

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE NOVA SCOTIA COURT OF APPEAL)**

BETWEEN:

**R.W.C. (A YOUNG PERSON WITHIN THE MEANING  
OF THE YOUTH CRIMINAL JUSTICE ACT)**

Appellant  
(Respondent)

AND:

**HER MAJESTY THE QUEEN**

Respondent  
(Appellant)

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**FACTUM OF THE INTERVENER  
THE CANADIAN FOUNDATION FOR CHILDREN YOUTH AND THE LAW  
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)**

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**PART I: STATEMENT OF FACTS**

1. A 13-year-old young person, with no prior youth record, pled guilty to assault with a weapon arising out of a dispute with his mother. The weapon was a pen; the victim was his mother. A significant number of aggravating facts contained in the Respondent's factum are disputed by the Appellant. The Intervener takes no position with respect to those facts except with respect to whether they may be admissible under law. What is undisputed is that the young person struck his mother's foot with a pen.
2. The Crown applied for an order requiring the accused young person to provide a DNA sample under s. 487.051(1)(a) of the *Criminal Code* R.S.C. 1985, c. C-46. Assault with a weapon is a primary designated offence under s. 487.04 of the *Criminal Code*.
3. The trial judge took into account the principles of the *Youth Criminal Justice Act* S.C. 2002, c.1 ("YCJA") and the balancing of interests required in exercising her discretion under s. 487.051(2) of the *Criminal Code*, and did not order the provision of a DNA sample.
4. The Nova Scotia Court of Appeal overturned the decision of the lower court and ordered the DNA sample to be taken. The Appeal Court found that the principles of the YCJA do not inform or otherwise modify the application of s. 487.051(1) & (2).

## **PART II: QUESTIONS AT ISSUE**

5. Did the Nova Scotia Court of Appeal err in its application of section 487.051(2) of the *Criminal Code* in allowing the appeal and issuing a DNA order?
6. Did the Nova Scotia Court of Appeal err in its interpretation and application of the law in holding that the principles and purposes of the *YCJA* do not inform or otherwise modify the application of s. 487.051(1)(a) and (2) of the *Criminal Code* when applying those sections to young people?

## **PART III: STATEMENT OF ARGUMENT**

### **A: DOMESTIC LAW**

#### **Standard of Proof for Disputed Facts**

7. A significant number of facts in this case are in dispute. The intervener takes no position on those facts which are disputed. The standard for deciding disputed aggravating facts at the sanctioning stage was addressed by this Honourable Court in *R. v. Gardiner*. Facts that justify the sanction are no less important than facts that justify the conviction, especially since in the majority of cases such as this one, the accused pleads guilty. According to this Honourable Court, a plea of guilty is only an admission to facts that are the essential legal ingredients of the offence and no more. This Court has found that any aggravating facts

beyond those essential to the plea, must be proven according to “*the criminal standard of proof beyond a reasonable doubt*”. In this case, the Crown introduced no evidence following the guilty pleas. There is therefore no evidence of facts beyond what the young person conceded as essential to the finding of guilt.

***R. v. Gardiner*, [1982] 2 S.C.R. 368 at 414-415**

**The YCJA applies to all sections of the Criminal Code with respect to young people**

8. The YCJA is, as was its predecessor, the *Young Offenders Act* R.S.C. 1985, c. Y-1 (the “YOA”) a complete and comprehensive scheme for youth justice in Canada. As this Court has stated, the YOA “*is not meant to be a replica of the Criminal Code. It sets up a complete and comprehensive scheme specially designed for an age group...*”.

***Youth Criminal Justice Act*, S.C., 2002 c.1, s. 14**

***Reference re Young Offenders Act (PEI)*, [1991] 1 S.C.R. 252, at para. 20**

9. In the same case this Court stated the *raison d’etre* of separate legislation for young people is:

*jurisdiction over young persons charged with a criminal offence acknowledges that what distinguishes this legislation from the Criminal Code is the fact that it creates a special regime for young persons. The essence of the young offenders legislation is a distinction based on age and on the diminished responsibility associated with this distinction....*

***Reference re Young Offenders Act (PEI)*, *ibid.* at para. 23**

10. The YCJA was enacted, in part, to reduce the number of judicially imposed consequences for youthful criminal conduct and to ensure that young people no longer suffer consequences as

harsh as those imposed on adults for similar conduct. Under the *YCJA*, even in the most serious cases such as murder, young people are afforded all the protections under the *YCJA*, and are never transferred to adult courts nor become subject to the adult regime. The transfer provisions under the *Young Offenders Act* were eliminated under the *YCJA*. Instead, after a finding of guilt a youth court may under certain circumstances impose an adult sentence.

