IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: *Canadian Broadcasting Corporation v. Canada (Border Services Agency),* 2021 NSPC 48

In the Matter of an Application to Vary a Sealing Order,
Criminal Code s. 487.3

BETWEEN:

Canadian Broadcasting Corporation, Canadian Television Network, Global News, The Canadian Press, Globe and Mail, Post Media, Halifax Examiner and Saltwire

(CBC Law Department, Bell Canada, Global News, Halifax Examiner Inc., SaltWire Network, The Globe and Mail, Toronto Star Newspapers Limited)

- Applicants

- and-

Her Majesty the Queen in the Right of Canada (Canada Border Services Agency)

and

Her Majesty the Queen in the Right of Nova Scotia (Royal Canadian Mounted Police)

- Respondents

CANADIAN VICTIMS BILL OF RIGHTS DECISION

Judge:	The Honourable Judge Laurel J. Halfpenny MacQuarrie
Heard:	February 18, 2021 and March 10, 2021
Decision	Oral Decision: September 13, 2021 Written Decision: November 25, 2021
Counsel:	Mark Covan and Scott Millar, for the Federal Crown Shauna MacDonald and Mark Heerema, for the Provincial Crown David G. Coles, QC, for the Applicants

By the Court:

I. The Application

[1] On April 28, 2020 the Canadian Broadcasting Corporation, through its representative Elizabeth McMillan, filed a "Notice of Application" in the Provincial Court, seeking to lift a Sealing Order over Informations to Obtain (ITO's). In particular, it suggested, a general warrant had been issued pursuant to Section 487.01 of the *Criminal Code* permitting the search of property belonging to Gabriel Wortman with an associated Sealing Order.

[2] This application was precipitated by a mass shooting on April 18 and 19, 2020 in rural Nova Scotia, which resulted in 22 people being killed, one of whom was pregnant, others injured, and a Province left in a state of shock. The tragedy encompassed 17 crime scenes and covered a large geographical area.

[3] In her correspondence, Ms. McMillan, referencing the "open court principle" wrote:

> I am a journalist with the Canadian Broadcasting Corporation. I am applying to lift a sealing order that has been imposed over certain records relating to these proceedings…
>
> We believe this matter is urgent because it is possible that the information outlined in the search warrant/affidavits/ITO's could shed light on what police knew and when. There has been considerable focus on why the RCMP didn't send out a public alert to warn people about an active shooter. We believe the public should know what information police had in this case, in the event protocol changes need to be made before the next tragedy. If we wait months for this information, an opportunity to take steps to prevent a similar situation could be delayed.
>
> There is tremendous public interest in understanding the facts regarding the attacks that killed 22 people. This was the largest mass shooting in Canadian

> history, and we believe the public should know why police searched properties belonging to the shooter Gabriel Wortman.*[my emphasis added]*

[4] A Respondent was not identified in the Notice of Application by Ms. McMillan. Court Services staff in Truro forwarded it to the local Crown Attorney's office, who in turn, sent it to the Special Prosecutions branch of the Public Prosecution Service of Nova Scotia (PPS).

[5] The Royal Canadian Mounted Police (RCMP) were identified as the Respondents by the PPS as Her Majesty the Queen in the Right of the Province of Nova Scotia.

[6] Subsequently, the Canada Border Services Agency (CBSA) became a Respondent represented by the Public Prosecution Service of Canada (PPSC), as representing Her Majesty the Queen in the Right of Canada.

Statutes Cited

Canadian Victims Bill of Rights, S.C. 2015, c.13, s.2, Preamble, ss. 2, 5, 12, 14, 18, 19(1), 20(a).

Criminal Code, R.S.C. 1985, c. C-46, 486.4, 486.5, 487.3(1), (2), (4).

Interpretation Act, R.S.C. 1985, c.I-21, ss. 2(1), 12, 13

Overview

[7] In their respective written submissions on the *"merits*", counsel addressed the applicability of the *Canadian Victims Bill of Rights*, (*CVBR*) to the unsealing

applications. On March 16, 2021, the Court released the "merits" decision without a determination made on that legislation. (*see 2021 NSPC 15*)

[8] By way of background, on February 18, 2021, the Court reviewed with counsel specific sections of the *CVBR* with a view to seeking further submissions on the applicability of that *Act t*o the Application before this Court.

[9] In particular, the Court made the following comments: (transcript pp. 10-17)

> … So the next issue, the Crown has identified to the Court are those redactions still existing that are, using their phraseology, victims or innocent third parties. … the Crowns in their written briefs refer to the *Canadian Victim Bill of Rights*, in particular the PPS Crown refers to a few sections at paragraph 61 of their written submissions…
>
> …the preamble obviously is important because it sets out the purpose and reason for this very recent legislation in our ever-evolving world…
>
> 'Any of the following individuals may exercise a victim's rights under this Act if the victim is dead or incapable of acting on their own behalf…
>
> Section 5 is important…
>
> 'For the purpose of this Act, the criminal justice system consists of the investigation and prosecution of offences in Canada.'
>
> Section 11…
>
> 'Every victim has the right to have their privacy considered by the appropriate authorities in the criminal justice system.'
>
> 12 is an important section that provides
>
> 'Every victim has the right to request that their identity be protected if they are a complainant to the offence or a witness in proceedings relating to the offence.'
>
> 14 says,
>
> 'Every victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect victim's rights under this Act and to have those views considered.'
>
> Section 18 deals with the application of the Act and it says it
>
> '… applies in respect of a victim of an offence in their interactions with the criminal justice system while the offence is investigated or prosecuted.'
>
> And 19,
>
> 'The rights of victims under this Act are to be exercised through the mechanisms provided by law.'

So those are a few provisions that tell us what that legislation encompasses, what its intention is and how it should be applied.

Now Section 2, I'm going back in the Act to the definition section…the following definitions apply in this Act…

> '…means an offence under the *Criminal Code…'*

So I read all of that with what I've already referred to in other sections, but those are the most appropriate, I think, for today's discussions and I'm trying to determine, counsel, if "offence" is to be equated with a charge or a prosecution that results in the laying of an information.

The *Criminal Code* itself does not give a definition *per se* as to what an offence is. It does, however, define offences as being indictable or summary…it talks about offence related property, about criminal organization offences. It talks about, you know, definition of serious offence. It talks about parties to an offence, but never gives a definition of 'offence'.

When I read all of those sections on its face to me, perhaps, presupposes that it is applicable when a person has been charged.

I then go to the meaning of 'victim'. And 'victim' is defined as

> 'an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence.'

