THIS IS A CASE UNDER THE *YOUTH CRIMINAL JUSTICE ACT* AND IS SUBJECT TO THE PROVISIONS OF THAT ACT

COA-23-CR-0907

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CANADIAN BROADCASTING CORPORATION, CTV NEWS, a division of BELL MEDIA INC., GLOBAL NEWS, a division of CORUS TELEVISION LIMITED PARTNERSHIP, THE GLOBE AND MAIL INC., TORONTO STAR NEWSPAPERS LIMITED, ALISON CHIASSON and ANDREW BRENNAN

Appellants

-and-

HIS MAJESTY THE KING, YOUNG PERSON 1, YOUNG PERSON 2, YOUNG PERSON 3, YOUNG PERSON 4, YOUNG PERSON 5, YOUNG PERSON 6, YOUNG PERSON 7, YOUNG PERSON 8

Respondents

JOINT FACTUM OF RESPONDENTS, YOUNG PERSONS (1 TO 8)

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PART I – OVERVIEW

1. This appeal asks this Honourable Court to overturn binding jurisprudence, including that of the Supreme Court of Canada, and to ignore the clear statutory requirements related to the unique privacy protections provided for in the *Youth Criminal Justice Act* (*YCJA*). With the *YCJA* Parliament has created a unique criminal justice system for children and adolescents that mandates special, enhanced protections specifically including their privacy rights. The *YCJA*'s enhanced privacy protections have important constitutional dimensions and reflect significant public interests. The Appellants ultimately seek a ruling that the media should have unfettered access to *YCJA* records. The Respondents submit that such a finding would be manifestly contrary to law.

Youth Criminal Justice Act, SC 2002, c 1, [*YCJA*]

2. The Appellants brought an application for, and were granted liberal access to youth court records,[1] with minor some redactions. The Youth Court also ordered that certain administrative mechanisms be established to ensure that the Applicants had easy access to forthcoming information, including the dates of all future appearances, and all existing and future court orders. The records sought pertain to eight young persons, aged 13 – 16, who are charged with second-degree murder.

3. The Appellants brought a Judicial Review by way of *certiorari* to the Superior Court of Justice, seeking greater access to the records. They also filed a Notice of Constitutional Question

[1] The Appellants were given access to the Informations, all bail release orders, the age of each young persons, the court file numbers, and the dates of all past and future court appearances, and all future orders made by youth criminal justices.

for the first time at the Superior Court, requesting that the constitutional question be heard at the same time as the *certiorari* application. The constitutional challenge was to the validity of multiple provisions in Part 6 of the *YCJA* - sections 114, 118, 119(1)(s) and 129 – all sections relating to youth court record access.

> Notice of Constitutional Question, Appeal Book, p. 59
> *YCJA, supra*

4. The *certiorari* application was heard at the same time as a threshold issue: whether the Superior Court Justice should hear the Appellant's constitutional application within the context of the *certiorari*.

5. Finding there was no error on the face of the record, the application for *certiorari* was dismissed. The Honourable Justice Ahktar, the Reviewing Judge, held, contrary to the Appellants' position, that the *Dagenais/Mentuck/Sherman Estates* test does not displace the comprehensive statutory regime for access to youth records provided in the *YCJA*. Rather, the *Dagenais/Mentuck/Sherman Estates* principles animate and are put into effect when considering the statutory test in s. 119(1)(s) of the *YCJA*. The Reviewing Judge also found there was no error made by requiring the Appellants to bring an application for the youth records, rather than merely requesting them from the court administration office.

6. Regarding the threshold issue of whether the Reviewing Court should determine the constitutional question, Justice Ahktar considered the relevant factors and declined to hear the constitutional question. In particular, the Reviewing Court determined that the Youth Court was the better forum to hear the Appellants' constitutional application for the first time.

7. The Appellants now appeal to this Honourable Court seeking various forms of relief.

8. The Appellants have failed to demonstrate any reversible error justifying this Court's intervention. This appeal should be dismissed in its entirety.

PART II – RESPONDENT'S STATEMENT AS TO THE FACTS

9. The Respondent young persons accept the facts as detailed in the Appellants' factum at paragraphs 10 to 17, 19, 20, and 24 to 29 with the additions and modifications outlined below. The Respondents do not accept the facts asserted in paragraphs 18, which are not in the record, nor the facts asserted at paragraphs 22 and 23, which were not before the Youth Court and are not the subject of a fresh evidence application. With respect, paragraph 21 is improper argument regarding the decision of the Youth Court, and not appropriately included as a fact.

i. Procedural History & the Youth Court Order

10. Eight teenage girls between the ages of 13 and 16 were arrested for second degree murder in relation to an incident that occurred on December 18, 2022. All eight young persons were detained and appeared in bail court for the first time on December 19, 2022. Their bail hearings were adjourned to December 29, 2022.

> *Canadian Broadcasting Corporation v. Ontario*, 2023 ONCJ 32, at paras 4, 6, [*CBC - OCJ*]

11. One of the young persons, young person #1, had their bail hearing brought forward to December 28, 2022 and the hearing was held that day. No member of the media attended that hearing. Young person #1 was released on bail on December 29, 2022. That day, the remaining

seven young people were remanded in custody awaiting their bail hearings. Many members of the media were present in court on December 29.

CBC - OCJ, *supra*, at paras 7-10, 13

12. On December 30, 2022, a reporter from the Canadian Broadcasting Corporation (CBC) filed an application to access the entire unredacted court file for all eight young persons. The application was brought on behalf of two reporters and seven media outlets: CBC, CTV News, the New York Times, Global News, The Globe and Mail, the Toronto Star, and The Associated Press.

Form 1: Application to Access Youth Court Records, at pp 1-3, *Appeal Book* p 173
CBC - OCJ, *supra*, at para 1

13. The application for youth court records was brought at a very early stage of the proceedings, twelve days after the young persons were arrested. At that time, there were few youth records in the court file. The Youth Court Judge built in prospective access to some records as described below.

CBC - OCJ, *supra*, at paras 4, 6, 53, 84

14. The application was heard on January 13, 2023, before the Honourable Justice O'Connell (the "Youth Court Judge"). The Reasons for Judgment were released on January 19, 2023. At the time of the decision, all of the evidence – the only evidence - in the court file pertained to a bail hearing that was subject to a publication ban pursuant to s. 517, and which remains in effect until the end of trial.

CBC - OCJ, *supra*, at paras 8, 76

15. The Youth Court Judge granted access to records in the court file. In particular, the

Applicants were granted access to, (a) the charging Informations, (b) all bail release orders, (c) the age of each young person, (d) the dates of all past and future court appearances, (e) all other orders made by youth justices in the matters, and (f) the court file number. The names of the young persons and other identifying information was redacted from the disclosed records. The exhibits at the first bail hearing, which are subject to a section 517 publication ban, were not released.

CBC - OCJ, *supra*, at para 84

16. The Youth Court Order included a process to ensure media outlets were aware of all future court dates, including added and rescheduled court dates, "so that members of the media can attend these court proceedings."

CBC - OCJ, *supra*, at paras 78, 84(3)

ii. Evidence not properly before this Court

17. The Respondent Young Persons object to the inclusion of new evidence in the record before this Court. Evidence that was not before the Youth Court on January 13, 2023 is not properly part of the record, absent the necessary court order on fresh evidence. This new evidence includes the Affidavit of Thomas Daigle and factual assertions in the Notice of Application for *Certiorari* and the Notice of Appeal.

Affidavit of Thomas Daigle, Appeal Book at p. 56
Notice of Application for *Certiorari*, at paras 6-8, 16, Appeal Book at p. 32
Notice of Appeal, at paras 10-11, Appeal Book p. 1

PART III – RESPONSE TO THE APPELLANTS' ISSUES

18. The Appellants' appeal relates to two applications brought at the Superior Court of Justice. First, they appeal the Order refusing to grant *certiorari* on Judicial Review of a decision

providing access to redacted youth court records, with some specific limitations. Second, they appeal an Order dismissing a related but separate application for the Superior Court to hear a constitutional challenge pursuant to s. 52 of the *Constitution Act* to multiple provisions of the *YCJA*.

19. The Appellants contend that the Youth Court Judge and the Reviewing Judge of the Superior Court erred by failing to apply the common law test regarding publication bans developed in *Dagenais/Mentuck*, and regarding sealing orders in *Sherman Estates*. Their position is that the *Dagenais/Mentuck/Sherman Estates* test displaces the statutory regime set out in the *YCJA* and is the only consideration courts should look to when media outlets seek access to *YCJA* records. The Respondents disagree.

