Court File No. YC18-00000185-00M0

SUPERIOR COURT OF JUSTICE
(Toronto Region)

B E T W E E N:

HER MAJESTY THE QUEEN

Respondent

- and –

TORONTO COMMUNITY HOUSING CORPORATION

Applicant

- and -

JUSTICE FOR CHILDREN AND YOUTH

Intervener

FACTUM OF THE INTERVENER JUSTICE FOR CHILDREN AND YOUTH

PART I – OVERVIEW

1. This case examines whether R.V.'s youth criminal justice records under the *Youth Criminal Justice Act,* S.C. 2001, c. 1 ("*YCJA*") should be disclosed to Toronto Community Housing Corporation ("TCHC"). TCHC had sought the records for the purposes of eviction proceedings against R.V. and his family at the Landlord Tenant Board ("LTB") on the grounds of illegality and community safety consistent with the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 ("*RTA*"). In order to access and disclose youth records, a third party to the criminal proceedings requesting records, in this case TCHC, must rebut the strong presumption against access and demonstrate that their interest in the records – advancing their public safety mandate for their broader tenant population - is compelling enough to override the young person's constitutionally protected privacy rights.

2. Justice for Children and Youth ("JFCY") was granted intervener status in these proceedings. The purpose of JFCY's intervention is to assist this Court to understand the rights and protections that should be considered by a court when determining whether to grant access or disclosure of youth records under the *YCJA*, in light of its guiding principles and purposes.

3. In this case, TCHC failed to rebut the presumption against access to records under the *YCJA* and its application for access and disclosure of R.V.'s records was dismissed by the youth court. TCHC now seeks the highly discretionary remedy of *certiorari* from this Court. The parties agree this matter is moot but the Applicant is requesting that this Court nonetheless exercise its discretion to hear this matter. This is opposed by the Intervener.

4. The *YCJA* constitutes a complete code with respect to the administration of youth criminal justice based on the principle of young people's reduced moral blameworthiness. The *YCJA* accordingly prioritizes rehabilitation and reintegration and the avoidance of stigma for young people.

The protection of young persons' privacy is fundamental to these objectives. It follows that these principles constitute an important component of analysis related to requests for access and disclosure of youth criminal justice records. The analysis of a request for access and disclosure is a fact-driven and contextual inquiry individual to the particular request. It is not contrary to the proper administration of justice for a collateral proceeding to be halted if a records request is denied.

PART II – FACTS

5. JFCY agrees with the facts as set out by the Applicant but asserts that additional facts are necessary to the proper consideration of this matter.

6. At the time of the alleged offences, R.V. was sixteen years old. R.V. identifies as Black-Hispanic. R.V. was arrested on TCHC complex where he lives, when he and another male were stopped and searched by police officers who were conducting a routine bike patrol.

> *Toronto Community Housing Corporation v R,* 2018 ONCJ 492, ("Lower Court Decision"), para 2, 5, 25-26, Applicant's Records, Tab 2

7. R.V. lives with his mother and his three siblings in a TCHC townhouse. R.V.'s mother's language of origin is Spanish. She speaks very little English. She is a single mother, who works very hard to support her family by working in a factory. R.V. has a younger sibling who at the time of the records application was twelve years old.

> Lower Court Decision, *supra* para 6 at para 4-5

8. Because this is subsidized social housing, the family of five pays modest rent for their housing given its size. The family cannot afford comparable, non-subsidized housing elsewhere in Toronto.

> Lower Court Decision, *supra* para 6 at para 6

9. TCHC intended to evict R.V. and his family for an act that either was an illegal act and/or an act that seriously impairs or impaired the safety of a person in the residential complex.

> Lower Court Decision, *supra* para 6 at para 31-34

RTA, ss. 61(1) and 66(1)

10. The Applicant conceded that the youth court could consider the prospect of R.V.'s eviction as a consequence to him when making its decision regarding access to his records. The Applicant suggested that to avoid conflating the eviction proceedings with the records application, the Court simply could not evaluate the *merits* of the prospective eviction proceedings.

Lower Court Decision, *supra* para 6 at para 128

11. The records in question did not relate to a finding of guilt but rather a stay of the charges and a peace bond. There is no evidence that R.V. was aware that an eviction was a possible collateral consequence of the disposition of his charges.

Lower Court Decision, *supra* para 6 at para 111-112

12. TCHC indicated they were functionally unable to launch its intended eviction proceedings because all of the evidence which it needed to rely on was protected by the *YCJA*.

Lower Court Decision, *supra* para 6 at para 8

13. R.V. was arrested on September 20th, 2016 and his matter was disposed of on November 17th, 2017. The Application was commenced in January of 2018 and the youth court provided its decision on July 20th, 2018. The limitation period for commencing an eviction expired on September 20th, 2018.

Lower Court Decision, *supra* para 6 at para 1, 17; *Applicant's Factum*, para 12, 14, 22

14. In reaching this decision, the youth court judge Justice Finlayson was alive to the Applicant's public safety mandate, and the seriousness of the criminal charges, but nonetheless found that TCHC failed to rebut the presumption against access. Justice Finlayson was swayed by the facts that: R.V.'s charges had been stayed; he was under a peace bond; he had not been in trouble in the almost two years leading up to the access application thereby posing no real safety concern. His Honour determined that eviction proceedings would both stigmatize and punish R.V. as a criminal without expert knowledge of the principles animating the *YCJA*. His Honour considered that the intended

and/or likely consequence would be disastrous for his rehabilitation and ongoing integration into his community. Justice Finlayson determined that the possibility of a devastating eviction from social housing, and the real chance that the proceedings themselves — regardless of the outcome — would drive a wedge between the respondent and his family, were significantly worse than any possible outcome that Respondent could have faced under the *YCJA*.

