North America. It is wholly owned by the City of Toronto and operates in a non-profit manner. It has 2,100 buildings and 50 million square feet of residential space. It has homes and communities in 106 of Toronto's 140 neighbourhoods, providing housing to nearly 60,000 low and moderate-income households. It has a total of 110,000 residents. They come from varying backgrounds, with a diversity in age, education, language, mental and physical disability, religion and ethnicity.

[22] TCHC's core mandate is to provide affordable and subsidized rental housing to low and moderate-income households in Toronto. TCHC is also responsible for administering rent subsidies based on tenants' relative incomes.

[23] There are approximately 90,000 families, or 170,000 individuals, on the wait list for a TCHC property. If evicted, R.V.'s family may or may not be eligible to re-apply for subsidized housing through TCHC. The number of families and individuals on the wait

[2] R.V. was not in attendance on February 8, 2018. My order provided that the information was to be given to him and his former counsel in the youth proceeding.

[3] Some of the records the Court received contained some redactions made by the Police or the Crown. Separately, the Court received a complete duplicate set without redactions. The redacted records were released to R.V.'s counsel. R.V.'s counsel agreed with that approach and did not ask for the not redacted version.

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list is an agreed fact that counsel communicated orally to the Court during submissions. TCHC was unable to specify with certainty whether R.V.'s family would be eligible to re-apply for housing if evicted, nor their precise wait time for re-admission. But it agrees that if the family is eligible to re-apply, their wait will be long.

[24] According to the Memorandum of Understanding between the Toronto Police Service Board, Special Constable Program and TCHC, dated September 13, 2002, TCHC employs Special Constables, otherwise known as Community Patrol Officers, who are empowered by the Toronto Police Services Board to engage in specific policing functions throughout TCHC's residential complexes. As part of their mandate, TCHC's Special Constables help "provide safe, quality public housing in the City of Toronto in a manner that fosters healthy communities with a sense of belonging for all residents." As patrol officers specifically employed by TCHC, Special Constables are often "first on the scene" and act as liaisons between TCHC residents and Toronto Police officers. In cases of serious criminal allegations, Special Constables are mandated to report incidents to the police and to assist police officers in their investigations.

B. Information Provided by the Toronto Police to TCHC Regarding this Matter

[25] TCHC Special Constable Leonard Garnett deposed that on September 20, 2016, at 1:59pm, he was dispatched to attend at a TCHC residential complex, at the request of the Toronto Police. He arrived at 2:09pm. Once there, he met with two police officers in the superintendent's office.

[26] According to Mr. Garnett, the officers advised that they had been carrying out a bike patrol when they apprehended two males under the age of 18. The officers said they searched the males and located a hand gun in a backpack. At least one of the males had been in possession of this backpack prior to the search.

[27] Mr. Garnett said the officers advised him that the two males had been transported to a police station for booking. One of the males provided his home address as being at a TCHC property. The other male was not a TCHC resident.

[28] SC Garnett assisted the officers in obtaining and reviewing CCTV footage of the incident. The police officers seized the footage from TCHC. Following this involvement, SC Garnett created an incident report for TCHC's internal record-keeping database. The report included all the details provided here, as well as the corresponding Toronto Police "GO number" (incident tracking number.)

[29] John Kraljevic is employed by TCHC as an Operating Unit Manager that encompasses both the complex at which the arrest occurred and the complex where R.V. resides with his family. Mr. Kraljevic deposed that he reviewed various records and identified R.V. and the other occupants of the TCHC townhouse in which R.V. resides.

PART IV: THE CONDUCT OF AN EVICTION PROCEEDING

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[30] To understand the context in which TCHC brings this application, it is necessary to set out the information I was provided with by counsel for TCHC about the conduct of an eviction proceeding.

[31] Pursuant to section 69(1) of the *RTA,* TCHC wishes to apply to the Landlord and Tenant Board (the "Board") to terminate and evict R.V.'s mother (and the other occupants of the unit (ie. R.V. and his siblings)) pursuant to sections 61(1) and 66(1) of the *Residential Tenancies Act, 2006, S.O. 2006, c. 17, as amended* (the "RTA")[4].

[32] Sections 61(1), 66(1), and 69(1) read:

> Termination for cause, illegal act
>
> **61** (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.
>
> Termination for cause, act impairs safety
>
> **66** (1) A landlord may give a tenant notice of termination of the tenancy if,
>
> (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
>
> (b) the act or omission occurs in the residential complex.
>
> Application by landlord
>
> **69** (1) A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under this Act or the *Tenant Protection Act, 1997*.

[33] As sections 61(1) and 66(1) state, the actions of a non-tenant "occupant" (like R.V. in this case) can ground a request to terminate and evict a tenant.

[34] In order to apply to terminate and evict under these sections, the illegal or dangerous act or omission must have been committed in the "residential unit" or in the "residential complex". Section 2(1) of the *RTA* defines both a "residential unit" and a "residential complex".

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[4] Most of the information that TCHC provided to the Court about the intended eviction proceeding relates to section 61(1). However, TCHC may also seek to terminate and evict under section 66(1).

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[35] TCHC concedes that if R.V.'s actions occurred outside of a TCHC "residential unit" or "residential complex" as defined in section 2(1), it will not have a "valid interest" in the records and this application should go no further. Thus, TCHC asked the Court to review the records to confirm if they revealed a location of the alleged events, which I did.

[36] I need not repeat the definition of "residential unit" or "residential complex" here. R.V.'s counsel also reviewed the records. He did not raise any issue concerning the location of the alleged events. For example, R.V. does not argue that he engaged in certain behavior, but off of TCHC property. Rather, R.V. concedes that TCHC has a "valid interest" in the records sought in this context.

[37] Therefore, there is no issue as to the location of the alleged events.