20. The issues on appeal are: (A) whether the courts below applied the correct legal test in determining the Appellants' access and extent of access to youth court records; (B) whether the Reviewing Judge erred by finding the Youth Court Judge did not err by placing the onus on the Appellants to demonstrate they met the statutory preconditions for access; (C) whether the Reviewing Judge erred by finding that the Youth Court properly required the Appellants to bring an application to access the records under s. 119(1)(s)(ii), as opposed to merely making a request to a court administrator; and (D) whether the Review Judge appropriately exercised his discretion to decline to hear the constitutional question.

A. THE COURTS BELOW APPLIED THE CORRECT LEGAL ANALYSIS FOR MEDIA ACCESS TO YCJA RECORDS

21. The Appellants assert that the Youth Court should not have applied the test set out in s.

119(1)(s)(ii) of the *YCJA*, mischaracterizing it as a "common law test." They suggest that the Youth Court enjoyed common law jurisdiction existing outside the *YCJA* which would have permitted it to apply the *Dagenais/Mentuck* and *Sherman Estates*[2] test and thus depart from the legislatively-mandated regime for access to youth records. This is contrary to the legislation and to the settled jurisprudence of this Honourable Court.

> *YCJA*, *supra*
> *SL. v NB*, 2005 CanLII 11391 (ONCA), at para 2 [*SL v NB*]

22. The Superior Court Judge, disagreed with the Appellants and found that where Parliament has set out a comprehensive legislative scheme as in the *YCJA*, the *Dagenais/Mentuck/Sherman Estates* test does not override all other considerations. In agreeing with the approach of the Youth Court, the Reviewing Court Judge found that the principles from *Dagenais/Mentuck/Shermans Estates* "plays a guiding role but not one that overwhelms the statutory conditions to the point that they are ignored."

> *Canadian Broadcasting Corporation v. Ontario*, 2023 ONSC 4348, at para 31, [*CBC – SCJ*]

23. The Superior Court Judge on Review found the *Dagenais/Mentuck/Sherman Estates* principles are incorporated into the test contained in s. 119(1)(s)(ii) of the *YCJA*, which requires a person with a valid interest to show that access is in the interests of the administration of justice. The reasons and analysis explicitly recognize the two important interests - the open court principle and the principles of the *YCJA* - and refer to the well-supported line of jurisprudence that supports the approach taken by the Youth Court in this case. Ultimately the Reviewing Judge found that the Youth Court had not erred in its analysis, and that in any event the Youth

[2] *Sherman Estates v Donovan*, 2021 SCC 25, was not referred to by the Youth Court, but was incorporated into the reviewing Superior Court's decision.

Court provided "a significant amount of material to the [Appellants]" in making its order pursuant to s.119(1)(s)(ii).

> *CBC - OCJ, supra,* at para 31, generally see paras 15-26, 32-35, 37-39
> *FN (Re),* 2000 SCC 35, [2000] 1 SCR 880 [*FN(Re)]*
> *R v GDS.*, 2007 NSCA 94 *R v RC.*, 2005 SCC 61, at para 45 [*R v RC*]
> *SL. v NB, supra,* at para 2
> *Toronto Star Newspaper Ltd. v Ontario,* 2012 ONCJ 27 [*Toronto Star*]

24. The Reviewing Court did not err in finding that the Youth Court's legal analysis was sound. Importantly the Reviewing Court found, first, that youth court judges determining an application for access to youth court records are not acting pursuant to common law jurisdiction. Rather, youth court judges are exercising a discretion conferred upon them by a comprehensive statutory scheme under the *YCJA*. It is settled law that the *YCJA* is the only means by which youth records may be accessed, and that the *Dagenais/Mentuck/Sherman Estates* test must be applied through the lens of the *YCJA*, its provisions, principles, and guarantees of privacy for young people, which have important constitutional dimensions.

> *Toronto Star, supra,* at paras 4, 40 – 44, 48, 77
> *SL v NB, supra,* at paras 54-55

25. Second, the Youth Court Judge in fact did consider and apply *Dagenais/Mentuck* in the analysis under the *YCJA*, in the manner in which that analysis is incorporated into the *Act*. That analysis was correct, and did not disclose any reversible legal error.

26. In their submissions the Appellants say that the courts below applied the "*Boyer* test". There is no basis in law or in fact for this statement, or for the discussion that flows from it. The idea of a "Boyer test" is a creation of the Appellants. The Reviewing Judge made no reference to *Boyer v Doe*, and the Youth Court Judge made reference to it in only discrete terms that serve to

support the Appellants' "valid interest." If there is guiding jurisprudence from an Ontario youth court that could be called a "test" followed by the courts below, it is surely the decision in *Toronto Star*. The Youth Court below cites important passages from Justice Cohen's decision in *Toronto Star*, which was cited affirmatively by the Supreme Court of Canada in *AB & Bragg Communications* as it relates to the unique concerns and enhanced protections that must be applied to the privacy rights of children and adolescents in Canadian law. Further, the courts below appropriately cite extensively from this Honourable Court's decision in *SL v NB*.

CBC - OCJ, supra, at paras 34, 51, 71, 81-82
CBC - SCJ, supra, at paras 26, 38, 44-47, 55
Toronto Star, supra
AB v Bragg Communications, 2012 SCC 46, at paras 17-18 [*AB v Bragg*]
SL v NB, supra

i. The YCJA is a comprehensive legislative scheme which is intended to control access to youth court records

27. The *YCJA* reflects Parliament's intention to codify a distinct system of criminal justice for young people as compared to adults. To this end, it establishes enhanced procedural protections at every stage of youth criminal justice proceedings, from pre-charge to post-sentencing, including strict control over youth records. The *YCJA* has specific controls regarding access, disclosure, maintenance, use, and publication of youth records. This comprehensive scheme is understood to differ in important ways from other contexts including access to records in the adult criminal justice context.

YCJA, supra, Part 6

28. These enhanced procedural protections are based on the recognition, explicitly captured in the Preamble of the *YCJA*, that all members of society share a responsibility for addressing the developmental challenges and needs of young persons as they evolve into adulthood. There is

important public interest in the creation of and adherence to the unique, enhanced procedural protections provided for in the *YCJA*.

YCJA, supra, Preamble

29. The entitlement of young persons to a presumption of diminished blameworthiness, enhanced procedural protections, and a separate legal regime from that of adults is a principle of fundamental justice. The enhanced protection of privacy of young people has undoubted constitutional significance.

R v DB, 2008 SCC 25, at paras 40 – 69 [*R v DB*]
Toronto Star, supra, at paras 40 – 44
AB v Bragg, supra, at para 18

30. The *YCJA* codifies the central importance of protecting young people's privacy: "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 protections 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)
R v DB, supra, at paras 40-69

International legal instruments articulate minimum standards for the rights of children

31. International law recognizes that children and youth are inherently vulnerable members of society. The United Nations *Convention on the Rights of the Child (UNCRC)*, to which Canada is a signatory, the *General Comments* created thereunder by the United Nations Committee on the Rights of the Child, and the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice* (*Beijing Rules*), adopted by General Assembly Resolution, supported by Canada, are important interpretive tools when considering the rights of children in

Canadian law. The Supreme Court of Canada, and other courts have recognized this repeatedly.

> United Nations, *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3., Preamble, Article 16, Article 40, clauses 1 and 2(b)(vii) [UNCRC]
> United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, A/RES/40/33, November 29, 1985 [*Beijing Rules*]
> *FN (Re),, supra*, at para 16
> *R v RC, supra*, at para 41
> *R v DB, supra*, at paras 60, 85
> *A.B. v. Bragg, supra*, at para 17
> *Toronto Star, supra*, at paras 39, 45, 46
> *CBC – OCJ, supra*, at para 33

32. The *UNCRC*, which is expressly incorporated into the *YCJA* and has specifically been recognized as an important interpretive source for the legislation, mandates considering the child's age, the desirability of promoting the child's reintegration and rehabilitation, and the need for enhanced protections of the right to privacy of children. States parties, including Canada, must furthermore ensure that a child's privacy is protected at all stages of the proceedings, as a measure consistent with the requirement for "special safeguards and care, including legal protection." In keeping with its international obligations, Parliament has extended to young persons enhanced procedural protections, and sought to interfere with their personal freedom and privacy as little as possible

> *YCJA, supra*, Preamble
> United Nations, *Convention on the Rights of the Child, supra*, Preamble, Article 16, Article 40, clauses 1 and 2(b)(vii) [*UNCRC*]
> *R v RC, supra*, at para 41
> *R v CD; R v CDK*, 2005 SCC 78, at para 35
> *Quebec (Attorney General) v 9147-0732 Quebec, Inc.*, 2020 SCC 32, at para 38
> *R v DB, supra*, at paras 60, 85

33. The *Beijing Rules* provided the essential building blocks for the *YCJA*. They articulate basic standards and juvenile justice principles, including enhanced protections. They recognize that young people are "particularly susceptible to stigmatization" and the detrimental effects of labeling. They 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 labeling." They further provide that youth records "shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons."