*YCJA, supra, s. 61*

**See also paragraph 14 herein**

11. Although the *Criminal Code* applies to youth justice matters, specifically in relation to the definition of offences as well as some procedural matters, the *YCJA* in s. 140 expressly anticipates that modifications may be warranted:

Except to the extent that it is inconsistent with or excluded by the Act, the provisions of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of offences alleged to have been committed by young persons.

12. The Ontario Court of Appeal has previously determined that where the Crown is seeking an order authorizing taking DNA samples from young offenders, the factors relevant to making the order must be considered in the light of the goals the government has sought to achieve through young offender legislation. The Nova Scotia Court of Appeal in this case distinguished *R. v. B. (K.)* on the basis that it involved a secondary offence, whereas this case involves a primary offence. For both primary and secondary offences the judge must take into account the impact on the privacy and security of the young person and the administration of justice. In the case of primary offences committed by young persons, discretion as to whether to order a DNA sample is found under s. 487.051(2) of the *Criminal*

*Code* read in conjunction with s. 140 of the *YCJA*. As well, since consideration of the administration of justice is a factor in determining whether to make a DNA order, the principles of the *YCJA* must be considered as it sets out the administration of justice for young people.

***R. v. B. (K)* (2003), 67 O.R. (3d) 391 (C.A.), at para. 9  
*YCJA*, *supra*, s. 140**

13. Therefore, it is submitted that the principles, goals and purposes of young offender legislation must be applied to all DNA application orders for young people whether the underlying offence was a primary or a secondary offence. This is especially clear since all such orders must be made by a youth justice court, not an adult court.

## **PRINCIPLES, GOALS & PURPOSES OF THE *YCJA***

### **The *YCJA* requires special considerations for young people based on their special needs**

14. According to the Department of Justice Canada the *YCJA* ensures that:

- *Young people are tried in youth court separate from adults, **where all the protections suitable to their age are in place.*** (emphasis added).
- *The principles of the *YCJA* provide clear direction, establish structure for the application of principles and thereby resolve inconsistencies. **These principles reinforce that the criminal justice system for youth is different than the one for adults.*** (emphasis added)



*YCJA, supra*, s. 14(1)

Department of Justice Canada: “Youth Justice Renewal: “Youth Justice Fact Sheet” [<http://canadajustice.gc.ca/en/ps/yj/aboutus/yje.html>] 17 February 2005

Department of Justice Canada: “Why did the Government Introduce New Youth Justice Legislation?” [<http://canadajustice.gc.ca/en/ps/yj/ycja/why.html>] 17 February 2005

15. The *YCJA* contains both a Preamble and a Declaration of Principle to clarify the principles and objectives of the youth justice system. The Preamble contains significant statements from Parliament about the values governing the legislation. These statements guide the interpretation of the legislation and include the following:

- **enhanced procedural protection** to ensure that young persons are treated fairly and that their rights, including their **right to privacy**, are protected; (emphasis added)
- Society has a responsibility to address the developmental challenges and needs of young persons.
- Young persons have rights and freedoms, including those set out in the United Nations *Convention on the Rights of the Child*.
- The youth justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on incarceration.

*YCJA, supra* Preamble and s. 3(1)

Department of Justice Canada: “The Youth Criminal Justice Act: Summary and Background” [<http://canada.justice.gc.ca/en/ps/yj/yjca/explan.html>] 14 March February 2005

16. It is submitted that it is inconsistent with the stated intent of the legislation to treat young people the same as adults in the criminal justice system.