Lower Court Decision, *supra* para 6 at 96-107, 116

PART III – LAW AND ARGUMENT

A. PRELIMINARY ISSUE: MOOTNESS

15. All parties and the Intervener agree that this matter is moot. The Applicant concedes that it will not take any further action against R.V. either by obtaining the records from youth court or by pursuing eviction proceedings before the LTB. As such, R.V. is no longer participating in these proceedings given he has no material interest in the matter. The Crown is the only remaining Respondent in this matter but takes no position with respect to the records application or Justice Finlayson's decision.

Applicant's Factum on Standing, para 4
Respondent Crown's Factum, para 3

16. As such, this court must consider whether the Applicant has demonstrated sufficient grounds to overcome the general policy against entertaining moot cases, as in *Borowski*.

Borowski v. Canada, [1989] 1 SCR 342 at p. 19, 57 DLR (4th) 231.

17. Justice for Children and Youth has not agreed to step into the role of adversary to the Applicant on the merits of the application for *certiorari*. Justice for Children and Youth respectfully submits this matter ought not to be heard because it lacks an appropriate adversarial context and there are no collateral consequences that would necessitate the use of scarce judicial resources.

a. Adversarial Context/Collateral Consequences:

18. There is no persisting adversarial context in this matter. TCHC is no longer seeking R.V.'s

records and R.V. has abandoned these proceedings. The Crown Respondent's position focuses entirely on the interplay between the *YCJA* and *D.P. v Wagg*, an issue which does not arise on the facts of this Application nor has it been raised by the Applicant.

19. JFCY's participation does not create the necessary adversarial context. JFCY's intervention is limited to providing its expertise regarding the rights and protections that ought to be considered by the youth court when hearing a youth records application in light of the principles and purposes of the *YCJA,* as it has done in numerous cases related to the *YCJA* and privacy issues.

> Justice for Children and Youth's Notice of Motion for Leave to Intervene at para 6-7, and Affidavit of Anne Irwin dated November 13th, 2018 (Justice for Children and Youth's Motion Record for Leave to Intervene), para 47-48.

20. JFCY cannot provide the necessary adversarial context in this case as an intervener. JFCY does not represent R.V., nor is it a party to these proceedings. JFCY has no stake in the outcome and had no role in the lower court proceedings. Without standing as a party, there is no mechanism for an intervener to appeal a decision made by this Court.

21. TCHC is asking this Court to entertain a hypothetical and abstract question about when it may access youth records for eviction proceedings. Without a young person whose rights will be directly impacted or particular records to consider, there is no factual matrix on which this court can properly answer that question. There is accordingly no collateral consequence to any party that ought to be addressed; each request for youth records must be addressed on its merits consistent with the existing well-established legal framework and the circumstances of each particular case.

22. As stated by Justice Finlayson in paragraphs 14-15 and paragraphs 129-134, the outcome of this case will not prevent other landlords from taking steps to ensure the safety of their tenants in other cases because of the *fact*-driven contextual nature of the analysis of records requests. Justice Finlayson's decision does not create a general bar to access and contemplates circumstances that

militate in favour of access.

Lower Court Decision, *supra* para 5 at para 14-15, 115, 129-134

b. Judicial Economy:

23. This is not a case where this Court's decision will have some practical effect on the parties' rights, notwithstanding its mootness; hearing it does not serve the interests of judicial economy.

24. While the Applicant asserts the issues raised are likely to be "evasive of review" given the limitation periods associated with an eviction proceeding, this submission is based on the false presumption that a landlord cannot either (a) initiate a records request before an accused young person's court proceedings are concluded; or (b) bring a request before the LTB to evict before the limitation period expires without breaching the *YCJA*.

25. A landlord may file the procedurally uncomplicated LTB forms and indicate that there are confidentiality issues that must be addressed before the specifics can be provided and request an adjournment while preserving its rights despite the limitation period. In fact, the LTB has granted the latter remedy in a case JFCY represented a child on this very issue.

See Anonymized Decision of the LTB from August 2nd, 2016 at para 16 and Terms 1-2 of the Order

26. It is therefore not the case that courts will not have the opportunity to consider the issues raised here in a case where there is in fact a live controversy between the parties.

c. The Proper Role of the Court:

27. The Applicant is asking this Court to make general pronouncements concerning the interpretation of the *YCJA*, divorced from an underlying live dispute between the parties. Similarly, the Respondent Crown is asking this Court to opine on process and procedure that do not arise on the facts of this case and which were not canvassed by the lower court. In doing so, the parties are essentially asking this Court to depart from its proper adjudicative role and step into the role of the legislature.

28. As above, a records application is by its nature a fact-driven inquiry. This Court should resist both opining on abstract and hypothetical issues and making general pronouncements regarding the interpretation of the *YCJA*.

29. There are no systemic or broad issues at stake that transcend the factual matrix of this case that this Court ought to resolve. TCHC has not provided any evidence of a pressing need to routinely obtain youth records or a pattern of refusals for such requests. In fact, this is the first and only time TCHC or any landlord has tried to obtain youth records.

