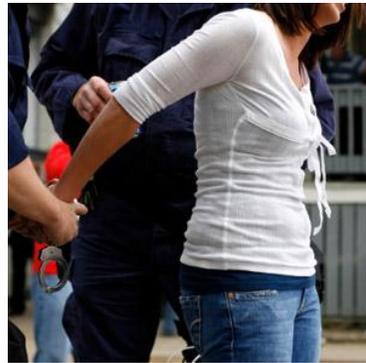


Research Package #3

(Junior and Senior High)

“BIRT we should not protect the identity of young offenders convicted with Criminal offences.” (Jr.)

“THW not protect the identity of young offenders convicted with Criminal offences” (Sr.)



Regional & Provincial Topic (Feb/Mar) 2010-2011

We no longer differentiate topics as “policy” or “values”. Use a model if it is helpful, but both practical and values arguments are accepted at all levels of debate.



The **Proposition Team** supports the resolution and will say “YES”

The **Opposition Team** opposes the resolution and will say “NO”

Both Proposition and Opposition Teams will try to pick about 3 or 4 good reasons to support their position and try to develop each by going through 4 steps:

- 1. State your point.
- 2. Explain your point.
- 3. Provide evidence in support of your point (give an example).
- 4. Explain how that evidence proves your point (tie it back to your theme).

Each argument will look like this:

Point #1: _____

Explanation: _____

Example: _____

Tie point to theme: _____

Point #2: _____

Explanation: _____

Example: _____

Tie point to theme: _____

Point #3: _____

Explanation: _____

Example: _____

Tie point to theme: _____

PROPOSITION TEAM

The job of the Proposition in any debate is to persuade the judges that the resolution should be supported. In order to accomplish this, there are a number of steps that the Proposition team must go through.

- 1) Define the resolution (Make sure everyone is clear upon what the Proposition is debating).
- 2) Present a Model (if needed)
- 3) Present arguments in favor of the resolution.
- 4) Refute Opposition attacks on the Proposition case. (Show why the Opposition is wrong and the Opposition is correct).

Owing to time restrictions, the Proposition duties are normally divided up between the first and second Proposition speakers. It is customary for the first proposition speaker to present two arguments followed by the second speaker who presents the final argument.

AN EXAMPLE OF A PROPOSITION STATEMENT

When young people know that there will be no long term consequences to their actions, they are more likely to commit crimes. Image is very important to young people, and the fear of their community finding out that they committed a criminal act is a strong deterrent, especially for first time offenders.

Here are some arguments that the Proposition can use in developing their case we should not protect the privacy of youth offenders when they are convicted:

- Specific deterrence. A young person is less likely to be deterred from committing any crime, petty to violent; if they believe no one will find out if they get caught.
- General deterrence. Other young people will be less deterred from crime if they do not see the consequences received by other young people around them.
- The fear of being embarrassed at school or in the community, identification is a main reason youth would think twice about crime.
- Safety. It's not just violent crime that make people feel unsafe, crimes against property can have a similar negative effect on the spirit of the community as violent crime. The public should have the right to know what criminals are in their neighborhoods, regardless of their age.
- Rehabilitation is still possible despite public knowledge. If the community supports the rehabilitation of young people, then privacy is not necessary to facilitate this result.
- Justice. Victims of crime are not able to decide if crimes can happen to them or not. In most cases, it can be embarrassing for a victim that they were affected by crime. If the identity of victims cannot be protected, the identity of the criminals should not be either.



OPPOSITION TEAM

The job of the Opposition is to be disagreeable! Whatever the Proposition believes, generally, the Opposition counters. The more you disagree, the better! The Opposition has to convince the judges not to accept the Proposition resolution.

The Proposition wants to convince the judges that their proposal should be adopted.

The Opposition wants to convince you that the Proposition proposal should not be accepted for one or more reasons.