[38] TCHC provided the Court with the Social Justice Tribunals Ontario Interpretation Guideline 9. It explains that the term "illegal" within the meaning of section 61(1) of the *RTA* is not defined in the *RTA,* but it would include a serious violation of a federal, provincial or municipal law. The Board considers "serious" to mean a violation of the law that has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants. If an illegal act is proven under section 61, then there is no opportunity of the tenant to avoid termination by rectifying the illegal act.

[39] TCHC may move to terminate and evict based on an illegal act, even if there has been no finding of guilt by a criminal court. Section 75 of the *RTA* reads:

> Illegal act
>
> **75** The Board may issue an order terminating a tenancy and evicting a tenant in an application under section 69 based on a notice of termination under section 61 whether or not the tenant or other person has been convicted of an offence relating to an illegal act, trade, business or occupation.

[40] Interpretation Guideline 9 confirms that the burden of proof under section 61(1) is on the civil standard, ie. the balance of probabilities. A person need not be charged with a criminal offence for the landlord to apply to the Board under section 61(1). Conversely, the fact of a criminal charge alone does not mean that termination and eviction is inevitable in a proceeding under section 61(1).

[41] TCHC says that in the normal course of an eviction proceeding based on an illegal act or alleged conduct that seriously impairs the safety of any person in a residential unit or complex, it would simply subpoena one of the police officers involved in the investigation to the hearing to give evidence of the illegal or dangerous acts. The testifying officer would rely on his/her own investigative materials, such as memo book notes, or materials created by another officer in the investigation, such as synopsis or a supplementary report. Where, as in this case, surveillance video was collected from TCHC, the Applicant would also rely on that video as evidence of the illegal or dangerous act and the exact location of the act.

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[42] Section 184(1) of the *RTA* provides that the hearing is governed by the *Statutory Powers Procedure Act, R.S.O. 1990, c. S. 22, as amended* (the "*SPPA").* There are relaxed evidentiary rules at the hearing before the Board that would permit the Board to receive portions of this evidence that may not otherwise be received in a criminal proceeding. This includes the receipt of hearsay evidence.

[43] Section 15(1) of the *SPPA* reads:

> Evidence
>
> What is admissible in evidence at a hearing
>
> 15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[44] If the grounds to terminate and evict are proven, then pursuant to section 83 of the *RTA,* the Board retains the discretion to refuse to evict or to postpone an eviction in certain circumstances. Subsections 83(1) to 83(3) read:

> Power of Board, eviction
>
> **83** (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,
>
> (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or
>
> (b) order that the enforcement of the eviction order be postponed for a period of time.
>
> Mandatory review
>
> (2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).
>
> Circumstances where refusal required
>
> (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,
>
> (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
>
> (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of

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a law dealing with health, safety, housing or maintenance standards;

(c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

(d) the reason for the application being brought is that the tenant is a member of a tenants' association or is attempting to organize such an association; or

(e) the reason for the application being brought is that the rental unit is occupied by children and the occupation by the children does not constitute overcrowding.

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[45] Finally, section 204(1) of the *RTA* also applies in an eviction proceeding. It provides that the Board may include "whatever conditions it considers fair in the circumstances" in an eviction order. For example, I was told that this could include a term that R.V. be excluded to spare the entire family of eviction. Hypothetically, it could also include a less onerous term, such as a requirement that R.V. not re-offend on TCHC property.

[46] To be clear though, TCHC said it will be seeking eviction.

PART V: PART 6 OF THE *YCJA*: PUBLICATION, RECORDS AND INFORMATION

[47] However, TCHC submits that this is not an "ordinary" eviction proceeding. The evidence upon which TCHC seeks to rely consists of entirely of information that is protected by the *YCJA.* TCHC says that absent a Youth Court Order granting it access and a right of "limited disclosure", it is unable to even bring proceedings before the Board. To bring an application, TCHC says it would at the very least need to identify R.V. by his full name and address and connect him to the police investigation and youth criminal charges.

[48] Even without producing physical court or police documents, TCHC says it "appreciates that it cannot share any information with the Board (or any other party) that suggests R.V. was the subject of a police investigation for a criminal act committed while he was under 18 years of age". TCHC submissions in this respect are based on the operation of various sections in Part 6 of the *YCJA,* which deals with publication, records and information.

[49] The records sought by TCHC are court and police records within the meaning of sections 114 and 115 of the *YCJA*. Section 114 provides that a youth court may keep a record of any case that comes before it arising under the *YCJA*. And section 115 provides that police records relating to any offence alleged to have been committed by a young person may be retained by any police force responsible for or participating in the investigation.

[50] The *YCJA* places restrictions on TCHC's ability to identify R.V. and to access and use the records and information contained in them in the eviction proceeding.

[51] Section 110 provides that that name and other identifying information about a young person may not be published, except according to certain exceptions. The relevant portions of section 110 read:

> Identity of offender not to be published
>
> **110 (1)** Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.
>
> Limitation
>
> **(2)** Subsection (1) does not apply
>
> **(a)** in a case where the information relates to a young person who has received an adult sentence;
>
> **(b)** in a case where the information relates to a young person who has received a youth sentence for a violent offence and the youth justice court has ordered a lifting of the publication ban under subsection 75(2); and
>
> **(c)** in a case where the publication of information is made in the course of the administration of justice, if it is not the purpose of the publication to make the information known in the community.
>
> Exception
>
> **(3)** A young person referred to in subsection (1) may, after he or she attains the age of eighteen years, publish or cause to be published information that would identify him or her as having been dealt with under this Act or the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, provided that he or she is not in custody pursuant to either Act at the time of the publication.

[52] Section 118(1) of the *YCJA* prohibits TCHC from being given access to the court and police records or to the information contained therein, except as authorized or required by the *YCJA*. Section 118(1) reads:

> No access unless authorized
>
> **118 (1)** Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this Act.

[53] The Toronto Police may have been authorized to disclose information contained in its records to the TCHC special constable or employee under section 125(1) of the *YCJA*. Section 125(1) reads:

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Disclosure by peace officer during investigation

125 (1) A peace officer may disclose to any person any information in a record kept under section 114 (court records) or 115 (police records) that it is necessary to disclose in the conduct of the investigation of an offence.

