

CITATION: Her Majesty the Queen in Right of Ontario v. Canadian Broadcasting Corporation,
2019 ONSC 1084
COURT FILE NO.: 18-78211
DATE: 20190215

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Her Majesty the Queen in Right of Ontario)
) Sunil Mathai and Jeffrey Costain for the
Applicant) Applicant
)
- and -)
)
Canadian Broadcasting Corporation and) Richard G. Dearden and Hunter Fox, for the
Post Media Network Canada Corporation) Respondent and
)
Respondent) Sean Moreman for the Respondent Canadian
) Broadcasting Corporation
)
)

ENDORSEMENT

BEAUDOIN J.

[1] In preparation for the release of my decision in this matter, I contacted counsel for their submissions having regard to the publication bans that are in place.

[2] Counsel for Post Media agreed to the use of initials for the principals. He submitted that the warning should be the same as the warning counsel agreed would be attached to the Notice of Application.

[3] Counsel for CBC took the position that it would not be appropriate to initialize the decision for the following reasons:

- a) there was no motion before me to limit the open court principle in any way, including by way of anonymizing my written decision;

- b) there was no evidence before me to establish anonymizing the decision placed in the court file is necessary to prevent a real and substantial harm to the proper administration of justice;
- c) the underlying criminal proceeding contains only a ban on publication, and does not contain an anonymity order. It is not necessary that this proceeding be subject to more restrictions on the open court principle than the underlying proceeding that gave rise to the publication ban in the first place; and
- d) since the materials filed in this matter were not subject to any such order, anonymizing the decision to be placed in the public court record would not serve any functional purpose.

[4] CBC takes no position on whether the decision should contain a warning to any party who wishes to further reproduce it online or in print reporters.

[5] Given the likelihood that the decision will be broadly disseminated, the Crown takes the position it would be appropriate for this Court to exercise its discretion by writing the decision in a manner that best protects the identities of the victims in *R. v. B.*

[6] The Crown further submits that initializing the decision in the manner proposed would also ensure that the anonymity of the Family Court proceedings is not compromised by the release of this Court's decision. Justice Engelking granted an order permitting the applicant to initialize the style of cause.

[7] The Crown submits that the court's exercise of discretion over the manner in which the decision is drafted has no impact to the open court principle. Any person or media outlet interested in the decision can access the court file to ascertain the identities of the initialized individuals.

[8] The Crown proposes the more substantial warning that the is generally to appellate decisions an cites as an example the warning from the Court of Appeal's decision in *R. v. M.C.*, 2018 ONCA 606 (CanLII).

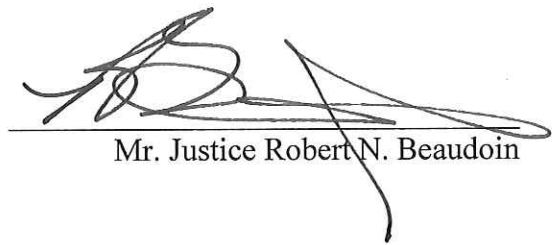
Conclusion

[9] I must determine how my decision is drafted in such a way as to respect the publication bans. I have drafted my decision in such a way as to limit any identifying information as much as possible. In order to comply with the non-publication order, which remains in effect, I conclude that the identification of the principal parties shall be by initials. I agree with the Crown's

submission that the scope of the publication ban as set out in the *Criminal Code* is not subject to negotiation by the parties.

[10] I conclude that this decision has no impact to the open court principle. Any person or media outlet interested in this decision can access the court file to ascertain the identities of the initialized individuals.

[11] Given the likelihood that the decision will be broadly disseminated, a modified warning, similar to one attached to the Notice of Application will be attached to my Reasons for Decision.



Mr. Justice Robert N. Beaudoin

Released: February 15, 2019

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Applicant

– and –

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Respondent

ENDORSEMENT

Beaudoin J.

Released: February 15, 2019