30. The Court must be mindful of the nature of these proceedings. This is an application for *certiorari* where the Court is bound by the record before the youth court and the youth court must be afforded a high degree of deference. Youth courts have the benefit of expertise and routine application of the principles animating the YCJA and relevant appellate court jurisprudence to make complex decisions related to the adjudication of youth criminal matters, including maintaining the appropriate safeguards related to the use and disclosure of the resulting records. In fact, no youth court bench is better placed to make these decisions than 311 Jarvis Street given it is the only courthouse in both the province and country where the sitting Ontario Court of Justice bench exclusively hears youth criminal justice proceedings and family matters related to children.

> *SL v NB, (2005)* 252 DLR (4th) 508, para 54, 2005 CanLII 11391 (ONCA) as quoted by Justice Finlayson at para 126 of his decision [*SL v NB*]
>
> *R v Awashish*, 2018 SCC 45, para 12, 367 CCC (3d) 377 [*Awashish*]
>
> *TPS v. LD*, 2018 ONCA 17 at para 26 [*LD*]

B. AN APPLICATION FOR CERTIORARI

31. An application for *certiorari* is distinct from an appeal. On a judicial review of a request made by a third party where the decision is of a final nature, a reviewing court may only review the decision if the court below exceeded its jurisdiction or there is an error of law on the face of the record. It is a highly deferential standard of review.

LD, *supra* para 28 at para 26

Awashish, *supra* para 28 at para 12

R v Mullings, 2012 ONSC 2910, paras 27-29, [2012] OJ No 2199 (QL).

32. *Certiorari* does not permit a court on review to challenge the decision of the court below nor substitute its own decision on the ground that the court below committed a minor error or that the reviewing court would have exercised its jurisdiction differently.

R v Innocente, 2004 NSCA 18, paras 16-18, 221 NSR (2d) 357 citing *R v Skogman,* [1984] 2 S.C.R. 93 at pp. 98 to 100, 11 DLR (4th) 161.

R v Russell, [2001] 2 S.C.R. 804, paras 19, 2001 SCC 53.

R v Mullings, 2012 ONSC 2910, paras 27-29, [2012] OJ No 2199.

33. Certiorari is a grant of discretion and even if the court finds an error of jurisdiction or an error of law on the face of the record, the reviewing court can refuse to overturn the decision. The error of law must be pervasive enough to override the remainder of the analysis. If not, deference must be accorded to the expertise and jurisdiction of the lower court.

R. v. Papadopoulos, [2005], OJ No 1121 at para 19 and 20, 196 OAC 335.

34. The decision and analysis was properly within Justice Finlayson's jurisdiction. His Honour was in a superior position to determine this issue because of his expertise as a youth court judge coupled with his opportunity to review all the records in question directly. His decision ought to be entitled significant deference on review.

C. THE PROTECTIONS OF YOUNG PEOPLE'S PRIVACY UNDER THE *YCJA*

a. Young people are entitled to special protection because of their developmental realities

35. There is broad consensus – scientific and legal - that young people are inherently vulnerable in society, and specifically in the criminal justice system, as a result of their evolving capacities, lack of sophistication and maturity, and dependence on adults.

36. Social science and neuroscientific literature demonstrates that adolescents exhibit a reduced capacity for judgment and reasoning and a limited ability to consider situations from different

viewpoints. They are likely to be more impulsive and have reduced capacity to weigh risks, consequences, and alternatives. Their offending behaviour is less a result of poor moral judgment and bad character, and more a consequence of their age and stage of brain development.

> Nim Tottenham & Adriana Galvan "Stress and the adolescent brain: Amygdala-prefrontal cortex circuitry and ventral striatum as developmental targets" (2016) 70 Neurosci & Behav Rev 217 at 223.
>
> *Roper v Simmons*, 543 US 551 (2005), at IIIB

37. The Supreme Court has commented that young people are recognized in Canadian and international law as inherently vulnerable as a *class* and that "the law attributes the heightened vulnerability based on chronology, not temperament."

> *AB (Litigation Guardian of) v Bragg Communications Inc.,* 2012 SCC 46, para 17, [2012] 2 SCR 567 (internal citations omitted)

38. The Supreme Court has also stated that, as a consequence of their developing capacities, there is a positive legal obligation on the part of the state to protect young people from harm.

> *AC v Manitoba (Director of Child and Family Services),* 2009 SCC 30, para 71, [2009] 2 SCR 181.
>
> *Kanthasamy v Canada (Citizenship & Immigration),* 2015 SCC 61, para 41, 58, [2015] 3 SCR 909.

39. The United Nations Convention on the Rights of the Child ("*UNCRC*") – to which Canada is a signatory, and which is expressly incorporated into the *YCJA* – requires that "special safeguards and care, including legal protection" be afforded to young people "by reason of their physical and mental immaturity".

> United Nations, Convention on the Rights of the Child, Can. T.S. 1992 No. 3., Preamble, Article 40, clauses 1 and 2(b)(vii) [*UNCRC*].
>
> *YCJA*, *supra*, Preamble
>
> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 25.

40. These developmental immaturities explain in part why adolescence is a period marked with a spike of criminal and high-risk behaviours. However, the vast majority of young people charged with offences, even serious violent offences, can and do become productive and law abiding citizens, even without intervention. As such, they require special protections and unique interventions to assist them to move forward from youthful offending as they transition to adulthood.

Laurence Steinberg, "A Dual Systems Model of Adolescent Risk-Taking" (2010) 52 Dev Psychobiol 216 at 217.