[54] However, section 129 of the *YCJA* then prohibits TCHC from using the information it obtained from the Toronto Police without authorization. Section 129 reads:

No subsequent disclosure

129 No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorized under this Act.

[55] Pursuant to section 138(1) of the *YCJA*, it is an offence to breach sections 110, 118 or 129 (as well as certain other sections of the legislation and the predecessor *Young Offenders Act* that do not apply in this case). Section 138(1) reads:

Offences

138 (1) Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published), 118(1) (no access to records unless authorized) or 128(3) (disposal of R.C.M.P. records) or section 129 (no subsequent disclosure) of this Act, or subsection 38(1) (identity not to be published), (1.12) (no subsequent disclosure), (1.14) (no subsequent disclosure by school) or (1.15) (information to be kept separate), 45(2) (destruction of records) or 46(1) (prohibition against disclosure) of the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

[56] Notwithstanding these provisions, the *YCJA* allows certain persons to gain access to and use the records in certain circumstances. What legal test, if any, will govern depends on who is seeking access to the records, when access is sought, and what is being sought.

[57] These rules are set out in detail in sections 119 through 123 of the *YCJA*.

[58] Generally, I will only reference the sections respecting access that apply in this case.

[59] The *YCJA* specifies “periods of access” in section 119(2). These are the timelines within which access to records should be sought. The length of the applicable timeline depends on the disposition of the charge. Generally, the more severe the disposition, the longer the access period. For example, the access period for an acquittal, withdrawal, or dismissal is two months from the date of disposition; the

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access period for a finding of guilt for which a reprimand is given is also two months; the access period following a stay is one year; the access period after an absolute discharge is one year; a conditional discharge results in an access period of three years, and so on.

[60] In this case, the access period is that set out in section 119(2)(d). It reads:

> Period of access
>
> **119(2)** The period of access referred to in subsection (1) is
>
> > **.....**
> >
> > **(d)** if the charge against the young person is stayed, with no proceedings being taken against the young person for a period of one year, at the end of that period;

[61] This section applies because the charges against R.V. were stayed on November 16, 2017. As of the date I heard this application, no further proceedings have been taken against R.V. since the stay. As TCHC has brought its application within the access period, it is the test in section 119(1)(s)(ii) of the *YCJA* applies. Section 119(1)(s)(ii) reads:

> Persons having access to records
>
> **119 (1)** Subject to subsections (4) to (6), from the date that a record is created until the end of the applicable period set out in subsection (2), the following persons, on request, shall be given access to a record kept under section 114, and may be given access to a record kept under sections 115 and 116:
>
> > **.....**
> >
> > **(s)** any person or member of a class of persons that a youth justice court judge considers has a valid interest in the record, to the extent directed by the judge, if the judge is satisfied that access to the record is
> >
> > > **(i)** desirable in the public interest for research or statistical purposes, or
> > >
> > > **(ii)** desirable in the interest of the proper administration of justice.

[62] The expiry of the access period does not bar TCHC from seeking access. Had TCHC sought access to the record after the expiry of the access period, then the test in section 123(1)(a) of the YCJA would have applied. Section 123(1) reads:

> **123 (1)** A youth justice court judge may, on application by a person after the end of the applicable period set out in subsection 119(2), order that the person be given access to all or part of a record kept under sections 114 to 116 or that a copy of the record or part be given to that person,

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> **(a)** if the youth justice court judge is satisfied that
>
> > **(i)** the person has a valid and substantial interest in the record or part,
> >
> > **(ii)** it is necessary for access to be given to the record or part in the interest of the proper administration of justice, and
> >
> > **(iii)** disclosure of the record or part or the information in it is not prohibited under any other Act of Parliament or the legislature of a province; or
>
> **(b)** if the youth court judge is satisfied that access to the record or part is desirable in the public interest for research or statistical purposes.

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[63] Section 123(1)(a) contains a more onerous test than that in section 119(1)(s)(ii). The threshold for access to records under section 119 is low relative to the threshold under section 123. *See Children's Aid Society of Toronto v. A.C.,* [2016] O.J. No. 6750 (C.J.) ¶ *59.* But as section 123 is inapplicable, I need not address the differences between the two tests further. That said, even though less onerous, the test under section 119(1)(s)(ii) nevertheless requires the Court to balance important competing interests. Access should not be granted as a matter of course under section 119(1)(s)(ii).

PART VI: THE APPLCIATION OF SECTION 119(1)(s)(ii)

A. *TCHC's "Valid Interest" in the Records*

[64] Again, R.V. concedes that TCHC has a "valid interest" in the records sought but as I said above, I will briefly comment on the nature and extent of its "valid interest" in spite of R.V.'s concession.

[65] As O'Connell J. held in *Boyer v. Huang,* a "valid interest" in a record is an interest that is legitimate and relevant to the purpose for which the record is sought. To establish the "valid interest", THCH must articulate a factual and legal nexus between the material issues to be litigated in the eviction proceeding and the records being sought. *See Boyer v. Huang ¶ 57-59.*

[66] A "valid interest" may include seeking access to records for the purposes of instituting civil proceedings. The civil proceeding need not be in a court, it may be one that is brought before an administrative tribunal. *See Boyer v. Huang ¶ 57-59; Re F.N.* ¶ 34; *Scarlett Heights Collegiate Institute v. K.M.,* [1995] O.J. No. 3750 (C.J.); *and see also Toronto (City) Police Service v. L.D.,* 2015 ONCJ 430.

[67] I am satisfied that TCHC has established a "valid interest", to the extent the records sought pertain to R.V. and not the other young person. The information TCHC seeks will be directly relevant to its intended eviction proceeding. It is required by TCHC's to meet its burden of proof respecting whether R.V. engaged in an illegal act or

dangerous behaviour on TCHC property within the meaning of sections 2(1), 61(1) and 66(1) of the *RTA.*

[68] However, the analysis does not end there. TCHC must also satisfy the Court that access to the records is "desirable in the interest of the proper administration of justice." I begin by looking at the principles that inform this analysis.