Counsel, I've done considerable research in the last few weeks, without much success, on the applicability of the *Canadian Victim Bill of Rights*, vis-a-vis the situation that is presented in this application before the Court.

I note in Mr. Coles'…written brief…paragraph 22…

> 'In respect to the *Canadian Victim Bill of Rights*, S.C. 2015, c.13, there is no evidence that individuals have requested that their identity be protected pursuant to the Act. It is trite law that the statute must be interpreted in a manner consistent with the *Charter* including section 2(b) thereof.'

Section 12, and I have already read it, says: 'Every victim...' and that's what he's referring to,

> 'Every victim has the right to request that their identity be protected if they are complainant to the offence or witness in proceedings.'

... there's that one paragraph in Mr. Coles' brief that talks about it and he made some comments during the arguments in October, so I guess I'm going to ask this to Mr. Coles. And I'm not going to ask you for an answer right now. It's just something I want you to think about, Mr. Coles, for a bit. Are you agreeing, because the Crown is asserting it, that that legislation is applicable to those individuals who they have identified as victims or innocent third party witnesses to these proceedings…

And I want to make this perfectly clear at this point. I want no mistake, misunderstanding, misapprehension about why I'm asking this question. This inquiry by the Court is purely a legal one and not a factual one at this stage. I don't believe anyone on this call, anyone in this Province or perhaps anyone in this country would suggest that those people whose family members have been lost,

> who have in any way been harmed emotionally or physically as a result of the events of April 18th and 19th or who had any encounters on that day with Mr. Wortman during his reign of terror are not victims in the common use of that term. That's not what this is about.
>
> This inquiry is about whether that legislation applies to this fact situation where Mr. Wortman, who was responsible for these deaths and this harm and these emotional scars that people have, falls within that Act because he is deceased. In order for that Act to operate and for me to consider Section 12, in particular to start, do we need a prosecution of an offence? That's where I'm at. I must decide that before I look at the notice provisions in Section 12 and whether or not ... if it does then obviously the rest of the legislation would become important.
>
> I know Mr. Coles says the duty is on the Crown to provide such notice, and the Crowns have made their position with respect to that clear. They say it's a two-prong sort of approach that the Court has to look at. But ultimately if the *Canadian Victims Bill of Rights* is applicable, I construe Section 12 as a duty, a positive duty, on the Court to provide such notice… whether that is ... that would likely… if this is applicable, go through the Crown. But I think that particularly in this set of circumstances that the Court would bear the responsibility to make that determination….

Position of the Parties

Crown:

[10] The *Canadian Victims Bill of Rights* and the provisions therein, give every "victim", within the criminal justice system, a generalized right to information, protection and restitution. It gives a specific right to "victims" to have their security, privacy and identity protected.

[11] The Crown, referencing s. 487.3 of the *Criminal Code*, argues that, notwithstanding the open court principle, the status of innocent persons is recognized in s. 487.3(2)(iv) which allows for a sealing to be granted where disclosure of information would prejudice such persons.

> 487.3 (1) On application made at the time an application is made for a warrant under this or any other Act of Parliament, an order under any of sections 487.013 to 487.018 or an authorization under section 529 or 529.4, or at a later time, a justice, a judge of a superior court of criminal jurisdiction or a judge of the Court of Quebec may make an order prohibiting access to, and the disclosure of, any information relating to the warrant, order or authorization on the ground that

> *(a)* the ends of justice would be subverted by the disclosure for one of the reasons referred to in subsection (2) or the information might be used for an improper purpose; and
>
> *(b)* the reason referred to in paragraph (a) outweighs in importance the access to the information.
>
> (2) For the purposes of paragraph (1)*(a),* an order may be made under subsection (1) on the ground that the ends of justice would be subverted by the disclosure
>
> *(a)* if disclosure of the information would
>
> (i) compromise the identity of a confidential informant,
>
> (ii) compromise the nature and extent of an ongoing investigation,
>
> (iii) endanger a person engaged in particular intelligence-gathering techniques and thereby prejudice future investigations in which similar techniques would be used, or
>
> (iv) prejudice the interests of an innocent person; and
>
> *(b)* for any other sufficient reason…
>
> (4) An application to terminate the order or vary any of its terms and conditions may be made to the justice or judge who made the order or a judge of the court before which any proceedings arising out of the investigation in relation to which the warrant or production order was obtained may be held.

[12] The *CVBR* is an instrument available to the Court in giving definition to "innocent persons" in s.487.3. The most appropriate way to do so is to permit submissions from such individuals to the court if they so choose.

[13] The Crown references, in support of a broad remedial and modern principled approach to the interpretation of the *CVBR,* the *Interpretation Act,* R.S.C. 1985, c.I-21 and Hansard excerpts from the Canadian House of Commons. They also refer to the United Nations "*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*", as the impetus for the *Canadian Victims Bill of Rights.*

[14] Notwithstanding that Gabriel Wortman is deceased, and will never be prosecuted, such in and of itself does not mean persons who were impacted because of

his actions do not receive protections as set out in the *CVBR.* The language of the legislation is broad. It is to be read contextually. The *CVBR* applies from the commencement of an investigation. The RCMP and CBSA initiated investigations into the Wortman mass shooting.

[15] In the original redacting/vetting process by the Crown, it took on the responsibility of identifying individuals as third-party interests and /or victims, in relation to their respective privacy rights. This process at the outset was for expediency with a view to notice to any affected person/persons as the matter proceeded.

[16] Gabriel Wortman committed offences. The investigation of such was the basis for the judicial authorizations in this application. Three people have been charged with supplying ammunition to Mr. Wortman as a result of the investigation.

[17] The *CVBR* adds an additional responsibility by the Court *vis-a-vis* victims separate from third party interests, which is not otherwise available, and in particular is not present in section 486.5 of the *Criminal Code* as suggested by the Applicant. That provision relates specifically to publication ban applications, which this is not.

Applicants:

[18] Mr. Coles submits that should a "victim" seek privacy/identity protection, such has been prescribed for by law at s.486.5 of the *Criminal Code*. He references *R. v. F. (R.D.)*, 2016 SKPC 89 at para. 64:

> In addition, in my opinion, the *Victims Bill of Rights* does not change the law respecting applications for publication bans in the criminal law context. Sections 11 and 12 of the Act simply affirm and codify a crime victim's pre-existing common law right to apply for an order protecting their privacy. As required by s. 19(1) of

> the Act, s.486.5 of the *Criminal Code* provides the mechanism by which a victim may implement their right.

