

During the Senate Legal and Constitutional Affairs Committee's consideration of Bill C-10 (*Safe Streets and Communities Act*) on February 9, 2012, the Privacy Commissioner of Canada raised concerns about lowering the age for the lifting of publication bans under the *Youth Criminal Justice Act* (YCJA) from 14 to 12. The Library of Parliament had stated in their legislative summary of the Bill C-10 that the age would remain at 14.

The Library of Parliament, through the Clerk of the Committee, asked whether the Department of Justice could clarify the following issue that it framed as follows:

*The question concerns the new section 75 of the Youth Criminal Justice Act, as set out in clause 185 of Bill C-10. Read in isolation, the new section seems to say that any young offender (i.e. anyone between the ages of 12 and 17) found guilty of a violent offence may have a publication ban lifted, even if that offender has received a youth sentence. Read on its own, this would mean that the current age limit of 14 and over for the lifting of a publication ban would no longer apply. So a 12- or 13-year-old could have a publication ban lifted.*

*But section 75 is embedded in a Part of the YCJA entitled "Adult Sentence and Election". The sections of the YCJA both before and after section 75 all discuss adult sentences. Such sentences, as set out in new section 64, can only be imposed upon youths 14 years of age and older. Publication bans can only be lifted against young offenders who are at least 14. So should new section 75 be read in the context of adult sentences? In other words, should we be reading section 75 to say "when a youth sentence is imposed [when an adult sentence was a possibility]"? This would make some sense given the position of section 75 in the bill, unless it is considered that section 75 is sufficiently clear on its own to not need this contextual reading.*

As a basic rule, Part 6 of the YCJA entitled "Publication, Records and Information", prohibits the publication of names of young offenders, as well as any information that could lead to the identification of a young person being dealt with under the Act.

Subsection 110(1) of the YCJA provides that "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".

Nevertheless, the YCJA contains several exceptions to the general prohibition on publication, including the following:

- Paragraph 110(2)(a) permits publication of the names of young persons who have received an adult sentence for their offence (adult sentences are only available for young persons aged 14 and up); and
- Paragraph 110(2)(b), as amended in Bill C-10, will permit publication in cases where the information relates to a young person who has received a youth sentence for a violent offence, and the youth justice court has ordered a lifting of the publication ban under the amended subsection 75(2) of the YCJA (a young person is defined in section 2 of the YCJA as being twelve years or older, but less than eighteen).

Section 75 of the *YCJA* is found in Part 4 of the *YCJA* entitled “Sentencing”, which includes provisions related to both youth and adult sentencing.

Section 75 in the current version of the *YCJA* sets out a process to determine the appropriateness of publication in limited circumstances whereby a youth sentence is imposed by the court where an adult sentence is being sought. Such circumstances are applicable to young persons aged 14 and up. Young persons aged 12 and 13 are not subject to the provisions of the *YCJA* relating to adult offences.

Under the proposed changes to section 75 of the *YCJA* found in Clause 185 of Bill C-10, the scope of subsection 75(1) has been broadened to require the judge to consider lifting the ban anytime a young person receives a youth sentence for a violent offence.

The new test in subsection 75(2) provides the court with discretion to order a lifting of the ban if it determines, taking into account the principles in sections 3 and 38 of the Act, that the young person poses a significant risk of committing another violent offence and the lifting of the ban is necessary to protect the public against that risk.

In conclusion, under Clause 185 of Bill C-10, where the youth court imposes a youth sentence on a young person found guilty of a violent offence, the youth court may lift the publication ban subject to the test in subsection 75(2). As a “young person” is defined in section 2 of the *YCJA* to mean a person who is “...twelve years old or older, but less than eighteen years old”, the publication ban would be able to be lifted for youth between the ages of twelve and fourteen.