Jones, B., Birdsell M., & Rhodes, E., "A Call For Enhanced Constitutional Protections for the Special Circumstances of Youth" (2013) 3:2 CR (7th) 350 at 352-359.

41. As a consequence of their developmental realities, young people are considered less morally culpable for their offending conduct. In *DB,* the Supreme Court of Canada affirmed that the principle of diminished moral culpability as a principle of fundamental justice that underlies the entire youth criminal justice system. Abella J. explained that young people are entitled to a separate legal regime:

> . . . 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.

R v DB, 2008 SCC 25 at para 41, [2008] 2 SCR 3.

United Nations, Convention on the Rights of the Child, Can. T.S. 1992 No. 3., Preamble, Article 40, clauses 1 and 2(b)(vii) [*UNCRC*].

YCJA, *supra*, Preamble

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 25

42. Young people are thus accordingly constitutionally entitled to a separate system of criminal justice founded on the principles of diminished moral blameworthiness, with an emphasis on meaningful accountability, enhanced procedural protections including privacy, as well as rehabilitation, and reintegration. The YCJA as a whole is to be *liberally construed* to ensure young people benefit from the proper and robust application of these guiding principles.

YCJA, *supra*, Declaration of Principles, s. 3

b. Young people's heightened vulnerability and diminished moral blameworthiness are recognized in the privacy provisions of the *YCJA*

43. The *YCJA* reflects Parliament's intention to codify a distinct system of criminal justice for young people as compared to adults. To this end, the *YCJA* establishes enhanced procedural protections at every stage of youth criminal proceedings, from pre-charge to post-sentencing, including strict control over youth records.

44. These enhanced procedural protections are born from the Preamble's explicit recognition that all members of society share a responsibility for addressing the developmental challenges and needs

of young persons into adulthood.

YCJA, *supra*, Preamble

45. Parliament codified the central importance of the need to protect young people's privacy in the *YCJA*: "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, *inter alia,* rehabilitation and reintegration, enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected.

YCJA, supra, s. 3(1)(b) (emphasis added)

46. Moreover, the *UNCRC*, which is expressly incorporated into the *YCJA,* mandates taking into account the child's age and the desirability of promoting the child's reintegration and rehabilitation. States parties must furthermore ensure that a child's privacy is protected at all stages of the proceedings.

YCJA, supra, Preamble
UNCRC, *supra,* Preamble, Article 40, clauses 1 and 2(b)(vii)

47. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "*Beijing Rules*") elaborate on this principle recognizing that young people are "particularly susceptible to stigmatization" and the detrimental effects of labelling, and require that the privacy of a young person be protected at all stages of a criminal proceeding "in order to avoid harm being done to her or him by undue publicity or by the process of labelling".

United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, A/RES/40/33, November 29, 1985, Rule 8.

48. All the provisions of the *YCJA* must be read as making meaningful this principle, including the non-publication and records provisions found in Part 6.

c. Privacy protections are restrictive for young persons` because of the importance of rehabilitation and reintegration

49. Children presumptively require enhanced privacy protections to meaningfully recognize their

heightened vulnerability and diminished moral blameworthiness. This is best articulated by the Honourable Justice Wagner in *R v Jarvis*:

> That Canadian law provides children with greater privacy rights than similarly situated adults in a number of contexts evidences a societal consensus on this point, and on the shared value of protecting children's privacy.
>
> *R v Jarvis*, 2019 SCC 10, para 86, [2019] SCJ No 10 (QL) [*Jarvis*]
>
> *AB v Bragg Communications*, *supra*, at para 17-18, citing Toronto Star v Ontario, 2012 ONCJ 27

50. Diminished moral culpability means a young person should not be labelled or stigmatized as a criminal. Given that youthful offending is presumed not to reflect poor moral judgment or bad character in the same way as adult offending, the emphasis of the youth criminal justice system is on rehabilitation and reintegration rather than deterrence, denunciation, or retribution.

> *R v DB*, supra, at para 62

51. The privacy protections are accordingly directed in part at preventing the stigmatization and labelling of young persons as offenders, consistent with the obligations under the *UNCRC* and the *Beijing Rules*.

52. In *DB*, the Supreme Court of Canada held that the protection of privacy for young people dealt with under the *YCJA* is a significant element of their rehabilitation and reintegration, and ultimately the long-term protection of the public:

> In s. 3(1)(b)(iii) of the YCJA, as previously noted, the young person's "enhanced procedural protection . . . including their right to privacy", is stipulated to be a principle to be emphasized in the application of the Act. Scholars agree that "[p]ublication increases a youth's self-perception as an offender, disrupts the family's abilities to provide support, and negatively affects interaction with peers, teachers, and the surrounding community" (Nicholas Bala, Young Offenders Law (1997), at p. 215)
>
> *R v DB*, *supra*, at para 84

53. The Court further noted that identification of a young person outside the youth criminal justice system makes the young person vulnerable to greater psychological and social stress, and in so doing, renders the impact of their involvement with the criminal justice system more severe, contrary to the principles of the *YCJA* and the *UNCRC*.

R v DB, *supra*, at para 87

54. Similarly, in *Re FN*, the Supreme Court noted that "[s]tigmatization or premature 'labelling' of a young offender still in his or her formative years is well understood as a problem in the juvenile justice system. A young person once stigmatized as a lawbreaker may, unless given help and redirection, render the stigma a self-fulfilling prophecy." The privacy protections were accordingly recognized as being designed to "maximize the chance of rehabilitation for young offenders."

