

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**CANADIAN BROADCASTING CORPORATION, CTV NEWS, A DIVISION
OF BELL MEDIA INC., THE GLOBE AND MAIL INC., TORONTO STAR
NEWSPAPERS LIMITED and LA PRESSE**

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

**ATTORNEY GENERAL OF ONTARIO, JUSTICE FOR CHILDREN AND YOUTH, and
M.J.**

Interveners

**FACTUM OF THE INTERVENER
JUSTICE FOR CHILDREN AND YOUTH**

January 9, 2026

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PART I – OVERVIEW

1. In this *Charter*¹ challenge to the *YCJA*'s provisions governing public access to court records, the central question is how should the operation of the open courts principle be understood in the context of providing meaningful protection to an inherently vulnerable group of people. This case asks a novel question: what are the appropriate presumptions and practices for a meaningfully open court that also meaningfully maintains a distinct criminal justice system that protects the *Charter* rights and unique vulnerabilities of young people?
2. While the open court principle has historically been interpreted to mean that the public and media have free unfettered access to all documents in a court record², there are no Canadian court decisions that have considered the appropriateness of unfettered access in the context of children's private information in the justice system.
3. We do not seek to assail the significance of the open court principle. We acknowledge its significance and centrality to democratic principles and to the administration of justice. We do ask this Court to consider whether the historical approach to open courts – where all records created in the context of a court proceeding should be available in an unfettered manner to the public – should apply when young people's private information is concerned.
4. JFCY submits that ss. 119(1)(s)(ii) and 129 do not violate the open court principle. They properly maintain the s. 2(b) *Charter* right to free expression through the open court principle in the context of the importance of the privacy of children's information in the justice system, and the s. 7 and 15 *Charter* rights that are implicated.

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, [c 11](#) [“*Charter*”].

² *AG (Nova Scotia) v MacIntyre*, [1982 CanLII 14 \(SCC\)](#) at pp 183, 185, 189; *Edmonton Journal v. Alberta (Attorney General)*, [\[1989\] 2 SCR 1326](#) at pp 1339.

5. The intimacy and extent of personal information in modern court files and the context in which publicly available information is transmitted, mandates a modern approach to the balancing of the *Charter* rights of young people with the *Charter* rights of the public in open courts. There is broad legal consensus that young people are inherently vulnerable in society and before the courts – as victims, witnesses, and accused persons. This unique vulnerability is in part addressed by enhanced legal, procedural, and privacy protections in the *Youth Criminal Justice Act* (“YCJA”).³

6. The impugned provisions in this case – ss. 119(1)(s)(ii), and 129 of the YCJA – are carefully tailored, enhanced protections designed to ensure the balance required to ensure a meaningfully open court and the adequate protection of privacy of vulnerable young people.

7. The heightened privacy protections that protect the *Charter* rights and interests of young people, are required by Canada’s international commitments under the United Nations *Convention on the Rights of the Child*⁴ (“UNCRC”) and related international instruments, and are necessary to achieve society’s interests in avoiding harm to young people, and avoiding stigmatization and labelling and promoting youth rehabilitation, reintegration and flourishing.

8. Enhanced privacy protections, which modify the expectation and operation of the open court principle, exist in other legal contexts to account for the inherent vulnerability of young people. Such protections exist not only in youth criminal justice matters, but also, for example, in child protection, family law, secure treatment, for witnesses in sexual offences matters involving adult accused persons (486.4(2)), and as victims to any offence alleged against an adult accused.

³ [Youth Criminal Justice Act](#), S.C. 2002, c. 1 [“YCJA”].

⁴ [United Nations Convention on the Rights of the Child](#), 20 November 1989, Can. T.S. 1992 No. 3. [“UNCRC”].

PART II – INTERVENER’S STATEMENT AS TO FACTS

9. The Intervener JFCY accepts and adopts the facts set out in the factum of the Respondent (paragraphs 4 to 36) with the following clarification to paragraph 24: There are disclosure provisions relating to subsequent disclosure of information by persons who accessed youth records for research and statistical purposes in ss. 119(8), 120(5), 123(6) and 126.

10. In addition, JFCY highlights the following facts in support of its submissions as Intervener.

A. Access to family law proceedings and records is sometimes prohibited, restricted, and delayed

11. When processing requests to access court records, court staff follow the enabling legislation and the Ministry of Attorney General’s policy on access to court files (“the access policy”).⁵ The access policy is subject to judicial direction.⁶

12. Across the many kinds of family law proceedings that engage children’s privacy interests, privacy is enhanced by employing a variety of different methods such as: restricting access to courtroom proceedings, limiting access to court records, delaying access to court records and publication bans.⁷ These proceedings are child protection proceedings, applications for secure treatment⁸, adoption matters, applications for decision-making, parenting time and contact, determinations of parentage and international child abduction.

13. **Child protection proceedings** are presumptively closed to the public, with the

⁵ Affidavit of Kristina Theoret, affirmed June 26, 2025, [*Theoret Affidavit*] at paras 3-5, Respondent’s Record [“RR”], Tab 3, p 89 (p 92 PDF).

⁶ *Ibid.*

⁷ *Theoret Affidavit*, Exhibit A, “Section 4: Public access to family court files”, RR, Tab 3, pp 116-121 (p 119 PDF).

⁸ A version of involuntary mental health detention of children under the *Child, Youth, and Family Services Act, 2017, S.O. 2017, C-14*, Part VII. [*CYFSA*].

exception of two media representatives.⁹ Court documents cannot be accessed by the public, including the media representatives who attended the hearing, and only the parties and their lawyers are presumptively entitled to transcripts of the proceedings.¹⁰ Publication of any identifying information about a child, a child’s parent or foster parent, or member of the child’s family is prohibited.

14. In **secure treatment cases**, applications to commit a child under the age of 19 to a secure treatment program are closed to the public, including to the media, and court documents are inaccessible.¹¹

15. **Adoption hearings** are closed to the public and court documents are accessible only to a closed list of people, which does not include the public or journalists.¹² The documents used in the adoption application must be sealed.

16. The **Family Law Rules** delay public access to court documents in specific kinds of family proceedings.¹³ These proceedings are: (a) claims for decision-making responsibility, parenting time or contact with a child¹⁴; (b) orders determining parentage; and (c) international child abduction.

17. The public must give written notice to the parties and the Office of the Children’s

⁹ The court can order that additional media representatives can attend or that all media are excluded. *CYFSA*, [ss 87\(4\)-87\(7\)](#), [121\(8\)](#).

¹⁰ *CYFSA*, [s 87\(10\)](#); *Theoret Affidavit*, Exhibit A, “Section 4.3.1: Child protection cases”, RR, Tab 3, p 118 (p 121 PDF).

¹¹ *Theoret Affidavit*, Exhibit A, “Section 4.3.2: Secure treatment cases”, RR, Tab 3, p 118, (p 121 PDF); *CYFSA*, [s 161\(7\)](#).

¹² *Theoret Affidavit*, Exhibit A, “Section 4.3.3: Adoption cases and openness orders”, RR, Tab 3, p 119 (p 122 PDF); *CYFSA*, [ss 204\(1\)](#), [215\(6\)](#), [222\(2\)](#).

¹³ *Family Law Rules*, [O Reg 114/99](#), [Rule 1.3\(2\), \(3\)](#) [“*Family Law Rules*”].

¹⁴ “Child” means: a child as defined in the Act governing the case or, if not defined in that Act, a person under the age of 18 years, and in a case under the *Divorce Act* (Canada) includes a “child of the marriage” within the meaning of that Act; *Family Law Rules*, [Rule 2\(1\)](#). The *CYFSA* defines “child” as a person under the age of 18.

Lawyer (if involved) (“OCL”) that they seek access to court documents.¹⁵ The notice period provides the parties and OCL an opportunity to apply for a restricted access order¹⁶ over some or all of the records.¹⁷ At the expiration of the notice period and prior to accessing the records, the record-seeker must file an affidavit attesting they provided notice and have not been served with motion for restricted access.¹⁸

B. Access to exhibits in family court is restricted and judicially controlled

18. Exhibits entered into evidence during the course of a family law trial are within the “control of the court”, similar to exhibits in adult criminal matters.¹⁹ They are only accessible to the public with judicial consent, and are always subject to the statutory rules.²⁰ When a request to access an exhibit is made by the public (including journalists), a judicial officer provides direction to court staff about whether access is granted, including any terms or conditions, or whether a formal application, on notice to the parties, is required to balance access rights, privacy interests and the proper administration of justice”.²¹

C. Youth court records contain a range of information and sensitive personal details

19. The contents of youth court files include various kinds of records, which can include information ranging from mundane to highly sensitive and personal.²² Dr Kelly described the nature and quality of the information in criminal court records as a “treasure trove of private

¹⁵ *Theoret Affidavit*, Exhibit A, “4.2 Notice requirements for public access”, RR, Tab 3, pp 117-118 (p 120 PDF); *Family Law Rules*, [Rule 1.3](#); *Children's Law Reform Act*, [RSO 1990, c C.12](#), Part I and III; *Divorce Act*, [RSC 1985, c 3 \(2nd Supp\)](#).

