IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. K.B., 2014 NSPC 24

Date: May 20, 2014
Docket: 2632254, 2632255, 2632431, 2632432
Registry: Halifax

The Halifax Herald Limited, Canadian Broadcasting Corporation, Global news, a division of Shaw Media Inc., and CTV, a division of Bell Media Inc., Applicants

and

Her Majesty the Queen, Respondent

and

K.B. and C.S., Respondents

APPLICATION DECISION

Judge: The Honourable Judge Jamie S. Campbell

Heard: May 16, 2014

Decision: May 20, 2014

Charge: CC 163.1(3)(a), CC 163.1(2)(a)

Counsel: Alexander Smith - Crown Attorney

Brian Church, Q.C. and Ian Gray - Defence Counsel
Ian Hutchison - Defence Counsel
Nancy Rubin, Q.C., - Counsel for the Applicants

By the Court:

1. An application has been made on behalf of The Halifax Herald Limited, Canadian Broadcasting Corporation, Global News, a division of Shaw Media Inc., and CTV, a division of Bell Media Inc., for the revocation of a publication ban issued under section 486.4(3) of the *Criminal Code*. That order was made on 30 April 2014.

2. The order was made in the context of a highly publicized case involving allegations relating to the production and distribution of child pornography. The young person whose identity is purported to be protected by the publication ban is more than just well-known. As Ms. Rubin has noted in her brief to the court, "she has achieved quasi-celebrity status where she is known by just her first name".

3. The issue isn't whether I think the ban serves any purpose or makes any sense in the peculiar circumstances of this individual case. It is whether, in a matter involving child pornography, I have the legal authority to not issue the order or to amend it. You'll hear the phrase "child pornography" repeated many times. There's a reason for that. This case is taking place in the context of a much larger public, political and social narrative famously referred to by the name of the young person to whose identity the ban applies. It is and it remains however a case about child pornography.

The Publication Ban in Child Pornography Cases:

4. The language of section 486.4(3) of the *Criminal Code* is clear. It says that a judge "shall" order a publication ban in every case where child pornography is alleged to be involved. When the word "shall" is used in a statute it means that the judge has no choice in the matter. When child pornography is involved the judge has to make the order. There is no discretion to be exercised. There is no provision that allows the judge to consider whether the imposition of the ban is in the public interest, in anyone's interest, is practically enforceable, has been notoriously flouted or is even contrary to the public interest.

5. The notice of application filed by Ms. Rubin includes a written statement dated 5 May 2014, from the parents of the young person whose identity is banned from publication. It indicates their consent to the disclosure of her name. It goes beyond mere consent. They note that continuing to raise awareness of their daughter is in the public interest and that she should remain a presence in the current court proceeding. They state that knowledge about her and her story have helped to facilitate legislative reform and raise awareness of issues relevant to Canadians. They have expressed their most vehement disagreement with the imposition of the publication ban.

6. There is no provision in the *Criminal Code* to permit the child or the parents of a child who is depicted in the images alleged to be child pornography to waive the ban on publication of his or her identity. That isn't some kind of narrow legalism. That is the law of Canada as it relates to child pornography. It isn't an

attempt by the legal system to hide that now famous name from the public or to stifle discussion about those broader issues. It isn't a vain attempt to remove her picture from sight, to make memorial tributes to her somehow illegal or to prevent people from uttering her name. It is the application of this country's child pornography laws as they relate to this case and this case is about child pornography.

7. Judges aren't authorized just to act on their sense or the community's sense of what the right thing to do might be in a particular case. Judges have to apply the law. They can do that with a bit of creativity or imagination to achieve a just result in an individual case. But one thing they can't do is to ignore the law. They can't pick which laws they will or won't apply. They can't just create exceptions and define them on the fly.

8. I have to consider here whether the law can be reasonably interpreted to allow me to revoke or amend the publication ban under s. 486.4(3) in this case. This application doesn't involve a challenge to the constitutional validity of the legislation under the *Charter of Rights and Freedoms*. If I am to be permitted to revoke the ban I have to find the authority to do that within the provisions of the legislation as it is worded now.

Revocation of the Publication Ban:

9. Ms. Rubin has referred me to the Supreme Court of Canada decision in *R .v. Adams*[1] The case confirms the proposition that as a general rule a court has the authority to reconsider its own orders. I accept that I have the jurisdiction to review the order made on 30 April imposing the ban.