**Rehabilitation of Young People and Protection from Adult Consequences is a Primary Goal of the *YCJA***

17. The scheme established by the *YCJA* is an attempt to strike a balance between the needs of a vulnerable group of young persons and the interests of society. It is submitted that the rehabilitation of young persons in conflict with the law satisfies this goal. This balancing is articulated in subs. 3(1)(a):

- (a) the youth criminal justice system is intended to
  - (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour
  - (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
  - (iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public... .

Subs. 3(1)(b) ensures that the:

- (b) criminal justice system for young persons **must be** separate from that of adults and 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 protections including privacy**
  - (iv) timely intervention
  - (v) promptness and speed given the young person's perception of time ... (emphasis added).

18. In *R. v. Southam*, the Ontario Court of Appeal affirmed the statement of the lower court that "*the protection and rehabilitation of young people involved in the criminal system is a social value of superordinate importance*". Rehabilitation depends significantly on timeliness and the end of stigma.

***R. v. Southam Inc.* (1984), 48 O.R. (2d) 678, (Ct. Just.), at QL p. 11, affirmed 53 O.R. (2d) 663 (C.A.), leave to appeal to S.C.C. refused (1986), 25 C.C.C. (3d) 119**

19. An order for the production of a DNA sample impedes rehabilitation. It creates an additional stigma: self-identification as a criminal and a perception in young offenders that the world still views them as criminals. Therefore, DNA production orders impede the primary goal of rehabilitation, which in turn has a negative impact on public safety. As this Honourable Court stated:

*A young person once stigmatized as a lawbreaker may, unless given help and redirection, render the stigma a self-fulfilling prophecy.*

***F.N. (Re), [2000] 1 S.C.R. 880, at para. 14***

***R. v. Southam Inc., supra***

20. The Preamble of the *YCJA* recognizes that young people have special developmental challenges that must be addressed. The U.S. Supreme Court has specifically recognized that young peoples' ability to judge risk and the consequences of their behaviour is less developed than adults which can lead to more impulsive behaviours. Therefore, young people should not receive the same consequences for their behaviours.

***Roper v. Simmons, 543 U.S. 1 (2005), (U.S. Supreme Court), at p. 15***

### **Young People have Special Privacy Rights under the *YCJA***

21. It is submitted that the special needs and vulnerabilities of a young person and the protection of society are both important under the *YCJA*. The scheme established by

the *YCJA*, and previously under the *YOA*, is an attempt to strike a balance between the needs of a vulnerable group of young persons and the interests of society.

22. However, the high value given to enhanced protection of privacy rights of young persons generally tips the balance in favour of protecting young people unless the protection of society can be shown to be threatened; that is, privacy interests prevail unless the circumstances clearly fit within the legislated exceptions. Furthermore, society will be better protected simply by keeping young people safe and avoiding stigmatizing or labelling them as criminals.

***YCJA, supra, s. 110***

**See also, *YOA, supra, s.38***

23. The special privacy rights of young persons are given specific reference in the principles of the *YCJA* which states that the criminal justice system for young persons must be separate from that of adults and must emphasize the following:

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

***YCJA, supra, s. 3(1)(b)(iii)***

24. Most recently, the Quebec Court of Appeal affirmed the principle, in relation to the *YCJA*, that the law protecting the privacy and identity of a young person is “*the cornerstone of the Canadian youth justice system.*” That Court went on to state that this principle is reflected in the specific protection of a young person’s privacy in s.3(1)(b)(iii) of the *YCJA* “*in terms of additional procedural measures to provide for fair treatment in protecting their rights,*

*particularly to privacy.”* Privacy is more likely to enhance the young person’s chances of being rehabilitated, which is beneficial not only to the young person, but also to society as a whole. It is in the public interest to have young people move on without a record of their misconduct.

***Reference re: Bill C-7 respecting the criminal justice system for young persons, [2003] Q.J. No. 2850, (C.A.) at para. 276***

25. As this Honourable Court has held “*the essence of privacy, however, is that once invaded, it can seldom be regained.*” Any record or personal information retained, increases the risk that the information may inadvertently or incorrectly be disclosed. This can have a greater impact on young people, because of their greater dependency and their vulnerability.