¹⁶ “Restricted access order” is defined in [Rule 1.3\(1\)](#) of the *Family Law Rules*: “In this rule “restricted access order” means an order that access to all or part of a court file be limited or that any portion of it be redacted before being provided to a person, including an order under [subsection 137 \(2\)](#) of the *Courts of Justice Act*, [RSO 1990, c C.43](#) or clause 70 (1) (a) of the *Children's Law Reform Act*, [RSO 1990, c C.12](#).”

¹⁷ *Family Law Rules*, [supra](#) note 13 at [Rules 1.3 \(6\)](#), [1.3\(7\)](#), [1.3\(10\)](#).

¹⁸ *Theoret Affidavit*, [supra](#) note 15 at pp 117-118 (p 120 PDF).

¹⁹ *Theoret Affidavit* at para 12, RR, Tab 3, p 90 (p 94 PDF); *Theoret Affidavit*, Exhibit A, “Section 6.2.3: Exhibits entered into evidence during trial”, RR, Tab 3, pp 124-125 (p 127 PDF).

²⁰ *Ibid.*

²¹ *Ibid.*

²² The records in the youth court file are itemized in *Theoret Affidavit* at para 25, RR, Tab 3, p 92 (p 95 PDF).

information”.²³ Youth court records can include “a whole range of information about [the young person], about their family, all sorts of other information”.²⁴ Ms Theoret highlighted that records can also include personal and sensitive information about people other than the accused young person, such as parents, adult relatives, witnesses and victims.²⁵

D. Section 34 assessments – access and information

20. Youth courts can order medical or psychological assessments of a young person (“section 34 assessment”) resulting in a written report (“section 34 report”).²⁶ Dr Teresa Grimbos, a witness in this Application, is a child psychologist with extensive experience with section 34 assessments and reports. She states that when preparing a section 34 report, the goal is to obtain a “comprehensive understanding of the youth’s life and functioning”.²⁷ The assessments typically cover many personal and intimate areas of the young person’s life, including the young person’s mental health history and diagnoses, their mother’s pregnancy and labour, peer and intimate relationships, school history and academic functioning, etc., and this information is reported in detail.²⁸ The reports also include risk assessments, mental health diagnoses, clinical impressions of a young person’s life, circumstances, needs, strengths, reasons for criminal involvement, recommendations, and treatment plans.

21. The section 34 report is part of the court record in the young person’s matter.²⁹ Only a subset of persons and entities identified in s. 119(1) can access section 34 assessments.³⁰ This

²³ Transcript of the Cross-examination of Dr L Kelly [“Kelly cross-examination”], QQ. 113, Applicant’s Transcript Brief [“TB”], Tab 1 p 40 ll. 22-24 (p 43 PDF)

²⁴ *Ibid*, Q. 117, at p 42 ll 6-8 (p 45 PDF)

²⁵ *Theoret Affidavit* at para 26, RR, Tab 3, p 92 (p 95 PDF).

²⁶ *YCJA*, *supra* note 3 at [s 34\(1\)](#).

²⁷ Affidavit of Dr. Theresa Grimbos, affirmed June 30, 2025, [“*Grimbos Affidavit*”], Exhibit C para 24, RR, Tab 3, p 78 (p 81 PDF).

²⁸ *Ibid* at paras 25-26, RR, Tab 3, p 79-80 (p 82 PDF).

²⁹ *YCJA*, *supra* note 3 at [s 34\(12\)](#).

³⁰ *Ibid* at [s 119\(6\)](#). Section 119(6) also restricts access to reports of DNA analysis results of a young person’s bodily substances.

subset includes public access through the provision at issue in this matter, s. 119(1)(s)(ii). It does not include the victim of the alleged offence.

E. Records obtained by Media and Journalist Applicants in two cases

22. Evidence was adduced about media and journalist applications for copies of youth records in two cases: the prosecution of eight young persons for the death of Kenneth Lee (“Kenneth Lee case”)³¹ and the prosecution of six young persons charged with violent offences at Kennedy subway station (“Kennedy station case”).³²

23. In the Kenneth Lee case, journalists and several media companies, including the New York Times, sought access to youth court records. The application was brought early in the proceedings, while bail hearings were being held. The youth court justice granted access to all information and records that were needed for fact-checking purposes at the time.³³

24. Media companies applied for copies of youth records in the Kennedy station case at an early stage of the court proceedings. Again, the youth court ordered access to redacted records. On the limited record before this Court, the only records withheld from the media organizations were the bail exhibits.³⁴ Identifying information about the young persons was ordered redacted as were the names and addresses of the sureties.³⁵

F. Evidence about Journalists and YCJA privacy protections – knowledge & experience

25. A CBC journalist requested access to the youth court records in the Kenneth Lee case directly from the court registry office. When the court registry office refused to provide the

³¹ The Applicant sometimes refers to this matter as the “swarming case”.

³² Affidavit of Jennifer Pagliaro, sworn March 27, 2024 [*Pagliaro Affidavit*] Exhibit G, Application Record [“AR”], Tab 3.

³³ *Canadian Broadcasting Corporation v Ontario*, [2023 ONCJ 32](#) at [para 11](#), [84](#). [*CBC v ON, O CJ*]; *R v Canadian Broadcasting Corporation*, [2024 ONCA 765](#) at [para 93](#). [*R v CBC, ONCA*].

³⁴ *Pagliaro Affidavit*, Exhibit G at para 11.

³⁵ *Ibid.*

records, counsel to the CBC emailed a letter to the trial coordinator, which was addressed to the youth court Justice and requested the records. They were directed to bring an application on notice to the Crown.³⁶ In her application ruling, the youth court judge ruled the media and journalists had to bring an application to access youth court records, as opposed to seeking administrative access from the registry office.³⁷

26. Six months later, a different CBC journalist requested youth court records of the “Kennedy station case” directly from the same court registry office in Toronto.

27. Jennifer Pagliaro, the Applicants’ witness, is employed as a reporter at The Toronto Star and, separate from her role at the Star, has a book deal for a book “Girls, Interrupted” relating to youth violence focusing on the Kenneth Lee case.³⁸ In response to questions about the CBC journalist’s request to the registry office, Ms Pagliaro testified “[n]ot every journalist that’s covering a court story is a court reporter” and “[n]ot everyone is familiar with the access regime under the *YCJA*”.³⁹ She went on to explain: “It’s common for us to just ask for access and not sort of handcuff ourselves to begin with”.⁴⁰ Ms Pagliaro refused to acknowledge the CBC journalist failed to respect the *YCJA* regime. Rather, she characterized the journalist as “just doing her job, trying to get information”.⁴¹

28. A reporter from Global News “indiscriminately” contacted people with the same last name as one of the young persons charged with homicide in the death of Kenneth Lee.⁴² The

³⁶ *R v CBC, ONCA*, *supra* note 33 at [para 24](#).

³⁷ *CBC v ON, OCJ*, *supra* note 33 at [para 81](#); upheld on this point, *R v CBC, ONCA*, *supra* note 33 at [paras 88-95](#).

³⁸ *Pagliaro Affidavit* at paras 2-3, AR, Tab 3, p 30; Transcript of the Cross-examination of Jennifer Pagliaro, [“*Pagliaro cross-examination*”], QQ 7 & 32-35, RR, Tab 4 pp 6 & 9-10 (pp 141 & 144-145 PDF).

³⁹ *Pagliaro Cross-examination*, Q 513, p 148 ll 23-25 (p 283 PDF).

⁴⁰ *Pagliaro Cross-examination*, Q 513 at p 148 l. 25 to 149 l. 2 (p 283-284 PDF)

⁴¹ *Ibid*, Q 514 at p 149 ll. 14-15 (p 284 PDF)

⁴² *Young person 2 v CBC*, [2023 ONCJ 309](#) at [paras 13, 73](#).

reporter identified the young person by first and last name as well as the charges.⁴³ The youth court found the reporter unintentionally violated the *YCJA*.⁴⁴ In the same case, concerns were raised about a piece in The Toronto Star that provided so much information about one of the young persons that it was identifying.⁴⁵

G. The vulnerability of young persons

29. Dr Lisa Kelly, an associate professor of law at Queens University, provided evidence about, *inter alia*, the recognized vulnerabilities of young persons. She highlights, in addition to behavioural and psychological differences, social and political factors contribute to children's increased vulnerability as compared to adults. She explained an important aspect of the youth context is "the youth accused is specifically legally, economically, socially dependent often on their family unit for their housing, for their food for everything".⁴⁶

30. In addition to the psychological, social and political markers of vulnerability related to their age, young persons in the youth criminal justice system are "overwhelmingly already marginalized along lines of class, race, Indigeneity, and disability".⁴⁷ Black youth, Indigenous youth, and youth who are dually involved in the child welfare and youth criminal system, are all overrepresented in the youth criminal system.⁴⁸

PART III – RESPONSE TO APPLICANTS' ISSUES

A. OVERVIEW

31. JFCY submits that the impugned provisions, ss. 119(1)(s)(ii) and 129, are *Charter* compliant, as carefully crafted regulation of public / media access to youth records under the

⁴³ *Ibid* at [paras 72-73](#).

