**COURT MARTIAL**

**Citation**: *R. v. Therrien*, 2025 CM 7012

**Date:** 20251205
**Docket:** 202515

Standing Court Martial

Halifax Courtroom, Suite 505
Halifax, Nova Scotia, Canada

**Between:**

**His Majesty the King, Applicant**

- and -

**Lieutenant-Colonel Y. Therrien, Respondent**

Application heard and decision rendered in Halifax, Nova Scotia on 2 October 2025
Reasons delivered in Gatineau, Quebec, on 5 December 2025.

**Before:** Colonel S.S. Strickey, M.J.

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**Restriction on publication: Pursuant to paragraph 183.5(4)(b) and section 183.6 of the *National Defence Act*, the Court directs that any information that could disclose the identity of the persons described in these proceedings as the complainants, including the persons referred to in the charge sheet as "J.A." and "L.P.", shall not be published in any document or broadcast or transmitted in any way.**

## REASONS ON AN APPLICATION FOR A PUBLICATION BAN

### *Introduction and background*

[1] The applicant is seeking from the Court an order restricting publication in these proceedings that could identify the two complainants, "J.A." and "L.P.". In particular, the applicant requested the following:

> "1. An order pursuant to section 183.5 (4)b) of the National Defence Act, RSC 1985, c N-5. (NDA) directing that:
>
> Any information that could identify the complainant in these

> proceedings, the person referred to as "J.A." on the charge sheet, shall not be published in any document or broadcast or transmitted in any way, except when disclosure of such information is in the course of the administration of justice, when it is not the purpose of that disclosure to make the information known in the community.
>
> 2. An order pursuant to section 183.6 of the NDA directing that:
>
> Any information that could identify the complainant in these proceedings, the person referred to as "L.P." on the charge sheet, shall not be published in any document or broadcast or transmitted in any way, except when disclosure of such information is in the course of the administration of justice, when it is not the purpose of that disclosure to make the information known in the community."

[2] The application was heard just prior to the commencement of the court martial. The respondent did not oppose the orders sought by the applicant. After a brief deliberation, I granted the orders restricting publication with written reasons to follow. These reasons are set forth below.

[3] The publication ban orders remains extant. However, upon reviewing the law in rendering these reasons, the applicant (prosecutor) erred in arguing that the legal basis for granting the publication ban order for the victim J.A. was *NDA* paragraph 183.5(4)(b). The prosecutor stated that it was mandatory for the Court to order the publication ban pursuant to this paragraph as the victim J.A. was sixteen years old at the time of the offence. In relying upon the prosecutor's argument, that was not contested by the respondent, the Court erroneously ordered a publication ban based on this paragraph.

## ***Evidence***

[4] Counsel for the applicant entered as exhibits the charge sheet (PP1-1), notice of application (PP1-2) and an Agreed Statement of Facts (ASOF) (PP1-3). Counsel for the respondent did not enter any evidence into the record. In addition, the applicant cited four cases including *R. v. Mason*, 2023 CM 2004.

## ***Application and submissions***

[5] As summarized in the ASOF, the respondent (accused) has been charged with two offences pursuant to *NDA* section 129. The alleged incidents leading to the charges occurred in 2013, when the respondent was the commanding officer (CO) of the Debert Cadet Flying Training Centre (CFTC). The applicant submits that at the time of the alleged offences, L.P. was an eighteen-year-old staff cadet and J.A. was a sixteen-year-old cadet.

[6] In sum, it is alleged that L.P. and J.A were subject to a *de facto* punishment of "confinement". More specifically, J.A. was alleged to have been confined to a repurposed dorm room used as a storage room for one day and was only allowed to leave to go to the washroom.

J.A. was also subject to being escorted for lunch and dinner. The applicant further alleges that L.P. was "confined" twice; once remaining seated at a desk for six to seven hours and, second, remaining in the repurposed storage room from 0730 hours to 2230 hours. It is alleged that L.P. was taken to meals outside of regular hours to avoid contact with other cadets and was not allowed to contact her parents. While the door of the repurposed storage room was not locked nor completely shut, L.P. did not feel free to leave.

[7] The applicant submits that *NDA* paragraph 183.5(4)(b) applies to a publication ban order concerning J.A. while *NDA* section 183.6 is the appropriate section to address L.P.'s situation.