***R. v. O’Connor, [1995] 4 S.C.R. 411, at para. 119***

26. For young people the long term consequences of having DNA taken is greater than for adults, in part because of their vulnerability; but also because of their age, the time for maintaining those records can be longer than for adults. For example, in cases where DNA is sent to foreign governments as provided under s. 6 of the *DNA Identification Act*, there is no capacity even to ask that these records will ever be destroyed. This is not consistent with the legislators’ intent to provide greater, rather than lesser privacy rights for young people in the criminal context. Therefore the discretion created by s. 487.051(2) of the *Criminal Code* should be exercised in a manner consistent with the heightened privacy protections for young people. The *YCJA* requires that its provisions be construed liberally, to ensure greater protection for young people in accordance with the principles under the *YCJA*.

***DNA Identification Act, S.C. 1998, c.37, s. 6***

*YCJA, supra, s. 3(2)*

27. Furthermore, an order requiring the production of a DNA sample from a young person is physically intrusive at a time when adolescents are sensitive about their bodies and their physical integrity and dignity.

**DNA Orders are Not Mandatory: s. 487.051(2) of the *Criminal Code* provides discretion to take into account the Principles and Goals of the YCJA**

28. The legislators have conferred discretion on the courts under s. 487.051(2) not to make a mandatory DNA order in the case of primary offences. Under the section, the impact on the person's privacy and security of the person must be weighed with the protection of society and the proper administration of justice. Young offender legislation requires that young people be treated differently from adults because of their vulnerability, lack of maturity and experience, and other factors related to their youth. This Court has also taken notice of the vulnerability and dependency of all children. These factors directly affect the impact of being forced to provide a DNA sample on the young person; in particular the right to privacy under the *YCJA*. Therefore, the disposition judge must take into account the principles of the *YCJA*, as with the former *YOA*, when making a determination under this section.

*We cannot assume, for example, as with an adult offender, that there will be minimal impact on a young person's privacy and security of the person. In considering each of the three factors, the disposition judge must, in accordance with the principles of disposition set out in the young offenders legislation, look at each of them in terms of the goals sought to be achieved by that legislation*

***Canadian Foundation for Children Youth and the Law v. Canada (Attorney General)*  
[2004] 1 S.C.R. 76 at para. 58**

***R. v. B. (K), supra at para. 8 & 9***

***R. v. A.H.*, [2001] O.J. 382 (Ct. Just.) at para. 11**

29. Further, the *YCJA* provides that interventions for young people should be timely to reinforce the link between the offending behaviour and its consequences, taking into account that young people have a different perception of time. If young person's DNA can be kept by foreign governments for indefinite periods of time, the principle of timely intervention is obstructed. Young people may suffer the consequences of their actions for the rest of their lives. Their plans to travel, to seek employment opportunities or visit family members in other countries may be affected because of actions in their youth.

***YCJA, supra*, s. 3(1)(b)(iv)(v)**

30. In this case, the Nova Scotia Court of Appeal stated that the onus was on each individual young person to establish that the impact of the order for DNA on the young person would be grossly disproportionate to the public interest. It would be an unfair burden to place on young persons the onus of providing social science and other relevant evidence, to establish the additional impact on privacy and security of the person based on differences between adolescents and adults. Young people's greater need for privacy and the requirement to take into account their vulnerability, level of development, and dependency in the criminal context has already been determined by the legislature in the preamble to the *YCJA*, and the *YOA*, as well as by this Honourable Court, and all other levels of courts that hear young offender matters. We submit that the onus on the individual young person under s. 487.051(2) should be only to prove any additional impact due to their own particular circumstances and only where the general privacy principles submitted herein are insufficient

to satisfy a court not to make a DNA order. The proper administration of justice under s. 487.051(2) requires that the principles of the *YCJA*, including the protection of privacy, be taken into account.

***Reference re Young Offenders Act, supra at para. 23***

31. It is therefore submitted that courts must take the principles of the *YCJA* into account when determining whether the effect on the young person's privacy and security of the person will be "...grossly disproportionate to the public interest in the protection of society and the proper administration of justice..." under s. 487.051(2).