⁴⁴ *Ibid* at [para 73](#).

⁴⁵ *Pagliario Cross-examination*, QQ 260-276, pp 84-88 (p 219 PDF)

⁴⁶ *Kelly Cross-examination*, Q 221, at p 76 (p 77 PDF)

⁴⁷ Affidavit of Dr. Lisa M Kelly, sworn June 30, 2020 [*"Kelly Affidavit"*] Exhibit C, Expert Report, at para 72, RR, Tab 1, p 40 (p 43 PDF)

⁴⁸ *Ibid*.

YCJA. The provisions appropriately balance access rights, privacy interests, and the proper administration of justice. They meaningfully support open courts in the unique context of inherently vulnerable members of society – balancing *Charter* compliance with the open court principle, and *Charter* compliance with the s. 7 enhanced privacy interests and unique vulnerabilities of children / young people in the youth criminal justice system, which also invoke equality rights.

32. While the open court principle has historically been understood to mean that court records will be publicly available in an unregulated manner, there has never been a careful consideration of the appropriate expectations or operation of the open court principle in the specific context of the personal information of children under 18 in the justice system.

33. As described in paragraphs 12-18 above there are many instances in the justice system where there are presumptive limits and / or regulation of public access to the private information of children – some much more restrictive than the impugned provisions of the *YCJA* at issue here.

34. JFCY submits that these limits do not violate the open court principle, they merely adapt the way the open court operates in order to meaningfully provide for the security, equality, privacy, and well-being of inherently vulnerable members of society.

35. In the alternative, if this Honourable Court finds that the provisions do violate the open court principle, JFCY submits that the provisions are carefully crafted, addressing a pressing and substantial objective, are minimally impairing, rationally connected, and that the benefits of the narrow protections offered far outweigh any potential negative effects.

36. JFCY submits that in this case there are four issues related to the rights and protection of young people, which are inextricably connected, will helpfully inform this Court's analysis, and must be taken into consideration:

- a. Recognition of the inherent vulnerability of children / young people as a class, has consistent and deep roots in Canadian law, and as described by the Supreme Court of Canada, requires special consideration, enhanced protections, and adapted approaches in the justice system, including regarding open courts and records access.⁴⁹
- b. The *UNCRC*, to which Canada is a signatory, and which is incorporated by reference into the *YCJA*, requires this Court to interpret the issues before it in compliance with Canada's obligations therein, including that all decisions must take as a primary consideration the best interests of the child, the child's right of participation, and the existence of a stand alone criminal justice system for children that addresses the unique features of adolescence and the inherent vulnerabilities.
- c. The *YCJA* is Parliament's creation of a complete code and separate criminal legal system designed specifically to address the unique rights and interests of young people in Canadian criminal justice and requires unique approaches to the open court principle and practices.
- d. The unique *Charter* rights and interests of young people in the justice system are engaged in this case and may require a re-consideration of how we evaluate the open court principle in this context.

B. UNIQUE VULNERABILITY OF YOUNG PEOPLE

37. International and Canadian law have recognized the inherent vulnerability of young people in society, and specifically in the criminal justice system, occasioned by young people's evolving capacities, lack of sophistication and maturity, and their dependence on adults.

⁴⁹ *AB (Litigation Guardian of) v Bragg Communications Inc.*, [2012 SCC 46](#) at paras [17-19](#). [*AB v Bragg*"]; citing *R v DB*, [2008 SCC 25](#) at [paras 41, 61, 84-87](#). [*DB*"]; *Toronto Star Newspaper Ltd v Ontario*, [2012 ONCI 27](#) at [paras 40-41, 44](#). [*Toronto Star, 2012*"]; *R v L(DO)*, [1993 CanLII 46 \(SCC\)](#) at pp 445-46.

38. The Supreme Court of Canada, in various legal contexts, has repeatedly recognized that “the inherent vulnerability of children has consistent and deep roots in Canadian law”, resulting in enhanced legal protections for young people.⁵⁰ The Court notes that young people are recognized in Canadian and International law as inherently vulnerable as a class and that “the law attributes heightened vulnerability based on chronology, not temperament.”⁵¹ The Court has also confirmed that a separate criminal legal system for young people is required because they have “heightened vulnerability, less maturity, and a reduced capacity for moral judgement”.⁵² Vulnerability and concomitant disadvantage inhere to young people because of their age.⁵³

39. The Supreme Court of Canada has recognized the cognitive, social and emotional differences of young people as compared to adults. In *CP*, Abella J quoted from a government report discussing age-related vulnerabilities of young people.⁵⁴

In essence, youthful brains are wired differently, and those underdeveloped brains result in young persons being poor decision-makers, in contrast to adults. Experts across disciplines point to a trilogy of judgments by the United States Supreme Court, including *Roper v Simmons* where the Court acknowledged the scientific evidence that young persons are less mature, less able to assess risks and long-term consequences of their conduct, more vulnerable to external pressures and more compliant to authority.

40. The intersecting areas of vulnerability of the specific young people who are most commonly before the criminal courts – including young people who are Indigenous, racialized, involved with children’s aid societies, have disabilities (including cognitive disability, brain injury, mental health differences, and learning disabilities) – only serve to enhance the extent to

⁵⁰ *AB v Bragg*, *supra* note 49 at [paras 17-19](#).

⁵¹ *Ibid* at [para 17](#).

⁵² *DB*, *supra* note 49 at [paras 41, 48](#).

⁵³ *R v CP*, [2021 SCC 19](#) at [para 85](#). [“*CP*”].

⁵⁴ *Ibid* at [para 86](#), quoting “*Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada*”, 2018 (online), at p 243.

which enhanced protections are required.

41. The inherent vulnerability of young people, occasioned by their age, reduced maturity, and experiences, as well as the common intersectional equality related vulnerabilities, requires a more refined approach to the open court principle in general. If this Honourable Court finds that ss. 119(1)(s)(ii) and 129 do constitute a breach of the open court principle, then the unique vulnerabilities of young people clearly support finding that any limitation meets the requirements of the *Oakes* test as described by the Attorney General of Canada in their submissions, but with even greater certainty.

C. INTERNATIONAL LEGAL INSTRUMENTS MUST GUIDE ANALYSIS

42. International legal instruments that address youth criminal justice require that there be a separate legal system, with enhanced legal protections, and in particular enhanced privacy protections to account for the unique needs and special vulnerabilities of adolescence. As outlined below, the *YCJA* provides *greater* access to youth proceedings and records than international standards would provide. The minimal regulation of public access to records required by ss. 119(1)(s)(ii) and 129, while maintaining entirely open proceedings does not meet international standards, but in JFCY’s submission reflects a carefully crafted standard for *Charter* compliance with the open court principle while offering some level of enhanced protection to the privacy interests of young people in a modern context.

43. International law and Canada’s international legal obligations play a role in domestic legal matters. There is a presumption that domestic legislation complies with Canada’s international obligations.⁵⁵ Furthermore, the *Charter* is presumed to provide at least the same

⁵⁵ *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at [para 105](#) [“*Mason*”]; *Baker v Canada*, 1999 SCC 699 at [paras 70-71](#); see also: *DB*, *supra* note 49 at [para 60](#).

level of protection as found in international human rights documents ratified by Canada, including the *UNCRC*.⁵⁶

44. The presumption of conformity with international law assumes added force when Parliament has made that intent explicit through incorporation into the statute.⁵⁷ Significantly, the *UNCRC* has been incorporated by reference into the *YCJA*, and provides interpretive guidance, as recognized by the Supreme Court of Canada.⁵⁸

45. The *UNCRC* is not the only relevant international instrument. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, (“the *Beijing Rules*”) have been consistently recognized as an important tool, together with the *UNCRC*, in interpreting the scope, rights, and protections of the *YCJA*.⁵⁹ Parliament drafted the *YCJA* with significant fidelity to these international instruments, further demonstrating a clear intention to be guided by international standards on child rights.⁶⁰ The Supreme Court of Canada has consistently recognized the importance of international law in interpreting the *YCJA*.⁶¹

46. In *DB*, the Supreme Court of Canada referenced Canada’s international law commitments, including the *UNCRC* and the *Beijing Rules*, in recognizing the presumption of diminished moral blameworthiness as a principle of fundamental justice.⁶² Abella J. cited Article 40 of the *UNCRC* in affirming that young people are entitled to the presumption due to their age, heightened vulnerability, and reduced capacity for moral judgment.