***Order restricting publication for J.A.***

[8] The applicant (prosecutor) argues that on its application, it is mandatory for the military judge to grant an order restricting publication under *NDA* paragraph 183.5(4)(b) when the victim of a service offence, other than a service offence referred to in *NDA* subsection 183.5(1), is under the age of eighteen. In this case, as J.A. was sixteen years old at the time of the alleged offence and seeks an order restricting publication, there is no discretion for the military judge as the order is mandatory.

***Order restricting publication for L.P.***

[9] In terms of L.P., the applicant states that *NDA* section 183.6 permits a military judge to order a restriction on publication if it is in the interest of the proper administration of military justice. From the applicant's perspective, *NDA* paragraphs 183.6(8)(b), (d), (e), and (g) are the most relevant factors to be considered by the Court when determining whether to make an order restricting publication:

> (b) whether there is a real and substantial risk that the victim, witness or military justice system participant would suffer harm if their identity were disclosed;
>
> . . .
>
> (d) society's interest in encouraging the reporting of service offences and the participation of victims, witnesses and military justice system participants;
>
> (e) whether effective alternatives are available to protect the identity of the victim, witness or military justice system participant;
>
> . . .
>
> (g) the impact of the order on the freedom of expression of those affected by it . . ..

[10] In this case, the applicant submits they are seeking to limit the scope of the order restricting publication of the complainant's name to their initials. They argue that initialization is a minimal intrusion on the open court principle, and the relief sought would not prevent the public or media from attending the proceedings where the name of the complainant would be used. Should the Court not grant the order, the applicant states that disclosing the core biographical details of the victim would negatively impact their dignity and generate harm.

## ***Law and analysis***

[11] In the military justice system, Division 1.1 of the *NDA* sets forth the Declaration of Victim Rights. Among other things, *NDA* section 71.08 states that "every victim has the right to request that their identity be protected if they are a complainant in respect of the service offence . . .". More specifically, the *NDA* also sets forth the statutory regime related to publication bans at *NDA* sections 183.5 to 183.6:

> **Order restricting publication — sexual offences**
>
> 183.5(1) Subject to subsection (2), a military judge or, if the court martial has been convened, the military judge assigned to preside at the court martial may make an order directing that any information that could identify a victim or a witness not be published in any document, or broadcast or transmitted in any way, if the proceedings are in respect of
>
> (a) any of the following offences:
>
> (i) an offence punishable under section 130 that is an offence under section 151, 152, 153, 153.1, 155, 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 of the *Criminal Code*,
>
> (ii) any offence under the *Criminal Code*, as it read at any 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 had occurred on or after that day; or
>
> (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).
>
> **Mandatory order on application**
>
> (2) In proceedings in respect of any offence referred to in subsection (1), the military judge shall
>
> (a) as soon as feasible, inform the victim and any witness under the age of 18 years of their right to make an application for the order; and
>
> (b) on application of the victim, the prosecutor or any such witness, make the order.
>
> **Victim under 18 — other offences**
>
> (3) Subject to subsection (4), in proceedings in respect of a service offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the military judge or, if the court martial has been convened, the military judge assigned to preside at the court martial may make an order directing that any information that could identify the victim not be published in any document or broadcast or transmitted in any way.
>
> **Mandatory order on application**
>
> (4) In proceedings in respect of a service offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the military judge or, if the court martial has been convened, the military judge assigned to preside at the court martial 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.

**Child sexual abuse and exploitation material**

(5) In proceedings in respect of an offence punishable under section 130 that is an offence under section 163.1 of the *Criminal Code*, the military judge or, if the court martial has been convened, the military judge assigned to preside at the court martial shall make an order directing that any information that could identify a witness who is under the age of 18 years or any person who is the subject of any representation, written material or recording that constitutes child sexual abuse and exploitation material, as defined in that section 163.1, not be published in any document or broadcast or transmitted in any way.

**Limitation**

(6) An order made under this section does not apply in respect of the disclosure of information if the disclosure is made in the course of the administration of military justice and it is made for a purpose other than to make the information known in the community.

**Order restricting publication — victims and witnesses**

183.6(1) Unless an order is made under section 183.5, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a military judge or, if the court martial has been convened, the military judge assigned to preside at the court martial may make an order directing that any information that could identify the victim or witness not be published in any document or broadcast or transmitted in any way, if the military judge is of the opinion that the order is in the interest of the proper administration of military justice.