**Public Safety is Consonant with and Best Served By The Application of *YCJA* Principles**

32. Under the *YOA*, this Honourable Court found that:

in the long run, society is best protected by the reformation and rehabilitation of a young offender. In turn, the young offenders are best served when they are provided with the necessary guidance and assistance to enable them to learn the skills required to become fully integrated, useful members of society.

***R. v. M.(J.J.), [1993] 2 S.C.R. 421 at para. 26***

***Dagenais v. Canadian Broadcasting Corp, [1993] 3 S.C.R. 835, at para. 83***

33. When balancing the value of protecting society, the proper administration of justice and the young person's privacy and security of the person, the social benefit of not adding to the criminalization of young people will inform the interpretation of each of the three factors. Young people whose encounters with the criminal justice system focus on rehabilitation, rather than sanctions, are less likely to re-offend:



*most young offenders are one-time offenders only and, the less harm brought upon them from their experience with the criminal justice system, the less likely they are to commit further criminal acts.*

***R. v. Southam, supra, at p 697, as approved by the Supreme Court of Canada in F.N. (Re) supra, at para. 17***

34. Young people are at lower risk of recidivism than adult offenders. Therefore, there is a reduced value in collecting DNA samples as a means of protecting the public.

*The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside. For most teens, these behaviours are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behaviour that persist into adulthood.*

***Roper v. Simmons, supra at p. 16***

35. DNA samples are not helpful in the prosecution of crimes, in the context of a family dispute such as this one, where the accused is well known to the victim and there is no previous youth record. Society would not be safer if the young person's DNA were to be obtained and retained.

***R. v. T.T., [2001] O.J. No. 2936, (Ct. Just.) at para. 22***

36. The issue of deterrence is irrelevant to decision of whether to take a DNA sample. The stated purpose of the DNA Identification Act is “*to establish a national data bank to help law enforcement agencies identify persons alleged to have committed designated offences*”. The stated principles do not include deterrence. The principles are set out in s. 4: “*the protection*

*of society and the administration of justice are well served by the early detection, arrest and conviction of offenders, which can be facilitated by the use of DNA profiles”.*

***DNA Identification Act, S.C. 1998, c.37, ss. 3, 4***

37. In the alternative, if a DNA order is considered part of sentencing, it is notable that, unlike the purposes of sentencing set out in s. 718 of the *Criminal Code*, neither the statement of policy for Canada with respect to young persons at s. 3 of the *YCJA* nor the sentencing provisions make reference to general deterrence as a principle or purpose of youth sentencing. Further, deterrence has a reduced value for young people who are less likely to re-offend than adults.

**Young people are often charged with the maximum offence and often plead guilty to that charge for relatively minor occurrences**

38. In this case a thirteen-year old boy who struck his mother’s foot with a pen was charged, and plead guilty to assault with a weapon. Many young people involved in fights with classmates or family disputes are charged with the maximum very serious offence, and often plead guilty to the same, for relatively minor occurrences. Some serious assault charges arise out of family disputes involving teenagers who react to parental assault, particularly prior to this Honourable Court’s recent decision with respect to s. 43 of the *Criminal Code*. Until very recently when a teenager reacted with physical force to being hit by their parents it was the adolescent who was charged. Many of the assault with a weapon charges in schools involve school bags, lunch bags, and pencils, and would therefore qualify as primary offences for the purpose of DNA orders. For example :

- young person pled guilty to robbery; charge involved fight over bus fare between young people of the same age, both accused and victim punched each other, Crown applied for DNA. *R. v. T.T.*, [2001] O.J. No. 2936, (Ct. Just.);
- young person pled guilty to assault with a weapon for hitting his sister with a telephone during fight, Crown asked for DNA. *R. v. S.M.*, [2004] A.J. No. 534.
- sixteen year old charged with assault and uttering threats for pushing back at his parents who were shoving him on the floor to keep him from leaving the house. (*R. v. D.P.* August 15, 2003) (unreported, Ontario Youth Court)
- 13 year old in secure treatment facility (for mental health treatment under *Child and Family Services Act, Ontario*) charged with assault causing bodily harm while resisting workers restraining him. *R. v. M.C.*, (June 5, 2002), (unreported Ontario Youth Court)
- young man charged with assault with a weapon for poking another student on the arm in class with a pencil. *R. v. R.M.* (Feb. 17, 1997) (unreported Ontario Youth Court)
- young man charged with robbery for standing in a bus shelter door and when asked by another transit rider “what do you want?” answered “do you have two dollars?”. *R. v. R..M.* (January 12, 2000) (unreported Ontario Youth Court).

