ONTARIO COURT OF JUSTICE
(Toronto Region)

BETWEEN:

The Toronto Star

Applicant

v.

HER MAJESTY THE QUEEN

Respondent

-and-

G.(J.)

Respondent

D.(A.)

Respondent

I.(E.)

Respondent

SURREPLY SUBMISSIONS OF AMICUS CURIAE
JUSTICE FOR CHILDREN AND YOUTH

November 1, 2011

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SURREPLY SUBMISSIONS

1. Justice for Children and Youth, as Amicus Curiae to this Application, makes the following submissions as surreply to the Applicant's Reply factum dated October 25, 2011.

2. This is not a case about a free press, an open court, the media's ability to report on youth justice court matters, or about the publication of identifying information, despite the Applicant's dogged attempts to frame it in that way.

3. This is a case about the protection of private and sensitive information that exists in youth court records and the fact that the *Youth Criminal Justice Act* ("YCJA") has express provisions, especially ss. 118 & 119, to restrict public access to such information.

4. The YCJA provides protection for the privacy of youth records in ways that do not exist in the adult system, and the media's access to those records must be treated in an entirely different manner in the youth system than is the case in the adult system.

5. Young people who have been dealt with under the YCJA are exposed because of their criminal justice involvement. Personal and sensitive information about them will have been collected for the purposes of sentencing, and is contained in their youth records.

6. The YCJA gives this Court the supervisory role over the administration of youth justice and the responsibility to ensure it is administered according to the principles articulated within, including ensuring that the special privacy protections accorded to young people are meaningfully guarded.

7. In paragraph 5, the Applicant mischaracterizes Dr. Leschied's testimony as being that there would be minimal or no harm to young people if public access were given to their records. On the contrary, Dr. Leschied testified that it would be harmful to young people to have their privacy breached by allowing the public, people unconnected to the young person's rehabilitation, access to their private and sensitive information.

8. In paragraph 29, the Applicant quotes the preamble of the YCJA where it says: "…information about youth justice, youth crime and the effectiveness of measures taken to address youth crime should be publicly available." This does not in any way equate to the Applicant's claim that the personal details of the sort that commonly exist in pre-sentence reports and victim impact statements should be available to the media. Particularly, in the unfettered manner that the Applicant requests.

9. In paragraph 40, the Applicant argues that Ms. Marynowicz has not been involved in J.G.'s rehabilitation, and that her evidence was uninformed by academic expertise or personal experience in the case. In our submission, Ms. Marynowicz's evidence was to the contrary. She described her involvement with J.G. as: action planning; to move from where you are to where you want to be; planning for future goals, and; as inextricably linked to rehabilitation. She testified that she has been working in the field of social work for over 30 years, and has met with J.G. 20 - 30 times in the last 2 ½ years, having extensive knowledge of his case.

10. In paragraph 49, the Applicant argues that there must be a "threat of harm" to the young people whose records are sought in order to ground a publication ban. Once again, this is not a case of a publication ban. This is a case about granting an exception to tightly restricted access to personal records. Further, there is no language anywhere in the YCJA to suggest that unless there is a threat of harm to the young person there will be public access to youth court records.

11. In this Application the Court is not asked to impose a publication ban, or to restrict the media's publication of anything. The media seeks to be given access to records that are statutorily protected from them unless an exception is granted. The Applicant's argument suggests that because they are the media they must be granted access. If that is what parliament had intended, the media would have been listed as a person or class who are to be given access to records under s. 119 of the YCJA.

12. The YCJA prohibits public access to youth court records except as provided for in the legislation. The Court is charged with the duty to protect the privacy of youth court records, beyond prohibiting the publication of identifying information. The reporter must establish that he or she is seeking to be given access to records for a reason or purpose that is desirable in the interest of the proper administration of justice, beyond the well accepted importance of an open court and free speech. To decide otherwise is to ignore the importance of a unique and separate youth justice system that provides for special protections, including privacy protections for young people.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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