FN (Re), 2000 SCC 35, [2000] 1 SCR 880, at para 14

See also: *Quebec (Minister of Justice) v Canada (Minister of Justice)* (2003), 175 CCC (3d) 321 (QCCA), para 215, 228 DLR (4th) 63.

55. The Court noted, "this insistence on confidentiality is born of a tender concern for the welfare of the child, to hide his youthful errors and 'bury them in the graveyard of the forgotten past.'"

FN (Re), supra, at para 15, citing *Smith, Judge v Daily Mail Publishing Co.*, 443 US 97 (1979) (US Sup Ct), at pp 107-8

See also: *R v RC,* 2005 SCC 61, para 42, [2005] 2 SCR 99

56. In sum, the privacy protections perform an important protective function by allowing the young person to move forward from youth criminal justice involvement without the stigma that is damaging to their self-worth, rehabilitation, and reintegration.

d. The privacy protections allow the court to control the use, and misuse, of youth records

57. As the Ontario Court of Appeal recognized in *SL v NB*, the jurisdiction for determining appropriate access to and disclosure of youth records has been delegated exclusively to youth justice court judges.

SL v NB, supra at para 54

58. It is appropriate that youth court justices perform a gatekeeping function in determining the appropriate use of youth records. Strict control over the use and dissemination of information ensures that records are not misused in proceedings outside the youth criminal justice system, including eviction proceedings before the LTB, where the principles animating the youth criminal justice system may not be well understood nor a young person's rights adequately protected. Parliament has

seen fit to protect young people as a class under the *YCJA* precisely to avoid putting young people in the position of having to enforce their rights to privacy in any particular case.

AB v Bragg Communications Inc, *supra*, at para 17

59. Part 6 of the *YCJA* codifies a strict statutory code governing access to and disclosure of youth records which, as the Ontario Court of Appeal has stated, "demonstrate beyond peradventure Parliament's intention to maintain tight control over access to records pertaining to young offender proceedings".

SL v NB, supra, at para 42

60. Under section 110(1), no person shall publish the name of a young person, or any other information related to a young person, if to do so would identify the young person as having been dealt with under the Act. This broad prohibition means that disclosure of information contained in a record must be pre-authorized under one of the limited exceptions set out in the *YCJA,* or must be specifically judicially authorized.

61. Similarly, section 118 enacts a presumptive prohibition on access to and disclosure of youth records. Where access is permitted, section 129 prohibits further disclosure. This is reinforced by section 138, which creates an offence for contravention of the non-publication and non-disclosure provisions of the Act. The prohibition is "unequivocal and unqualified".

SL v NB, supra, at para 45

62. As this Court has noted, generally access to records is "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 who have come into conflict with the law." The importance of that interest – which, as the foregoing demonstrates, has a significant constitutional dimension – cannot be underestimated in that calculus.

SL v NB, supra, at para 42
R v ZW, 2016 ONCJ 490 (OCJ), at para 44-45

63. To this end, Part 6 establishes statutory tests for access where the person seeking the records is a stranger to the youth criminal justice proceedings concerning the young person, or seeks the records for a purpose outside the administration of the youth criminal justice system.

64. In particular, s. 119(1) of the *YCJA* enumerates an exhaustive list of persons or classes of persons who can access records. These records can be accessed only while a record falls within the access periods referred to s. 119(2), which varies depending on the manner in which the young person's charges were resolved. Section 119(1)(s) creates a basket clause pursuant to which third parties may access the records, only while a record falls within the access periods referred to s. 119(2), requiring that they demonstrate: a valid interest in the record, and that access is desirable in the public interest or for research purposes, or desirable in the interest of the proper administration of justice. Access under s. 119(1)(s) is an exception to the presumption against access.

65. Given the principles and purposes at stake under the *YCJA*, the access and disclosure regime is stringent and the threshold to rebut the presumption against access is intentionally high.

R v DB, *supra*, at para 87

66. Whether it is "desirable in the interests of the proper administration of justice" to allow access and disclosure to youth records requires a youth court to consider not only whether it is desirable that another legal process should proceed, but the impact on the young person and the proper administration of youth criminal justice as well.

67. Each request must be evaluated based on the particular facts and circumstances of the request. Records may be accessed and disclosed for one purpose in a particular type of proceeding may be withheld in others given the different interests at play. For example, records that may be releasable for use in a criminal proceeding where the innocence of an accused person is at stake may not be released for use in a civil or administrative proceeding for a private purpose.

May v Ferndale Institution, [2005] 3 SCR 809, para 90-92, 2005 SCC 82

68. It is not sufficient to simply allow another body, such as the LTB, to determine whether youth records are producible in that proceeding. Determinations of weight or admissibility to be afforded to youth records in another proceeding do not adequately address the interests at stake for the young person, nor the protections and controls imposed by the *YCJA.* These determinations are the sole purview of the expert youth court.

> *Re JD*, 2009 ONCJ 505 (OCJ), para 82, [2009] OJ No 6384 (QL)

D. LANDLORD TENANT BOARD PROCEEDINGS

a. Access to housing is fundamental to rehabilitation

69. R.V.'s youth criminal justice records were being requested for the purpose of evicting his whole family from social housing. In the court of first instance, the Applicant conceded that Justice Finlayson could consider the possible eviction in reaching his decision, yet now raises this an error of jurisdiction. This court is bound by the record that was before the lower court.

