

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-4794

Appeal PA23-00491

Archives of Ontario

March 9, 2026

Summary: The Archives of Ontario received a request under the *Freedom of Information and Protection of Privacy Act* for incarceration records from the 1940s related to a named individual. The archives denied access to the records, stating that they are excluded from *FIPPA* because the *Youth Criminal Justice Act* applies to them, as they relate to how the individual was dealt with under the *Juvenile Delinquents Act* (a predecessor of the *YCJA*). The appellant disputed this, stating that the *YCJA* does not apply because although the individual was committed to a training school as a young person, she was not convicted under the *JDA*.

In this order, the adjudicator finds that the information at issue relates to the “offence of delinquency” as defined in the *JDA*, and the *YCJA* therefore applies to the information. He dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31; *Youth Criminal Justice Act*, S.C. 2002, c.1 sections 110, 117, 163; *Juvenile Delinquents Act*, S.C. 1908, c. 40 section 2 (definition of “child”) and 3(1); *Young Offenders Act*, R.S.C., 1985, c. Y-1.

Order Considered: Orders MO-4421, PO-4567, and P-378.

Case Considered: *S.L. v. N.B.*, [2005] OJ No. 1411 (C.A.).

OVERVIEW:

[1] The Archives of Ontario (the archives) received a request under the *Freedom of*

Information and Protection of Privacy Act (FIPPA) for incarceration records related to a named individual. The archives issued a decision denying access to the records, stating that they are excluded from *FIPPA* because the *Youth Criminal Justice Act (YCJA)* applies to them. The requester (now the appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC).

[2] During mediation, the archives stated that the records contain information related to the individual named in the request as well as other individuals. The archives advised that the information related to the named individual was withheld because of the *YCJA*, while information related to the other individuals was withheld under the personal privacy exemption at section 21 of *FIPPA*.

[3] The appellant stated that she continues to seek information about the named individual, but she is not pursuing information about other individuals, and section 21 is therefore not at issue in the appeal. The archives maintained their position that the *YCJA* applies to the information.

[4] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process. The adjudicator initially assigned to the appeal sought and received representations from the archives and the appellant. The appeal was then assigned to me to complete the inquiry. I reviewed the representations of the parties and obtained additional representations from the archives. I also sought additional representations from the appellant, but she did not submit any.

[5] For the reasons that follow, I uphold the archives' decision and dismiss the appeal.

RECORDS:

[6] The information at issue in this appeal relates to the incarceration of a specified individual that appears in portions of 31 pages of records.

DISCUSSION:

[7] The sole issue in this appeal is whether the information at issue is excluded from the application of *FIPPA* because the *YCJA* applies to it. The doctrine of the paramountcy of federal legislation dictates that if there is a conflict between federal legislation (such as the *YCJA*) and provincial legislation (such as *FIPPA*), the provincial legislation must yield to the federal.¹ In other words, federal legislation prevails.

[8] The records at issue date from when the named individual was over the age of 16, but, as will be discussed below, relate to events that occurred when she was under 16. As such, at issue in this appeal is whether the events leading to the named individual's committal to the Mercer Reformatory, and the corresponding records, relate to the

¹ *Multiple Access Ltd. v. McCutcheon*, 1982 CanLII 55 (SCC), [1982] 2 SCR 161.

"offence of delinquency" under the *JDA*. If they do, the *YCJA* applies to prohibit disclosure of the records. If the *YCJA* applies to the information at issue in this appeal, the *YCJA* prevails and the IPC does not have jurisdiction to grant the appellant access to the information under *FIPPA*. The appellant is of the view that the IPC has the jurisdiction to determine access to this information under *FIPPA*. The archives disagree.

The *YCJA*

[9] The *YCJA* is a federal law establishing a separate youth criminal justice system for individuals who meet the definition of a "young person" at section 2 of that Act, as follows:

... a person who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under this Act.

[10] Part 6 of the *YCJA*, titled "Publication, Records and Information," sets out a series of privacy protections afforded to young persons under the *YCJA*. Sections 110 to 129 prescribe detailed provisions that, variously, govern both publication of the identity of those involved in the youth justice system, and the management and disclosure of records kept under the *YCJA*. These provisions prohibit the publication of information that would identify the involvement of young persons in the youth criminal justice system, as well as giving anyone access to records generated within that system, except as specifically authorized or required.