10. In *Adams* the trial judge issued the publication ban at the request of the Crown, in a sexual assault case. The ban is quite different from the one involved here. The ban was issued under then s. 486(4) which is similar to s. 486.4(1) and (2) but not like s. 486.4(3). That section provided for a ban in a sexual assault matter that could be issued by a judge but had to be issued if requested by the Crown, a witness or the complainant. The judge acquitted the accused after finding that the complainant's evidence was not credible. On his own motion he rescinded the publication ban and said that the ban should apply only to those who give honest evidence. The Crown objected to the ban being lifted.

11. The Supreme Court commented on the purpose of publication bans in matters involving sexual offences. The mandatory nature of an order was described as furthering the goal of encouraging the reporting of those kinds of offences. Citing Lamer J. in *Canadian Newspapers Co .v. Canada (Attorney General)* [2] Sopinka J. noted that "complainants must be certain that their names will not be

[1] [1995] 4 S.C.R. 707

[2] [1988] 2. S.C.R. 122

published for the objective of the publication ban to be achieved,"[3] and went on to quote from *Canadian Newspapers*.

> *Obviously since the fear of publication is one of the factors that influences the reporting of sexual assault, certainty with respect to non-publication at the time of deciding whether to report plays a vital role in that decision. Therefore, a discretionary provision under which the judge retains the power to decide whether to grant or refuse the ban on publication would be counterproductive, since it would deprive the victim of that certainty.* [4]

12. The court noted that if the trial judge were given the power to revoke the ban the complainant would never be certain that his or her anonymity would be preserved. The ban would serve as little more than a "temporary guarantee" of anonymity.

13. A court does have a limited power to revoke and rescind an order if the circumstances that were present at the time the order was made and justified making the order in the first place have materially changed. In A*dams* the order became mandatory on request by the Crown. The Crown had not withdrawn its application so the order remained mandatory. In the case of a mandatory order, if what makes the order mandatory is still present, the order can't be revoked.

> *Where the order is required to be made by statute, the circumstances that are relevant are those whose presence makes*

[3] Adams para. 25

[4] Canadian Newspapers, p. 132

> *the order mandatory. As long as these circumstances are present, there cannot be a material change in circumstances. Subsection (3) and (4) of s. 486 make the order banning publication mandatory on the application of the prosecutor, the complainant or a witness under the age of 18. In this case, the circumstance that made the order mandatory was an application by the prosecutor. The crown did not withdraw its application or consent to the revocation of the order. Accordingly, the circumstances that were present and required the order to be made had not changed. The trial judge therefore did not have the power to revoke the order.* [5]

14. The court noted beyond that that even had the Crown in that case consented to the revocation of the order but the compliant did not, the trial judge would have had no authority to revoke it. The complainant was entitled to publication ban even if the Crown had not applied for it. In this case, what makes the order mandatory is not an application by anyone but simply the presence of charges involving child pornography. As long as those charges are involved there is no authority to lift the ban.

15. Reference has been made to a number of other cases that have applied the principles in *Adams*.

16. In *R. v. Morin*[6] the Ontario Court of Appeal dealt with an application to revoke orders banning the publication of information that would disclose the identity of an informer. The applicants in that case took the view that the calling of a public inquiry was of such singular significance that it made the case an exception and warranted the revocation of the ban. The informer, who intervened,

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[5] Adams, para. 30, 31

[6] 1997 CarswellOnt 400 (ONCA)

argued that the fact of a public inquiry didn't constitute a material change in the circumstances that would justify varying the order. The court disagreed, stating that the trial judge could not have anticipated that the case would have ended up as the subject of a public inquiry. New circumstances can arise which, although they are not related to the matters justifying the order in the first place, are so exceptional that they warrant a second look. In that case the Court of Appeal agreed to the second look, balanced the issues and maintained the ban.

17. The applicants contend that the importance of *Morin* lies in the holding that "exceptional, unrelated circumstances may arise subsequent to the issuance of the initial order that may justify review." A judge can reconsider a discretionary ban when exceptional things happen. It does not at all mean that exceptional circumstances can be used to set aside a mandatory order when the things that made the order mandatory in the first place are still there. Nothing in *Morin* suggests that.