**Military justice system participants**

(2) On application of the prosecutor in respect of a military justice system participant who is involved in proceedings in respect of an offence referred to in subsection (3) or on application of the military justice system participant themself, a military judge or, if the court martial has been convened, the military judge assigned to preside at the court martial may make an order directing that any information that could identify the military justice system participant not be published in any document or broadcast or transmitted in any way, if the military judge is of the opinion that the order is in the interest of the proper administration of military justice.

**Offences**

(3) For the purpose of subsection (2), an offence is any of the following:

(a) an offence punishable under section 130 that is an offence under section 423.1, 467.11, 467.111, 467.12 or 467.13 of the *Criminal Code* or that is 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 punishable under section 130 that is an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1), 20.1(1), 20.2(1), 20.3(1), 20.4(1) or 22(1) of the *Foreign Interference and Security of Information Act*;

(d) an offence punishable under section 130 that is an offence under subsection 21(1) or section 23 of the *Foreign Interference and Security of Information Act* and that is committed in relation to an offence referred to in paragraph (c).

**Limitation**

(4) An order made under this section does not apply in respect of the disclosure of information if the disclosure is made in the course of the administration of military justice and it is made for a purpose other than to make the information known in the community.

**Making of application**

(5) An application for an order under this section must be made in accordance with regulations made by the Governor in Council.

**Grounds**

(6) The application must set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of military justice.

**Hearing may be held**

(7) The military judge may hold a hearing to determine whether an order under this section should be made, and the hearing may be held in private.

**Factors to be considered**

(8) In determining whether to make an order under this section, the military judge shall consider

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim, witness or military justice system participant would suffer harm if their identity were disclosed;

(c) whether the victim, witness or military justice system participant needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of service offences and the participation of victims, witnesses and military justice system participants;

(e) whether effective alternatives are available to protect the identity of the victim, witness or military justice system participant;

(f) the salutary and deleterious effects of the order;

(g) the impact of the order on the freedom of expression of those affected by it; and

(h) any other factor that the military judge considers relevant.

**Conditions**

(9) An order made under this section may be subject to any conditions that the military judge thinks fit.

**Publication prohibited**

> (10) Unless the military judge refuses to make an order under this section, no person shall publish in any document or broadcast or transmit in any way
>
> (a) the contents of the application for the order;
>
> (b) any evidence taken, information given or submissions made at a hearing held under subsection (7); or
>
> (c) any other information that could identify the person to whom the application relates as a victim, witness or military justice system participant in the proceedings.

***Order restricting publication pursuant to NDA paragraph 183.5(4)(b)***

[12] The victim J.A. was under the age of eighteen years at the time of the alleged offence, an act to the prejudice of good order and discipline pursuant to *NDA* section 129. The applicant submits that *NDA* paragraph 183.5(4)(b) applies in this case:

> 183.5(4) In proceedings in respect of a service offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the military judge or, if the court martial has been convened, the military judge assigned to preside at the court martial 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 prosecutor, make the order.
> [My emphasis.]

[13] The applicant relied upon *NDA* subsection 183.5(4) in their application at paragraphs 9 and 10:

> "9. At paragraph 183.5(4), the NDA makes it mandatory on application for the Military Judge to grant a publication ban order when the victim of any offence is under the age of 18.
>
> 10. J.A. was 16 years old at the time of the incident, therefore, he would qualify as a victim of an offence, a section 129 offence in this case, and would be entitled to a publication ban order."

[14] There was no substantive oral argument from the applicant on this point, and the respondent did not oppose the application. Following a short deliberation, I granted the request for an order restricting publication for the victim J.A. pursuant to *NDA* paragraph 183.5(4)(b) with written reasons to follow.

[15] However, upon reviewing the law in rendering these reasons, *NDA* subsection 183.5(4) does not appear to apply in this case. The victim J.A. was under eighteen at the time of the alleged offence, in 2013. Therefore, the question is whether *NDA* subsection 183.5(4) applies if the victim was under the age of eighteen at the time of the alleged offence. If I accept this interpretation, then *NDA* subsection 183.5(4) would be applicable to the victim some twelve years later, when he is now approximately twenty-eight years old. If not, it would appear that the

appropriate means for the applicant to request an order restricting publication should have been similar to that sought for the victim L.P.; namely, a publication ban order pursuant to *NDA* section 183.6.