[19] There is no evidence that individuals have requested their identity be protected pursuant to this *Act.* The statute must be interpreted in a strict and narrow manner, consistent with the *Canadian Charter of Rights and Freedoms.* Privacy has not risen to a *Charter* right. *R. v. F. (R.D.),* continues at para. 62:

> Although the provisions of the *Victims Bill of Rights* prevail over conflicting legislation, it does not rise to the level of constitutional law. The Charter however, is a constitutional document.

[20] The RCMP and the CBSA investigations have both ceased. There is no evidence to the contrary. The three accused persons are not "accomplices" of Gabriel Wortman. They are but a by-product of the investigation and not interwoven with Wortman's actions such that those individuals identified as victims trigger the application of the *CVBR* in this matter

Legal Principles and Analysis

ISSUE: Is the *Canadian Victims Bill of Rights* applicable to an unsealing application.

[21] Statutory interpretation, legislative intent and current *Criminal Code* provisions must be examined.

A. Statutory Interpretation

[22] Section 2 of the *CVBR* is the starting point of statutory interpretation for the purpose of this decision. It provides:

> *victim* means an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence. (*victime*)

[23] The question before the Court is whether identified individuals are "*victims"* within that definition, such that other protections in the *Act* are afforded to them, and in particular s.12 and s.14 which state:

> 12 Every victim has the right to request that their identity be protected if they are a complainant to the offence or a witness in proceedings relating to the offence.
>
> 14 Every victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under this Act and to have those views considered.

[24] To answer such the Court must determine the intent of the legislation which requires an examination of the *Act* itself, and its legislative history.

(i) Rules of Construction

[25] There are generally two categories of statutory interpretation, either a strict rule of construction or a liberal interpretation, the latter often referred to as the "modern principle".

[26] The *Interpretation Act*, R.S.C. 1985, c.I-21, is of great assistance in determining which approach is appropriate. The *Act* provides:

> *Interpretation Act*, R.S.C.1985, c. I-21
>
> An Act respecting the interpretation of statutes and regulations
>
> Definitions
>
> 2(1) In this Act**, *Act*** means an Act of Parliament;

> Enactments deemed remedial
>
> 12 Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.
>
> Preamble
>
> 13 The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.

[27] Section 12 is a statement of the modern principle of interpretation, that is, such should be done in a broad fashion so as to determine the meaning of the words used, in a contextual fashion, so as to ensure the intention of Parliament/legislation is ascertained.

[28] Elmer Driedger, in his text, *Construction of Statutes* (3rd ed. 1994), is a leading authority on statutory interpretation.

[29] In *Rizzo v. Rizzo Shoes*, [1998] 1 S.C.R. 27, Justice Iacobucci stated at para. 21:

> Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter '*Construction of Statutes*'); Pierre-Andre Cote*, The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p.87 he states:
>
> > 'Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
> > Recent cases which have cited the above passage with approval include…'

[30] This contextual approach to statutory interpretation by Driedger was previously adopted in *R. v. McIntosh*, [1995] 1 S.C.R. 686 by then Chief Justice Lamer. He stated at para. 21:

> Driedger then reduces the principle to five steps of construction (at p.105):
>
> > '1. The Act as a whole is to be read in its entire context so as to ascertain the intention of Parliament (the law as expressly or impliedly enacted by the words), the object of the Act (the ends sought to be achieved), and the scheme of the Act (the relation between the individual provisions of the Act).
> >
> > 2. The words of the individual provisions to be applied to the particular case under consideration are then to be read in their grammatical and ordinary sense in the light of the intention of Parliament embodied in the Act as a whole, the object of the Act and the scheme of the Act, and if they are clear and unambiguous and in harmony with that intention, object and scheme and with the general body of the law, that is the end.
> >
> > 3. If the words are apparently obscure or ambiguous, then a meaning that best accords with the intention of Parliament, the object of the Act and the scheme of the Act, but one that the words are reasonably capable of bearing, is to be given them.
> >
> > 4. If, notwithstanding that the words are clear and unambiguous, when read in their grammatical and ordinary sense, there is disharmony within the statue, statutes in *pari materia,* or the general law, then an unordinary meaning that will produce harmony is to be given the words, if they are reasonably capable of bearing that meaning.
> >
> > 5. If obscurity, ambiguity or disharmony cannot be resolved objectively by reference to the intention of Parliament, the object of the Act or the scheme of the Act, then a meaning that appears to be the most reasonable may be selected.

[31] More recently, Justice Bastarache in *ATCO Gas & Pipelines Ltd. v. Alberta*, [2006] 1 S.C.R. 140, stated at para.49:

> The provisions at issue are found in statutes which are themselves components of a larger statutory scheme which cannot be ignored:
>
> > 'As the product of a rational logical legislature, the statute is considered to form a system. Every component contributes to the meaning as a whole, and the whole gives meaning to its parts: 'each legal provision should be considered in relation to other provisions, as parts of a whole'….
>
> (P.-A. Cote, the Interpretation of Legislation in Canada (3rd ed. 2000), at p.308)
>
> As in any statutory interpretation exercise, when determining the powers of an administrative body, courts need to examine the context that colors the words and

> the legislative scheme. The ultimate goal is to discover the clear intent of the legislature and the true purpose of the statue while preserving the harmony, coherence and consistency of the legislative scheme (*Bell ExpressVu*), at para.27; see also *Interpretation Act***,** R.S.A. 2000, c.I-8, s.10,… 'statutory interpretation is the art of finding the legislative spirit embodied in enactments' *Bristol-Myers Squibb Co*. at para.102.'

[32] In the Ontario Court of Appeal decision in *Oakville (Town) v. Club Link Corporation ULC*, 2019 ONCA 826, Justice Harvison Young stated at para.38:

> The core teaching of the 'modern principle' is that statutory language must always be interpreted purposefully and in context. In other words, 'statutory interpretation cannot be founded on the wording of legislation alone': *Rizzo*, at para.21 as summarized by Ruth Sullivan in *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016), at p.46:
>
> > 'The key point of the principle is…that statutory interpretation cannot be founded on the wording of the legislation alone. The words of the text must be read and analyzed in light of a purpose of analysis, a scheme analysis, the larger context in which the legislation was written and operates, and the intention of the legislature, which includes implied intention and the presumptions of legislative intent. In the course of resolving an interpretation problem, an interpreter must also consider the relevance of a wide range of rules, principles and maxims.'