Beijing Rules, *supra*, Rule 8, Rule 21

Interpretive Method

34. All the provisions of the *YCJA*, including those in Part 6 at issue in this appeal, must be read together to give meaning to these foundational principles.

35. Part 6 of the *YCJA* is a complete and strict statutory code governing publication of, access to, and disclosure of youth records, which "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

36. In *SL v NB*, Justice Doherty of this Honourable Court affirmed that:

> The access provisions of the Act are a comprehensive scheme designed to carefully control access to young offender records. The language of s. 118 and the comprehensiveness of the scheme itself demonstrate that Parliament intended that access to the records could be gained only through the Act. Using the words of Cory J.A. in *Cook*, Parliament in "clear and unambiguous terms" has placed the responsibility for determining access to records on the shoulders of the youth justice court judges. This makes sense. Youth justice court judges are familiar with the principles and policies animating the Act. They are also familiar with the terms of the Act and the specific provisions sprinkled throughout the Act that touch on access issues. Youth justice court judges also know what records are generated by the youth justice court system, and have daily experience in considering and balancing the competing interests which may clash on access applications.

Justice Doherty concluded that "the *YCJA* provides the exclusive means by which access may be

obtained to documents which constitute records under the Act."

SL v NB, supra, at paras 54-55

A Review of the Scheme With Respect to Records

37. A brief review of the provisions of Part 6 of the *YCJA* demonstrate the comprehensiveness of the legislative scheme.

38. Records are defined broadly as including "anything containing information, regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, and any copy of any of those things, that is created or kept for the purposes of this Act or for the investigation of an offence that is or could be prosecuted under this Act."

YCJA, supra, s. 2

39. Sections 114 to 116 of the *YCJA* further distinguish between youth court records (s. 114), police records (s. 115), and government and/or Crown records (s. 116). Section 118 enacts a presumptive prohibition on access to youth records:

> 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.

YCJA, supra, ss 114-116, 118

40. Where access is permitted, s. 129 prohibits further disclosure of the record itself or information contained within it. This is reinforced by s. 138, which creates an offence for contravention of the non-publication and non-disclosure provisions of the Act. The prohibition is "unequivocal and unqualified."

YCJA, supra, ss 129, 138
SL v NB, supra, at para 45

41. Notably, the *YCJA* distinguishes between, and limits, both publication and disclosure. Section 110(1) prohibits the publication of 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 *YCJA*. Disclosure is defined in s. 2 as the communication of information other than by way of publication. "Publish" has been understood to mean disclosure of information to the community or part thereof not authorized to receive it. The provisions mean that a person may not communicate information within the community that would tend to identify a young person dealt with under the *YCJA*, and pursuant to s. 129, a person cannot further disclose information contained in such a record to which access has been granted. In short, there is no publication or disclosure of information, including where access has been granted, except as authorized by the *YCJA*.

YCJA, supra, ss. 2, 110, 129
FN (Re), supra, at para 42

42. Depending on the nature of the disposition of a young person's charges, records will become inaccessible after a period of time, consistent with the principles of diminished moral blameworthiness, timeliness, rehabilitation and reintegration, and the avoidance of labelling and stigma.

Only a Limited Class of People May Have Access to YCJA Records

43. Section 119(1) of the *YCJA* sets out an exhaustive list of persons entitled to access youth court records ("s. 114 records") on request while they remain in their statutory access period.

Generally speaking, these are persons directly implicated in the administration of youth criminal justice. The media are not among them.

YCJA, supra, s 119(1)

44. For all persons not falling within the enumerated categories, Parliament has created a basket clause pursuant to which such third parties may access records, subject to a statutory test:

> 119(1)(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.

YCJA, supra, s. 119(1)(s)

45. A person seeking s. 114 records pursuant to s. 119(1)(s) must demonstrate both a valid interest in the records and that access is in the interests of the proper administration of justice. This two-part test must be met in order to justify intrusion on the enhanced privacy protections for a young person.

46. Part 6 of the *YCJA* protects the privacy of young people in related yet distinct ways by addressing publication and dissemination of information as well as maintenance, use and access to records. There are privacy interests related to the access to records themselves, distinct from the publication of that information, which Parliament sought to protect.

CBC – OCJ, supra, at paras 44-52
SL v NB, supra, at para 35, 42-45
FN(Re), supra
Toronto Star, supra, at para 34

47. The Reviewing Judge did not err by upholding the Youth Court's decision that the *Dagenais/Mentuck* text did not "override all other considerations," thereby displacing the legislative criteria and limits on access to records.

48. The Supreme Court of Canada, including in *Dagenais* and *Sherman Estates*, has recognized that the public interest in confidentiality can outweigh public interest in openness. The provisions of the *YCJA* explicitly codify such a public interest – the privacy of youth records. *YCJA* records are presumptively inaccessible to anyone not included in s. 119(1)(a) – (r). Section 119(1)(s) exists to address any residual accessibility concerns, such as media access, and it provides the context within which the two important public interests – privacy of *YCJA* records, and media access to information – can be balanced in case specific ways. Youth courts bring expertise to balancing these interests within the statutory requirements of youth criminal justice. Given the principles of the *YCJA*, the comprehensiveness of the legislative scheme and this Court's jurisprudence, the Reviewing Judge was required to conclude as it did.

> *CBC - SCJ*, *supra*, at para 31
> *SL v NB*, *supra*, at paras 42-43
> *FN(Re)*, *supra*, at para 10
> *AB v Bragg*, *supra*, at paras 13, 16-18
> *Dagenais v. Canadian Broadcasting Corp.*, 1994 39 (SCC), [1994] 3 SCR 835 [*Dagenais*]
> *Sherman Estates v Donovan*, 2021 SCC 25, at paras 41, 47-48 [*Sherman Estates*]

ii. Dagenais/Mentuck/ Sherman Estates informs the analysis under section 119(1)(s) and was applied by the courts below

49. Courts, including the Youth Court and the Reviewing Court in this matter, have recognized that the principles underlying the test developed in *Dagenais* and *Mentuck* are relevant to the analysis under s. 119(1)(s), and have imported them into the analysis under this provision. Contrary to the Appellants' assertion, both courts below considered and applied the

Dagenais/Mentuck test. The Reviewing Court also considered and applied *Sherman Estates*, and the principles articulated therein through the lens of the important privacy considerations under the *YCJA*, consistent with the approach taken generally by youth courts.

50. Both the Youth Court below and the Superior Court Justice on Review undertook careful and detailed analyses of the *Dangenais/Mentuck* (per the Youth Court) and *Dagenais/Mentuk/Sherman Estates* (per the Superior Court) principles. The Appellant is incorrect to suggest otherwise. Moreover, although the Youth Court was required to apply the statutory test under s. 119(1)(s), it specifically noted that the *Dagenais/Mentuck* test informed the analysis. The Appellants have failed to demonstrate an error for this Court to correct.

> *CBC - OCJ*, *supra*, at paras 56-58, 61-65
> *CBC – SCJ*, *supra*, at paras 15-19, 28-33, 39

51. The approach of the courts below is not surprising. Neither *Dagenais*, *Mentuck*, *nor Sherman Estates* concern youth matters. It is accordingly appropriate that youth courts have developed a unique approach to the principles enunciated in *Dagenais/Mentuck/Sherman Estates* in the youth criminal justice context, consistent with Parliament's clear intention to enact a unique system of criminal justice for young people, and as affirmed by the Supreme Court of Canada, including in *R v DB*.

> *YCJA*, *supra*, Preamble, s 3
> *R v DB*, *supra*, at para 41

52. This is consistent with the approach taken in the case law, in which principles of the *Dagenais/Mentuck* test are applied in the context of youth records applications, with the objective of balancing the constitutionally protected principles of freedom of the press and open

courts, and the constitutionally protected principles and purposes included in the *YCJA*, and in particular the stringent privacy protections to which young people are entitled within Part 6 in general, and s. 119(1)(s) in particular.