18. In *R. v. Adolph B.*[7] both the Crown and the complainant sought to remove a publication ban on the complainant's identity. The accused person opposed lifting the ban for the sole reason that it would disclose his identity. The court lifted the ban because there was no reason to continue to impose it. What is important to note is that according to those sections dealing with publication bans in sexual assault matters, the mandatory aspect of the order is gone once the Crown and the complainant or witnesses no longer request it. The accused person is not one of the people on whose application the ban was required to be imposed.

[7] 33 O.R.(3d) 321, [1997] O.J. No. 1578

19. Similarly in *R. v. Ireland*[8] the CBC applied to lift a publication ban under then s. 486(3), on the identity of a complainant two years after the conviction was entered and subsequent to sentencing. Both the complainant and the Crown consented and the application was granted. The circumstances requiring the original order had changed. Section 486.4(3) and section 486(3) are not the same. They are in fact very different. Once again the application did not deal with an order that was mandatory even in the absence of an application from the Crown or a complainant.

20. In *R. v. Klasges*[9] a young woman had given birth to a child when she was 14 years old after being impregnated by her foster father. She was 16 at the time of the sentencing hearing and asked the court to lift the ban on publication. She wanted the media to be able to report using his name. The Crown didn't object to that request. Counsel for the Children's' Aid Society did object based on a concern about the impact the decision would have on other foster children. The court held that there was no further public interest to be served by the ban.

21. Once again this case deals with a section that provides for a mandatory publication ban only when the ban has been applied for by the Crown, the complainant or a witness. The withdrawal of the application was sufficient to show a change in circumstances.

22. Each of the cases referenced in support of the application deals with publication bans that are different in a singularly important way from the one under s. 486.4(3). In each case the ban is mandatory only when an application has been

[8] 2005 CanLII 45583 (ONSC)

[9] 2010 ONSC 3419

made for it. The cases stand for the proposition that when the parties who could apply no longer want it, the judge can consider the circumstances and revoke it. That is not the case here. Under section 486.4(3) the judge has to impose the ban even if no one asks for it, no one wants it, no one thinks it makes any sense at all, and it will have no real effect. Whether there are exceptional circumstances is irrelevant. Whether the ban is enforceable is irrelevant.

The Publication Ban and the Youth Criminal Justice Act:

23. Faced with that reality the lawyers have identified what might be described as a more creative or indirect approach. On its face it seems to present an elegant solution and a clever way out of the conundrum of how to get around the ban that nobody wants. (Actually it's the ban that everybody wants, to protect the victims in child pornography cases. They just don't want it for this case.) Both Ms. Rubin, and Mr. Smith for the Crown, have noted section 140 of the *Youth Criminal Justice Act*. That section says that the *Criminal Code* applies in youth matters except to the extent that it is inconsistent with the *Youth Criminal Justice Act*. Section 486.4(3) of the *Criminal Code* dealing with the mandatory ban in child pornography cases does not include a provision for a waiver by victims, parents or anyone else. There is a general privacy section contained in the *Youth Criminal Justice Act* that protects the identity of all youth witnesses and victims in every case. That provision does permit privacy rights to be waived in some circumstances. They argue that section 486.4(3) ought to be read with appropriate modification to ensure consistency with the general privacy provisions contained in section 111 of

the *Youth Criminal Justice Act*. What that would mean, really, is that because the two people accused of making and distributing the image involved were under 18 at the time, the parents of the young person alleged to be in the image could waive her privacy rights and publish her name. If the accused were over 18, her name would remain banned from publication.

24. With both the Crown and the applicants essentially in agreement, it presents an opportunity to go along to get along, ask no questions and satisfy most people in the process. I could do that.[10]

25. This second argument isn't really something that I have to deal with. The applicants have said and the Crown has agreed that s. 111(2) applies to permit the publication by the parents. If that's correct, it requires no order from the court and no order is being sought. In short, based on that argument, if the responsible media choose to report the name or identifying information, they don't need an order from the court to do that. A decision will be made as to whether they should be charged with failing to comply with the order under s. 486.4(3). The Crown has already said that once the parents "publish their daughter's name, s. 111(2) of the *YCJA* provides that the restriction on publication no longer applies".

26. The media have sought clarification and my concern is that a decision to just make no decision could be seen as a court endorsing the interpretation of the *Youth Criminal Justice Act* adopted by both the Crown and the applicants. I want to be very clear that I do not accept that interpretation. As a youth court judge, I simply can't be seen as endorsing it in any way.