[33] Further at para.42:

> …Pierre-Andre Cote describes the modern principles as embodying 'the rise of contextual interpretation' with a corresponding shift away from textual literalism and plain meaning:
>
> > 'statutory interpretation requires the interpreter to weigh a series of factors before establishing the true, or at least best, meaning. The range of factors to be considered has been elastic, and has known historical expansion and compression. Currently the list of mandatory or recommended factors is extensive.
> >
> > 'This extension is an outgrowth of the rise of contextual interpretation, an approach increasingly favored by both doctrine and the case law. It is now recognized that it is impossible to determine the meaning of words in the absence of context. *Today, it is fair to say that the Plain Meaning Rule, which restricts the interpreter to a consideration of the literal meaning of a clear text has fallen into disrepute*.(emphasis added)
> >
> > The urtext of broader approach to interpretive authority is…the modern principle of statutory interpretation…
> >
> > It would be unreasonable to suppose that Driedgers principle expresses, in and of itself, every dimension of the Canadian interpretive practice, it is none the less true that it has materially contributed to the overthrow of the Plain Meaning Rule and the promotion of a contextual approach to the interpretation that draws on a wide range of factors and is, in particular,

> open to the consideration of the objectives of the provisions in statutes under examination.'

[34] Justice Harvison Young concluded at para.45:

> …the modern principle instructs that the words of a statute must be read in their grammatical and ordinary sense, *harmoniously* with the scheme of the Act, the object of the Act, and the intention of Parliament.

(ii) Legislative Intent

The Purpose and Object of the CVBR

[35] The *Canadian Victims Bill of Right* is recent legislation, only having received Royal Assent on April 23, 2015. There have been no reported decisions on it to assist specifically with the matter before this Court.

[36] A drilling down into legislation as well as a looking back, are often good starting points to determine what the legislation was intended to do, and conversely, not do. We need to know why it was enacted into law, and how it is to be interpreted if an application such as this before me, ensues.

(a) Language of Legislation

[37] It is important to examine the language of the *Act* itself and to trace the history of it from inception. This requires an examination of documents that have been previously referred to.

[38] The following sections of the *Canadian Victims Bill of Rights*, are instructive to the reader in determining the scope and intent of the *Act:*

Canadian Victims Bill of Rights, S.C. 2015, c. 13, s.2

An Act for the Recognition of Victims Rights

Preamble

Whereas crime has a harmful impact on victims and on society;

Whereas victims of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity;

Whereas it is important that victims' rights be considered throughout the criminal justice system;

Whereas victims of crime have rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*;

Whereas consideration of the rights of victims of crime is in the interest of the proper administration of justice;

Whereas, in 1988, the federal, provincial and territorial governments endorsed the *Canadian Statement of Basic Principles of Justice for Victims of Crime* and, in 2003, the *Canadian Statement of Basic Principles of Justice for Victims of Crime*, 2003…

Criminal justice system

5 For the purpose of this Act, the criminal justice system consists of

(a) the investigation and prosecution of offences in Canada…

Application

18 (1**)** This Act applies in respect of a victim of an offence in their interactions with the criminal justice system

(a) while the offence is investigated or prosecuted…

Exercise of rights

19 (1) The rights of victims under this Act are to be exercised through the mechanisms provided by law.

Interpretation of this Act

20 This Act is to be construed and applied in a manner that is reasonable in the circumstances, and in a manner that is not likely to

(a) interfere with the proper administration of justice, including

(i) by causing interference with police discretion or causing excessive delay in, or compromising or hindering, the investigation of any offence, and

(ii) by causing interference with prosecutorial discretion or causing excessive delay in, or compromising or hindering, the prosecution of any offence;

> [emphasis added]

[39] The subtitle of the legislation is “An Act for the Recognition of Victims Rights”. It is followed by the preamble which acknowledges the impact of crime on victims, that victims and their families deserve to be treated with courtesy, compassion, respect, dignity and their rights are to be considered throughout the criminal justice system.

[40] A crucial consideration appears in the preamble:

> Whereas consideration of the rights of victims of crime is in the interest of the proper administration of justice…

[41] This is very strong language in this Court’s opinion. It is not equivocal or uncertain language.

[42] The preamble has an acknowledgement that the federal, provincial and territorial governments of Canada endorsed, in 1988, and again in 2003, the *Canadian Statement of Basic Principles of Justice for Victims of Crime*. These declarations honour the *U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,* which was adopted by the General Assembly on November 29, 1985, and ‘should guide the treatment of victims…during the criminal justice process’ (see www.justice.gc.ca/eng/rp-pr/cj-jp/victim/03/princ.html)

[43] Articles 1, 2, 5, and 6 bear reciting:

> A. Victims of crime
>
> 1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that

> are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
>
> 2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization…
>
> Access to justice and fair treatment
>
> 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
>
> 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
>
> (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
>
> (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
>
> (c) Providing proper assistance to victims throughout the legal process;
>
> (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
>
> (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims….
>
> [emphasis added]

[44] In *R. v. Hape*, [2007] 2 S.C.R. 292, the Court considered the reach of extraterritorial searches and seizures by the RCMP who were investigating a Canadian businessperson for suspected money laundering in the Turks and Caicos Islands. With the cooperation of the local police, the RCMP conducted searches of the accused's offices in the foreign jurisdiction. Mr. Hape, charged in Canada, sought exclusion of the

documentary evidence found in the Turks and Caicos as a violation of the *Canadian Charter of Rights and Freedoms*, and specifically, section 8.

[45] The issue of statutory interpretation as between domestic and international law appears in the decision at paras. 53-54 as follows:

> (4) Conformity With International Law as an Interpretive Principle of Domestic Law
>
> One final general principle bears on the resolution of the legal issues in this appeal. It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law. The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result. *R. Sullivan, Sullivan and Driedger* on the Construction of Statutes (4th ed. 2002), at p. 422, explains that the presumption has two aspects. First, the legislature is presumed to act in compliance with Canada's obligations as a signatory of international treaties and as a member of the international community. In deciding between possible interpretations, courts will avoid a construction that would place Canada in breach of those obligations. The second aspect is that the legislature is presumed to comply with the values and principles of customary and conventional international law. Those values and principles form part of the context in which statutes are enacted, and courts will therefore prefer a construction that reflects them. The presumption is rebuttable, however. Parliamentary sovereignty requires courts to give effect to a statute that demonstrates an unequivocal legislative intent to default on an international obligation…
>
> The presumption of conformity has been accepted and applied by this Court on numerous occasions. In *Daniels v. White*, [1968] S.C.R. 517, at p. 541, Pigeon J. stated:
>
> > 'This is a case for the application of the rule of construction that Parliament is not presumed to legislate in breach of a treaty or in any manner inconsistent with the comity of nations and the established rules of international law….'