The steps that the Opposition should use are:

- 1) Either agree with the Proposition definition or propose a definition of your own. (Only disagree if absolutely necessary. These make for messy debates.)
- 2) Rebut the Proposition arguments in favor of the resolution.
- 3) Attack the Proposition Model and sometimes propose a counter model
- 4) Present reasons (arguments) to oppose the resolution.
- 5) Refute Proposition attacks on the Opposition case (show why the Proposition is wrong and Opposition is right).

Owing to time restrictions, the Opposition duties are divided between the first and second opposition speakers.

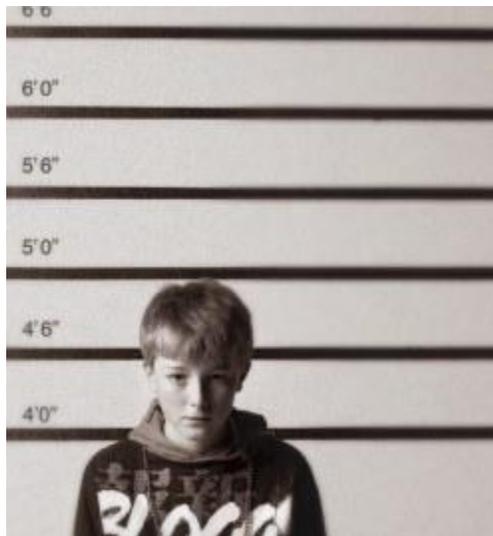
It is the custom for the First Opposition Speaker to present two arguments and the second opposition speaker to present the final argument. (This is flexible!)

AN EXAMPLE OF AN OPPOSITION STATEMENT

Young people have not always developed the mental capacity to properly determine the consequences of their actions. Therefore, our criminal justice system should prioritize rehabilitation over retribution for youth. The protection of their privacy allows these young people to receive help, and gives them the opportunity of having a clean start.

Some of the arguments that the Opposition can use in developing their case that Alberta should NOT put a moratorium on developing the oil sands:

- The main focus of the criminal justice system for young people is rehabilitation. Society has more interest in young people getting on the right track than in punishing them for crimes.
- Publishing the names of young offenders attaches a stigma to that person, making it more difficult for them to clean up their act.
- The minds of youth are not fully developed to the point where they can always properly analyze the consequences of their actions.
- Public humiliation may drive a young person to commit more crimes once they are already labeled as a criminal.
- Media can be brutal. What can be proven in court is not always the full truth. On top of that, media will sensationalize stories to attract more attention. It is important to protect young people from the harm these twisted truths can cause.
- There are a range of fair sentencing options available to meet the needs of deterrence, rehabilitation, and justice within the system without the need to publish names.



THE ARTICLES HERE HAVE BEEN EDITED, REPHRASED & ANNOTATED

RESEARCH

This Research booklet is not complete. It is only an overview of information and good debaters will use this booklet as a basis for their thinking and move on to other ideas and research. As well, the best foundation for any research into a topic begins with some basic reading on the ideas. Follow this with an interview with someone who is knowledgeable, can suggest ideas and can direct you to other ideas and research. Although you cannot quote this person unless he/she is published in print or on video, a human being can always explain issues better than an article.

The regulation of young offenders' private information in the Canadian youth criminal justice system: the semantics of repression

<http://www.idtrail.org/content/view/189/42/>

In 1918, George Mead drew a significant distinction between the adult criminal court and the juvenile criminal court. He noted that:

[i]t is in the juvenile court that we meet the undertaking to reach and understand the causes of social and individual breakdown, to mend if possible the defective situation and reinstate the individual at fault. This is not attended with any weakening of the sense of the values that are at stake, but a great part of the paraphernalia of hostile procedure is absent. (George Mead, "The Psychology of Punitive Justice" (1918) 23 Am. J. Soc. 577 at 594)

Part of the above mentioned "paraphernalia of hostile procedure" was the resort to open criminal trials and the possibility of making available to the public the name of the convicted offenders. In order to prevent the young offender from the undesirable outcomes attached to those practices, for instance social exclusion, marginalization, and stigmatization, in the year 1892 Canadian parliamentarians passed legislation to regulate such an issue.