⁵⁶ *Divito v Canada (Public Safety and Emergency Preparedness)*, [2013 SCC 47](#) at paras [22-23](#).

⁵⁷ *Mason*, *supra* note 55 at [para 106](#).

⁵⁸ *R v RC*, [2005 SCC 61](#) at [para 41](#). [“*RC*”].

⁵⁹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33 (November 29, 1985) (“*Beijing Rules*”); *CP*, *supra* note 53 at [paras 147-148](#); *DB*, *supra* note 49 at [paras 60, 85](#).

⁶⁰ *YCJA*, *supra* note 3 at [Preamble, s 3](#); *R v KJM*, [2019 SCC 55](#) at [para 140](#). [“*KJM*”].

⁶¹ *CP*, *supra* note 53 at [paras 147-148](#); *DB*, *supra* note 49 at [paras 60, 85](#).

⁶² *DB*, *supra* note 49 at [paras 60, 85, 53](#). The evolving development of adolescents renders them less morally culpable for their actions. See: *YCJA*, *supra* note 3 at [Preamble, s 3\(1\)\(b\)](#); *DB*, *supra* note 49 at [paras 58-59](#).

47. Article 40 of the *UNCRC* specifically addresses the rights of young people in penal law. States parties are required to establish special safeguards and care, including legal protection, for young people;⁶³ mandates taking into account the child’s age and the desirability of promoting the child’s reintegration and rehabilitation;⁶⁴ requires the treatment of children in the justice system in a manner that promotes their dignity, human rights, and reintegration;⁶⁵ and, perhaps most significantly in this case, requires states parties to ensure a child’s privacy is protected at all stages of the proceedings.⁶⁶ Article 16, states: “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 [emphasis added].”⁶⁷

48. At Article 3, the *UNCRC* further requires that “In all actions concerning children, whether undertaken by ... courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Article 12 requires that a child shall be “provided the opportunity to be heard in any judicial and administrative proceedings” affecting them.⁶⁸

49. The *Beijing Rules* elaborate on the concern regarding enhanced privacy protections, recognizing that young people are “particularly susceptible to stigmatization” and the detrimental effects of labelling, and require the privacy of a young person be protected at all stages of a criminal proceeding “in order to avoid harm being done to her or him by undue publicity or by the process of labelling [emphasis added]”.⁶⁹

⁶³ *UNCRC*, [Preamble](#).

⁶⁴ *Ibid* at [art 40\(1\)](#).

⁶⁵ *Ibid* at [art 40\(1\)](#); *DB*, *supra* note 49 at [paras 60-61](#), [69](#).

⁶⁶ *Ibid* at [art 40\(2\)\(b\)\(vii\)](#).

⁶⁷ *Ibid* at [art 16\(1\)](#). Clause 2 states “The child has the right to the protection of the law against such interference or attacks.”

⁶⁸ *Ibid* at [arts 3 and 12](#); re Art. 3 see *Kanhasamy v Canada (Citizenship and Immigration)*, [2015 SCC 61](#), at [paras 37](#) and following.

⁶⁹ [Beijing Rules](#).

50. The *Beijing Rules* also specifically address youth records, mandating: “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 [emphasis added].”⁷⁰ This articulation of the privacy interests of young people makes clear that identification and publication are not the only concerns when it comes to enhanced privacy protections, and that the need to protect the privacy interests at stake also specifically includes the intimate information that is contained in youth records.

51. The general comments of the United Nations Committee on the Rights of the Child (the “Committee”) interpret and clarify the normative content of rights under the *UNCRC*. The comments reflect international standards on child justice, the growing consensus and understanding of adolescent development, and effective state practice.⁷¹ Courts have made specific reference to general comments when making decisions regarding the rights of children and interpreting legislation.⁷²

52. General Comment No. 24 on children’s rights in the child justice system (“GC 24”) reflects international standards on child justice, the growing consensus and understanding of adolescent development, and effective state practice.⁷³ The objectives of GC 24 include providing contemporary consideration of the relevant articles of the *UNCRC*, and to guide states toward the holistic implementation of child justice systems that promote and protect

⁷⁰ *Ibid* at [Rule 21.1](#).

⁷¹ Committee on the Rights of the Child, *General Comment No. 24 on children’s rights in the child justice system*, UNCRCOR, [UN DOC CRC/C/GC/24](#) (18 September 2019) at [para 1](#). [“General Comment No. 24”].

⁷² See for example: *ARP v Children’s Aid Society of London and Middlesex*, [2024 ONSC 4023 \(Div Ct\)](#), at [paras 49-51](#); also, *SS v RS*, [2021 ONSC 2137](#), at [paras 31-36](#); *Ward v Quebec (Commission des droits de la personne et des droits de la jeunesse)* [2021 SCC 43](#) at [para 197](#); and *R v McGregor*, [2023 SCC 4](#) at [para 72](#) (relying on Human Rights Committee, *General Comment No. 31*).

⁷³ *General Comment No. 24*, *supra* note 71 at [para 1](#).

children's rights.⁷⁴

53. GC 24 further details the following:

67. States parties should respect the rule that child justice hearings are to be conducted behind closed doors. Exceptions should be very limited and clearly stated in the law. If the verdict and/or sentence is pronounced in public at a court session, the identity of the child should not be revealed. Furthermore, the right to privacy also means that the court files and records of children should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. [emphasis added]

54. Despite the incorporation of the *UNCRC* into the *YCJA*, the privacy protections in the *YCJA* do not rise to the level mandated by the *Beijing Rules* and GC 24, which require youth proceedings be closed to the public.⁷⁵ That Canada falls short supports JFCY's submission that the *YCJA* provisions are only a modification of the approach to records access in open courts, and constitute a very low bar by regulating records access and certainly maintain openness.

55. JFCY submits that the protections provided by ss. 119(1)(s(ii)) and 129 reflect an appropriate modification of the historical approach to records access in open courts, and are to provide the enhanced protections required to protect the unique vulnerabilities of adolescence – the provisions appropriately regulate access to records within an open court. If this Court disagrees with this, we then submit the provisions are a justified limit on open courts.

D. *YCJA* CREATES A SEPARATE AND UNIQUE CODE AND SYSTEM

56. The *YCJA* is an entire scheme, separate and apart from the adult criminal justice system. It was created in agreement with international consensus that such a system is required to account for the unique needs of inherently vulnerable young people. Using a child rights

⁷⁴ *Ibid* at [para 6\(a\)](#).

⁷⁵ *General Comment No. 24* calls for extensive safeguards to ensure legal process rights and fair trial protections along with closed door proceedings. The extent to which the UN Committee on child rights seeks to protect the privacy of young people in criminal justice would require closed door hearings.

approach Parliament deliberately and carefully crafted the legislation to ensure that enhanced procedural and privacy protections could account for the unique developmental stage, diminished moral blameworthiness, and heightened vulnerabilities of children.⁷⁶

57. It is settled law that the *YCJA* is the only means by which youth records may be accessed, and the *Dagenais-Mentuck* test must be applied through the lens of the *YCJA*, its provisions, principles, and constitutional guarantees of privacy for young people.⁷⁷ The Court of Appeal for Ontario recently provided a comprehensive overview of the relevant statutory provisions, once again confirming that Part 6, including the provisions relating to records access, must be read comprehensively with all the provisions of the *YCJA*, including the preamble, and the principles in s. 3.⁷⁸

58. In the *YCJA* (and under international legal instruments), the concept of diminished moral culpability underlies all aspects of the youth criminal justice system, and specifically suffuses all the enhanced protections of the Act.⁷⁹ Parliament specifically codified the principle of diminished moral blameworthiness as an animating principle of the *YCJA*, making special mention of the need to protect young people's privacy in the Declaration of Principle⁸⁰:

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 ...(i) rehabilitation and reintegration, ...(iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected [emphasis added].

⁷⁶ *YCJA*, *supra* note 3 at [Preamble, s 3\(1\)\(b\)](#).

⁷⁷ *R v CBC, ONCA*, *supra* note 33 at [paras 6-18](#); *SL v NB*, 2005 CanLII 11391 (ONCA) at [paras 42, 54-55](#). [“*SL v NB*”]; *Toronto Star*, 2012, *supra* note 49 at [para 4](#); *CBC v ON, ONCJ*, *supra* note 33 at [para 26](#) and following.

⁷⁸ *Toronto Star*, 2012, *supra* note 49 at [paras 40-41](#); quoted in *AB v Bragg*, *supra* note 49 at [para 18](#); and *R v CBC ONCA*, *supra* note 33 at [paras 6-18](#).

⁷⁹ *DB*, *supra* note 49 at [paras 41, 61](#). As outlined above, children's *inherent* vulnerability, which is well-recognized in the law, entitles them to the presumption of diminished moral culpability: See *DB*, *supra* note 49 at [para 61](#); *AB v Bragg*, *supra* note 49 at [para 17](#).