[46] The U.N. Declaration, having been endorsed by the Canadian government, assists with the intent and purpose of the *CVBR.*

[47] A reading of the *Act* on its face demonstrates that a variety of victims' interests are outlined and protected. Victims have a right to obtain information about the criminal justice system, to seek restitution, their role in it, the availability of services and programs for victims and their right to assert any infringement or denial of the same.

The legislation allows for protection from intimidation and retaliation and to have privacy considered, and to request identity be protected.

[48] The language of the *Act* describes the range of interests victims have. Victims are not purely paper people. They are not only names associated with crime but are an important consideration in the administration of justice. They are in fact real. They are individuals who have rights and interests that must be considered in the proper forum.

(b) Hansard

[49] In *R. v. Summers*, [2014] 1 S.C.R. 575 the Court examined the intent of s. 719(3.1) of the *Code.* The section did not delineate the scope of what may constitute circumstances justifying credit at the rate of 1.5 to 1, but rather only what circumstances should not apply.

[50] In 2009 the *Truth in Sentencing Act,* S.C. 2009, c.29, provided for a change as to the credit a person can be given for presentence detention. There was a modification of s.719(3) of the *Criminal Code* to a maximum of 1 day for each day spent in custody. It also provided in s.719(3.1) that despite such limit, if circumstances justify the same, a maximum of 1.5 days could be credited. The accused in this case received the increased rate of 1.5 to 1. The trial judge found such was justifiable, based on the loss of the accused's eligibility for early release and parole.

[51] In determining whether such was an appropriate circumstance for the increased credit, because the section did not clearly state those words as an exception, the debates on the legislation were examined.

[52] Justice Karakatsanis, speaking from the Court at paras 4-6:

> [4] The *Truth in Sentencing Act*, … amended the *Criminal Code* to cap pre-sentence credit at a maximum of 1.5 days for every day in custody…
>
> [5] In this case, the Court is called upon to interpret these amendments. There is no dispute that Parliament imposed a cap on enhanced credit at a rate of 1.5 to 1. However, there are conflicting lower court decisions on when "enhanced" credit at a rate higher than 1 to 1 is available.
>
> [6] The statute does not definitively address the issue, providing simply that enhanced credit is available when "the circumstances justify it"(s.719(3.1)) The legislative history is contradictory and inconclusive. We must interpret the provisions to determine what "circumstances" justify enhanced credit of up to a rate of 1.5 to 1….

[53] She continued at paragraph 7:

> …where Parliament intended to alter existing practice, as with respect to the maximum amount of credit, it did so expressly. However, the legislation excludes no particular 'circumstances' from consideration. Had parliament intended to alter the well-established rule that enhanced credit compensates for the loss of eligibility for early release, it would have done so expressly.

[54] The Supreme Court in making its determination looked at both the text of the *Criminal Code* provision as well as the *Hansard* exchanges regarding its implementation, coming to the conclusion that had Parliament wished to express a limiting interpretation "if circumstances justify" it would do so, as such language exists elsewhere in the *Criminal Code*

[55] Regarding the intention of Parliament, at paragraph 51 she stated:

> The intention of Parliament can be determined with reference to the legislative history, including Hansard evidence and committee debates, although the court should be mindful of the limited reliability and weight of such evidence (R.

> Sullivan, *Sullivan on the Construction of Statues* (5th ed. 2008), at pp. 593-94 and 609).

[56] As noted in the Respondent's brief at pages 12-13, with a link to the Parliamentary sessions, the *CVBR* received first reading on April 3, 2004, second reading on June 20 and was then referred to the Standing Committee on Justice and Human Rights, which met 9 times and reported back to the House on December 3, 2004, having heard 58 witnesses.

[57] Third reading took place on February 20, 2005.

[58] The then Minister of Justice, Peter MacKay, rose in the House of Commons to speak on that date to this proposed legislation. (see 41st Parliament, 2nd Session, volume 147, # 176, February 20, 2015) pp.11455-456:

> Hon. Peter MacKay (Minister of Justice and Attorney General of Canada, CPC) moved that Bill C-32, An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts, be read the third time and passed.
>
> He said: Mr. Speaker, I am honoured to be here with my colleagues this cold February day to speak about Bill C-32, the victim's bill of rights act, and to enact this bill, which I believe will truly be transformative in approving rights for victims within our criminal justice system. This will be a quantum leap forward for victims and their families and the justice system at large…
>
> It has been a top priority of our government to put victims at the very epicentre of our justice system…
>
> …we also understand that the time has come to take a different approach to meeting the needs of victims of crime in Canada- an approach that recognizes victims' needs through clearly defined and enforceable rights…we promised to do that by entrenching victim's rights into a single law at the federal level…we are delivering on that promise with Bill C-32.
>
> I cannot overstate the significance of this piece of legislation. The Canadian victims bill of rights would explicitly enshrine victims rights in federal legislation for the first time in our country's history. Victims would enjoy rights to information, protection, participation and, in many cases, restitution…
>
> The bill would also amend other legislation…and bring victims' rights to life. This is indeed a watershed moment for Canadian victims of crime…

> What we heard loud and clear is that every victim needs a voice and every victim needs to count. We see this bill as an important step towards ensuring that victims not only obtain the information and support they need but are also able to participate in the justice system in a meaningful way that respects their dignity throughout the process…
>
> For that reason, the Canadian victims bill of rights would include a broad definition of victim that includes an individual who has suffered physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of an offence.
>
> This definition recognizes that a person may be a victim even when an offence has not been committed against them personally…
>
> The bill would extend rights to victims of crime at every stage of our criminal justice process: during the investigation and prosecution of an offence, during the corrections process, during the conditional release process or parole, and in proceedings in the courts or before review boards for an accused found not criminally responsible on account of a mental disorder or who was unfit to stand trial. However, the bill would also provide that those rights could not be applied so as to interfere with police or prosecutorial discretion and would have to be reasonable in the circumstances…
>
> This bill recognizes the importance of protection victims from further harm, while they participate in the justice system. It would provide victims with the right to have their privacy and security considered by the appropriate authorities in the criminal justice system, and the right to protection from intimidation and retaliation, including the right to apply for testimonial aids and to have their identity protected from public disclosure.
>
> [emphasis added]

[59] The Minister, and the Associate Minister of Natural Defence comment at p.11459:

> I want to come back as well to the issue of how victims fit into this process. This Canadian victims bill of rights would be a quasi-constitutional statute. It would protect extremely important values and incorporate certain goals that are basically associated with the justice system…
>
> Hon. Julian Fantino (Associate Minister of National Defence, CPC): Mr. Speaker, …Drawing on my own experience over some 40 years in law enforcement, I can say with all honesty that this bill has been a long time in the making. The whole issue of victim's rights has been neglected over many years…
>
> …what is new is the mandated codification, if you will, of processes, regards and concerns about the plight of victims and their role in the judicial system.