[10] The Crown did not agree with the Applicants interpretation of R. v. Adams, but did agree that s. 486.4(3) should be read to be consistent with s. 111(2) of the Youth Criminal Justice Act. Counsel for K.B. argued that the ban should remain in place under s. 486.4(3) because it is a mandatory ban. Counsel for C.S. took no position on the application.

27. On an intuitive level the argument strikes a strange note. What possible reason could there be for offering different protections for child pornography victims based on the ages of the people alleged to have created the child pornography? What does the age of the accused have to do with whether the name of the victim can be published?

28. Section 111 of the *Youth Criminal Justice Act* deals directly with the issue of how the identity of young victims and witnesses should be protected. That section applies in every youth court case where there are victims or witnesses under 18. It even applies to the child or young person who gives evidence in court about seeing his friend's IPod stolen at school. It gives young people who are alleged to be victims, the kind of privacy protections that apply to those who are accused of having committed offences against them. It applies without any order being made. It allows for the waiver of that protection by the parents in the case of a young victim who is deceased, by the young person after reaching 18 or before with consent of the parents.

29. The applicants and the Crown have argued that the *Criminal Code* provision on publication bans for child pornography matters be applied with some modification in youth court. That would make the special section dealing with child pornography consistent with the general section that provides protection for the witness in the stolen IPod case. It means that in youth court, the protection offered child pornography victims can't be any more stringent than the privacy protection offered the young IPod witness. It was suggested his might indeed be an unfortunate consequence of statutory interpretation. Those consequences do not drive interpretation but they should inform it. When the consequences light up your conscience they might be telling you it's worth checking the interpretation again.

30. The difference between section 111 of the *Youth Criminal Justice Act* and section 486.4(3) of the *Criminal Code* is not the kind of inconsistency contemplated by section 140 of the *Youth Criminal Justice Act*.

31. Justice Abella in her dissenting judgment in *R. v. S.J.L.*[11] addressed what was meant by inconsistency as contemplated by section 140.

> *Together, these are clear statutory directions that the Criminal Code is not to be applied in a way that derogates from the unique conceptual, procedural and substantive legal terrain inhabited by the YCJA.*[12]

32. That unique conceptual, procedural and substantive legal terrain is intended to reflect the "special regime for young persons", the essence of which is an age based distinction giving rise to diminished responsibility.[13] Young persons are afforded "rights and procedural safeguards which they alone enjoy."[14] The *Youth Criminal Justice Act* contains a declaration of principle at section 3. It provides that the system for young persons must be separate from that for adults. It references at s. 3(1)(b) enhanced procedural protections "to ensure that young persons are treated fairly, and that their rights including their right to privacy are protected."

33. In youth court, the *Criminal Code* cannot be applied in a way that takes away from the substantive and procedural protections of the special regime for

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[11] 2009 SCC 14

[12] para. 102

[13] In Reference re Young Offenders Act (P.E.I.) [1991] 1 S.C.R. 252, 268

[14] R. v. L.T.H. 2008 SCC 49, [2008] 2 S.C.R. 739

young people created to reflect their diminished responsibility based on age. Another way of putting it is that young people should get the benefit of the *Youth Criminal Justice* Act when there is an inconsistency. Providing strict privacy protection for the victims in child pornography matters is not inconsistent with those principles.

34. Public policy, as expressed by Parliament through the legislation is that there are no circumstances that would ever justify publication, in the context of any case before the court, of the identity of a person whose image appears in child pornography. The child can't waive it, the parents can't waive it, and the Crown can't waive it. Even the judge can't waive it. Public policy is that those children should have the most complete, robust and absolute protection that the law can provide.

35. Some people believe that there should be room for exceptional cases. Others would argue that there are public policy reasons for the certainty of an iron clad, automatic and immutable ban.

36. The law is an expression of public policy as it relates to child pornography. There is no conflict or inconsistency between that public policy decision and the procedural and substantive protections offered to young people under the *Youth Criminal Justice Ac*t. The ban doesn't relate to or even mention the accused at all. It deals with the privacy interests and personal dignity of people, usually children, who have been singled out for special protection. It doesn't relate to the process of the trial or to the rights of the accused young person. It doesn't impose additional penalties or restrictions on young persons accused of committing offences beyond those contemplated by the *Youth Criminal Justice Act*. It isn't inconsistent with the purposes and principles of the *Youth Criminal Justice Act*. It isn't inconsistent

with the procedures under that act. It isn't inconsistent with the spirit and objectives of that act.