Toronto Star, supra, at paras 49-51
R v MM, 2017 NSPC 12, at paras 32-34
R v AYD, 2011 ABQB 590, at para 23
R v GDS, supra, at para 38
FN(Re), supra

53. Courts, including the courts below, have consistently held that given the importance of the open court principle and its significance in Canadian democracy, the media has a valid interest in youth court records and proceedings. This is the first statutory condition in s. 119(1)(s). It then falls to a youth court judge to consider, in case specific contexts, whether access by the media is desirable in the interest of the proper administration of justice under the second statutory condition in s. 119(1)(s)(ii). It is this second stage, which in substance imports the principles of the *Dagenais/Mentuck/Sherman Estates* test. The interest of the proper administration of justice is part of both the s. 119(1)(s)(ii) test and the *Dagenais/Mentuck/Sherman Estates* test.

CBC - OCJ, supra, at paras 48-52, 61-66
CBC - SCJ, supra, at paras 24-26, 29-35, 39

54. In the context of the *YCJA*, the proper administration of justice and the rights and interests of both the parties and the public must include special consideration of the risks to and effect on young persons' privacy, the importance of which cannot be understated.

55. In enacting the *YCJA*, Parliament has affirmed that children presumptively require

enhanced privacy protections to meaningfully recognize their heightened vulnerability and diminished moral blameworthiness. That children should be provided with greater privacy rights and protections as a matter of public interest, than similarly situated adults is a matter of social and legal consensus, and a shared value of Canadian law that has been consistently embraced by the courts.

> *R v Jarvis*, 2019 SCC 10, at para 86
> *AB v Bragg, supra*, at paras 17-18, citing *Toronto Star v Ontario, supra*
> *FN(Re), supra*

56. 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. According to the Court:

> 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… ."
>
> *R v DB, supra*, at para 84, (citing Nicholas Bala, Young Offenders Law (1997) at p. 215).

57. 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), supra*, at para 14
> See also: *Quebec (Minister of Justice) v Canada (Minister of Justice)* (2003), 175 CCC (3d)

321 (QCCA), at para 215

58. The importance of privacy under the *YCJA*, however, extends beyond the avoidance of labelling and stigma and underscores the fact that a mere publication ban may be insufficient to appropriately protect the privacy interests of young persons.

59. As Justice Cohen explained in *Toronto Star,* reasoning that was subsequently cited with approval by the Supreme Court of Canada, the privacy interests of young persons has undoubted constitutional significance:

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

Toronto Star, supra, at paras 40-41, 44, cited in *AB v Bragg, supra,* at para 18

60. Access to records under the *YCJA* engages young people's rights to enhanced procedural protections and constitutional rights to privacy, which appropriately carry significant weight in

the determination of an application under s. 119(1)(s). The Youth Court, as affirmed by the Reviewing Court, appropriately exercised caution and crafted appropriate, case specific limitations on access to the court file. Such permissible limitations recognize the engagement of constitutionally protected privacy interests and principles of fundamental justice, enhanced procedural protections, harms occasioned by stigma and labelling, and potential harms of dissemination of identifying information.

CBC - OCJ, *supra*, at paras 73-74
CBC - SCJ, *supra*, at paras 36, 39

61. The Courts below also recognized the importance of protecting the integrity of the trial process at this early stage of proceedings, by properly placing some restrictions on access to the youth court records.

CBC - OCJ, *supra*, at paras 67-68
CBC - SCJ, *supra*, at para 37

62. The courts were alive to the importance of the open court principle. In her Reasons, Justice O'Connell stated, "the open court principle, which permits the public to scrutinize the workings of the court, is a value of paramount significance in the Canadian democracy." The Reviewing Court noted that the Youth Court applied the test in a "careful and thoughtful manner," balancing the young persons' rights to privacy against the Appellants' rights "to report on the judicial process in the most fulsome way possible."

CBC - OCJ, *supra*, at para 71
CBC - SCJ, *supra*, at paras 33, 36

63. The Youth Court gave effect to this important constitutional value by providing appropriately balanced access to much of the information in the court file and made orders

ensuring that the Appellants have access to the dates of all future court proceedings, and all orders of the youth court justices. The Youth Court further left open the possibility for future applications for access.

CBC - OCJ, *supra*, at para 84

64. The Appellants have failed to demonstrate why unredacted access to the entirety of the youth court files is necessary in order to allow the media to scrutinize the proceedings and the judicial process, particularly in the face of the risks to accused young people of intrusion on their privacy, the risks to the public including jeopardy to rehabilitation and reintegration, the risks to the fair trial process, and the possible risks of identifying personal information and intimate personal details contained in the exhibits disseminated publicly. The purpose of the open court principle, after all, is scrutiny of the courts and the process, not of scrutinizing young persons' intimate information.

65. The Appellants object in particular to the Youth Court Judge referencing accidental or inadvertent dissemination of personal and identifying information. The Respondents submit that this reference is neither singular to the Youth Court's determination, nor does it refer to only the Appellants' personal or individual possible error in disclosing identifying information. Rather, the Youth Court Judge is appropriately considering the reality of the modern context of media, that includes social media, and instantaneous and irreversible dissemination of information that might easily lead to identification. This is not only appropriate but necessary in evaluating the interests of the proper administration of justice, the dangers of public disclosure of *YCJA* records, and the potentially competing interests at stake. In fact, the Supreme Court of Canada in *Sherman Estates* noted that "the growth of the Internet, virtually timeless with pervasive reach,

has exacerbated the potential harm that may flow from incursions to a person's privacy interests."

> *Sherman Estates, supra*, at para 51 [citations omitted]
> *AB v Bragg*, supra, at paras 20, 22, 25

B. THE ONUS IS ON THE APPLICANTS TO SHOW THAT THE STATUTORY PRECONDITIONS ARE MET

66. Youth criminal justice courts, while open in the sense that any member of the public can attend court, have a presumption against access to the records of the court. As reviewed above, this presumption in favour of protecting the privacy of records in *YCJA* matters, has constitutional underpinnings, and is designed to protect the vulnerability, dignity and personal integrity of the children and adolescents in the criminal justice system.

67. Children before the youth court have no choice regarding their participation, and typically have no agency regarding the nature or extent of the personal information that may be contained in their *YCJA* records. The *YCJA* recognizes, among all other interests described above, the unique vulnerability of children in having their intimate information made publicly known through both access and publication, and societal interest and responsibility to protect the dignity of children in the criminal justice system, and to promote rehabilitation and reintegration of young people who have been involved.

68. The requirement that all applicants, including members of the media, must demonstrate that they meet the statutory preconditions under s. 119(1)(s)(ii) of the *YCJA* flows from the finding that the Part 6 statutory regime is not overridden by the *Dagenais/Mentuck/Sherman*

Estates test.

69. Read together, it is clear that ss. 118 and 119(1)(s) require a person seeking access to youth records to meet the statutory requirements of s. 119(1)(s). As outlined above, s. 118 creates a prohibition on access to youth records. That prohibition is lifted for those required by or permitted by the *YCJA* to access the records. Thus, the record-seeker has an onus to establish that they meet the preconditions of s. 119(1)(s)(ii) to access the records. This is equally true if the applicant is a member of the media. There is no statutory exception for the media.

70. Contrary to the assertion of the Appellants, the Reviewing Judge was well-aware of the open court principle, including its application to youth courts. His analysis refers at length to the interplay between openness and access to records. His reasons cite extensively from *Re: FN*, including the passage that states: "The youth courts are open to the public, and their proceedings are properly subject to public scrutiny."

> *CBC - SCJ, supra*, at paras 33, 15-19
> *Re FN, supra*, at paras 10-12

71. The Reviewing Judge correctly identified that the default position for access to records in *Sherman Estates* differed from the default position under the *YCJA*. The records in *Sherman Estates* were presumptively publicly accessible. In contrast, as identified by this Court in *SL v NB*, the default position under the *YCJA* is "an unequivocal and unqualified prohibition against access to records." As stated, this prohibition lifts only as required or authorized by the *YCJA*.