[60] Speaking in support of this legislation was the New Democrat Member of Parliament Ms. Francoise Boivin at page 11460:

> …We heard from many witnesses. I counted about 40 witnesses…In fact, there were 42…what mattered most to all of the witnesses was putting victims at the centre of the debate. I think that is the most positive thing that stood out…that was the most common remark I heard…whether physical, psychological, or material, the cost to victims are huge. The very notion of 'victim' is being broadened as well….
>
> [emphasis added]

[61] The consistent theme, message and intent within these passages is there was a void in the rights of victims in Canada that needed to be filled. The *Canadian Victims Bill of Rights* was proclaimed to address the same. The language of the legislation, and the language of the debate, demonstrate the broadening of the individual rights of victims as it relates to informational components, restitution, security and privacy within the criminal justice system.

[62] The language of the Minister and the other Parliamentarians, directs that victims are to be given additional rights than those that existed at the time, i.e. those in the *Criminal Code*, and that those rights are to have meaning, not just in the abstract but substantively so, in the actions that are to be taken as a result of the new *Act.*

B. *Criminal Code*

[63] The Applicants assert that the mechanism open to victims exists at s. 486.5 of the *Code.*

[64] Section 486.5 of the *Criminal Code* provides:

> ORDER RESTRICING PUBLICATION – VICTIMS AND WITNESSES
>
> 486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.
>
> (2) On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.
>
> (2.1) The offences for the purposes of subsection (2) are
>
> (a) an offence under section 423.1, 467.11, 467.111, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;
> (b) a terrorism offence;
> (c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the Security of Information Act; or
> (d) an offence under subsection 21(1) or section 23 the Security of Information Act that is committed in relation to an offence referred to in paragraph (c)…
>
> (9) Unless the judge or justice refuses to make an order, no person shall publish in any document or broadcast or transmit in any way
>
> (a) the contents of an application;
> (b) any evidence taken, information given or submissions made at a hearing under subsection (6); or
> (c) any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.
> 2005, c.32, s.15; 2015, c.13, s.19.

[65] For context, s. 486.4 provides:

> ORDERS RESTRICTING PUBLICATION – SEXUAL OFFENCES
>
> 486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of
>
> (a) any of the following offences:
>
> (i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

> (ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or
> (iii) [Repealed, 2014, c. 25, s. 22(2).]
>
> (b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).
>
> (2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall
>
> (a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and
> (b) on application made by the victim, the prosecutor or any such witness, make the order.
>
> (2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.
>
> (2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall
> (a) as soon as feasible, inform the victim of their right to make an application for the order; and
> (b) on application of the victim or the prosecutor, make the order.

[66] Section 486.4 relates to publication bans and is directed specifically at victims or witnesses of enumerated offences in the *Criminal Code*. It provides that anything that could identify persons may be protected by a publication ban, such that it will not be published in any document or broadcast or transmitted in any way.

[67] The presiding Judge *shall,* at the first reasonable opportunity, advise of the availability of the same to anyone under the age of 18 of their right to make the application and *shall* on application, make such order of non-publication.

[68] The provision extends further to offences which are not enumerated and where a victim is under 18. It requires the Court to inform, as soon as feasible, a victim of the right to make an application and upon such application by a victim or prosecutor, *may* make a similar order. There are further requirements in relation to s.163.1 offences.

[69] Section 486.5 relates to a publication ban of victims and witnesses where a 486.4 order is not made and is in the interest of the proper administration of justice.

[70] It also permits a ban on publication application for any justice system participant, in relation to enumerated sections and outlines the procedure in ss. (4) and (5) and if a hearing is held, it shall be in private, and it delineates the factors the Judge shall consider. If the Court issues a ban, it requires that no person shall publish in any document or broadcast or transmit in any way, the contents of the application, any evidence taken, information given, or submissions made at the hearing and anything that could lead to the identity of the person for whom the application relates.

[71] Section 486.4 and 486.5 are aimed at identity and anything that could identify a victim or witness.

[72] The *CVBR* is much broader, it refers to much more than identify. It provides for substantive safeguards throughout the criminal justice system from investigation onward. A publication ban is identity focused. The *CVBR* is much more substantive legislation both procedurally and in scope of application.

[73] There is nothing in the *Criminal Code* or in any authorities presented to me, that equates those bans to an application for unsealing of judicial authorizations.

[74] Mr. Coles further argues there is no evidence that anyone is seeking such protection.

[75] The Applicants rely on Justice Nordheimer's decision in *Canadian Broadcasting Corporation and Others v. HMQ*, 2013 ONSC 7309, to support their position that there is no evidentiary basis that any "victims" seek identity or privacy protection, and therefore such should not be permitted. At para 30:

> Finally, on this point, it is worth reiterating the evidentiary standard that is to be applied in deciding the proper application of the *Dagenais/Mentuck* test. It is not sufficient for a party who is seeking to restrict public access to simply make generalized statements of concern regarding the negative impacts of permitting such access. Rather the concerns expressed as warranting a restriction on public access must be 'real, substantial, and well-grounded in the evidence'.

[76] It is important to note that at the commencement of this application, with the need to move as quickly as possible at the insistence of both the Applicants and the Court, the Crown undertook to present, to the degree that they could, the positions of third parties/victims.

[77] There was an agreed upon procedure by all parties, for the sake of expediency, outlined in a letter to the Court dated May 15, 2020, from Mark Covan, Senior General Counsel, PPSC. It stated in part:

> Our discussions with Mr. Coles, Q.C., have been productive. The attached proposed procedural approach is presented on behalf of the Crown and the Applicants…I know that the Applicants are concerned about the time-frames, and I note that the Crown will endeavor to complete its obligations before the specified date if possible.
>
> | | **Step** | **Approximate timing** |
> |---|---|---|

1	CBC brings application to unseal ITO's, files brief of law in support	April 28, 2020	…
9	Preliminary decision Applications judge to provide a preliminary ruling If Applications judge rules against Crown's redactions protecting interests of innocent persons / third party privacy interests, she will consider issue of notice to some or all third parties involved		
10	[if necessary] Notice provided to third parties, with deadline for response		….