37. There is nothing about an absolute ban on the publication of the identity of a young person whose image appears in child pornography that derogates a tittle or jot from the principles, or from the unique terrain of the *Youth Criminal Justice Act*.

38. In order to accept that section 486.4(3) should be read with modifications in youth court, there must be a finding that it is inconsistent with the Youth Criminal Justice Act. It is not.

39. But judges can stretch interpretations. Let's say, for the sake of argument that I could find a way to say that this is what inconsistent means. Just assume that I could accept that this isn't a law just for and about victims. It would help in this unusual case. And some would say "Just do it and let her name be heard. What's the harm?"

40. Well, here's the harm. When judges stretch the law to accommodate the needs of individual cases they risk creating precedents that are not what anyone intended. That is where the cliché "hard cases make bad law"[15] comes from. A judicial decision, even in Youth Justice Court in Halifax, can have implications beyond the case itself. In stretching the law to accommodate the needs of this extraordinary case, how could that decision be used in other extraordinary cases? We've already established that extraordinary cases happen.

[15] The phrase has been referred to as hackneyed and pedantic. Lord Denning suggested that it was the equivalent of saying that "bad decisions make good law". (Re Vandervell's Trust (No. 2) 1974 Ch. 269) The phrase no longer stands as a warning against legal ingenuity but should serve as a caution to those who are confident that an exception carved out for an individual case will not have consequences elsewhere. It might be considered a legal reminder of the law of unintended or unanticipated consequences.

41. Child pornography is an offence that involves behaviour that can plumb the depths of human depravity. Even parents have been known to produce and distribute pornographic images of their own children. This interpretation would mean that a sole surviving parent being dealt with in Youth Justice Court could publish the name of his deceased child as the person whose image appears in the child pornography that he himself is accused of having produced. A 17 year old father makes pornographic images of his baby. Both baby and mother die. On the interpretation as argued, as the parent, he could publish the name of the child. The parent who made the child pornography could release the name of his victim.

42. You might ask why anyone would do that. His purpose for publication could be as simple as to spite the deceased child's surviving grandparents. It could be blackmail. Based on this interpretation his authority to do that could not be limited even by requiring him to make an application to the court to have it tested against public interest, the child's interest or anything else.

43. Under s. 486.4(3) he could never do that. No one could do that. But under this interpretation, as a young person, he could. But what are the chances of that happening? What are the chances of this case happening? It only has to happen once.

44. If I am seen as in any way accepting that the *Criminal Code* provision protecting the privacy of people in images that are child pornography is inconsistent with the *Youth Criminal Justice Act* general privacy provision, more things flow from that. If it has to be made consistent it isn't just as it relates to the waiver for deceased children. It would mean that s. 111(2) would have to be incorporated in its entirety.

45. Section 111(2)(a) says that after a victim who is a young person reaches 18 he or she can publish his or her identity. That right is absolute. No court approval is required. An 18 year old can just publish his or her identity. Once again, that's really different from the total shut down based on a court order, for child pornography.

46. A 17 year old makes a graphic and very disturbing pornographic film involving his 18 year old girlfriend. She is portrayed as being 14 so it comes within the definition of child pornography. She has been under the influence of the young man who has used a combination of threats, drugs and promises. Sadly that's a type of relationship we see frequently in youth court. She is still under his influence and his friends convince her that the public should know that the child pornography case they've heard about was no such thing. She is convinced that publishing her name and telling people she was never forced to do anything will help him beat his child pornography charges. She couldn't publish her name and no one else could publish her name under s. 486.4(3). Section 111(2)(a) of the *Youth Criminal Justice Act* wouldn't apply, because she was an adult when the film was made. It doesn't matter that he is a young person. Section 111 applies only to victims who are young persons. As an adult she would have the enhanced protection of s. 486.4(3).

47. Now, let's make her 17 years old when the film was made. Once she turned 18, with the case still making its way through the court, she could publish her name, give interviews and talk about her case. That is the case even if she is responding to pressure and is making a decision that she will soon come to regret. Responsible journalists would no doubt sense what was going on. It isn't hard to imagine her story being published, in some form, by someone.