> *Sherman Estates v Donovan, supra*, at para 4
> *YCJA, supra*, s. 118
> *SL v NB, supra*, at paras 44-45

C. AN APPLICATION IS REQUIRED TO ACCESS YOUTH RECORDS PURSUANT TO *YCJA* S. 119(1)(S)

72. The Appellants contend that the Reviewing Judge erred by finding that an application is required to access records pursuant to s. 119(1)(s). The Appellants rely on substantially the same arguments made to the Reviewing Court. The Reviewing Court, like the Youth Court, properly interpreted the statutory provisions and applied this Court's decision in *SL v NB*, which was binding on them.

> *CBC - SCJ*, *supra*, at paras 41-48
> *YCJA*, *supra*, s. 119(1)

73. Sections 119(1)(a) to (r) of the *YCJA* enumerate an exhaustive list of persons or classes of persons who, on request, shall be given access to court records and who may also be given access to police and government records.[3] In contrast, section 119(1)(s) creates a class of record-seekers that do not have an entitlement to records and "must persuade a youth court judge that they meet the section 119(1)(s)(ii) criteria." Since access to the records is a matter of judicial consideration, an application must be brought on notice to the Crown.

> *CBC - SCJ*, *supra*, at para 42

74. In *SL v NB,* Doherty J.A. writing for this Court held that section 119(1)(s) required a motion before a youth court judge:

> This subsection [119(1)(s)] allows any person, including the victim, to bring a motion before a youth justice court judge for an order allowing access to any of the records made and kept under the Act. A victim could first request access to the records in the court and in the possession of the Crown Attorney. If dissatisfied with the access granted pursuant to those requests, counsel for the victim could bring a motion under s. 119(1)(s) for more complete access. Counsel

[3] The records can only be accessed while the record falls within the access periods in s. 119(2), which varies depending on the manner in which the young person's charges were disposed.

for the respondents could have followed that procedure. [emphasis added]

In contrast, Doherty JA held that other classes enumerated in s. 119(1) could access the records *on request*:

> S.L. is a victim. Counsel for the L. could have gone to the Ontario Court of Justice immediately upon commencing this action in September 2002 and requested access to the court's records. This procedure does not require a formal motion to the court or notice to any individuals. It involves a simple request to the court office, presumably directed to a court administrator. If the court administrator is satisfied that counsel acts for the victim and that the application is made within the access period, then subject to the narrow exceptions referred to above, the court administrator would be obligated to allow counsel access to the court records. Access includes receiving a copy of the record (s. 122). It is a safe assumption that had counsel followed this course, he would have received documents from the court that would have identified at least some of S.L.'s assailants and may also have provided the information necessary to locate those individuals. [emphasis added]
>
> *SL v NB*, *supra*, at paras 47-52
> *R. v. Mosa*, 2016 A.J. No. 620 (ABQB), at paras 24-28

75. The reasons in *SL v NB* regarding the nature of s. 119 requests and applications form part of an intentional, robust, and comparative analysis of the provisions in Part 6 of the *YCJA* generally and s. 119(1) specifically. Contrary to the Appellants' contention, it is not *obiter dicta*.

76. The Appellants argue that requiring applications creates unnecessary procedural hurdles to media outlets and negatively impacts judicial resources. The Reviewing Judge correctly addressed this argument, relying on *SL v NB*. Most applications will be straightforward. Even so, concerns of judicial economy and convenience cannot alter the clear intention of Parliament expressed in the *YCJA*. Had Parliament intended that the media should have access to youth court records as of right, it could have enacted provisions in that regard. It chose not to do so, based on the sound principles on which the *YCJA* generally, and these provisions specifically, are based.

SL v NB, supra, at paras 52, 54, 56

D. THE COURT BELOW APPROPRIATELY EXERCISED ITS DISCRETION TO DECLINE TO HEAR THE CONSTITUTIONAL QUESTION

77. The Superior Court Reviewing Judge did not err by declining to hear the constitutional question for the first time at the Superior Court. The constitutionality of ss. 114, 118, 119, and 129 was not raised before the Youth Court Judge. The decision whether to hear the challenge as constituted, as opposed to leaving it to the OCJ, was a discretionary one. It is entitled to deference on appeal.

Reza v. Canada, 1994 CanLII 91 (SCC), at para 21
Friends of the Oldman River Society v Canada (Minister of Transport), [1992] 1 SCR 3, at para 112

i. The Superior Court exercised its discretion judicially

78. The Superior Court determined that the better forum for the constitutional challenge to multiple provisions of Part 6 of the *YCJA* was the youth court. The Superior Court proceeded on the basis that it had jurisdiction to hear the constitutional challenge but found, after considering the relevant factors, that in the circumstances, the youth court was the appropriate forum for a hearing at first instance.

CBC - SCJ, *supra*, at paras 51-55

79. The Superior Court considered the necessary factors in exercising its discretion. First the Court considered the youth court has jurisdiction to hear and decide constitutional questions.[4] Second, the Court considered the expertise of the youth court in the administration of youth

[4] If the youth court held a provision was unconstitutional it would then decline to apply that provision in the case properly before it. It is noteworthy that this would result in the same remedy the Appellants sought at the Youth Court at first instance – access to the records in this particular case.

justice and its exclusive jurisdiction over access to records. The youth court, with its expertise, was better situated to make a determination about the constitutionality of the Part 6 provisions in this case, which would also have widespread effect on the administration of youth criminal justice. Third, the Court considered the record before the Superior Court and found it incomplete for the purpose of a constitutional challenge. A constitutional challenge requires a complete and comprehensive evidentiary record. It is wholly unlike the record required for a *certiorari* application.

CBC - SCJ, *supra*, at para 55

80. The Reviewing Judge did not commit a reversible error by declining to hear the constitutional challenge for the first time at the Superior Court. The Court's discretion was exercised judicially by considering the relevant factors.

ii. Procedural Issues

81. The Appellants seek to appeal the order dismissing the *certiorari* application, relying solely on the jurisdiction conveyed by section 784 of the *Criminal Code*. Section 784 provides authority to appeal from the granting or refusal of certain prerogative writs, including a writ of *certiorari*. The refusal to hear a constitutional question does not constitute a refusal of a prerogative writ. The application was directed at a determination of the constitutionality of sections of the *YCJA*, not the Review of the Youth Justice Court's order.

Notice of Appeal, Appeal Book, at pp 1, 7
Appellant's Factum, at para 25 (characterizes the constitutional challenge as a separate application)
R v Laba, [1994] 3 S.C.R. 965, at para 13
R v Parker, 2011 ONCA 819, at para 22
Toronto (Police Service) v LD, 2018 ONCA 17, at para 19

82. In the alternative to bringing the notice of constitutional question before the Youth Court,

the Respondents submit that the proper route to seek a declaration of constitutional invalidity would be to bring originating process naming the Attorney General in Right of Canada as Respondent (with Notice to the Attorney General for Ontario). In that context an appropriate and robust record would be developed to request a s. 52 remedy under the *Charter*. The Respondents in this matter are not the appropriate respondents to resist a s. 52 remedy.

iii. The Relief Sought By the Appellants

83. The declaratory relief requested by the Appellants should not be ordered, even if this Honourable Court finds a reversible error.[5] The Appellants have not identified a reason why declaratory relief is needed and appropriate in the circumstances. A declaration will not resolve the dispute between the parties – which is whether the media should be granted unfettered access to the young persons' youth court records. Since the Appellants are not seeking to have the constitutional question remitted to the Superior Court, the declaratory relief does not engage any future right as between the parties.

84. In short, even if this Honourable Court were to find that the request for declaratory relief meets the legal preconditions, it can and should still decline to order this discretionary remedy.

RG v KG, 2017 ONCA 108, at paras 47, 58, citing *Solosky v R*, [1980] 1 SCR 821

PART IV – ADDITIONAL ISSUES

85. The Respondent young persons raise no additional issues.

[5] In their factum, the Appellants request: "A declaration that Superior Court erred in refusing to hear the Constitutional Challenge": Appellant's Factum, at para 75(d)

PART V – ORDER REQUESTED

86. The Respondents request that the appeal be dismissed in its entirety; or if this Honourable Court allows the appeal of the *certiorari* application, an order remitting the matter to the Youth Court Justice, and any other orders as counsel may advise and this Honourable Court may permit.

PART VI – SEALING ORDERS, PUBLICATION BANS OR OTHER RESTRICTIONS ON PUBLIC ACCESS

87. The restrictions on access to court records and publication of identifying information in Part 6 of the *YCJA* apply to these proceedings and this Appeal.

88. Furthermore, there is an order pursuant to section 517 of the *Criminal Code* prohibiting publication of information taken, evidence given, and representations made at the bail hearings of the young persons as well as the reasons for decision. This order remains in effect until the end of trial. It remains in effect at the time of preparing this factum.