Section 550 of the *1892 Canadian Criminal Code* stated that "[t]he trials of all persons apparently under the age of sixteen years shall, so far as it appears expedient and practicable, take place without publicity, and separately and apart from that of other accused persons and at suitable times to be designated and appointed for that purpose" (*Criminal Code, 1892, Statutes of Canada, 1892, c. 29 at s. 550*). The reason for that regulation was to avoid the undesirable outcomes attached to criminal procedures in an attempt to facilitate the reintegration of the young offender in society.

Such a section was amended in the year 1894 in order to strengthen the restriction on the publicity of the private information of young persons: "[t]he trials of young persons apparently under the age of sixteen years, shall take place without publicity and separately and apart from the trials of other accused persons, and at suitable times to be designated and appointed for that purpose." (*An Act respecting Arrest, Trial and Imprisonment of Youthful Offenders, 1894, c. 58, s. 1*).

The above mentioned philosophy continued with the enactment of the Juvenile Delinquents Act (*An Act Respecting Juvenile Delinquents, S.C. 1908, c. 40, s. 10*). Moreover, the legislation enacted in the year

1929 introduced more restrictions to the possibility of making available to public the private information of young offenders involved in criminal procedures (*An Act respecting Juvenile Delinquents*, S.C. 1929, c. 46, s.12).

On July 7, 1982 the *Young Offenders Act* received Royal Assent. With regard to the privacy of young offenders, this act introduced important changes to the regulation of the *Juvenile Delinquents Act* that would completely modify the system. First of all, concerning the privacy of youth court proceeding, this new piece of legislation opened up youth court hearings to “ensure public scrutiny and monitoring of the youth court system.” It seems that in this case the notions of “due process” and “accountability” had priority to the protection of private information of young people involved in criminal procedures. In addition, the *Young Offenders Act* allowed the publication of information concerning a young person who had been transferred to an ordinary court and found guilty of the alleged offence. On the other hand, except the situation mentioned above, the *Young Offenders Act* criminalized the reporting by the press that did not respect the anonymity of the young person involved, whether as an accused, as a victim, or as a witness (*Young Offenders Act*, S.C. 1980-81-82-82, c. 110 at s. 38(2)).

On June 27, 1986, Parliament passed *An Act to amend the Young Offenders Act, the Criminal Code, the Penitentiary Act and the Prisons and Reformatories Act* (, S.C. 1986, c. 32.). This Act introduced several amendments to the *Young Offenders Act*, among them, an amendment to the regulation of privacy of young persons. This amendment increased the circumstances under which identifiable information of a young offender could be made public:

38 (1.2) A youth court judge shall, on the ex parte application of a peace officer, make an order permitting any person to publish a report described in subsection (1) that contains the name of a young person, or information serving to identify a young person, who has committed or is alleged to have committed an indictable offence, if the judge is satisfied that (a) there is reason to believe that the young person is dangerous to others; and (b) publication of the report is necessary to assist in apprehending the young person.

As mentioned above, the *Young Offenders Act* introduced a marked shift to the regulation of private information of young persons involved in criminal procedures. Such a shift in the area of youth privacy would be more evident after each subsequent amendment to the *Young Offenders Act*. On April 9, 1992 Parliament enacted another piece of legislation that would set up new changes to the regulation of the privacy of young offenders: *An Act to amend the Young Offenders Act and the Criminal Code* (, S.C. 1992, c. 11). This piece of legislation introduced amendments to the regulation of privacy of young offenders by increasing the number of situations under which youth court information could be disclosed to third parties, such as schools and other authorities.