48. Take it a step farther. If we're in the process of making the privacy protections in the *Criminal Code* "consistent" with those in the *Youth Criminal Justice Act*, what about s. 486.4(1) and (2)? Those sections deal with the publication bans that relate to the victims of other sexual offences. They are discretionary. A judge can order the ban but doesn't have to. That changes if the order is requested by the Crown, the complainant or a witness. Then it's mandatory. But at all times, even if no one asks for it the judge can impose it.

49. If a complainant in a sexual assault case for example, decides that he or she doesn't want the ban, he or she can ask the judge to remove it. But she has to go to court to do that. The judge maintains the authority to retain it and has to retain it if the Crown continues to want the ban.[16] If s. 111(2) (a) of the Youth Criminal Justice Act has to be imported, a strange and unfortunate thing could happen. If she was under 18 at the time of the offence she could be pressured into publicizing her name after her 18th birthday. That disclosure could happen in any coffee shop using a cell phone with the person exerting the pressure sitting at the same table. For the person who was over 18 at the time of the offence, the ban might be lifted but only after someone, the Crown or perhaps the court has heard why. And that certainly wouldn't happen at a coffee shop.

50. When judges are asked to tinker with the law by agreeing to highly creative interpretations for the purposes of one case, issues of important public policy can be involved. Public policy should be made after careful consideration of the implications and not as a side effect of a decision to provide a desired result in an individual case. What appears like an elegant solution for one case can't be restricted to one case.

[16] See Adams for example.

51. The practical merits of this application, in the circumstances of this case, are strikingly apparent. They scream out for a solution. The ban serves no purpose where the deceased young person's name is already well known to be associated with the case. Allowing her parents to waive her privacy rights would be a good thing if it could be done just for this case, just this once.

52. The responsible media could publish the identifying information and hope that in light of the Crown's position in this case that they will not be prosecuted. The risk of course is that they will be prosecuted.

53. The Crown, including any individual prosecutor, has the legal authority to take the position that it is not in the public interest to prosecute anyone who publishes information caught by the mandatory ban issued under s. 486.4(3) in this case based on its uniquely public nature. The Nova Scotia Public Prosecution Service document entitled "The Decision to Prosecute", issued on 1 July 2001 and revised 1 February 2011, was provided by the Crown in the part of this case dealing with the defence disclosure application. That document at page 8 says:

> *In Nova Scotia once it has been determined that there is sufficient evidence to provide a realistic prospect of conviction (as described above), the prosecutor must then determine whether the public interest is best served by the prosecution of the case. It has never been a rule of prosecution policy in Canada, England, or elsewhere in the British Commonwealth that all criminal cases which could be prosecuted must be prosecuted. ...The proper administration of justice requires that the consideration of the public interest in prosecuting a case be carried out on a consistent, principled basis.*

54. The same document provides some guidance. One of the factors that prosecutors should consider is whether the prosecution would be "perceived as counter-productive, for example, by bringing the law into disrepute."

55. It is not for the court to purport to direct or even to advise or provide recommendations to the Director of Public Prosecutions. I will note however that it would be within the authority of the DPP to issue a direction to prosecutors in a specific case or in a certain classes of cases that it would not be in the public interest to prosecute. It would be within the authority of the Attorney General to issue a public direction to the DPP to that same effect.

Conclusion:

56. Finally, the law requires that a ban be imposed under s. 486.4(3). When a case involves an allegation of child pornography, the law orders the judge to issue the ban. Period.

57. Parliament has decided that when child pornography is involved the ban is absolute and cannot be set aside at anyone's request.

58. This case could not be allowed to become a precedent that would derogate from the protections afforded the victims in child pornography cases. The law can be applied differently in youth court if takes away from the procedural or substantive rights of young people under the *Youth Criminal Justice Act*. It doesn't affect the rights of young people under that act at all. It is not inconsistent with the

Youth Criminal Justice Act and there is no justification for reading into s. 486.4 of the *Criminal Code* the waivers that apply in the *Youth Criminal Justice Act*.

59. If a solution is to be found to deal with this case it should not be one that either disregards the law or tinkers with it in such an important area. If that law is to be changed it should be changed by parliament having careful regard to all of the implications.

60. If the media tell the public what the public already knows because of the unique circumstances of this case, the Crown has the authority to determine whether or not it is not in the public interest to prosecute and to provide precise, public and written assurances in that regard. That is a decision that can only be made by the prosecution service, not by me.

61. The application is dismissed.