[78] Acknowledgement of this proposed procedure by Mr. Coles was received on the same date. Both pieces of correspondence were tendered as exhibits 1 and 2 in a hearing on May 19, 2020.

[79] On July 3, 2020, after submission of briefs, counsel presented argument to the Court on the procedure to be followed in the unsealing application. The issues of expediency and volume of materials were a key part of the submissions.

[80] The following is important to recall for the purposes of this decision and in particular, the position of the Crown on the issue of notice to third party interests and their evidentiary burden.

From the transcript of July 3, 2020, the following appears at pp: 6-8:

> **MR. COVAN:** This is an important decision for the Court…there's not a lot of case law on this very area…the **Criminal Code** … is completely silent on this issue…It tells you what your jurisdiction is, what you can and can't do, provides you with a perhaps rudimentary analytical framework which is has, but that is for the common law to fill in the blanks, so to speak…
>
> *The Nova Scotia Provincial Court Rules* are equally silent…What we're left with really are generalized statements, which again are not of much assistance

when it comes to nailing down what this thing is going to look like when we get in court.

The case law, of course, is a mix, it's all over the place. Some courts seem to adopt a more rigorous procedure… Other courts seem to make it up as they go along… Other courts, judges for example, Justice Goldstein in the *R. v Canadian Broadcasting Corporation* decision that's at Tab 4, he seems to have taken the bull by the horns and really adopted his own procedure…

So, I … think we really have to go back to…basics, Your Honour, and what we know is that law informs procedure, not the other way around. Procedure doesn't inform law. Law has to inform procedure and what we know in this case is although it's an application by CBC, amongst others, this is a Crown burden…

What we know is that the Crown has both an evidentiary and persuasive burden and I think it's important to make that distinction. The Supreme Court of Canada tells us that the evidentiary burden is simply the obligation to lead evidence at some point in the proceeding. Sometimes the Defence has an evidentiary burden; there are examples of that in criminal law, of course. But in this particular case, … we have both the evidentiary as well as the persuasive burden. So, we have to lead evidence and we have to satisfy the Court, the trier of fact, as to a particular analytical framework or to a particular legal stand which is described in our materials. So, that's from the outset. This is a Crown burden and we recognize that.

Complicating the analysis, I think, is the fact that we have numerous competing obligations here. I'm not going to go through the list…it's a long one…There was a crime committed here. Wortman killed 22 people…that's not in dispute. There's no dispute that there is a significant RCMP investigation going on into those murders and the individuals surrounding that event…

There are, as you've heard, Your Honour, numerous Search Warrants that have been executed, Production Orders and so on pursuant to that investigation and you've seen from the materials that we've filed to the Court that it is a significant one. I think one of the materials quoted some sixteen hundred tasks have been completed… At the same time, of course, the media has a strong public interest in accessing materials to bring these to the public…attention to the extent that it's reasonable in the circumstances…

We've got third-party interests, of course, that require protection in all of this, and defining the scope of those third-party interests. So, the question becomes, how do we achieve a balance between all those competing interests and at the same time, allow the Crown to meets its evidentiary persuasive burden. That's the challenge of the procedural question….

And further at pp. 26-28:

MR. COVAN: …we've tried to have some ability for the Court to adjudicate not only the nature of the claims that are advanced by the Crown in relation to third-party interests, but also, the scope of those claims…for example, if Mr. Millar here was one of the third party individuals and the application was in relation to…a large body of information related to him, you might decide that some of that information is protected, all of that information is protected or none of it. But that process, then, also reduces the nature of the application that would follow where he has been given those.

> …if you decide that his date of birth, his social insurance number, his…the license plate from his car, all of these other personal pieces of information are protected but you …you don't feel that his identity should be protected, then that matter moves forward on the basis that there's certain areas that are protected but some that aren't, and then he would receive those… and we would litigate only the issues that you have determined should move forward in the process – his identify, where he was when he made certain observations or heard certain things, that sort of thing. But again, it's an opportunity for the Court to define and delineate what moves through the process.
>
> What's proven unsatisfactory, Your Honour, is the circumstance with Justice Nordheimer where he said to the Crown, 'There's so many third parties here, we're not going to give them notice; we can't possibly give them all notice.' I think there was –
>
> **MS. MACDONALD**: Seventy.
>
> **MR. COVAN**: …seventy of them. 'We can't give seventy people notice; its going to… we'll have a lineup out the door of the courtroom. It's going to be a very burdensome process'. Then the Crown says, 'Okay, well, we'll advocate on their behalf,' … at the end of it,… Justice Nordheimer says, 'Well, I haven't heard sufficient evidence on the third party interests, I'm going to release that information'… it's obvious that there's a problem with that approach.
>
> So, what we've attempted to do…is…allow the Court to define and delineate who those people are, who should get notice, the scope of the claims that are being advanced or that should be considered by the Crown moving forward, and hopefully make that process more efficient rather than go to I don't know how many third parties we'd have in this particular case, I don't have the number off the top of my head, but if it's fifteen people, for example, that's going to essentially grind this process to a halt. And from the Crown's perspective, we understand that there's a public interest in moving this application forward and doing it efficiently. I think we've demonstrated that with short timelines, with proactively providing additional disclosure when the investigation allows us to do so and we anticipate doing that as we move forward…We understand that obligation; we take it very seriously. At the same time, obviously we have to protect the investigation and the third-party interests.
>
> So, that's step four, Your Honour, and as I said, it's…I would suggest to you, Your Honour, that no matter what process you adopt, whether it's the one that the Crown advocates or that Mr. Coles advocates, or something in between that, there are going to be inefficiencies in that process. The question really becomes what process is going to best protect that information, while ensuring that Mr. Coles has…a fair and appropriate opportunity, has due process rights to advocate on behalf of his clients as he moves forward through the hearing.

[81] This was the beginning of the procedural hearings on this matter which culminated with a procedural decision of this Court on July 16, 2020 (*see 2021 NSPC 15*). The Court would determine, when, and if notice, would be required to third party interests, as the matter proceeded.

[82] To say the Crown has not produced evidence is inaccurate, but even if that were correct, that does not absolve the Court of its duty.