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B. General Principles and Interpretation

[69] The *YCJA* addresses the "pressing and unique concerns" that arise when young persons come into conflict with the law. It contains a comprehensive scheme designed to carefully control access to [youth] records. *See S.L. v. N.B.,* 2005, 252 D.L.R. (4th) 508 (C.A.) at ¶ 33, 54. However, section 119(1)(s)(ii) itself contains little guidance about the meaning of a "valid interest in the record" or what will be "desirable in the interest of the proper administration of justice".

[70] No case has yet enumerated a complete list of criteria to apply. Albeit in a different context, in *A.G. (Nova Scotia) v. MacIntyre,* [1982] 1 SCR 175 at 183*,* Dickson J. referred to any attempt by a Court to craft a "comprehensive definition of the right to access to judicial records or delineation of the factors to be taken into account" as "difficult" and "unwise".

[71] In records applications and in other cases in varying criminal and civil contexts that involved any limits to the open court principle, Courts have grappled with what factors to consider when trying to strike the right balance between allowing access and protecting one's privacy.

[72] In the youth context, the case law essentially provides that access to records under section 119(1)(s)(ii) is generally limited to circumstances where the efficient operation of the young offender system or some other valid public interest is sufficiently strong to override the benefits of maintaining the privacy of young persons. *See S.L. v. N.B.* at ¶ 42.

[73] However, there are other considerations that inform the analysis. As overarching principles, this records application must be considered through the lens of R.V.'s constitutionally protected presumption of diminished moral blameworthiness and his heightened right to privacy.

(1) The Presumption of Diminished Moral Blameworthiness

[74] As Abella J. said in *R. v. D.B., [*2008] 2 SCR 3 at ¶ 1*,* "[y]oung people who commit crimes have historically been treated separately and distinctly from adults. This does not mean that young people are not accountable for the offences they commit. They are decidedly but differently accountable." Because of their age, young people have "heightened vulnerability, less maturity and a reduced capacity for moral judgment. This entitles them to a *presumption* of diminished moral blameworthiness or culpability". This presumption warrants the unique approach to punishment in the *YCJA. See R. v. D.B. at ¶ 41.*

[75] This presumption of diminished moral blameworthiness or culpability is a principle of fundamental justice recognized by section 7 of the *Charter of Rights and Freedoms.* It is also a legal principle that finds expression in the United Nations *Convention on the Rights of the Child*. *See R. v. D.B. at ¶ 60, 68-69.*

[76] It is a principle that was incorporated into text of the *YCJA* after *R. v. D.B.,* The preamble to the *YCJA* references both the *Charter* and the United Nations *Convention on the Rights of the Child.* It reads:

> Preamble
>
> WHEREAS members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood;
>
> WHEREAS communities, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes;
>
> WHEREAS information about youth justice, youth crime and the effectiveness of measures taken to address youth crime should be publicly available;
>
> WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and have special guarantees of their rights and freedoms;
>
> AND WHEREAS Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons;

[77] The *YCJA*'s declaration of principle in section 3, sets out Canada's policy with respect to young persons. Not only is the presumption of diminished moral blameworthiness specifically mentioned in section 3(1)(b), but many of the other provisions of section 3 give meaning to it.

[78] Section 3(1) reads:

> Policy for Canada with respect to young persons
>
> **3 (1)** The following principles apply in this Act:
>
> **(a)** the youth criminal justice system is intended to protect the public by

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(i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,

(ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and

(iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;

(b) the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:

(i) rehabilitation and reintegration,

(ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,

(iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,

(iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and

(v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should

(i) reinforce respect for societal values,

(ii) encourage the repair of harm done to victims and the community,

(iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the

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> processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,
>
> **(ii)** victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,
>
> **(iii)** victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
>
> **(iv)** parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

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[79] The preamble, these interpretive provisions and the specifics of Part 6 of *YCJA* (as well as other aspects of the *YCJA)* are designed to ensure that a young person's privacy is protected and that a young person is protected from the "long term negative consequences of their youthful offending behaviour, and is in keeping with the rehabilitative intentions of the *Act*". *See Children's Aid Society of Toronto v. A.C. ¶ 35* per Justice Marion Cohen.

(2) Young Persons Have Heightened Privacy Rights

[80] Young persons are inherently vulnerable and thus have "heightened privacy rights" that are protected across different areas of law, not only in the criminal context. *A.B. v. Bragg Communications Inc.,* 2012 SCC 46 was a case in which a 15 year old girl had been cyberbullied. The Supreme Court heard an appeal that considered the propriety of a publication ban. In that context, at ¶ 17-18, the Supreme Court said:

> 17 Recognition of the *inherent* vulnerability of children has consistent and deep roots in Canadian law. This results in protection for young people's privacy under the *Criminal Code*, R.S.C. 1985, c. C-46 (s. 486), the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (s. 110), and child welfare legislation, not to mention international protections such as the *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, all based on age, not the sensitivity of the particular child. As a result, in an application involving sexualized cyberbullying, there is no need for a particular child to demonstrate that she personally conforms to this legal paradigm. The law attributes the heightened vulnerability based on chronology, not temperament: See *R. v. D.B.*, 2008 SCC 25 (CanLII), [2008] 2 S.C.R. 3, at paras. 41, 61 and 84-87; *R. v. Sharpe*, 2001 SCC 2 (CanLII), [2001] 1 S.C.R. 45, at paras. 170-74.
>
> 18 This led Cohen J. in *Toronto Star Newspaper Ltd. v. Ontario*, 2012 ONCJ 27 (CanLII), to explain the importance of privacy in the specific context of young persons who are participants in the justice system:

> The concern to avoid labeling and stigmatization is essential to an understanding of why the protection of privacy is such an important value in the *Act*. However it is not the only explanation. The value of the privacy of young persons under the *Act* has deeper roots than exclusively pragmatic considerations would suggest. We must also look to the Charter, because the protection of privacy of young persons has undoubted constitutional significance.
>
> Privacy is recognized in Canadian constitutional jurisprudence as implicating liberty and security interests. In *Dyment*, the court stated that privacy is worthy of constitutional protection because it is "grounded in man's physical and moral autonomy," is "essential for the well-being of the individual," and is "at the heart of liberty in a modern state" (para. 17). *These considerations apply equally if not more strongly in the case of young persons.* Furthermore, the constitutional protection of privacy embraces the privacy of young persons, not only as an aspect of their rights under section 7 and 8 of the Charter, but by virtue of the presumption of their diminished moral culpability, which has been found to be a principle of fundamental justice under the *Charter*.
>
> . . .
>
> . . . the protection of the privacy of young persons fosters respect for dignity, personal integrity and autonomy of the young person. [Emphasis added; paras. 40-41 and 44.]

[81] In a recent Ontario Court of Appeal decision that reversed the Information and Privacy Commissioner's decision to grant a father access to the Children's Lawyer's litigation records concerning his child, the Court found, in part, that granting access would "seriously undermine the Children's lawyer in her role as advocate for the child. Access would also sabotage the child's heightened privacy rights, eviscerate the work of the Children's lawyer and seriously limit the court's ability to fully address the child's best interests". *See Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner),* 2018 ONCA 559 at ¶ 87, 128.

[82] In the context of a youth records application under the *YCJA,* a young person's heightened privacy rights are also recognized by statute in the *YCJA*. Section 3(1)(b)(iii) of the *YCJA* provides that the criminal justice system for young persons must emphasize a young person's enhanced procedural protection, which includes protecting his or her privacy.

[83] This is because publication is widely understood to be harmful. As Abella J. held at ¶ 87 of *R. v. D.B.,* publication makes the young person vulnerable to greater psychological and social stress. It renders the sentence "significantly more severe".

[84] Part 6 of the legislation in particular demonstrates a clear intention to protect the privacy of young persons. The YCJA seeks to avoid the "premature labeling of young offenders as outlaws and to thereby facilitate their rehabilitation and their reintegration

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into the law abiding community." A premium is placed on the privacy interests of all young persons involved in youth court proceedings. *See S.L. v. N.B.* at ¶ 33-36.

[85] In enacting the YCJA, Parliament has legislated that the "consequences of conviction for young persons are imposed in a manner that advances the objectives of the youth criminal justice legislation". See *R. v. R.C.,* 2005 SCC 61 ¶ 37*.* While having open and accessible courts is an important constitutional norm, it is also understood that in the youth context, confidentiality assists rehabilitation. There is a risk that publication will lead to stigmatization of a young person as a criminal and that a young person, once stigmatized, is more likely reoffend. Non-publication is designed to maximize the chances of rehabilitation for young persons. *See Re F.N.,* 2000 SCC 35 ¶ *10-14.* Protecting the privacy of young persons serves "rehabilitative objectives and thereby contributes to the long-term protection of society". See *R. v. R.C.* ¶ *42.* The protection and rehabilitation of young people involved in the criminal justice system is accepted as a social value of "superordinate importance". See *Re Southam Inc. and the Queen,* 1984 CanLII 2169 (Ont. S.C.); aff'd by 1986 CanLII 2859 (Ont. C.A.).

[86] With these comments in mind, it is important not just to pay lip service to R.V.'s privacy right, but to take a hard look at what is gained from granting TCHC access to the records versus what is compromised.

(3) ***Statutory Interpretation***

[87] As a matter of statutory interpretation, at ¶ 21 of *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 SCR 27*,* citing Ruth Sullivan, *Driedger on the Construction of Statutes* (then in its 3rd edition), the Supreme Court said, "[t]oday there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

[88] Section 3(2) of the *YCJA* provides that the Act is to be liberally construed so as to ensure that young persons are dealt with in accordance with the principles in section 3(1).

[89] I further note that while there are a series of exceptions to the general rules that limit publication and restrict greater openness, they have generally been given a restrictive interpretation. *See Re F.N. ¶ 19.*

[90] These principles further inform how section 119(1)(s)(ii) ought to be interpreted and applied.

C. *Whether Access Is Desirable In the Interest of the Proper Administration of Justice*

[91] I accept that TCHC is obligated to "create a safe environment for its residential communities". I accept it has an interest in pursuing what it has called its "community safety mandate". I also accept that if it decides to launch the eviction proceeding, there is an interest in correctly disposing of the litigation. See *M.(A.) v. Ryan,* [1997] 1 SCR 157 ¶ 29.

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[92] However, despite these goals, TCHC has failed to satisfy the Court that access to the records is "desirable in the interest of the proper administration of justice". In my view, granting access to the record does not achieve THCH's goal of advancing safety to a degree sufficient to override R.V.'s privacy interest in the records.

[93] I say this for six reasons.

(1) TCHC's Access to the Records Undermines R.V.'s Participation As A Functioning Member of Society

[94] I appreciate that the *YCJA* contemplates granting access to records in matters where there has been a stay of proceedings. Thus, in appropriate cases the Court may grant access to records even where there has been no finding of guilt. And I also appreciate that the lack of guilty finding is not dispositive of the intended proceeding before the *RTA.* However, I find that the disposition, that is, the imposition of a stay of proceedings, is relevant to the question of whether access by TCHC to the records is desirable in the proper interests of justice when I balance the relevant factors that militate against access versus what interests will be served by granting TCHC access to the records for use in the intended eviction proceeding.

[95] Section 3 of the *YCJA* sets out principles that apply in the interpretation of the entire Act. Recognizing R.V.'s constitutional and statutory entitlement to a presumption of diminished moral blameworthiness, ensuring outcomes that promote rehabilitation and reintegration into society, and protecting R.V. from the long term negative consequences of his youthful offending behaviour are all important principles enshrined in the *YCJA* and the jurisprudence that inform the balancing act. With these principles in mind, I am also mindful that when the criminal proceeding concerning R.V. was before this Court, the Court did not find that R.V. guilty. He has not been found to be morally blameworthy at all, even on the diminished basis. Consequently, as there has been no finding of guilt, there has been no sentence.