70. A young person's rehabilitation is hindered when they face added punishments for their behaviour that limits their ongoing integration into their community. It is a deeply intrusive and severe consequence for youth records to be used to evict a family and this consequence affects his ability to rehabilitate and remain integrated in his community. Parliament has recognized housing as a fundamental human right. As stated by the Divisional Court, "short of losing one's liberty, the loss of one's home is as serious a matter as can be imagined".

> *Re TSL-92515-18,* 2018 CanLII 120931 (ON LTB) para 15 citing *Britannia Glen Co-operative Homes. v. Singh* (2 December 1996), File No. A4279/96 (Ont. Div.), at p. 3
>
> National Housing Strategy Act, Preamble, Declaration, being Division 19 of Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19th, 2019 and other measures, 1st Sess, 42nd Parl, 2019, June 21st, 2019, (assented to June 21, 2019).

71. Diminished moral blameworthiness includes s. 3(1)(ii) of *YCJA,* "*fair and proportionate accountability* that is consistent with *the greater dependency* of young persons and their reduced level of maturity". Fair and proportionate accountability is specific to the individual and where appropriate

calls for the involvement of parents and/or the extended family, in rehabilitation and reintegration.

> *YCJA, supra,* s. 3

72. Part of the dependency and reduced maturity means that young people are not independent and operate as a part of their family unit and should ideally be housed with their parent and siblings. Relationships with supportive and loving family members strengthen rehabilitation and consequences that undermine these relationships are not fair, proportionate or developmentally appropriate. The *Committee on the Rights of the Child* states,

> adolescents experiencing poverty, armed conflicts, all forms of injustice, <u>family breakdown</u>, political, social and economic instability [..] may be particularly vulnerable. These situations might seriously hamper their health and development.

> UN Committee on the Rights of the Child, General Comment No 4 (2003) Adolescent health and development in the context of the Convention on the Rights of the Child, UNCRCOR, 33rd Sess, UN Doc CRC/C/GC/4 at Para 38 (emphasis added)

73. The Supreme Court has long recognized that separating a child from their parent for child welfare reasons engages both a child and parent's s.7 *Charter* right to security of the person because "the child's psychological integrity and well-being will be seriously affected by interference with the parent-child relationship"

> *New Brunswick (Minister of Health and Community Services) v JG*, [1999] SCR 46, para 76, 177 DLR (4th) 124

74. The *UNCRC* states that a court is obligated to consider the best interests of the child in *all* decisions that directly and indirectly affect children.

> UN Committee on the Rights of the Child, General Comment No 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts 4, 42, and 44, para 6, UNCRCOR, 44th Sess, UN Doc CRC/C/GC/5 at Pg 4

75. It follows that Justice Finlayson appropriately considered how disclosure of R.V.'s youth records would have affected not only R.V. individually, but his entire family. The impact on his family intensifies the consequences he may face and increases his self-perception as a criminal despite his charges having been stayed. Destabilizing his family unit undermines an important protective factor against future offending, and ultimately undermines his rehabilitation and

reintegration. An eviction against R.V.'s whole family is contrary to the principle of reduced moral blameworthiness, is not a meaningful or proportionate consequence, and is in effect punitive.

b. The grounds for eviction relate to criminality

76. TCHC was intending to pursue its community safety mandate before the LTB for eviction proceedings consistent with s. 61(1) of the *RTA* for an illegal act including but not limited to offences under the *Criminal Code* (see s. 75 of the RTA) and s. 66(1) for impairing safety. The contemplated request for eviction is not under any of the other grounds for eviction including, for example, interfering with the reasonable enjoyment of a landlord or other tenant (s. 64(1)), or causing damage (s. 62(1)). In these circumstances, the nature and use of the records would arguably be distinguished.

77. For this specific request, R.V.'s alleged criminality will be assessed. The LTB does not have expert knowledge of the developmental realities of young people nor the principle of reduced moral blameworthiness. It is therefore not equipped to evaluate R.V.'s offending behaviour through this lens nor to protect him from further stigma, blame, and punishment that result from his eviction and render his involvement in the youth criminal justice system disproportionately more severe. This specific intended use of R.V.'s records explains the very reasons why the heightened privacy protections exist under the *YCJA* and why decisions regarding releasing youth records are reserved to the youth court, which is in a superior position to determine the appropriateness of that use given the nature of the records being sought.

78. All decisions made under the YCJA are intended to be fair, proportionate and specific to the individual young person given his needs and level of development.

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

79. The facts of R.V.'s youth criminal justice proceedings demonstrated that the release of the records would not support TCHC's stated goal of maintaining the safety of the TCHC community –

there was no victim, no pattern of criminal behaviour, no finding of guilt, and an ongoing obligation to follow the terms of a peace bond. Justice Finlayson determined that R.V.'s youth records would be used unfairly, or disproportionately to their intended purpose contrary to s. 3(1)(b)(ii) of the *YCJA*. This is a finding Justice Finlayson was entitled to make.

c. Significance of racial profiling on TCHC property

80. R.V. identifies as Black-Hispanic. There is a long documented problem of discriminatory stops and heightened police intervention of black young people on TCHC property. As noted in the *Report of the Independent Street Checks Review* by the Honourable Michael Tulloch:

> "[W]hile the 'street' constitutes a meaningful part of everyday life for many marginalized youth, their presence and visibility in that space makes them ready targets for heightened police surveillance and intervention".
>
> Ontario, *Report of the Independent Street Checks Review*, (Queens Printer for Ontario, 2018) (The Honourable Michael Tulloch) (2018) Ontario at pg. 41-42.
>
> *See also* Ontario Human Rights Commission, *"Under Suspicion – Research and Consultation Report on Racial Profiling in Ontario"* (April 2017) at pg. 34.