[16] The Court is guided by the modern approach to statutory interpretation: 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 the legislature. Therefore, *NDA* subsection 183.5(4) suggests that in the case of J.A., a mandatory order restricting publication, on application from the prosecutor, would not apply. More particularly, the phrase [if the victim is under the age of 18 years] "at the time of the offence" (or words to that effect) is absent from the impugned subsection (see generally, *Rizzo & Rizzo Shoes Ltd*. (Re), [1998] 1 SCR 27.

[17] There are circumstances whereby the *NDA* is clear that a military judge shall issue a publication ban order for victims and witnesses under the age of 18. For example, pursuant to *NDA* paragraphs 183.5(1)(a) and (b), if the proceedings are in respect of various *Criminal Code* offences that are punishable under *NDA* section 130, the military judge shall "as soon as feasible, inform the victim and any witness under the age of 18 years of their right to make an application for the order" (*NDA* paragraph 183.5(2)(a)) and "on application of the victim, the prosecutor or any such witness, make the order" (*NDA* paragraph 183.5(2)(b)). [My emphasis.]

[18] Similarly, if the alleged service offence is not captured in *NDA* subsection 183.5(1), for victims under eighteen, "the military judge shall as soon as feasible, inform the victim of their right to make an application for an order" (*NDA* paragraph 183.5(4)(a)); and "on application of the victim [under the age of eighteen], or the prosecutor, make the order" (*NDA* paragraph 183.5(4)(b)).

[19] *NDA* subsection 183.5(2) suggests that Parliament has legislated a mandatory order restricting publication, on application, for victims and any witness under the age of eighteen years for those service offences that fall within *NDA* subsection 183.5(1). Therefore, this would suggest that a victim, regardless of age, could apply for an order restricting publication under this subsection. In contrast, for service offences not captured under subsection 183.5(1), a mandatory order restricting publication, on application, would only apply to victims under the age of eighteen years (see *NDA* subsection 183.5(4)). For all other victims, the appropriate section to ground an application for an order restricting publication is *NDA* subsection 183.6(1).

[20] I note there are sections in the *NDA* that would appear to account for the age of the victim at the time of the offence. For example, when examining the aggravating and mitigating sentencing principles outlined at *NDA* subparagraph 203.3(a)(iv), the age of the victim at the time of the offence is relevant as an aggravating factor on sentence:

> 203.3 Sentences must be imposed in accordance with the following other principles:
>
> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and aggravating circumstances include, but are not restricted to, evidence establishing that:
>
> . . .

> (iv) the offender, in committing the offence, abused a person under the age of 18 years . . .. [My emphasis.]

[21] Finally, the wording of the applicable sections in the *Criminal Code* generally mirror that of the military justice system (see *Criminal Code* sections 486.4-486.51)). To that end, I was unable to locate any case law in the civilian criminal justice system that would support the applicant's position that a mandatory order restricting publication should be granted as the victim was eighteen years old at the time of the offence but time has passed such that, at the time of the application, they are over eighteen years old.

[22] In summary, the victim J.A. was sixteen years old in 2013 at the time of the alleged offence. He is now approximately twenty-eight years old. The applicant erred in relying upon *NDA* subsection 183.5(4) in requesting the Court order a mandatory publication ban. In turn, the Court subsequently erred in relying upon counsel and granting the publication ban order under this authority. The applicant should have sought a publication ban order for the victim J.A. pursuant to *NDA* section 183.6.

***Order restricting publication –section 183.6***

[23] The victim L.P. was an eighteen-year-old staff cadet at the time of the alleged offence.

[24] In this situation, *NDA* subsection 183.6(1) applies:

> 183.6(1) Unless an order is made under section 183.5, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a military judge or, if the court martial has been convened, the military judge assigned to preside at the court martial may make an order directing that any information that could identify the victim or witness not be published in any document or broadcast or transmitted in any way, if the military judge is of the opinion that the order is in the interest of the proper administration of military justice.

[25] Subsection 183.6(8) outlines the factors that the military judge must consider in deciding whether to authorize an order restricting publication:

> 183.6(8) In determining whether to make an order under this section, the military judge shall consider:
>
> (a) The right to a fair and public hearing;
>
> (b) Whether there is a real and substantial risk that the victim, witness or military justice system participant would suffer harm if their identity were disclosed;
>
> (c) Whether the victim, witness or military justice system participant need the order for their security or to protect them from intimidation or retaliation;
>
> (d) Society's interest in encouraging the reporting of service offence and the participation of victims, witnesses and military justice system participants;
>
> (e) Whether effective alternatives are available to protect the identity of the victim, witness or military justice participant;

> (f) The salutary and deleterious effects of the order;
>
> (g) The impact of the order on the freedom of expression of those affected by it; and
>
> (h) Any other factor that the military judge considers relevant.