[11] Sections 110 to 112 of the *YCJA* restrict the publication of information that could identify young persons involved in matters under the *YCJA*. The Ontario Court of Appeal explained the importance of these provisions in *S.L. v. N.B.*,² as follows:

Sections 110 to 112 place significant restrictions on the publication of anything that might identify a young offender, a child or young person who is a complainant in a proceeding in Youth Court, or a child or young person who is a witness in such proceeding. These non-publication provisions are not in issue on this appeal. They are, however, indicative of the premium placed on the privacy interests of all young persons involved in young offender proceedings.

[12] Of particular relevance in this appeal is section 110(1):

Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

[13] "Publication" is defined in the *YCJA* to mean "the communication of information by

² 2005 CanLII 11391 (ON CA), at para. 36.

making it known or accessible to the general public through any means" including through media. IPC orders have consistently held that, with limited exceptions, disclosure under the access provisions of *FIPPA* is equivalent to disclosure to the world because there are generally no limits on the dissemination of records accessed under *FIPPA*.³

[14] Two IPC orders have affirmed that in the context of a request under *FIPPA* and its counterpart, the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, disclosure under *FIPPA* or *MFIPPA* of information protected by the *YCJA* is equivalent to publication and prohibited by section 110(1) of the *YCJA*.⁴ I agree with and adopt the same reasoning in this appeal. Accordingly, if section 110(1) of the *YCJA* prohibits publication of the information at issue, the *YCJA* prevails over *FIPPA* and the IPC has no jurisdiction to order that the appellant be given access to the information under *FIPPA*.

[15] Section 110(1) is not the only provision of the *YCJA* that is potentially relevant in the circumstances of this appeal. As noted above, Part 6 of the *YCJA* contains a series of provisions governing access to youth criminal justice "records" defined at section 2 to include,

... any thing containing information, regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, and any copy of any of those things, that is created or kept for the purposes of this Act or for the investigation of an offence that is or could be prosecuted under this Act.

[16] Sections 114 to 116 strictly limit the entities permitted to keep "records" relating to young persons dealt with under the *YCJA*, such as youth courts and review boards, investigating police forces, and other government agencies involved in administering the youth criminal justice system.⁵

[17] Sections 117 to 129 of the *YCJA* establish detailed rules governing access to and use and disclosure of records kept under sections 114 to 116, as well as their disposition or destruction. In *S.L. v N.B.*, the Court of Appeal for Ontario held that sections 117 to 129 establish an exclusive and comprehensive regime designed to carefully control access to the records of young persons involved in the youth justice system.⁶ In addition, the

³ See, for instance, Orders P-164, P-578, P-679, P-1635, PO-2018, PO-2465, PO-4414 and also (under the equivalent provision in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56) Order M-96, upheld on judicial review in *O.S.S.T.F., District 39 v. Wellington (County) Board of Education*, Toronto Doc. 407/93 (Ont. Div. Ct.), leave to appeal refused, Doc. M15357 (C.A.).

⁴ Order MO-4421 under *MFIPPA* and Order PO-4567 under *FIPPA*.

⁵ Section 114 provides that "a youth justice court, review board and any court dealing with matters arising out of proceedings under this Act may keep a record of any case that comes before it arising under this Act." Section 115 provides that "[a] record relating to any offence alleged to have been committed by a young person ... may be kept by any police force responsible for or participating in the investigation of the offence." Finally, section 116 provides that other government agencies may keep records relating to youth criminal justice investigations and proceedings, the administration of a youth sentence and the use of extrajudicial measures.

⁶ *S.L. v N.B.*, *supra*, note 1, at paras. 42-25 and 54.

Court confirmed that Parliament placed the responsibility for determining access to such records exclusively on youth justice court judges.⁷

[18] The principal provision restricting access to youth records is found at section 118(1) of the *YCJA* which, subject to certain exceptions, prohibits any person being given access to youth records kept under the *YCJA* and any identifying information contained in such records.⁸ It states:

Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this Act.