[96] Yet R.V. is now exposed to both "psychological and social stress" from the prospect of the records relating to him being released. Abella J. recognized this prospect at ¶ 87 of *R. v. D.B.,* where she said that publication makes the young person vulnerable to greater psychological and social stress. It renders the sentence[5] "significantly more severe".

[97] This possibility is very evident in this case.

[98] The potential impact on R.V. if TCHC's application is granted is not limited to R.V. being subjected to stigma, although that is certainly a potential impact. There is also a very real possible consequence to not only R.V., but also to his family. They may lose their housing. And perhaps divisions within the family will ensue.

[5] In this case, there was no sentence so R.V.'s exposure on this records application is indeed all the more severe.

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[99] R.V. deposed that he felt a "huge relief" when the criminal case ended in November of 2017. That case had been "hanging over" him for more than a year and he described that as "really stressful". Although he was not found guilty, going through the youth court process here at the Ontario Court of Justice 311 Jarvis had some positive impact to R.V. Not only has he stayed out of trouble, but he has demonstrated to the Court insight into how the criminal case affected his mother. He understands the importance of family. His mother supported him "so much" and he was "hurt" to see her "staying awake at night worrying". He believed that the whole ordeal was over when the criminal case came to an end.

[100] When he learned about this records application and the possibility of his and his family's eviction, he "could not believe that this was happening again". He had told his mother that the criminal case was over and that she could "stop worrying". He deposes that this current records application "actually feels worse because of how this could affect [his] whole family".

[101] R.V.'s evidence is that he has faced challenges his entire life, including living in social housing and being a member of two different visible minority communities in Toronto. His perception is that the police are "always hassling" him. He feels pressure to "do something with [his] life" and to "make [his] mom proud of [him]" but he feels there are "so many barriers facing [him]." The records application makes him worry about how "society sees [him]". This is the very definition of stigma. He has not been subject to any new charges in almost two years, but it seems to him like these old charges "will not go away".

[102] School seems pointless to R.V. because he does not see how it will lead to a job. Currently he says he is struggling to decide what to do with his life going forward, but "at least [he] has a roof over [his] head and [his] mother's support." He cannot afford to move out.

[103] The preamble to the YCJA imposes on the community, which includes the residents of THCH, a shared responsibility "to address the developmental challenges and the needs of young persons and to guide them into adulthood". This Court is directed to be mindful of the underlying causes of youth crime when considering the benefits versus harmful effects of disclosure in this case. This includes, as the Supreme Court has recognized citing various experts in the field, that stigmatization and labelling is an underlying cause of youth crime.

[104] It is desirable in the proper administration of justice that R.V. be encouraged in his development as a functioning member of society. This objective is undermined if this Court makes an Order for access to records that increases the likelihood of R.V. offending in the future.

(2) TCHC's Access to the Records Undermines the Support R.V. Receives

From His Family

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[105] As can be seen from this evidence, R.V. is at a crossroads. He is struggling to find his path forward in life. A major source of his support comes from his mother. His older sister has confirmed the important role their mother plays in the family. Parental support is to be encouraged in accordance with section 3(d)(iv) of the *YCJA.* Yet granting access to the records exposes the family to eviction, financial harm and possible conflict.

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[106] Granting access to the records undermines the very parental support that the Court should be encouraging. I am not comforted by TCHC's submission that the tribunal could make an Order sparing the family from eviction, by excluding only R.V. under section 204 of the *RTA.* First, TCHC said its primary position will be eviction. But even if it modifies its position and seeks to negotiate or litigate a resolution where only R.V. is excluded, this will place the family in the impossible position of having decide whether to turn against R.V. to save their housing. The prospect of family members being pitted against one another is real and it is troubling. There is great potential for strain on the family and R.V.'s mother in particular.

[107] In short, I fail to see how granting access to the records sought enhances the "rehabilitative objectives [of the YCJA] and thereby contributes to the long-term protection of society" in this case. It is desirable in the proper administration of justice that R.V.'s family support be encouraged, not undermined.

(3) TCHC's Access to the Records May Cause Harm to Another Child

[108] I cannot ignore the fact that granting access to the records impacts not only R.V. but other members of his family. In particular, it impacts R.V.'s 12 year old younger sibling.

[109] In a youth court records application, it may be appropriate to consider the impact of granting access on other children. For example, in *Children's Aid Society of Toronto v. A.C.,* Cohen J. granted the Children's Aid Society of Toronto access to a portion of a parent's former youth record for use in a child protection proceeding where the protection of a child of that parent was in issue. The valid interest in ensuring the Court had relevant information to determine whether the child was in need of protection outweighed the parent's privacy interest in the record.

[110] In this case, granting TCHC access to the record potentially has the opposite effect on an innocent child. It exposes R.V.'s younger brother to the prospect of eviction. And as the Supreme Court said in *Nova Scotia (Attorney General) v. McIntyre* at 186, (albeit in a different context), the protection of the innocent is a "social value of superordinate importance". It is desirable in the proper administration of justice that the Court make orders with this value in mind where harm to a child is a real potential consequence.

(4) TCHC's Access to the Records Does Not Actually Further Its "Community Safety Mandate" in this Case

[111] TCHC argues the disposition in this case militates in favour of granting it access. Specifically, it submits that the charges against R.V. could have simply been withdrawn.

But instead, it argues that in agreeing to resolve the charges by way of a stay and peace bond, the youth crown may have taken the fact that there would be a longer access period into account.

[112] I disagree. I have no evidence that the crown considered this when it agreed to the disposition. It does appear from R.V.'s evidence filed in the records application that he was then unaware that eviction was a possible collateral consequence of the charges and the disposition. This does not surprise me since TCHC says it has never taken this step before in a youth case and it is unaware of another landlord having done so either.