[26] As noted above, the applicant has submitted that paragraphs (b), (d), (e) and (g) are especially salient. In addition, the applicant further states that given the alleged offence involves a young victim at the time of the offence, society's interest in encouraging the reporting of the offence and the victim's participation in the criminal justice system is particularly relevant.

[27] In *Mason*, the Court succinctly outlines factors a military judge should apply when considering issuing an order restricting publication:

> [10] The rendering of a decision requires the Court to consider the ban's effect on the administration of military justice and conduct a careful balancing of the effects of the publication ban against the rights and interests of the parties.
>
> [11] The onus is on the applicant to justify the restriction sought on the open court principle by establishing the existence of a real and substantial risk to the fairness of the trial that is well grounded in evidence. The test set out in section 183.6 of the *NDA* directs that a military judge must assess the competing interests between the open court principle and the administration of justice with neither interest eclipsing the other.

[28] Applying the rationale in *Mason* to this case, the Court has considered the proposed order restricting the publication's effect on the administration of justice against the rights and interests of the victim L.P. and the accused. In this case, the applicant has satisfied the Court that the restriction sought on the open court principle is necessary for the proper administration of military justice.

[29] More specifically, as it relates to the factors for a military judge to consider at *NDA* paragraphs 183.6(8)(a-h), paragraphs (b), (d) and (e) militate towards granting the order. In the circumstances of this application, L.P. was only eighteen years old at the time of the alleged offence. Granting the order would reinforce to victims that any concerns regarding their core biographical information being disclosed would be duly considered, particularly in relation to any impact upon their dignity. In addition, granting the order would also encourage complainants to report misconduct. I fully agree with the applicant at paragraph 19 of the application that states, "when the offence is one of abuse of disciplinary powers involving young victims, society's interest in encouraging the reporting of the offence and the victim's participation in the criminal justice process . . .." As the Court aptly stated at paragraph 17 in *Mason,* "An order that recognizes the vulnerable state of complainants and their need to continue their career in the CAF is important."

[30] Gleaning once again the rationale in *Mason*, the applicant in this case is seeking similar relief; namely, the Court is being asked to limit the publication of the complainant's name. I concur with Sukstorf, M.J. at paragraph 19 where she stated, "The publication ban in this case relates strictly to the identity of the complainant. It does not prevent the public or media from attending the proceeding where the name of the complainant will be used. In fact, the media, the public and the CAF community are all strongly encouraged to attend."

[31] That is the case before the Court. The order restricting publication requested by the applicant for the victim L.P. is reasonable and does not impact on the fair trial rights of the accused.

***Conclusion***

[32] The order restricting publication for J.A. and L.P. was granted on 3 October 2025. After reviewing the factors argued by the applicant in granting L.P.'s order restricting publication, if the applicant made a similar argument for the victim J.A., the Court would have granted the publication ban order pursuant to *NDA* subsection 183.6.[1]

**FOR THESE REASONS, THE COURT:**

[33] **GRANTS** the application.

"S.S. Strickey, Colonel"
M.J.

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**Counsel:**

The Director of Military Prosecutions as represented by Major O. Vinet-Gasse

Major I. Gagné, Defence Counsel Services, Counsel for Lieutenant-Colonel Y. Therrien

[1] In *R v. Hornibrook*, 2022 NWTSC 1, the Crown sought and obtained a publication ban. It was not disputed that the Crown's application was made in error. The Crown then applied to revoke the publication ban. Citing the Supreme Court of Canada (SCC) in R.*v. Adams* [1995] 4 S.C.R. 707. At paragraph 30 the SCC stated: "As a general rule, any order relating to the conduct of a trial can be varied or revoked if the circumstances that were present at the time the order was made have materially changed. In order to be material, the change must related to a matter that justified the making of the order in the first place." The NWTSC rescinded the publication ban and stated ". . . . it is hard to conceive that a legitimate mistake by the Crown in obtaining a publication ban would not also constitute a material change in circumstances".