Criminal Code, RSC 1985, c. C-46, s. 517

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th day of March, 2024

_____

Mary Birdsell and Candice Suter
Justice for Children and Youth
For Young Persons #1, 2, 4, 5, 6, 7

Per Boris Bytensky
For Young Person #3

Per Kevin Gray and Leo Adler
For Young Person #8

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Canadian Broadcasting Corporation v. Ontario*, 2023 ONCJ 32
2. *S.L. v. N.B.*, 2005 11391 (ON CA)
3. *Canadian Broadcasting Corporation v. Ontario*, 2023 ONSC 4348
4. *FN (Re)*, 2000 SCC 35, [2000] 1 SCR 880
5. *R v GDS.*, 2007 NSCA 94
6. *R v RC.*, 2005 SCC 61
7. *Toronto Star Newspaper Ltd. v Ontario*, 2012 ONCJ 27
8. *A.B. v. Bragg Communications Inc.*, 2012 SCC 46
9. *R v DB*, 2008 SCC 25
10. *R v CD; R v CDK*, 2005 SCC 78
11. *Quebec (Minister of Justice) v Canada (Minister of Justice)* (2003), 175 CCC (3d) 321 (QCCA)
12. *Dagenais v. Canadian Broadcasting Corp.*, 1994 39 (SCC), [1994] 3 SCR 835
13. *Sherman Estates v Donovan*, 2021 SCC 25
14. *R v MM*, 2017 NSPC 12
15. *R v AYD*, 2011 ABQB 590
16. *R v Jarvis*, 2019 SCC 10
17. *R v Mosa*, 2016 ABQB 336
18. *Reza v. Canada*, 1994 CanLII 91 (SCC)
19. *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3
20. *R v Laba*, [1994] 3 S.C.R. 965
21. *R v Parker*, 2011 ONCA 819

22. *Toronto (Police Service) v LD,* 2018 ONCA 17

23. *RG v KG*, 2017 ONCA 108

24. *Solosky v R,* [1980] 1 SCR 821

SCHEDULE B – RELEVANT LEGISLATIVE PROVISIONS

YOUTH CRIMINAL JUSTICE ACT (SC 2002, c 1)

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;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows . . . .

2 (1) The definitions in this subsection apply in this Act. . . .

> *record* includes any thing containing information, regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, and any copy of any of those things, that is created or kept for the purposes of this Act or for the investigation of an offence that is or could be prosecuted under this Act.

…

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

- **(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;

. . .

PART 6 - Publication, Records and Information

Protection of Privacy of Young Persons

Identity of offender not to be published

- **110 (1)** Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.
- **Limitation**

(2) Subsection (1) does not apply

- **(a)** in a case where the information relates to a young person who has received an adult sentence; or
- **(b)** [Repealed, 2019, c. 25, s. 379]
- **(c)** in a case where the publication of information is made in the course of the administration of justice, if it is not the purpose of the publication to make the information known in the community.

- **Exception**

(3) A young person referred to in subsection (1) may, after he or she attains the age of eighteen years, publish or cause to be published information that would identify him or her as having been dealt with under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, provided that he or she is not in custody pursuant to either Act at the time of the publication.

- ***Ex parte* application for leave to publish**

(4) A youth justice court judge shall, on the *ex parte* application of a peace officer, make an order permitting any person to publish information that identifies a young person as having committed or allegedly committed an indictable offence, if the judge is satisfied that

- **(a)** there is reason to believe that the young person is a danger to others; and

    - **(b)** publication of the information is necessary to assist in apprehending the young person.
- **Order ceases to have effect**

(5) An order made under subsection (4) ceases to have effect five days after it is made.

- **Application for leave to publish**

(6) The youth justice court may, on the application of a young person referred to in subsection (1), make an order permitting the young person to publish information that would identify him or her as having been dealt with under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, if the court is satisfied that the publication would not be contrary to the young person's best interests or the public interest.

- 2002, c. 1, s. 110
- 2012, c. 1, s. 189
- 2019, c. 25, s. 379

Identity of victim or witness not to be published

- **111 (1)** Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.
- **Exception**

(2) Information that would serve to identify a child or young person referred to in subsection (1) as having been a victim or a witness may be published, or caused to be published, by

    - **(a)** that child or young person after he or she attains the age of eighteen years or before that age with the consent of his or her parents; or
    - **(b)** the parents of that child or young person if he or she is deceased.
- **Application for leave to publish**

(3) The youth justice court may, on the application of a child or a young person referred to in subsection (1), make an order permitting the child or young person to publish information that would identify him or her as having been a victim or a witness if the court is satisfied that the publication would not be contrary to his or her best interests or the public interest.

Non-application

112 Once information is published under subsection 110(3) or (6) or 111(2) or (3), subsection 110(1) (identity of offender not to be published) or 111(1) (identity of victim or witness not to be published), as the case may be, no longer applies in respect of the information.

Fingerprints and Photographs

***Identification of Criminals Act* applies**

- **113 (1)** The *Identification of Criminals Act* applies in respect of young persons.
- **Limitation**

(2) No fingerprint, palmprint or photograph or other measurement, process or operation referred to in the *Identification of Criminals Act* shall be taken of, or applied in respect of, a young person who is charged with having committed an offence except in the circumstances in which an adult may, under that Act, be subjected to the measurements, processes and operations.

Records That May Be Kept

Youth justice court, review board and other courts

114 A youth justice court, review board or any court dealing with matters arising out of proceedings under this Act may keep a record of any case that comes before it arising under this Act.

Police records

- **115 (1)** A record relating to any offence alleged to have been committed by a young person, including the original or a copy of any fingerprints or photographs of the young person, may be kept by any police force responsible for or participating in the investigation of the offence.
- **Extrajudicial measures**

(1.1) The police force shall keep a record of any extrajudicial measures that they use to deal with young persons.

- **Police records**

(2) When a young person is charged with having committed an offence in respect of which an adult may be subjected to any measurement, process or operation referred to in the *Identification of Criminals Act*, the police force responsible for the investigation of the offence may provide a record relating to the offence to the Royal Canadian Mounted Police. If the young person is found guilty of the offence, the police force shall provide the record.

- **Records held by R.C.M.P.**

(3) The Royal Canadian Mounted Police shall keep the records provided under subsection (2) in the central repository that the Commissioner of the Royal Canadian Mounted Police may, from time to time, designate for the purpose of keeping criminal history files or records of offenders or keeping records for the identification of offenders.

- 2002, c. 1, s. 115
- 2012, c. 1, s. 190

Government records

- **116 (1)** A department or an agency of any government in Canada may keep records containing information obtained by the department or agency
    - **(a)** for the purposes of an investigation of an offence alleged to have been committed by a young person;
    - **(b)** for use in proceedings against a young person under this Act;
    - **(c)** for the purpose of administering a youth sentence or an order of the youth justice court;
    - **(d)** for the purpose of considering whether to use extrajudicial measures to deal with a young person; or
    - **(e)** as a result of the use of extrajudicial measures to deal with a young person.
- **Other records**

(2) A person or organization may keep records containing information obtained by the person or organization

    - **(a)** as a result of the use of extrajudicial measures to deal with a young person; or
    - **(b)** for the purpose of administering or participating in the administration of a youth sentence.

Access to Records

Exception — adult sentence

117 Sections 118 to 129 do not apply to records kept in respect of an offence for which an adult sentence has been imposed once the time allowed for the taking of an appeal has expired or, if an appeal is taken, all proceedings in respect of the appeal have been completed and the appeal court has upheld an adult sentence. The record shall be dealt with as a record of an adult and, for the purposes of the *Criminal Records Act*, the finding of guilt in respect of the offence for which the record is kept is deemed to be a conviction.

No access unless authorized

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

(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.

Persons having access to records

- **119 (1)** Subject to subsections (4) to (6), from the date that a record is created until the end of the applicable period set out in subsection (2), the following persons, on request, shall be given access to a record kept under section 114, and may be given access to a record kept under sections 115 and 116:
    - **(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*;
    - **(p.1)** an employee of a department or agency of the Government of Canada, for the purpose of administering the *Canadian Passport Order*;
    - **(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;
    - **(d.1)** if an order referred to in subsection 14(2) or 20(2) is made against a young person, the period ending six months after the expiry of the order;

- **(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.