[113] Obviously, the disposition of the charge is relevant to the determination of the applicable access period. But I fail to see how I can draw any other negative inferences. As TCHC has brought its application within the access period, the test under section 119(1)(s)(ii) applies. I am not prepared to draw conclusions unfavourable to R.V. based on the mere fact he is now subject to a common law peace bond.

[114] My comments rest in part on the meaning of a common law peace bond. A peace bond is not a finding of guilt or a criminal conviction. It is a tool routinely used in many jurisdictions to resolve criminal charges without a trial. The accused is not required to enter a plea of guilty or admit criminal conduct. A peace bond is obtained on an application based on apprehended conduct. The judge or justice must be satisfied that there was a basis for apprehending that the accused would commit a breach of the peace in the future[6]. Once the application is made the accused can either seek to show cause why he or she should not enter the bond, enter the bond as proposed or not show cause but contest one or more of the suggested terms. See *R. v. Mussoni,* 2009 CanLII 12118 (S.C.J.) ¶ 22-24; aff'd by 2009 ONCA 829.

[115] In this case, no admission of guilt was made nor was any proof of the commission of a criminal offence tendered. It is difficult to see how granting access to the records concretely improves the safety of TCHC's residents to a degree sufficient to outweigh the harm that may be caused to R.V. by granting access. While granting access to the records will permit TCHC to launch the eviction proceeding based on R.V.'s alleged past conduct, there is no evidence that R.V. has engaged in any illegal or dangerous behavior since September of 2016. In essence, for almost two years, there is no evidence that he has posed, nor that he currently poses, any risk TCHC tenants. Had the evidence been otherwise, his arguments against access may have been undermined. Incidentally, I note that Cohen J. considered a student's subsequent period of good behavior to be a relevant factor that militated against granting access in *Scarlett Heights Collegiate Institute v. K.M.,* [1995] O.J. No. 3750 (Prov. Div.).

[116] In my view, to the contrary, the existence of the peace bond actually weakens TCHC's argument. As a result of the peace bond, there is currently a restriction on R.V.'s liberty. The fact that the peace bond remains in place affords an extra layer of

[6] While there was a basis for anticipating a future breach of the peace, a breach of the peace is not necessarily an "illegal act" or the kind of behaviour envisioned by sections 61(1) and 66(1) of the *RTA.*

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community safety at this time to the other residents of the particular TCHC community in which R.V. resides.

(5) While the Board May Consider Similar Factors, This Court Must Decide this Case Considering the Objectives of the YCJA

[117] As the Court of Appeal said in *S.L. v. N.B.* at ¶ 52, where records are sought for use in a subsequent civil proceeding, it is open (but not required) to a youth court to forward the records to the superior court[7] to determine whether the documents are properly producible under the relevant production rule in that forum. While TCHC argues that I should order access to the records now, it would also be theoretically possible for me to "lodge" the records with the Board, subject to its own decision about whether to order production under its governing rules.

[118] Although a case decided under section 123 of the *YCJA,* in *Re J.D.,* 2009 ONCJ 505*,* Katarynych J. declined to do just that albeit for somewhat different reasons. In *Re J.D.*, the civil action for which the records were sought had not yet been commenced. Katarynych J. felt that she did not have the necessary factual matrix in which the evaluate the test concerning access. She found it to be too speculative as to whether the particular record, or part of it, would rise to the required level to permit access for use in the civil action, once it was properly underway. Furthermore, since there was no civil action then underway, there was no live case and no identified Superior Court judge with whom to "lodge the record" in accordance with *S.L. v. N.B.*

[119] In this case, although TCHC has not yet commenced the eviction proceeding, I find there is a sufficient factual matrix for me to decide the issue. But even if there were already an ongoing eviction proceeding, I would not have lodged the record with the tribunal or changed my decision in this case. I would have still decided the issue of access to the record in the same fashion.

[120] What TCHC essentially argues is that R.V.'s interests will be considered by the Board. As set out above, under section 83 of the *RTA,* the Board may refuse to evict unless it would be unfair to refuse the application "having regard to all the circumstances". TCHC submits that as the Board has expertise in the interpretation and application of its own statute, it can and will consider the impact of the eviction on R.V. and his family.

[121] To support this argument, TCHC relies on case law concerning the Board's expertise. In a different context, namely discussing the standard of review on an appeal, the Court of Appeal said the following about the Board's expertise at ¶ 17 of *First Ontario Realty Corp v. Deng*, [2011] O.J. No. 260 (C.A.). Deference is usually afforded to the Board where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity. Deference may also be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in a specific statutory context.

[7] Or presumably another court or tribunal. In S.L. the records had been sought for use in a civil proceeding in the superior court, hence the reference to the superior court.

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Where the Board considers questions of true jurisdiction or general law that is of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise, the Court is less deferential and on appeal, the standard of correctness applies.

[122] I find this case law to be distinguishable. These passages from *First Ontario Realty Corp v. Deng* talk about the level of appellate deference that is owed to the Board on appeal. Of course, what I am deciding is not an appeal of the Board's decision. More significantly, there is no mention in any policy document provided by TCHC, in any statutory reference or in any of the case law supplied by TCHC that the Board will take into account the "Policy for Canada with Respect to Young Persons" or any of the other principles and objectives of the YCJA when exercising its discretion under section 83 of the *RTA* to consider "all of the circumstances".

[123] Again, the Board provided me with Interpretation Guideline 9. It says the Board will consider the length of the tenancy, the financial circumstances of the tenant, whether there are children living in the unit, whether there have been other problems with the tenant and whether the tenant is likely to commit the illegal act again. Also, "[t]here may be other factors to consider". What the "other factors" are is not specified.

[124] As set out above, in an application to terminate and evict under section 61(1), once an "illegal act" is proven, there is no opportunity for the tenant to avoid eviction by rectifying the illegal act. If the Board were to find that R.V. committed an "illegal act" on the civil standard, nowhere do any of the aforementioned documents indicate that the Board will consider R.V.'s diminished moral blameworthiness and the other policies and objectives that would apply in proceedings of the *YCJA* when it decides an appropriate disposition to the eviction proceeding.