[83] By way of example, within the trial context, at sentencing, victims have a legislated right to make the Court aware of the physical, emotional and/or financial impact of the crime by submitting a victim impact statement pursuant to s. 722 of the *Code.*

[84] It is incumbent upon a Court when sentencing an individual, where a victim is clearly ascertainable or identified, and no victim impact statement has been filed, to inquire from the Crown if the victim was told of their right in law to do so. If the victim has not been told, a Court will often adjourn proceedings to ensure that information has been forwarded to a victim. It is a positive duty on the Court to make the inquiry. I find this application before this Court an analogous situation. That is, there is a positive duty on the Court to notify ascertainable victims of their rights, both substantive and procedurally, under the *Canadian Victim Bill of Rights*.

[85] Such an inquiry will provide an evidence-based approach that Mr. Coles refers to.

Conclusion

[86] There is no provision within the *Criminal Code* or otherwise, to permit victims to express the impact disclosure of their identify and/or personal information would have on a situation such as before the Court. However, it has been established through

Hansard, the preamble and specific provisions of the *Act*, such was intended, and this Court is the mechanism for such, as those words appear in Section 19(1).

[87] It is the obligation of this Court to be the gatekeeper for the proper administration of justice. I find s. 19(1) of the *Act* to be a specific direction to Courts in that regard.

[88] The contentious issue as between the Applicants and Respondents, is the applicability of s.2 and its interplay with s.18(1)(a) and other provisions within the *CVBR*.

[89] This application is about "standing" and "notice" as it relates to victims within the meaning of the *Canadian Victims Bill of Rights*. It is not about how such would be procedurally, or substantially, determined should they be given such. That is for another day.

[90] In *R. v. McIntosh*, *supra*, the Supreme Court of Canada adopted the Driedger contextual approach and outlined a 5 step process:

> Driedger then reduces the principle to five steps of construction (at p.105):
>
> '1. The Act as a whole is to be read in its entire context so as to ascertain the intention of Parliament (the law as expressly or implied enacted by the words), the object of the Act (the relation between the individual provisions of the Act).
>
> 2. The words of the individual provisions to be applied to the particular case under consideration are then to be read in their grammatical and ordinary sense in the light of the intention of Parliament embodied in the Act as a whole, the object of the Act and the scheme of the Act, and if they are clear and unambiguous and in harmony with that intention, object and scheme and with the general body of the law, that is the end.
>
> 3. If the words are apparently obscure or ambiguous, then a meaning that best accords with the intention of Parliament, the object of the Act and the scheme of the Act, but one that the words are reasonably capable of bearing, is to be given them.

> 4. If, notwithstanding that the words are clear and unambiguous, when read in their grammatical and ordinary sense, there is disharmony within the statue, statutes in *pari materia,* or the general law, then an unordinary meaning that will produce harmony is to be given the words, if they are reasonably capable of bearing that meaning.
>
> 5. If obscurity, ambiguity or disharmony cannot be resolved objectively by reference to the intention of Parliament, the object of the Act or the scheme of the Act, then a meaning that appears to be the most reasonable may be selected. [Emphasis added]'

[91] This Court can make its determination of meaning, intent and applicability in the context of the *Act*, by reference to steps 1 and 2, and need go no further.

[92] Step 1 requires a reading of the *Act* as a whole, contextually in relation to Parliament's intent. The debate in the House of Commons makes it apparent to the Court, that victims are to be considered at every stage, from the investigation onward.

[93] The Minister of Justice was clear, the legislation was meant to be 'transformative', victims were to be at the 'epicentre of our justice system', 'at every stage' and were to have 'enforceable rights'. (see *Hansard, supra)*

[94] Most significantly from *Hansard* he stated:

> The bill would extend rights to victims of crime at every stage of our criminal justice process: during the investigation and prosecution of an offence. (see 41st Parliament, 2nd Session, volume 147, # 176, February 20, 2015) pp.11455-456)

[95] Step 2 requires a reading of sections of the *Act* applicable to the case at bar. They are most notably ss. 12, 14 and 18(1)(a). These are to be read in their grammatical and ordinary sense, by reference to the intention of Parliament, the object of the *Act* and its the scheme.

[96] The subtitle of the *Act,* “an Act for the recognition of victims’ rights”, is an acknowledgement of intent and object.

[97] Important guidance is found in the ‘Preamble’. In very plain language it instructs the reader that the legislation is meant to give victims identifiable rights, such are guaranteed by *the Canadian Charter of Rights and Freedoms*, and such is an ingredient for the proper administration of justice

[98] Section 12 provides for a right to victims to request participation.

[99] Section 14 provides for active participation by a victim.

[100] Section 18 provides these rights are available from the initiation of an investigation. Section 18 is not a stand-alone provision. It has a very natural nexus to the entirety of the *Act.*

[101] Section 12, 14 and 18 are the codification of the stated intention of the Parliament of Canada in enacting this law in Bill C-32.

[102] One only goes on to Step 3 where ‘words are apparently obscure or ambiguous’. Such ambiguity or obscurity does not exist in this Court’s interpretation or application.

[103] The language of the *Act* assists immensely with the interpretation of the intent of the *Act.*

[104] The preamble is very clear. There is no ambiguity as to the crucial role victims have in terms of their rights in the criminal justice system. It specifically states that 'consideration of the rights of victims of crime is in the interest of the proper administration of justice'. That is very instructive and very defining.

[105] The Court finds that the cumulative effect of the debates on the Bill in the House of Commons, the language of the U.N. Declaration and the language of the *Act* itself, is that the *Canadian Victims Bill of Rights* applies to this unsealing application and such rights are both procedural and substantive.

[106] As the Crown suggested, it would be illogical to have interests of a victim be considered at trial but not in a pre-trial unsealing application. That is, if at trial, the *CBVR* applies and all protections are afforded, it would be too late if an unsealing application was ordered without the protections afforded victims having been applied.

[107] The preamble of the *Canadian Victims Bill of Rights* speaks about courtesy, compassion and respect to victims within the criminal justice system. This cannot simply be a suggestion.

[108] The Court is a gatekeeper in many aspects of the administration of justice. The rights and obligations, set out in the *Act* are key to the proper administration of justice. There is nothing within the *CVBR*, when coupled with s. 487.3(2)(iv) and the debate leading up to its adoption, that could in any way be interpreted as not being applicable to the unsealing of judicial authorizations.

[109] Such an interpretation is to use the words of Justice Bastarache in keeping with the 'legislative spirit embodied' in the *CVBR*. (see *ATCO,supra,* para 49)

_____

Laurel Halfpenny MacQuarrie

J.P.C.