On February 19, 2002, the *Youth Criminal Justice Act* received Royal Assent. Even though the rhetoric of this act recognizes the importance of protecting the privacy of young offenders, it allows open youth court proceedings (s. 132). In addition, although this piece of legislation prohibits the publication of identifying information about youths involved in the justice system, it permits the publication of information that identifies young offenders that have received an adult sentence, who have been convicted of very serious offences, or who pose a serious risk to the public:

110.(1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act. (2) Subsection (1) does not apply (a) in a case where the information relates to a young person who has received an adult sentence; (b) subject to sections 65 (young person not liable to adult sentence) and 75 (youth sentence imposed despite presumptive offence), in a case where the information relates to a young person who has received a youth sentence for an offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2(1), or an offence set out in paragraph (b) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence); and (c) in a case where the publication of information is made in the course of the administration of justice, if it is not the purpose of the publication to make the information known in the community. [...]

Although the rhetoric of the *Youth Criminal Justice Act* in the area of privacy of young offenders is slightly different to the rhetoric of the *Young Offenders Act*, the underlying normative regulation has not changed. To present (September 2005), the *Youth Criminal Justice Act* has been amended three times; however, none of these amendments has modified the regulation of privacy of young offenders as stated on the 2002 version.

In the origins of the Canadian youth criminal law intervention, the protection of private information of young persons involved in criminal procedure was seen as a compelling matter for preventing issues such as marginalization, social exclusion, and stigmatization. There was a generalized perception that making available to public young offenders' information would jeopardize their reintegration into society. In addition, the "protection" of such information was seen as one of the most important instruments for assuring the "social inclusion" of former young offenders.

Even though the above mentioned "perceptions" about the undesirable effects of making public young offenders' information have not changed, legislators have been able to "tolerate" this effect, in an attempt to protect society from the "dangerous young offenders." My question is the following: is it possible to affirm that current regulation of young offenders' private information does protect society? Up to present, the efficiency of such an intervention policy has not been assessed. Nevertheless, the infringement of young offenders' privacy rights is notorious, and even more notorious is how this infringement to privacy rights allows society to "exclude" such offenders. Besides, current regulation of young offenders' private information is actually reinforcing the "paraphernalia of hostile procedure." Nice paradox to Mead.

Time to scrap a bad idea

<http://www.abbotsfordtimes.com/Time+scrap+idea/2915145/story.html>

By John Martin, Special to the Times May 4, 2010

A recently proposed piece of legislation to address repeat youth offenders, particularly those engaged in extreme violence, is one of the most common sense proposals to come along in quite some time. Bill-C5, also known as Sebastien's Law, in recognition of 19-year-old Sebastien Lacasse, who was senselessly murdered at a house party in 2004, would finally hold the most violent youth accountable for their actions. Obviously the bill has a long way to go before it becomes law. Some of its components are controversial and sure to meet with resistance from the usual crew of appeasers and apologists.

Among other things, the legislation would provide mechanisms to keep repeat, violent offenders off the street while awaiting trial and strengthen sentencing provisions to permit sentences that are proportionate to the severity of the crime. It would also ensure adult sentences are considered for youth 14 and older who commit the most serious offences - including murder and sexual assault.

But the least discussed piece of Bill-C-5 is the one I'm particularly pleased to see. It would require courts to consider lifting the publication ban on identifying young offenders convicted of violent offences. The idea of prohibiting the naming of juvenile delinquents was a noble one half a century ago. It was founded on the notion that identifying a young criminal could create a powerful stigma that would make it more difficult for the youth to carry on with his life. Consequently, media has long been banned from naming young offenders.

But it's a hopeless concept in the digital age.

Anyone with an Internet connection can easily track down the identity of the accused in high profile cases. The names of youth scooped up by the police and being held in custody are plastered all over Facebook and other social networking sites.

The World Wide Web opened up the barn doors quite some time ago and it is futile to think an archaic law can shield the identities of young offenders in this day and age.