[19] Section 129 provides that no person to whom a record or information has been disclosed under the *YCJA* shall subsequently disclose it unless authorized under the *YCJA*. Finally, section 138(1) makes it an offence to contravene sections 110(1), 118(1) and 129, among other provisions at Part 6 of the *YCJA*.

[20] It is apparent from this review that the prohibition on being given access to a youth criminal justice record at section 118(1) of the *YCJA*, like the prohibition against publication at section 110(1), also prevails over the access provisions and the IPC's jurisdiction under *FIPPA*.

Transitional Provisions of the *YCJA* and the *Juvenile Delinquents Act*

The transitional provision at section 163 of the YCJA

[21] It is not disputed that if the information at issue relates to the incarceration of an individual dealt with under the *YCJA*, section 110(1) of the *YCJA* would prohibit publication of the information. Further, section 118(1) would prohibit any person not authorized under the *YCJA* from being given access to the record or to any information contained in the record that would identify the person to whom it relates as a young person dealt with under the *YCJA*.

[22] The specific information at issue in this appeal dates from the 1940s, decades prior to the *YCJA* coming into force in 2003. The transitional provision at section 163 of the *YCJA* addresses records relating to previously enacted youth criminal justice legislation:

Sections 114 to 129 apply, with any modifications that the circumstances require, in respect of records relating to the offence of delinquency under the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, and in respect of records kept under sections 40 to 43 of the *Young Offenders Act* chapter Y-1 of the Revised Statutes of Canada, 1985.

⁷ *Ibid.*, at paras. 54-55 and 60-61.

⁸ *Ibid.*, at paras. 44-45.

[23] At the time the records were created, the *Juvenile Delinquents Act (JDA)*⁹ was in force. Consequently, the jurisdictional issue in this appeal turns on whether the records relate to the "offence of delinquency" under the *JDA*. If they do, section 118(1) of the *YCJA* would apply to prohibit disclosure of the information contained in the records and they would thus fall outside the purview of *FIPPA* and the IPC's jurisdiction.

The relevant provision of the JDA

[24] At the outset, it is useful to review the provisions of the *JDA* that are pertinent to the issues in this appeal. While the *JDA* was revised from time to time since it was first enacted in 1908,¹⁰ the key provisions cited from the 1970 version¹¹ to which section 163 of the *YCJA* specifically refers, were in all material respects substantially the same as those in effect in the 1940s. For consistency with section 163 of the *YCJA*, I will refer to the 1970 version of the *JDA* in this order.

[25] The *JDA* established the offence of delinquency, which could only be committed by a "child" defined to mean "any boy or girl apparently or actually under the age of sixteen years, or such other age as may be directed in any province pursuant to subsection (2)."¹² The term "delinquency" was given the meaning found within the definition of "juvenile delinquent" as follows:

... any child who violates any provision of the *Criminal Code* or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute.¹³

[26] The *JDA* provided that a child accused of the offence of delinquency, including one who passed the age limit of a "child" *after* committing the delinquency, was to be tried by a judge of the juvenile court¹⁴ under the summary conviction provisions of the *Criminal Code*.¹⁵ Where the act complained of was an indictable offence under the *Criminal Code* and the accused child was over the age of fourteen years, the juvenile court judge had the discretion to order the prosecution to proceed by way of indictment in the ordinary courts where "the good of the child and the interest of the community demanded it."¹⁶

[27] The *JDA* also sought to protect the privacy interests of children dealt with under that Act, consistent with its objective to rehabilitate and reform children guilty of delinquency. It provided that the trials of children shall take place in private without

⁹ *The Juvenile Delinquents Act*, S.C. 1929, C 46.

¹⁰ *The Juvenile Delinquents Act*, SC 1908, c 40.

¹¹ *The Juvenile Delinquents Act*, R.S.C. 1970, Chap. J-3

¹² *Ibid.*, s. 2(1).

¹³ *Ibid.*, s. 3(1).

¹⁴ *Ibid.*, s. 4.

¹⁵ *Ibid.*, s. 5(1).