⁸⁰ *YCJA*, *supra* note 3 at [s 3\(1\)\(b\)](#).

All the provisions of the *YCJA* must be read so as to make this principle meaningful, including the non-publication and privacy protections, and the provisions regulating access to records found in Part 6.

59. In accordance with these principles, the *YCJA* establishes enhanced procedural and privacy protections at all stages of criminal proceedings, from investigation to disposition. The *YCJA* purposefully modifies almost every aspect of the adult criminal justice system – providing a modified bail system, a unique sentencing regime, special case conferences, unique psychological reports, and more.

60. The Supreme Court of Canada and the Court of Appeal for Ontario recognize that because of the unique vulnerability of young people in criminal justice they require enhanced safeguards beyond what is available to adults. In affirming the need for enhanced procedural protections that must be implemented to adequately protect the rights and *Charter* interests of young people, the court said:

Parliament has in this way underscored the generally accepted proposition that procedural and evidentiary safeguards available to adults do not adequately protect young persons, who are presumed on account of their age and relative unsophistication to be more vulnerable than adults to suggestion, pressure and influence in the hands of police interrogators.⁸¹ [emphasis added]

The Court of Appeal, in the context of DNA orders, specifically noted: “We cannot assume, for example, as with an adult offender, that there will be minimal impact on a young person's privacy and security of the person [by making a DNA order].”⁸²

61. This same approach – recognition that legal principles must be approached differently when dealing with young people than with adults – must be applied to the regulation of access

⁸¹ *R v LTH*, [2008 SCC 49](#) at [para 3](#).

⁸² *R v KB*, [2003 CanLII 13967 \(ON CA\)](#) at [para 8](#).

to records in an open court. What is appropriate in terms of access to records in matters concerning adults will generally not be appropriate in matters concerning young people. The many contexts where this is the case reflects an appreciation of this required modification.⁸³

62. The nature of the information sometimes contained in the youth records is an additional consideration in this context. Youth court records can contain extremely sensitive information, often including health information, child protection information, intimate information about the young person's life circumstances and well-being, including for example adverse childhood experiences like violence and victimization. The significant privacy interests in personal information contained in youth records – rooted in concern for the dignity, autonomy, and integrity of young people, the goals of minimizing stigmatization and labelling, as well as the overarching concerns for rehabilitation, reintegration and well-being are even more heightened given the kinds of information in the records. Enhanced protections for young people in order to protect dignity, autonomy, and integrity have been found to apply not only in the criminal justice context, but also in the legal system more broadly.⁸⁴

E. CHARTER ANALYSIS CONTENT: BALANCING RIGHTS AND INTERESTS

63. As a proposed “cure” to the claimed *Charter* violation, the applicants seek administrative access to all records in a youth court file, without redactions and without judicial oversight. JFCY submits that heightened inherent vulnerability of young people must inform the analysis of the *Charter*-protected interests at stake. All of the foregoing, taken together, supports JCFY's proposed approach to the questions before this Court.

⁸³ See paragraphs 12-18 above.

⁸⁴ *AB v Bragg*, [supra](#) note 49 at [para 18](#) – citing *Toronto Star, 2012*, [supra](#) note 49; See also the privacy protections afforded in family law proceedings outlined at paragraphs 12-18 of this factum.

64. The enhanced privacy protections provided to young people whose interests are engaged under the *YCJA*, must be interpreted in accordance with their *Charter* rights, and as mandated by existing jurisprudence, and international legal obligations and protections.

65. Justice Cohen writing in *Toronto Star Newspaper Ltd*, 2012, has been quoted affirmatively by the Supreme Court of Canada, and recently by the Court of Appeal for Ontario saying the following:

The concern to avoid labelling 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.⁸⁵ [emphasis added]

66. The *YCJA* privacy protections are themselves entitled to recognition of their *Charter* significance and are part of and flow from the principle of diminished moral blameworthiness recognized as a principle of fundamental justice.⁸⁶ The Supreme Court provides additional context noting that “a broad consensus reflecting society’s values and interests exists, namely that the principle of a presumption of diminished moral culpability in young persons is fundamental to our notions of how a fair legal system ought to operate”.⁸⁷

⁸⁵ *TO Star*, 2012, *supra* note 49 at [paras 40-41](#); it is notable that Justice Cohen’s analysis here was specifically adopted by the Supreme Court of Canada in *AB v Bragg*, *supra* note 49 at [para 18](#).

⁸⁶ *DB*, *supra* note 49 at [paras 61-69](#), [83-87](#), [95](#).

⁸⁷ *DB*, *supra* note 49 at [para 68](#).

67. The principle of diminished moral blameworthiness is a principle of fundamental justice, a *Charter* protected right of young people engaged in the youth criminal justice system. The enactment of provisions that provide enhanced privacy protections are part of the way in which this principle of fundamental justice is recognized and protected. Any analysis of other *Charter* protected rights, including the open court principle, must be evaluated with due regard for the equally important *Charter* protected interests of young people.

68. The Applicant suggests that unfettered media access to youth records is required by the open court principle and protects young people from the possible rights violations of closed courts. This proposition makes reference to the concerns of the past, which were related to the closed courts under the *Juvenile Delinquents Act*. These concerns were resolved over 40 years ago when the youth criminal court system was overhauled by the *Young Offender's Act*.⁸⁸

69. Public access to the justice system, through open courts as facilitated by media access, is a well-established and constitutionally protected principle. That is not in question. However, also well-recognized are the enhanced privacy protections that must be integrated into the justice system to account for the unique developmental stage and heightened vulnerabilities of young people who are before the courts.

70. The impugned provisions in this case do not violate the open court principle, they modify the approach to accessing court records in the context of youth criminal justice, maintaining open courts and addressing the unique context of the privacy interests of children.

71. As referenced above, the Court of Appeal in *R v CBC* comprehensively addressed the appropriate approach to a media request for access to youth court records. There is no explicit

⁸⁸ *Young Offenders Act*, [RSC 1985, c Y-1](#).

provision in the *YCJA* that provides for media to access records. This is appropriate as the “media” and the public are seen as one, in the context of the open court principle analysis.

72. The Court made clear that “the *Dagenais-Mentuck-Sherman Estate* test does not supplant the statutory regime in ss. 118 and 119”, and that, “[t]he open court principle is a relevant consideration that should be given weight in determining whether a person should have access under s. 119(1)(s), ... however, it is not the only valid consideration.”⁸⁹ The youth court judge in that case noted:

Courts have consistently held that the media has a valid interest in youth court records and proceedings. [numerous citations omitted]

However, that does not end the analysis. The application judge must still determine whether access to the record by the media is still “desirable in the interest of the proper administration of justice” under section 119 (1)(s)(ii) of the Act, as set out above.⁹⁰

73. In *TO Star 2012, CBC v ON*, and the Kennedy station case, the youth courts provide access to records that are “part of the public proceeding”.⁹¹ JFCY submits that this maintains the open court and, as described, modifies access to records by including a regulating function by the courts.

74. A meaningful, purposive, and normative analysis of the *Charter*-protected interests at stake in this case requires attention to the unique features of adolescence, and attendant vulnerabilities, as well as the intersectional equity-based vulnerabilities including, Indigeneity, racialization, disability, child-welfare involvement etc. The circumstances of young people are critical to Court’s analysis of the public / media access to youth records and the privacy interests of young people in the youth criminal justice system.

⁸⁹ *R v CBC, ONCA*, [supra](#) note 33 at [para 82](#).

⁹⁰ *CBC v ON, OCJ*, [supra](#) note 33, at [paras 51-52](#), aff’d by *R v CBC, ONCA*, [supra](#) note 33.

⁹¹ *TO Star, 2012*, [supra](#) note 49 at [para 86](#); *CBC v ON, OCJ*, [supra](#) note 33; *Pagliari Affidavit*, Exhibit G.

75. In *R v LTH*, the Supreme Court of Canada supported a unique approach to *Charter* protections for young people, different from that afforded to adults. The Court specifically considered the unique vulnerability of young people in their interactions with police, finding that young persons “even more than adults, are inclined to feel vulnerable when questioned by police officers who suspect them of crime and can influence their fate”. It recognized the procedural safeguards generally available to adults do not adequately protect young persons, who are more vulnerable than adults to suggestion, influence, and pressure as a result of their age and relative lack of sophistication.⁹²

76. An analysis of young people’s *Charter* rights that does not attend to their unique place in society and their unique vulnerabilities as compared to adults fails to provide them the full scope of protection that the *Charter* is intended to provide. A developmental approach that accounts for their age and associated vulnerability, as well as other aspects of their social realities – such as Indigeneity, racialization, disability, child-protection involvement, etc. – is critical to an analysis that protects their rights and ensures, as above, that their constitutional rights are real, and not mere abstractions.