39. Canada has a history of overcharging young people such that minor incidents end up in the court system. Furthermore, Canada has had the highest rate of incarceration for young people in the Western World, including the United States. One of the government’s stated purposes in introducing the new *YCJA* was to rectify these problems.

*YCJA Summary & Background, supra*

40. It is therefore submitted that young people who are often over-charged in comparison with adults should have particular attention paid to the circumstances of the offence in making a DNA determination.

## INTERNATIONAL LAW

41. The Preamble of the *YCJA* specifically acknowledges and incorporates Canada's ratification of the United Nations *Convention on the Rights of the Child* (the "*Convention*"). This Court has held that Canadian law must be interpreted as being compliant with Canada's international Treaty obligations, such as the *Convention*. Because of the Preamble, this obligation is heightened with respect to the *YCJA*.

***Canadian Foundation for Children Youth and the Law v. Canada (Attorney General), supra at para. 31***

42. As a signatory to the *Convention*, Canada has undertaken to provide special treatment to children based on their vulnerability. The need to provide children with special legal protections is found in the *Convention's* Preamble, which states: "*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.*"

***Convention, supra, Preamble***

43. With respect to those children who have been found guilty of offences, Article 40 of the *Convention* requires State Parties to take into account the child's age and promote the child's dignity and self worth, and express the desirability of helping the child reintegrate and assume a constructive role in society. Canada has also ratified the United Nations *International Covenant on Civil and Political Rights*. Article 10 requires juvenile offenders to be treated in an age-appropriate manner. This is consistent with our own domestic law, in particular the *YCJA*, which focuses on rehabilitation, rather than punishment, and recognizes the child's greater need for privacy.

***International Covenant on Civil and Political Rights, Article 10***  
***Convention, Article 40***

44. Article 40 of the *Convention* also specifically recognizes the need for privacy for young persons in conflict with the law. Under subs. 2(b), every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(vii) *to have his or her privacy fully respected at all stages of the proceedings.* (emphasis added)

***Convention, Article 40***

45. Further, Article 16 of the *Convention* protects the privacy rights of children against arbitrary interference. We respectfully submit that courts must apply the principles enunciated in the *YCJA* consistent with the *Convention* in all proceedings and determinations concerning young people in particular with respect to their privacy rights, in order to ensure that the interference is not arbitrary and there is no additional onus on young people. In this case the principles must be taken into account when determining whether to order DNA samples from young people, pursuant to s. 487.051 of the *Criminal Code*.

***Convention, Article 16***

46. The privacy protections afforded under the *Convention* are enhanced by Article 3 of the *Convention* which provides that in all actions concerning children, public and private institutions, courts, administrative bodies and legislative bodies shall make the best interests of the child a primary consideration. This treaty requirement should inform the balancing of interests in making a determination under s. 487.051(2) of the *Criminal Code*. Courts should

also, therefore, be wary of imposing an onus on young people to disclose unique and specific privacy or security of the person concerns.

***Convention, Article 3***

47. It is therefore submitted, that young people cannot be treated the same as adults with respect to DNA orders under both domestic, and international law. Their special circumstances must be taken into account in accordance with the principles enunciated in the *Convention on the Rights of the Child* and the *Youth Criminal Justice Act*.

**PART IV-COSTS**

48. The Foundation does not seek costs nor does it believe that costs should be ordered against it.

**PART V - ORDER SOUGHT**

49. The Foundation respectfully requests that the appeal be allowed.

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Martha Mackinnon  
Counsel  
Canadian Foundation Children Youth and the Law

Toronto, March 16, 2005

**PART VI**

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#### **PART VII**

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2. *DNA Identification Act* R.S. 1998, c. 37
3. *Youth Criminal Justice Act*, S.C. 2002, c.1, Preamble, ss. 1-3;



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4. *Young Offenders Act*, R.S.C. 1985, c. Y.1, s. 38
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