But more important, why do we even want to do so anymore? There is absolutely no evidence whatsoever that the public identification of young offenders impedes reintegration or rehabilitation.

Conversely, we know that shaming and public condemnation are effective tools in addressing youthful criminality - as evidenced by the success of various restorative justice initiatives. It is ludicrous that the Abbotsford-Mission Times can report an elderly woman being swarmed and beaten by three young thugs but must protect their privacy while doing so.

I'm not advocating humiliating a kid for a one-time incident of poor judgment, but there is no basis to continually shield the identity of persistent, repeat offenders who laugh their way in and out of court. All this gag law does is protect the reputation of the offender's parents.

Who knows? Maybe a little bit of public humiliation would smarten up a lot of neglectful, irresponsible parents who don't have a clue or care what types of shenanigans their kids are getting into at two in the morning. At the very least, the name of a violent offender, regardless of age, should absolutely be published when it would aid in the protection of society.

Those who continually insist we must forever protect the identities of young offenders are quick to point out that crime is at an all time low so there's no need to crack down. To this, I say BS. True; some types of crime have moderately decreased. Overall though, crime is much higher than it was forty-five years ago. And one category that is increasing all the time is youth violent offences.

The kid glove approach, however well meaning, has not worked. Anyone who suggests otherwise is in denial. Bill-C-5 is a big step in the right direction. Eliminating the carte blanche right to anonymity for repeat, violent youth is thoughtful and responsible social policy. It would be so gratifying to see voters direct their wrath at any Member of Parliament who attempts to block or water down this legislation.

Read more: <http://www.abbotsfordtimes.com/Time+scrap+idea/2915145/story.html#ixzz1BacVccPt>

Why Did the Government Introduce New Youth Justice Legislation?

<http://www.justice.gc.ca/eng/pi/yj-ji/ycja-lsjpa/why-pourq.html>

The *Youth Criminal Justice Act* (YCJA) came into force on April 1, 2003 and addresses these fundamental flaws in the previous legislation (*Young Offenders Act*).

The YCJA sets out the purpose of the youth justice system through its principles. Unlike the YOA, the principles of the YCJA provide clear direction, establish structure for the application of principles and thereby resolve inconsistencies. These principles reinforce that the criminal justice system for youth is different than the one for adults. The objectives of the youth criminal justice system are to prevent crime, ensure meaningful consequences for offending behaviour, and rehabilitate and reintegrate the young person. In these ways, the youth justice system can contribute to the protection of society.

The YOA did not adequately respect the rights of young people. It provided that a youth could be transferred to an adult court before conviction and lose age-appropriate due process protections, including privacy protections, on the basis of an unproven charge. Transfer proceedings lasted as long as two years, impeding access to a speedy trial. Once transferred into the adult stream, youth as young as 14 could be required to serve their sentences in adult provincial or federal correctional facilities at the discretion of the judge.

The YCJA addresses these shortcomings by providing that all proceedings against a youth must take place in the youth court where age-appropriate due process protections apply. The hearing on the appropriateness of an adult sentence will only occur after a finding of guilt and all the evidence about the offence has been heard. The youth justice procedure for the most serious offences will be speedier, retain age-appropriate due process protections and be more respectful of the presumption of innocence. It also includes a presumption that, if under 18, a youth will serve an adult sentence in a youth facility. This is more consistent with the spirit of the United Nations Convention on the Rights of the Child, which is expressly referenced in the preamble of the new legislation.

Other Electronic Resources:

<http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/BP/bp368-e.htm>

http://www.gov.mb.ca/healthychild/publications/protocol_ycja_comp.pdf

<http://news.gc.ca/web/article-eng.do?m=/index&nid=518869>

<http://www.youthlaw.asn.au/upload/privacy-submission.pdf>

http://www2.parl.gc.ca/Sites/LOP/LegislativeSummaries/Bills_ls.asp?lang=E&ls=c4&source=library_prb&Parl=40&Ses=3