77. In addition, mandatory administrative access to youth records by the media implicates young people’s participation rights and interests. The *UNCRC* and the *YCJA* Declaration of Principle recognize the right of participation and, specific to the present context, the Court of Appeal held a young person has the right to notice and participation in a ss. 119(1)(s) application for their records.⁹³

⁹² *R v LTH*, [supra](#) note 82 at [paras 1, 3](#).

⁹³ *R v CBC*, (*ONCA*) [supra](#) note 33 at [para 91](#); *UNCRC*, [supra](#) note 4 at art 12; *General Comment No. 20*: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the *International Covenant on Economic, Social and Cultural Rights*) at [para 2 and para 12](#). [“*General Comment No. 20*”]; *YCJA*, [supra](#) note 3 at [s 3\(1\)\(d\)\(i\)](#).

78. JFCY submits that this Court must consider the impact on the rights of young people of failing to adapt processes and systems to account for the inherent vulnerability of young people in society and the justice system. The impact of that vulnerability, compounded by their social realities, should not be underestimated, nor should their unique position in relation to their privacy rights be discounted. It is appropriate that this Court recognize this adaptation of the historical access to records aspect of the open court to meaningfully protect those interests.

F. Conclusion

79. To give full constitutional effect to the principle of diminished moral blameworthiness, and to adequately preserve young people's right to enhanced privacy protections, and to comply with Canada's obligations under international law, the constitutionality of ss. 119(1)(s)(ii) and 129 must be upheld. An elevated burden on justice system actors is commonplace under the *YCJA*, in recognition of the unique position of adolescents in the justice system, and their rights and interests. Presumptive privacy protections, which require an onus on the public and media to seek judicial regulation for access to youth records, maintains the open court principle, and supports the rights and interests of young people.

PART IV – ORDER SOUGHT

80. JFCY respectfully requests an order dismissing the application and requests no order for costs be made against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of January, 2026.



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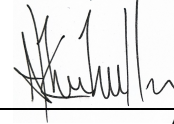
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Counsel for the Intervener, Justice for Children and Youth

CERTIFICATION OF AUTHORITIES

I, Allie McMillan, counsel for Justice for Children and Youth, am satisfied as to the authenticity of every authority cited in this factum.



Allie McMillan

Date: January 9, 2026
Allie McMillan

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2))

SCHEDULE “A” – AUTHORITIES REFERRED TO:

STATUTES AND REGULATIONS

1. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, [c 11](#)
2. *Youth Criminal Justice Act*, [S.C. 2002, c. 1](#)
3. *Child, Youth, and Family Services Act*, [2017, S.O. 2017, C-14](#)
4. *Divorce Act*, [RSC 1985, c 3 \(2nd Supp\)](#)
5. *Family Law Rules*, [O Reg 114/99](#)
6. *Courts of Justice Act*, [RSO 1990, c C.43](#)
7. *Children’s Law Reform Act*, [RSO 1990, c C.12](#)
8. *Young Offenders Act*, [RSC 1985, c Y-1](#)

JURISPRUDENCE

1. *AG (Nova Scotia) v MacIntyre*, [1982 CanLII 14 \(SCC\)](#)
2. *R v Canadian Broadcasting Corporation*, [2024 ONCA 765](#)
3. *Canadian Broadcasting Corporation v Ontario*, [2023 ONCJ 32](#)
4. *Young person 2 v CBC*, [2023 ONCJ 309](#)
5. *AB (Litigation Guardian of) v Bragg Communications Inc*, [2012 SCC 46](#)
6. *R v DB*, [2008 SCC 25](#)
7. *Toronto Star Newspaper Ltd. v Ontario*, [2012 ONCJ 27](#)
8. *R v L(DO)*, [1993 CanLII 46 \(SCC\)](#)
9. *R v CP*, [2021 SCC 19](#)
10. *Mason v Canada (Citizenship and Immigration)*, [2023 SCC 21](#)
11. *Baker v Canada*, [1999 SCC 699](#)

12. *Divito v Canada (Public Safety and Emergency Preparedness)*, [2013 SCC 47](#)
13. *R v RC*, [2005 SCC 61](#)
14. *R v KJM*, [2019 SCC 55](#)
15. *Kanthasamy v Canada (Citizenship and Immigration)*, [2015 SCC 61](#)
16. *ARP v Children's Aid Society of London and Middlesex*, [2024 ONSC 4023 \(Div Ct\)](#)
17. *SS v RS*, [2021 ONSC 2137](#)
18. *Ward v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, [2021 SCC 43](#)
19. *R v McGregor*, [2023 SCC 4](#)
20. *SL v NB*, [2005 CanLII 11391 \(ONCA\)](#)
21. *R v LTH*, [2008 SCC 49](#)
22. *R v KB*, [2003 CanLII 13967 \(ON CA\)](#)

SECONDARY SOURCES

1. [United Nations Convention on the Rights of the Child](#), 20 November 1989, Can. T.S. 1992 No. 3.
2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33 (November 29, 1985) ("[Beijing Rules](#)").
3. Committee on the Rights of the Child, *General Comment No. 24 on children's rights in the child justice system*, UNCRCOR, [UN DOC CRC/C/GC/24](#) (18 September 2019).
4. [General Comment No. 20](#): Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the *International Covenant on Economic, Social and Cultural Rights*).

SCHEDULE “B”

RELEVANT PROVISIONS OF STATUTES, REGULATIONS, AND BY-LAWS

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:

...

Declaration of Principle

Policy for Canada with respect to young persons

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

- (a)** the youth criminal justice system is intended to protect the public by
 - (i)** holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,
 - (ii)** promoting the rehabilitation and reintegration of young persons who have committed offences, and
 - (iii)** supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;
- (b)** the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:
 - (i)** rehabilitation and reintegration,
 - (ii)** fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
 - (iii)** enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
 - (iv)** timely intervention that reinforces the link between the offending behaviour and its consequences, and
 - (v)** the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;
- (c)** within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
 - (i)** reinforce respect for societal values,
 - (ii)** encourage the repair of harm done to victims and the community,

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

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

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

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,

(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

Act to be liberally construed

(2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

2002, c. 1, s. 3

...

Medical or psychological assessment

34 (1) A youth justice court may, at any stage of proceedings against a young person, by order require that the young person be assessed by a qualified person who is required to report the results in writing to the court,

- (a) with the consent of the young person and the prosecutor; or
- (b) on its own motion or on application of the young person or the prosecutor, if the court believes a medical, psychological or psychiatric report in respect of the young person is necessary for a purpose mentioned in paragraphs (2)(a) to (g) and
 - (i) the court has reasonable grounds to believe that the young person may be suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, a learning disability or a mental disability,
 - (ii) the young person's history indicates a pattern of repeated findings of guilt under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or

...

Report to be part of record

34 (12) A report made under subsection (1) forms part of the record of the case in respect of which it was requested.

...

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.

...

Persons having access to records

Records of assessments or forensic DNA analysis

[119 \(6\)](#) 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).

...

Disclosures for research or statistical purposes

[119 \(8\)](#) 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.

...

Disclosure for research or statistical purposes

120 (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.

...

Disclosure for research or statistical purposes

123 (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.

...

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.

...

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

Rules re hearings

Hearings private unless court orders otherwise

87 (4) A hearing shall be held in the absence of the public, subject to subsection (5), unless the court orders that the hearing be held in public after considering,

- (a) the wishes and interests of the parties; and
- (b) whether the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding. 2017, c. 14, Sched. 1, s. 87 (4).

Media representatives may attend

(5) Media representatives chosen in accordance with subsection (6) may be present at a hearing that is held in the absence of the public, unless the court makes an order excluding them under subsection (7). 2017, c. 14, Sched. 1, s. 87 (5).

Selection of media representatives

(6) The media representatives who may be present at a hearing that is held in the absence of the public shall be chosen as follows:

1. The media representatives in attendance shall choose not more than two persons from among themselves.
2. Where the media representatives in attendance are unable to agree on a choice of persons, the court may choose not more than two media representatives who may be present at the hearing.
3. The court may permit additional media representatives to be present at the hearing. 2017, c. 14, Sched. 1, s. 87 (6).

Order excluding media representatives or prohibiting publication

(7) Where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding, the court may make an order,

- (a) excluding a particular media representative from all or part of a hearing;
- (b) excluding all media representatives from all or a part of a hearing; or
- (c) prohibiting the publication of a report of the hearing or a specified part of the hearing. 2017, c. 14, Sched. 1, s. 87 (7).

Prohibition re identifying child

(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family. 2017, c. 14, Sched. 1, s. 87 (8).

Exception

(8.1) Despite subsection (8), a prescribed person may publish or make public the information described in that subsection in the prescribed circumstances and subject to any prescribed restrictions or limitations. 2024, c. 17, s. 4.