81. The Supreme Court of Canada has acknowledged how the disproportionate policing of racialized and low income communities contributes to their over-representation in the criminal justice system which creates a responsibility to be "vigilant in respecting the privacy, dignity, and equality of residents who already feel the presence and scrutiny of the state more keenly than their affluent counterparts".

> *R v Le*, 2019 SCC 34, para 60 and 97, [2019] SCJ No 34 [*R v Le*].

82. The youth court can appropriately consider R.V.'s particular vulnerability as a racialized low-income young person when evaluating whether further and added use of his youth records is consistent with the administration of *youth* criminal justice. To widen the scope and ramifications of potential racial profiling to include a possible eviction of a vulnerable young person and/or their family is alarming.

YCJA, supra s. 3(1)(c)(iv)

83. The *YCJA* provides that the measures taken against young people be proportionate and meaningful to the individual young person given his personal circumstances. It is therefore appropriate to consider the effect of authorizing disclosure on a particular young person - including the impact on their family and experience of racialization, racism, and poverty - and to interpret the privacy provisions accordingly. A failure to do so renders any the use of *YCJA* records inconsistent with their intended limited and restricted purpose in a manner that stigmatizes a young person and undercuts their rehabilitation.

PART V – ORDER

1. An order that this Application is moot and/or upholding Justice Finlayson's decision.
2. Such further orders this court finds just and necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of September, 2019.

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Samira Ahmed & Jane Stewart
Justice for Children and Youth

SCHEDULE A – LIST OF AUTHORITIES

Borowski v. Canada, [1989] 1 SCR 342, 57 DLR (4th) 231.

Anonymized LTB Decision, August 2 2016

TPS v. L.D., 2018 ONCA 17

SL v NB, 252 DLR (4th) 508, 2005 CanLII 11391 (ONCA)

R v Awashish, 2018 SCC 45, 367 CCC (3d) 377

R v Mullings, 2012 ONSC 2910, [2012] OJ No 2199 (QL)

R v Innocente, 2004 NSCA 18, 221 NSR (2d) 357.

R v Russell, [2001] 2 S.C.R. 804, 2001 SCC 53.

R. v. Papadopoulos, [2005], OJ No 1121, 196 OAC 335.

Roper v Simmons, 543 US 551 (2005), at IIIB

AB (Litigation Guardian of) v Bragg Communications Inc., 2012 SCC 46, [2012] 2 SCR 567

AC v Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 SCR 181

Kanthasamy v Canada (Citizenship & Immigration), 2015 SCC 61, [2015] 3 SCR 909

R v Jarvis, 2019 SCC 10, [2019] SCJ No 10 (QL)

R v DB, 2008 SCC 25, [2008] 2 SCR 3

FN (Re), 2000 SCC 35, [2000] 1 SCR 880

Quebec (Minister of Justice) v Canada (Minister of Justice) (2003), 175 CCC (3d) 321 (QCCA), 228 DLR (4th) 63.

R v RC, 2005 SCC 61, [2005] 2 SCR 99

R v ZW, 2016 ONCJ 490 (OCJ)

May v Ferndale Institution, [2005] 3 SCR 809, 2005 SCC 82

Re JD, 2009 ONCJ 505 (OCJ), [2009] OJ No 6384 (QL).

Re TSL-92515-18, 2018 CanLII 120931 (ON LTB)

New Brunswick (Minister of Health & Community Services) v JG, [1999] SCR 46, 177 DLR (4th) 124

R v Le, 2019 SCC 34, [2019] SCJ No 34

SCHEDULE B – LEGISLATIVE PROVISIONS

United Nations, Convention on the Rights of the Child, Can. T.S. 1992 No. 3.
Preamble, Article 40, clauses 1 and 2(b)(vii).

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

…

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
…

(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.

UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 25

Article 25.
…

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, A/RES/40/33, November 29, 1985. Rule 8.

Rule 8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary
Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2 1.)

Youth Criminal Justice Act - S.C. 2002, c. 1 Preamble, s.3(1)(b), s. 3(1)(c), s. 110(1), 118, 119, 129, 138

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;

…

3 (1) The following principles apply in this Act:

(a) the youth criminal justice system is intended to protect the public by

(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

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.

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.

(2) No person who is employed in keeping or maintaining records referred to in subsection (1) is restricted from doing anything prohibited under subsection (1) with respect to any other person so employed.

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:

(a) the young person to whom the record relates;

(b) the young person's counsel, or any representative of that counsel;

(c) the Attorney General;

(d) the victim of the offence or alleged offence to which the record relates;

(e) the parents of the young person, during the course of any proceedings relating to the offence or alleged offence to which the record relates or during the term of any youth sentence made in respect of the offence;

(f) any adult assisting the young person under subsection 25(7), during the course of any proceedings relating to the offence or alleged offence to which the record relates or during the term of any youth sentence made in respect of the offence;

(g) any peace officer for

(i) law enforcement purposes, or

(ii) any purpose related to the administration of the case to which the record relates, during the course of proceedings against the young person or the term of the youth sentence;

(h) a judge, court or review board, for any purpose relating to proceedings against the young person, or proceedings against the person after he or she becomes an adult, in respect of offences committed or alleged to have been committed by that person;

(i) the provincial director, or the director of the provincial correctional facility for adults or the penitentiary at which the young person is serving a sentence;