- **Prohibition orders not included**

(3) Prohibition orders made under an Act of Parliament or the legislature of a province, including any order made under section 51, shall not be taken into account in determining any period referred to in subsection (2).

- **Extrajudicial measures**

(4) Access to a record kept under section 115 or 116 in respect of extrajudicial measures, other than extrajudicial sanctions, used in respect of a young person shall be given only to the following persons for the following purposes:

- **(a)** a peace officer or the Attorney General, in order to make a decision whether to again use extrajudicial measures in respect of the young person;
- **(b)** a person participating in a conference, in order to decide on the appropriate extrajudicial measure;
- **(c)** a peace officer, the Attorney General or a person participating in a conference, if access is required for the administration of the case to which the record relates; and
- **(d)** a peace officer for the purpose of investigating an offence.

- **Exception**

(5) When a youth justice court has withheld all or part of a report from any person under subsection 34(9) or (10) (nondisclosure of medical or psychological report) or 40(7) (nondisclosure of pre-sentence report), that person shall not be given access under subsection (1) to that report or part.

- **Records of assessments or forensic DNA analysis**

(6) Access to a report made under section 34 (medical and psychological reports) or a record of the results of forensic DNA analysis of a bodily substance taken from a young person in execution of a warrant issued under section 487.05 of the *Criminal Code* may be given only under paragraphs (1)(a) to (c), (e) to (h) and (q) and subparagraph (1)(s)(ii).

- **Introduction into evidence**

(7) Nothing in paragraph (1)(h) or (q) authorizes the introduction into evidence of any part of a record that would not otherwise be admissible in evidence.

- **Disclosures for research or statistical purposes**

(8) When access to a record is given to a person under paragraph (1)(p) or subparagraph (1)(s)(i), the person may subsequently disclose information contained in the record, but shall not disclose the information in any form that would reasonably be expected to identify the young person to whom it relates.

- **Application of usual rules**

(9) If, during the period of access to a record under any of paragraphs (2)(g) to (j), the young person is convicted of an offence committed when he or she is an adult,

    - **(a)** section 82 (effect of absolute discharge or termination of youth sentence) does not apply to the young person in respect of the offence for which the record is kept under sections 114 to 116;
    - **(b)** this Part no longer applies to the record and the record shall be dealt with as a record of an adult; and
    - **(c)** for the purposes of the *Criminal Records Act*, the finding of guilt in respect of the offence for which the record is kept is deemed to be a conviction.

- **Records of offences that result in a prohibition order**

(10) Despite anything in this Act, when a young person is found guilty of an offence that results in a prohibition order being made, and the order is still in force at the end of the applicable period for which access to a record kept in respect of the order may be given under subsection (2),

    - **(a)** the record kept by the Royal Canadian Mounted Police pursuant to subsection 115(3) may be disclosed only to establish the existence of the order for purposes of law enforcement; and

- **(b)** the record referred to in section 114 that is kept by the youth justice court may be disclosed only to establish the existence of the order in any offence involving a breach of the order.

- 2002, c. 1, s. 119
- 2012, c. 1, ss. 157, 191(F)
- 2019, c. 13, s. 167

Access to R.C.M.P. records

- **120 (1)** The following persons may, during the period set out in subsection (3), be given access to a record kept under subsection 115(3) in respect of an offence set out in the schedule:
  - **(a)** the young person to whom the record relates;
  - **(b)** the young person's counsel, or any representative of that counsel;
  - **(c)** an employee or agent of the Government of Canada, for statistical purposes under the *Statistics Act*;
  - **(d)** 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 is desirable in the public interest for research or statistical purposes;
  - **(e)** the Attorney General or a peace officer, when the young person is or has been charged with another offence set out in the schedule or the same offence more than once, for the purpose of investigating any offence that the young person is suspected of having committed, or in respect of which the young person has been arrested or charged, whether as a young person or as an adult;
  - **(f)** the Attorney General or a peace officer to establish the existence of an order in any offence involving a breach of the order; and
  - **(g)** any person for the purposes of the *Firearms Act*.
- **Access for identification purposes**

(2) During the period set out in subsection (3), access to the portion of a record kept under subsection 115(3) that contains the name, date of birth and last known address of the young person to whom the fingerprints belong, may be given to a person for identification purposes if a fingerprint identified as that of the young person is found during the investigation of an offence or during an attempt to identify a deceased person or a person suffering from amnesia.

- **Period of access**

(3) For the purposes of subsections (1) and (2), the period of access to a record kept under subsection 115(3) in respect of an offence is the following:

  - **(a)** if the offence is an indictable offence, other than an offence referred to in paragraph (b), the period starting at the end of the applicable period set out in paragraphs 119(2)(h) to (j) and ending five years later; and

- **(b)** if the offence is a serious violent offence for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence), the period starting at the end of the applicable period set out in paragraphs 119(2)(h) to (j) and continuing indefinitely.

- **Subsequent offences as young person**

(4) If a young person was found guilty of an offence set out in the schedule is, during the period of access to a record under subsection (3), found guilty of an additional offence set out in the schedule, committed when he or she was a young person, access to the record may be given to the following additional persons:

- **(a)** a parent of the young person or any adult assisting the young person under subsection 25(7);
- **(b)** a judge, court or review board, for a purpose relating to proceedings against the young person under this Act or any other Act of Parliament in respect of offences committed or alleged to have been committed by the young person, whether as a young person or as an adult; or
- **(c)** a member of a department or agency of a government in Canada, or of an organization that is an agent of, or is under contract with, the department or agency, who is
  - **(i)** preparing a report in respect of the young person under this Act or for the purpose of assisting a court in sentencing the young person after the young person becomes an adult,
  - **(ii)** engaged in the supervision or care of the young person, whether as a young person or as an adult, or in the administration of a sentence in respect of the young person, whether as a young person or as an adult, or
  - **(iii)** considering an application for conditional release, or for a record suspension under the *Criminal Records Act*, made by the young person after the young person becomes an adult.

- **Disclosure for research or statistical purposes**

(5) A person who is given access to a record under paragraph (1)(c) or (d) may subsequently disclose information contained in the record, but shall not disclose the information in any form that would reasonably be expected to identify the young person to whom it relates.

- **Subsequent offences as adult**

(6) If, during the period of access to a record under subsection (3), the young person is convicted of an additional offence set out in the schedule, committed when he or she was an adult,

- **(a)** this Part no longer applies to the record and the record shall be dealt with as a record of an adult and may be included on the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police; and
- **(b)** for the purposes of the *Criminal Records Act*, the finding of guilt in respect of the offence for which the record is kept is deemed to be a conviction.

- 2002, c. 1, s. 120
- 2012, c. 1, ss. 158, 192

Deemed election

121 For the purposes of sections 119 and 120, if no election is made in respect of an offence that may be prosecuted by indictment or proceeded with by way of summary conviction, the Attorney General is deemed to have elected to proceed with the offence as an offence punishable on summary conviction.

Disclosure of information and copies of record

122 A person who is required or authorized to be given access to a record under section 119, 120, 123 or 124 may be given any information contained in the record and may be given a copy of any part of the record.

Where records may be made available

- **123 (1)** A youth justice court judge may, on application by a person after the end of the applicable period set out in subsection 119(2), order that the person be given access to all or part of a record kept under sections 114 to 116 or that a copy of the record or part be given to that person,
    - **(a)** if the youth justice court judge is satisfied that
        - **(i)** the person has a valid and substantial interest in the record or part,
        - **(ii)** it is necessary for access to be given to the record or part in the interest of the proper administration of justice, and
        - **(iii)** disclosure of the record or part or the information in it is not prohibited under any other Act of Parliament or the legislature of a province; or
    - **(b)** if the youth court judge is satisfied that access to the record or part is desirable in the public interest for research or statistical purposes.
- **Restriction for paragraph (1)(a)**

(2) Paragraph (1)(a) applies in respect of a record relating to a particular young person or to a record relating to a class of young persons only if the identity of young persons in the class at the time of the making of the application referred to in that paragraph cannot reasonably be ascertained and the disclosure of the record is necessary for the purpose of investigating any offence that a person is suspected on reasonable grounds of having committed against a young person while the young person is, or was, serving a sentence.

- **Notice**

(3) Subject to subsection (4), an application for an order under paragraph (1)(a) in respect of a record shall not be heard unless the person who makes the application has given the young person to whom the record relates and the person or body that has possession of the record at

least five days notice in writing of the application, and the young person and the person or body that has possession have had a reasonable opportunity to be heard.