Prohibition re identifying person charged

(9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part. 2017, c. 14, Sched. 1, s. 87 (9).

Transcript

(10) No person except a party or a party's lawyer shall be given a copy of a transcript of the hearing, unless the court orders otherwise. 2017, c. 14, Sched. 1, s. 87 (10).

...

Appeal

Application of s. 87

[121 \(8\)](#) Section 87 (rules re hearings) applies with necessary modifications to an appeal under this section. 2017, c. 14, Sched. 1, s. 121 (8).

...

Application for order for child's commitment

Hearing Private

[161\(7\)](#) A hearing under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

...

Rules re applications

Hearing in private

[204 \(1\)](#) An application for an adoption order shall be heard and dealt with in the absence of the public.

...

Appeals

Hearing in private

[215\(6\)](#) An appeal under this section shall be heard in the absence of the public. 2017, c. 14, Sched. 1, s. 215 (6).

...

Court papers

[222 \(1\)](#) In this section,

“court” includes the Superior Court of Justice.

Requirement to seal documents

(2) Subject to subsections (3) and 224 (2), the documents used on an application for an adoption order under this Part or Part VII (Adoption) of the old Act shall be sealed up together with a certified copy of the original order and filed in the court office by the appropriate court officer, and shall not be opened for inspection except by court order.

[Family Law Rules](#), O Reg 114/99

Rule 1.3: Access to court files

Definition

1.3 (1) In this rule,

“restricted access order” means an order that access to all or part of a court file be limited or that any portion of it be redacted before being provided to a person, including an order under subsection 137 (2) of the Courts of Justice Act or clause 70 (1) (a) of the Children’s Law Reform Act. O. Reg. 590/22, s. 1.

Requirement to notify re access to certain filed documents

(2) Subject to subrule (4), a person who, under subsection 137 (1) of the Courts of Justice Act, wishes to see any document filed in a case referred to in subrule (3) must first give at least 10 days written notice to,

(a) the parties to the case; and

(b) the Children’s Lawyer, if the Children’s Lawyer is,

(i) representing a child in the case, or

(ii) conducting an investigation under section 112 of the Courts of Justice Act in relation to the case. O. Reg. 590/22, s. 1.

Affected cases

(3) Subrule (2) applies with respect to the following cases, unless the case is already subject to a restricted access order:

1. A case involving a claim respecting decision-making responsibility, parenting time or contact with respect to a child under the Divorce Act (Canada) or Part III of the Children’s Law Reform Act.

2. A case involving an order under Part I of the Children’s Law Reform Act.

3. An international child abduction case. O. Reg. 590/22, s. 1.

Note: On the day section 3 of Schedule 9 to the Cutting Red Tape, Building Ontario Act, 2024 comes into force, subrule 1.3 (3) of the Regulation is amended by adding the following paragraphs: (See: O. Reg. 150/25, s. 1)

4. A case involving the filing of a domestic contract under subsection 35 (1) of the Family Law Act.

5. A case involving the filing of a family arbitration award under section 59.9 of the Family Law Act.

Exempted persons

(4) Subrule (2) does not apply with respect to the following persons:

1. A party or their licensed representative.
2. A person authorized in writing by a party or the party's licensed representative.
3. The Director of the Family Responsibility Office.
4. The Children's Lawyer.
5. A children's aid society.
6. Legal Aid Ontario.
7. A recipient, or an agency referred to in clause (b) or (c) of the definition of "recipient" in subrule 2 (1) when attempting to determine whether it is a recipient.
8. A Crown Attorney, assistant Crown Attorney or Deputy Crown Attorney.
9. A police officer, First Nation Officer or officer of the Royal Canadian Mounted Police, when acting in the course of their duties.
10. A service provider within the meaning of section 149 of the *Courts of Justice Act*. O. Reg. 590/22, s. 1; O. Reg. 105/23, s. 1 (1, 2); O. Reg. 172/25, s. 2.

Shortening notice time

(5) The court may shorten the time specified in subrule (2) under subrule 3 (5), but only if it is of the opinion that there is a situation of urgency requiring it. O. Reg. 590/22, s. 1.

Request for restricted access order

(6) A party who receives notice under subrule (2) and who wants to obtain a restricted access order with respect to the court file shall do so by making a motion before the expiry of the notice period specified under that subrule requesting the order. O. Reg. 590/22, s. 1.

Motion form

(7) Despite subrule 14 (9),

(a) the party making the motion shall use a motion form (Form 14B) instead of a notice of motion; and

(b) an affidavit (Form 14A) may be included, but is not required to be included. O. Reg. 590/22, s. 1.

Service

(8) The motion form shall be served on every other party to the case, the person who gave notice under subrule (2), and, if the notice was given to the Children’s Lawyer under clause (2) (b), the Children’s Lawyer. O. Reg. 590/22, s. 1.

Exception

(9) Subrules (6) to (8) do not apply if, at the time a party receives notice under subrule (2), the party has already made a motion or application for a restricted access order. O. Reg. 590/22, s. 1.

Access to document

(10) Access to a document filed in a case to which subrule (2) applies shall not be given to a person to whom that subrule applies, until,

(a) the person files an affidavit (Form 14A) confirming,

(i) the date on which the person gave notice under subrule (2), and to whom and by what method, and

(ii) that the person has not been served with notice of a motion or application for a restricted access order; or

(b) if a motion or application has been made in accordance with these rules for a restricted access order, the court determines the motion or application. O. Reg. 590/22, s. 1; O. Reg. 105/23, s. 1 (3).

...

Rule 2: Interpretation

Definitions

2. (1) In these rules,

“address” means a person’s street or municipal address, mailing address, telephone number, fax number and email address; (“adresse”)

“appellant” means a person who starts an appeal; (“appellant”)

“applicant” means a person who starts an application; (“requérant”)

“application” means, as the context requires, the document that starts a case or the procedure by which new cases are brought to the court for a final order or provisional order; (“requête”)

“arbitration agreement” means an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them; (“convention d’arbitrage”)

“bond” includes a recognizance, and expressions that refer to the posting of a bond include the act of entering into a recognizance; (“cautionnement”)

“case” means an application or any other method allowed in law for bringing a matter to the court for a final order or provisional order, and includes all motions, enforcements and appeals; (“cause”)

“change”, when used to refer to an order or agreement, means to vary, suspend or discharge, or a variation, suspension or discharge (depending on whether the word is used as a verb or as a noun); (“modifier”, “modification”)

“child” means a child as defined in the Act governing the case or, if not defined in that Act, a person under the age of 18 years, and in a case under the *Divorce Act* (Canada) includes a “child of the marriage” within the meaning of that Act; (“enfant”)

“child protection case” means a case under Part V of the *Child, Youth and Family Services Act, 2017*; (“cause portant sur la protection d’un enfant”)

“child support guidelines” means Ontario Regulation 391/97 (Child Support Guidelines) made under the *Family Law Act*, or the Federal Child Support Guidelines, as the case may be; (“lignes directrices sur les aliments pour les enfants”)

“clerk” means a person who has the authority of a clerk or a registrar of the court; (“greffier”)

“contempt motion” means a motion for a contempt order; (“motion pour outrage”)

“contempt order” means an order finding a person in contempt of court; (“ordonnance pour outrage”)

“continuing record” means the record made under rule 9 containing, in accordance with these rules, written documents in a case that are filed with the court; (“dossier continu”)

“corporation” *French version only*.

“court” means the court in which a case is being heard; (“tribunal”)

“default hearing” means a hearing under section 41 of the *Family Responsibility and Support Arrears Enforcement Act, 1996* in which a payor is required to come to court to explain why payment has not been made as required by a support order; (“audience sur le défaut”)

“Director of the Family Responsibility Office” means the Director of the Family Responsibility Office under the *Family Responsibility and Support Arrears Enforcement Act, 1996*, and “Director” has the same meaning, unless the context requires otherwise; (“directeur du Bureau des obligations familiales”, “directeur”)

“document” means information, sound or images recorded by any method; (“document”)

“domestic contract” has the same meaning as in Part IV of the *Family Law Act*; (“contrat familial”)

“enforcement” means the use of one or more remedies mentioned in rule 26 (enforcement of orders) to enforce an order; (“exécution”)

“family arbitration” means an arbitration that,

(a) deals with matters that could be dealt with in a marriage contract, separation agreement, cohabitation agreement or paternity agreement under Part IV of the *Family Law Act*, and

(b) is conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction; (“arbitrage familial”)

“family arbitration agreement” and “family arbitration award” have meanings that correspond to the meaning of “family arbitration”; (“convention d’arbitrage familial”, “sentence d’arbitrage familial”)

“family legal services provider” means a paralegal authorized under the *Law Society Act* to provide specific family legal services; (“prestataire de services en droit de la famille”)

“file” means to file, with proof of service where service is required,

(a) in the court office in the municipality where the case or enforcement is started or to which the case or enforcement is transferred, or