(j) a person participating in a conference or in the administration of extrajudicial measures, if required for the administration of the case to which the record relates;

(k) a person acting as ombudsman, privacy commissioner or information commissioner, whatever his or her official designation might be, who in the course of his or her duties under an Act of Parliament or the legislature of a province is investigating a complaint to which the record relates;

(l) a coroner or a person acting as a child advocate, whatever his or her official designation might be, who is acting in the course of his or her duties under an Act of Parliament or the legislature of a province;

(m) a person acting under the Firearms Act;

(n) a member of a department or agency of a government in Canada, or of an organization that is an agent of, or under contract with, the department or agency, who is

(i) acting in the exercise of his or her duties under this Act,

(ii) engaged in the supervision or care of the young person, whether as a young person or an adult, or in an investigation related to the young person under an Act of the legislature of a province respecting child welfare,

(iii) considering an application for conditional release, or for a record suspension under the Criminal Records Act, made by the young person, whether as a young person or an adult,

(iv) administering a prohibition order made under an Act of Parliament or the legislature of a province, or

(v) administering a youth sentence, if the young person has been committed to custody and is serving the custody in a provincial correctional facility for adults or a penitentiary;

(o) a person, for the purpose of carrying out a criminal record check required by the Government of Canada or the government of a province or a municipality for purposes of employment or the performance of services, with or without remuneration;

(p) an employee or agent of the Government of Canada, for statistical purposes under the Statistics Act;

(q) an accused or his or her counsel who swears an affidavit to the effect that access to the record is necessary to make a full answer and defence;

(r) a person or a member of a class of persons designated by order of the Governor in Council, or the lieutenant governor in council of the appropriate province, for a purpose and to the extent specified in the order; and

(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.

Period of access

(2) The period of access referred to in subsection (1) is

(a) if an extrajudicial sanction is used to deal with the young person, the period ending two years after the young person consents to be subject to the sanction in accordance with paragraph 10(2)(c);

(b) if the young person is acquitted of the offence otherwise than by reason of a verdict of not criminally responsible on account of mental disorder, the period ending two months after the expiry of the time allowed for the taking of an appeal or, if an appeal is taken, the period ending three months after all proceedings in respect of the appeal have been completed;

(c) if the charge against the young person is dismissed for any reason other than acquittal, the charge is withdrawn, or the young person is found guilty of the offence and a reprimand is given, the period ending two months after the dismissal, withdrawal, or finding of guilt;

(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;

(e) if the young person is found guilty of the offence and the youth sentence is an absolute discharge, the period ending one year after the young person is found guilty;

(f) if the young person is found guilty of the offence and the youth sentence is a conditional discharge, the period ending three years after the young person is found guilty;

(g) subject to paragraphs (i) and (j) and subsection (9), if the young person is found guilty of the offence and it is a summary conviction offence, the period ending three years after the youth sentence imposed in respect of the offence has been completed;

(h) subject to paragraphs (i) and (j) and subsection (9), if the young person is found guilty of the offence and it is an indictable offence, the period ending five years after the youth sentence imposed in respect of the offence has been completed;

(i) subject to subsection (9), if, during the period calculated in accordance with paragraph (g) or (h), the young person is found guilty of an offence punishable on summary conviction committed when he or she was a young person, the latest of

(i) the period calculated in accordance with paragraph (g) or (h), as the case may be, and

(ii) the period ending three years after the youth sentence imposed for that offence has been completed; and

(j) subject to subsection (9), if, during the period calculated in accordance with paragraph (g) or (h), the young person is found guilty of an indictable offence committed when he or she was a young person, the period ending five years after the sentence imposed for that indictable offence has been completed.

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

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.

Provincial court judge has absolute jurisdiction on indictment

(2) The jurisdiction of a provincial court judge to try an adult charged with an offence under paragraph (1)(a) is absolute and does not depend on the consent of the accused.

***Residential Tenancies Act*, 2006, S.O. 2006, c. 17, s. 61(1), 62(1), 64(1), 66(1)**

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. 2006, c. 17, s. 61 (1).

62 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex

64 (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant. 2006, c. 17, s. 64 (1).

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. 2006, c. 17, s. 66 (1)

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. 2006, c. 17, s. 75; 2013, c. 3, s. 28.

National Housing Strategy Act, Preamble, Declaration, being Division 19 of Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19th, 2019 and other measures, 1st Sess, 42nd Parl, 2019, June 21st, 2019, (assented to June 21, 2019).

Preamble

Whereas housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities as well as a strong national economy in which the people of Canada can prosper and thrive;

Whereas access to affordable housing contributes to achieving beneficial social, economic, health and environmental outcomes;

Whereas improved housing outcomes are best achieved through cooperation between governments and civil society as well as the meaningful involvement of local communities;

Whereas national goals, timelines and initiatives relating to housing and homelessness are essential to improving the quality of life of the people of Canada, particularly persons in greatest need;

Whereas a national housing strategy would support a common vision, key principles and a coordinated approach to achieving improved housing outcomes;

Whereas a national housing strategy would contribute to meeting the Sustainable Development Goals of the United Nations;

And whereas a national housing strategy would support the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights, to which Canada is a party;

Declaration

4 It is declared to be the housing policy of the Government of Canada to
(a) recognize that the right to adequate housing is a fundamental human right affirmed in international law;
(b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
(c) support improved housing outcomes for the people of Canada; and
(d) further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.