[125] With absolutely no disrespect to the Board, even if it were to consider these things under the rubric of "other factors", I fail to see how TCHC can argue that the Board has any particular expertise applying the policies and objectives of the *YCJA* under section 83 of the *RTA*.

[126] But this also misses the point. This Court does have expertise respecting the policies and objectives of the *YCJA* in the context of records applications. As the Court of Appeal said in *S.L. v. N.B.,* parliament intended to maintain tight control over access to these records. It intended that access could be gained only through the Act. This is because "youth justice court judges are familiar with the principles and polices animating the Act. They are also familiar with the terms of the Act and the specific provisions sprinkled throughout the Act that touch on access issues. Youth justice court judges also know what records are generated by the youth justice court system, and have daily experience in considering and balancing the competing interests which may clash on access applications."

[127] I find that I must consider the factors articulated in these reasons in applying the test in section 119(1)(s)(ii) of the *YCJA.* The Board may or may not consider similar factors or not under section 83 of the *RTA.* But these are two different issues. But it is very clearly this Court's role to consider all of the factors relevant to whether TCHC's has a valid public interest and whether it is "desirable in the interest of the proper

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administration of justice" to grant TCHC access to the records. Having considered these questions, I do not find that access to the records to be appropriate.

[128] To be clear, TCHC has conceded that this Court may consider the prospect of R.V.'s eviction as a consequence to him in the balancing exercise that I must do, to determine if I should grant TCHC access to the records. It simply asks that I do not embark upon an assessment of the merits of the intended eviction proceeding. I am not doing that. I make no comment on the merits of the intended eviction proceeding.

(6) The Outcome in this Case Will Not Prevent Landlords from Taking Steps to Ensure the Safety of their Other Tenants in the Future

[129] Finally, regarding TCHC's argument that this ruling will prevent it from commencing not only this intended eviction proceeding but also future eviction proceedings involving young persons, as the Court of Appeal said in *S.L. v. N.B.* at ¶ 31 and 54, citing *Cook v. Ip* (1985), 52 O.R. (2d) 289 (C.A.), production in civil proceedings can be limited or even foreclosed by competent provincial or federal legislation where it limits or forecloses discovery rights in "clear and unambiguous terms". The *YCJA* is "clear and unambiguous" that responsibility for determining access to records falls on the shoulders of youth court judges, even if this results in the curtailment of civil proceedings.

[130] Moreover, it is not unprecedented for a Court to refuse to grant access to records even if that results in halting or potentially halting a civil proceeding. Again, this result was contemplated by *S.L. v. N.B.* and *Cook v. Ip.* But secondly, this was a possible outcome resulting from Cohen J.'s decision in *Scarlett Heights Collegiate Institute v. K.M.*

[131] In *Scarlett Heights v. K.M.,* a school principal sought an order under the predecessor *Young Offenders Act* for the purpose of obtaining evidence to present at an expulsion hearing. While Cohen J. held at ¶ 14 that the principal and school board certainly had a valid interest in protecting students and staff from the violent behaviour of some young persons, on the other hand, "society as a whole has a valid interest, which is congruent with the young person's own interest, in ensuring that the growth and development of young persons into mature and productive members of society is not impeded by the stigma which attaches to a criminal record".

[132] In the result, Cohen J. was influenced by the fact that the young person's most recent offence occurred over one year earlier and that the young person had stayed out of trouble since. A term of the young person's probation Order required her to attend school.

[133] Cohen J. viewed expulsion to be an additional punishment beyond that already imposed by the Court.

[134] In my view, the balancing exercise to be done as a result of TCHC's request for access to the records concerning R.V. yields a result similar to that of Cohen J. in *Scarlett Heights.*

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D. R.V.'s Argument that TCHC Delayed Its Application

[135] I wish to conclude by addressing R.V.'s delay argument. R.V. was very critical of the timing of TCHC's application. He suggests that if TCHC was truly concerned about community safety, it would have moved more promptly to access the records after R.V.'s arrest. He argues that this application is motivated by a desire on TCHC's part to retroactively ensure its own 'due diligence'.

[136] R.V. relies on section 3(1)(b) of the *YCJA,* which states that timely intervention is a policy of the *YCJA*. Instead, TCHC waited until 16 months after the charges to bring this application. He highlights this because as set out above, the application is causing R.V. stress.

[137] The difficulty with this argument is that TCHC has moved well within the statutory access period. There is no Charter challenge before me requesting that the applicable statutory access period be shortened. R.V.'s arguments are more akin to arguing that the *Charter* values raised in *R. v. Jordan,* 2016 SCC 27, as applied in the youth context in *R. v. J.M.,* 2017 ONCJ 4, and/or the equitable principle of laches as set out in *M.(K.) v. M.(H.),* [1992] 3 SCR 6 should influence the result. Simply, TCHC ought to have proceeded more promptly and this should militate against this Court granting access now.

[138] Given my ruling above, I need not address this argument further. I have considered the impact of this records application on R.V. to be relevant for different reasons as set out above. To decide this application, I need not make any further comments about R.V.'s delay argument or the applicability of *Charter* values in this case. Nor do I need to make any findings about what may or may not be the driving force behind TCHC's application.

[139] But for clarity, counsel for TCHC did provide the Court with an explanation as to why TCHC is proceeding now as opposed to closer to the date of the charges. And R.V.'s counsel objected to my receiving that explanation, as it was not given to the Court by TCHC in sworn form.

PART VII: ORDER

[140] Based on the foregoing, TCHC's application is dismissed.

[141] I wish to thank counsel for the helpful *facta* and case briefs, and their very interesting, comprehensive and well thought out submissions.

[142] If there are any issues arising out of this ruling, I may be contacted through the trial coordinator.

Released: July 20, 2018

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Signed: Justice Alex Finlayson

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