(b) electronically in accordance with these rules; (“déposer”)

“final order” means an order, other than a temporary order, that decides a claim in an application, including,

(a) an order made on motion that changes a final order,

(b) a judgment, and

(c) an order that decides a party’s rights, in an issue between the parties or between a party and a non-party; (“ordonnance définitive”)

“government agency” means the Crown, a Crown agency, a municipal government or agency, a children’s aid society or any other public body; (“organisme gouvernemental”)

“income source” has the same meaning as in the *Family Responsibility and Support Arrears Enforcement Act, 1996*; (“source de revenu”)

“international child abduction case” means an application involving the alleged wrongful removal to or retention of a child in Ontario that is made under section 40 of the *Children’s Law Reform Act* or under the Convention on the Civil Aspects of International Child Abduction, set out in the Schedule to section 46 of that Act, if the removal or retention involves a jurisdiction outside Canada; (“cause portant sur l’enlèvement international d’un enfant”)

“lawyer” means a person authorized under the *Law Society Act* to practise law in Ontario; (“avocat”)

“legal aid rate” means the rate payable by Legal Aid Ontario on an account submitted to it by a service provider for copying in the service provider’s office; (“tarif de l’aide juridique”)

“licensed representative” means a lawyer or family legal services provider; (“représentant titulaire d’un permis”)

“mail”, when used as a noun, means ordinary or regular mail, and when used as a verb means to send by ordinary or regular mail; (“poste”)

“municipality” means a county, district, district municipality, regional municipality, the City of Toronto or a municipal corporation formed from the amalgamation of all the municipalities of a county, district, district municipality or regional municipality, and includes,

(a) an Indian reserve within the territorial area of a municipality, and

(b) the part of The Regional Municipality of Niagara that was the County of Lincoln as it existed on December 31, 1969; (“municipalité”)

“on motion” means on motion of a party or a person having an interest in the case; (“sur motion”)

“paralegal” means a person authorized under the *Law Society Act* to provide legal services in Ontario; (“parajuriste”)

“payment order” means a temporary or final order, but not a provisional order, requiring a person to pay money to another person, including,

(a) an order to pay an amount under Part I or II of the *Family Law Act* or the corresponding provisions of a predecessor Act,

(b) a support order,

(c) a support deduction order,

(d) an order under section 108 or subsection 213 (2) of the *Child, Youth and Family Services Act, 2017*, or under the corresponding provision of a predecessor Act,

(e) a payment order made under rules 26 to 32 (enforcement measures) or under section 41 of the *Family Responsibility and Support Arrears Enforcement Act, 1996*,

(f) a fine for contempt of court,

(g) an order of forfeiture of a bond or recognizance,

(h) an order requiring a party to pay the fees and expenses of,

(i) an assessor, mediator or other expert named by the court, or

(ii) a person conducting a blood test to help determine a child's parentage, and

(i) the costs and disbursements in a case; (“ordonnance de paiement”)

“payor” means a person required to pay money under an order or agreement, and includes the estate trustee of a payor who died; (“payeur”)

“periodic payment” means an amount payable at regular intervals and includes an amount payable in instalments; (“paiement périodique”)

“property claim” means a claim,

(a) under Part I of the *Family Law Act*,

(b) for a constructive or resulting trust, or

(c) for a monetary award as compensation for unjust enrichment; (“demande portant sur des biens”)

“provisional order” means an order that is not effective until confirmed by a court; (“ordonnance conditionnelle”)

“recipient” means a person entitled to receive money or costs under a payment order or agreement, including,

(a) a person who is entitled to money for the benefit of a child under a support order,

(b) in the case of a support order made under the *Family Law Act*, an agency referred to in subsection 33 (3) of that Act,

(c) in the case of a support order made under the *Divorce Act* (Canada), an agency referred to in subsection 20.1 (1) of that Act,

(d) a children's aid society entitled to money under an order made under section 108 or subsection 213 (2) of the *Child, Youth and Family Services Act, 2017*, or the corresponding provision in a predecessor Act,

(e) an assessor, mediator or other expert entitled to fees and expenses from the party named in the order, and

(f) the estate trustee of a person who was entitled to money under an order at the time of his or her death; (“bénéficiaire”)

“Registrar General” means the Registrar General under the *Vital Statistics Act*; (“registraire général de l’état civil”)

“respondent” means a person against whom a claim is made in an application, answer or appeal; (“intimé”)

“special party” means a party, other than a child party, who is or appears to be mentally incapable for the purposes of the *Substitute Decisions Act, 1992* in respect of an issue in the case and who, as a result, requires legal representation; (“partie spéciale”)

“support deduction order” means a support deduction order as defined in section 1 of the *Family Responsibility and Support Arrears Enforcement Act, 1996*; (“ordonnance de retenue des aliments”)

“support order” means an order described in subsection 34 (1) of the *Family Law Act* or a support order as defined in subsection 2 (1) of the *Divorce Act* (Canada) or in section 1 of the *Family Responsibility and Support Arrears Enforcement Act, 1996*; (“ordonnance alimentaire”)

“temporary order” means an order that says it is effective only for a limited time, and includes an interim order; (“ordonnance temporaire”)

“trial” includes a hearing; (“procès”)

“trial sitting” means the period of time set by the court in which a trial will be scheduled to be held; (“session”)

“uncontested trial” means a trial at which only the party making the claim provides evidence and submissions. (“procès non contesté”) O. Reg. 114/99, r. 2 (1); O. Reg. 544/99, s. 2; O. Reg. 76/06, s. 2; O. Reg. 439/07, s. 2; O. Reg. 388/12, s. 2; O. Reg. 142/14, s. 2; O. Reg. 69/15, s. 2; O. Reg. 140/15, s. 4; O. Reg. 298/18, s. 3 (1-5); O. Reg. 250/19, s. 1; O. Reg. 649/20, s. 2; O. Reg. 42/21, s. 1; O. Reg. 522/21, s. 2; O. Reg. 781/21, s. 2; O. Reg. 320/22, s. 2; O. Reg. 105/23, s. 2; O. Reg. 172/25, s. 3 (1, 2); O. Reg. 228/25, s. 2.

Courts of Justice Act, [RSO 1990, c C.43](#)

Sealing documents

[137 \(2\)](#) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Children’s Law Reform Act, [RSO 1990, c C.12](#)

Definitions and interpretation, Part I

Definitions

[1 \(1\)](#) In this Part,

“assisted reproduction” means a method of conceiving other than by sexual intercourse; (“procréation assistée”)

“birth” means birth as defined in the *Vital Statistics Act* and includes a still-birth as defined in that Act; (“naissance”)

“birth parent” means, in relation to a child, the person who gives birth to the child; (“parent de naissance”)

“court” means the Family Court or the Superior Court of Justice; (“tribunal”)

“embryo” means embryo as defined in the *Assisted Human Reproduction Act* (Canada); (“embryon”)

“insemination by a sperm donor” means an attempt to conceive a child through sexual intercourse in the circumstances described in subsection 7 (4); (“insémination par un donneur de sperme”)

“reproductive material” means all or any part of a sperm, ovum or other human cell or a human gene; (“matériel reproductif”)

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage; (“conjoint”)

“surrogate” means a person who agrees to carry a child conceived through assisted reproduction if, at the time of conception, the person intends to relinquish entitlement to parentage of the child, once born, to one or more persons. (“substitut”) 2016, c. 23, s. 1 (1).

If marriage is void

(2) For the purposes of the definition of “spouse” in subsection (1), two persons who, in good faith, go through a form of marriage with each other that is void but who live in a conjugal relationship are deemed to be married during the time they live in a conjugal relationship, and the marriage is deemed to be terminated when they cease to do so. 2016, c. 23, s. 1 (1).

Interpretation, conception through assisted reproduction

(3) For the purposes of this Part, a child conceived through assisted reproduction is deemed to have been conceived on the day the reproductive material or embryo used in the assisted reproduction is implanted in the birth parent. 2016, c. 23, s. 1 (1).

...

Confidentiality

70 (1) Where a proceeding includes an application under this Part, the court shall consider whether it is appropriate to order,

- (a) that access to all or part of the court file be limited to,
 - (i) the court and authorized court employees,
 - (ii) the parties and their counsel,
 - (iii) counsel, if any, representing the child who is the subject of the application, and
 - (iv) any other person that the court may specify; or
- (b) that no person shall publish or make public information that has the effect of identifying any person referred to in any document relating to the application that appears in the court file. 2009, c. 11, s. 18.

Court File No: CV-24-00732679-0000

**CANADIAN BROADCASTING
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LTD. and LA PRESSE**
Applicants

and

THE ATTORNEY GENERAL OF CANADA
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding commenced at Milton, transferred to Toronto

**FACTUM OF THE INTERVENER
JUSTICE FOR CHILDREN AND YOUTH**

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