- **Where notice not required**

(4) A youth justice court judge may waive the requirement in subsection (3) to give notice to a young person when the judge is of the opinion that

    - **(a)** to insist on the giving of the notice would frustrate the application; or
    - **(b)** reasonable efforts have not been successful in finding the young person.
- **Use of record**

(5) In any order under subsection (1), the youth justice court judge shall set out the purposes for which the record may be used.

- **Disclosure for research or statistical purposes**

(6) When access to a record is given to any person under paragraph (1)(b), that person may subsequently disclose information contained in the record, but shall not disclose the information in any form that would reasonably be expected to identify the young person to whom it relates.

Access to record by young person

124 A young person to whom a record relates and his or her counsel may have access to the record at any time.

Disclosure of Information in a Record

Disclosure by peace officer during investigation

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

(2) The Attorney General may, in the course of a proceeding under this Act or any other Act of Parliament, disclose the following information in a record kept under section 114 (court reports) or 115 (police records):

    - **(a)** to a person who is a co-accused with the young person in respect of the offence for which the record is kept, any information contained in the record; and
    - **(b)** to an accused in a proceeding, if the record is in respect of a witness in the proceeding, information that identifies the witness as a young person who has been dealt with under this Act.
- **Information that may be disclosed to a foreign state**

(3) The Attorney General or a peace officer may disclose to the Minister of Justice of Canada information in a record that is kept under section 114 (court records) or 115 (police records) to the extent that it is necessary to deal with a request to or by a foreign state under the *Mutual Legal Assistance in Criminal Matters Act*, or for the purposes of any extradition matter under the *Extradition Act*. The Minister of Justice of Canada may disclose the information to the foreign state in respect of which the request was made, or to which the extradition matter relates, as the case may be.

- **Disclosure to insurance company**

(4) A peace officer may disclose to an insurance company information in a record that is kept under section 114 (court records) or 115 (police records) for the purpose of investigating a claim arising out of an offence committed or alleged to have been committed by the young person to whom the record relates.

- **Preparation of reports**

(5) The provincial director or a youth worker may disclose information contained in a record if the disclosure is necessary for procuring information that relates to the preparation of a report required by this Act.

- **Schools and others**

(6) The provincial director, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to young persons may disclose to any professional or other person engaged in the supervision or care of a young person — including a representative of any school board or school or any other educational or training institution — any information contained in a record kept under sections 114 to 116 if the disclosure is necessary

    - **(a)** to ensure compliance by the young person with an authorization under section 91 or an order of the youth justice court;
    - **(b)** to ensure the safety of staff, students or other persons; or
    - **(c)** to facilitate the rehabilitation of the young person.
- **Information to be kept separate**

(7) A person to whom information is disclosed under subsection (6) shall

    - **(a)** keep the information separate from any other record of the young person to whom the information relates;
    - **(b)** ensure that no other person has access to the information except if authorized under this Act, or if necessary for the purposes of subsection (6); and
    - **(c)** destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed.
- **Time limit**

(8) No information may be disclosed under this section after the end of the applicable period set out in subsection 119(2) (period of access to records).

Records in the custody, etc., of archivists

126 When records originally kept under sections 114 to 116 are under the custody or control of the Librarian and Archivist of Canada or the archivist for any province, that person may disclose any information contained in the records to any other person if

- **(a)** a youth justice court judge is satisfied that the disclosure is desirable in the public interest for research or statistical purposes; and
- **(b)** the person to whom the information is disclosed undertakes not to disclose the information in any form that could reasonably be expected to identify the young person to whom it relates.

- 2002, c. 1, s. 126
- 2004, c. 11, s. 48

Disclosure with court order

- **127 (1)** The youth justice court may, on the application of the provincial director, the Attorney General or a peace officer, make an order permitting the applicant to disclose to the person or persons specified by the court any information about a young person that is specified, if the court is satisfied that the disclosure is necessary, having regard to the following circumstances:
  - **(a)** the young person has been found guilty of an offence involving serious personal injury;
  - **(b)** the young person poses a risk of serious harm to persons; and
  - **(c)** the disclosure of the information is relevant to the avoidance of that risk.
- **Opportunity to be heard**

(2) Subject to subsection (3), before making an order under subsection (1), the youth justice court shall give the young person, a parent of the young person and the Attorney General an opportunity to be heard.

- ***Ex parte* application**

(3) An application under subsection (1) may be made *ex parte* by the Attorney General where the youth justice court is satisfied that reasonable efforts have been made to locate the young person and that those efforts have not been successful.

- **Time limit**

(4) No information may be disclosed under subsection (1) after the end of the applicable period set out in subsection 119(2) (period of access to records).

Disposition or Destruction of Records and Prohibition on Use and Disclosure

Effect of end of access periods

- **128 (1)** Subject to sections 123, 124 and 126, after the end of the applicable period set out in section 119 or 120 no record kept under sections 114 to 116 may be used for any purpose that would identify the young person to whom the record relates as a young person dealt with under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985.
- **Disposal of records**

(2) Subject to paragraph 125(7)(c), any record kept under sections 114 to 116, other than a record kept under subsection 115(3), may, in the discretion of the person or body keeping the record, be destroyed or transmitted to the Librarian and Archivist of Canada or the archivist for any province, at any time before or after the end of the applicable period set out in section 119.

- **Disposal of R.C.M.P. records**

(3) All records kept under subsection 115(3) shall be destroyed or, if the Librarian and Archivist of Canada requires it, transmitted to the Librarian and Archivist, at the end of the applicable period set out in section 119 or 120.

- **Purging CPIC**

(4) The Commissioner of the Royal Canadian Mounted Police shall remove a record from the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police at the end of the applicable period referred to in section 119; however, information relating to a prohibition order made under an Act of Parliament or the legislature of a province shall be removed only at the end of the period for which the order is in force.

- **Exception**

(5) Despite subsections (1), (2) and (4), an entry that is contained in a system maintained by the Royal Canadian Mounted Police to match crime scene information and that relates to an offence committed or alleged to have been committed by a young person shall be dealt with in the same manner as information that relates to an offence committed by an adult for which a record suspension ordered under the *Criminal Records Act* is in effect.

- **Authority to inspect**

(6) The Librarian and Archivist of Canada may, at any time, inspect records kept under sections 114 to 116 that are under the control of a government institution as defined in section 2 of the *Library and Archives of Canada Act*, and the archivist for a province may at any time inspect any records kept under those sections that the archivist is authorized to inspect under any Act of the legislature of the province.

- **Definition of destroy**

(7) For the purposes of subsections (2) and (3), **destroy**, in respect of a record, means

  - **(a)** to shred, burn or otherwise physically destroy the record, in the case of a record other than a record in electronic form; and
  - **(b)** to delete, write over or otherwise render the record inaccessible, in the case of a record in electronic form.

- 2002, c. 1, s. 128
- 2004, c. 11, s. 49
- 2012, c. 1, s. 159

No subsequent disclosure

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

…

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.

…

UNITED NATIONS, CONVENTION ON THE RIGHTS OF THE CHILD, CAN. T.S. 1992 NO. 3.

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 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

…

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.

UNITED NATIONS GENERAL ASSEMBLY, UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE, A/RES/40/33, NOVEMBER 29, 1985.

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.)

…

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons. 21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the 13 interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

CRIMINAL CODE, RSC 1985, c. C-46

Order directing matters not to be published for specified period

517 (1) If the prosecutor or the accused intends to show cause under section 515, he or she shall so state to the justice and the justice may, and shall on application by the accused, before or at any time during the course of the proceedings under that section, make an order directing that the evidence taken, the information given or the representations made and the reasons, if any, given or to be given by the justice shall not be published in any document, or broadcast or transmitted in any way before such time as

- **(a)** if a preliminary inquiry is held, the accused in respect of whom the proceedings are held is discharged; or
- **(b)** if the accused in respect of whom the proceedings are held is tried or ordered to stand trial, the trial is ended.

Failure to comply

(2) Every person who fails, without lawful excuse, to comply with an order made under subsection (1) is guilty of an offence punishable on summary conviction.

(3) [Repealed, 2005, c. 32, s. 17]

R.S., 1985, c. C-46, s. 517

R.S., 1985, c. 27 (1st Supp.), s. 101(E)

2005, c. 32, s. 17

2018, c. 29, s. 62

Court File No.: COA-23-CR-0907

CANADIAN BROADCASTING CORPORATION et al.
Appellants

-and-

HIS MAJESTY THE KING et al.
Respondents

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto

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