¹⁶ *Ibid.*, s. 9(1).

publicity and separately from the trials of other accused persons.¹⁷ Further, no report of a delinquency committed or said to have been committed by a child, or of the trial or other disposition of a charge against a child, or any other identifying information could be published in any newspaper or other publication without special leave of the court.¹⁸

Representations

The archives representations

[28] In their initial representations, the archives submit that section 163 of the *YCJA* applies to exclude the records from the application of *FIPPA*. They further state that section 22(4)(a) of the *Archives and Record Keeping Act, 2006* requires them to refuse to produce any records if the refusal is required by *FIPPA* or another act. They maintain that this, along with section 126, which restricts the disclosure of the records in the possession of an archivist originally kept under section 114 to 116 of the *YCJA*, and 163 of the *YCJA*, prohibits the archives from disclosing records related to young persons and the youth criminal justice system to someone other than the individual or their counsel, unless there is an order from a youth court justice.

The appellant's representations

[29] The appellant submits that, based on the information she has received relating to the named individual, there was no criminal conviction related to the individual's incarceration at the Mercer reformatory. She refers to section 10 of the *Training Schools Act (TSA)*,¹⁹ which states:

The minister may, at any time, order that a boy or girl,

a. who has been made a ward of a children's aid society under The Children's Protection Act or any other boy or girl one of whose parents or guardians consents thereto, unless there is no parent or guardian, and who in the opinion of the Minister is in need of the training and discipline offered by a training school shall be admitted to a training school;

b. be transferred from one training school to another or to any foster home;
or

c. be discharged from a training school either absolutely or on such conditions as he may think fit, and every such boy or girl shall be admitted, transferred or discharged accordingly.

[30] The appellant references the named individual's children's aid society (CAS) notes, which she states provide a timeline of custodial arrangements unrelated to criminality or delinquency under the *JDA*. She cites one specific CAS note that stated that the appellant

¹⁷ *Ibid.*, s. 12(1).

¹⁸ *Ibid.*, s. 12(3).

¹⁹ S.O., 1939, c. 51.

was committed to a training school because she needed more consistent treatment than the average foster home could provide. The note states that the named individual would be 16 years old the day after the committal, so the appointment was "especially made." The appellant submits that the committal being done so quickly is likely due to the age of a "child" in the *Children's Protection Act*,²⁰ being defined as under 16 years of age, and because committing the named individual before she turned 16 allowed the CAS to act as her guardian under the *TSA*.

[31] The appellant further submits that while the *JDA* was designed to act with the *Criminal Code* of the day, the *TSA* provided broader authority for placing children in custody. She references section 7(1) of the *TSA*, which states:

Any person may bring before a judge any boy or girl apparently under the age of 16 years who,

- a. is found begging or receiving alms or being in any street or public place for the purpose of begging or receiving alms;
- b. is found wandering and has not any home or settled place of abode or proper guardianship;
- c. is found destitute, either being an orphan or having a surviving parent who is undergoing imprisonment;
- d. is an habitual truant and whose parent or teacher represents that he is unable to control the boy or girl;
- e. is by reason of the neglect, drunkenness, or other vices of his parents suffered to grow up without salutary parental control and education, or in circumstances exposing him to lead an idle and dissolute life;
- f. has been accused or found guilty of petty crime; or
- g. proves unmanageable or incorrigible.

[32] The appellant submits that the above offences are distinct from criminal convictions covered by the *JDA* or its successor legislation, the *Young Offenders Act (YOA)*, and later the *YCJA*. She states that the named individual's CAS file does not mention any criminal conviction related to her transfer to the Mercer Reformatory,²¹ and instead indicates that she was the victim and a Crown witness in a case of "child luring" brought about by her relationship with an older man. She submits that it was not uncommon for the Mercer reformatory to be used for individuals in the context of the *TSA*, who had not otherwise been convicted of a crime.

²⁰ Chapter 312, 1937, section 1(c).

²¹ The appellant notes that the named individual was later transferred from the training school to the Andrew Mercer Reformatory for Women.

[33] She notes that section 3 of the *Training Schools Amendment Act, 1978* replaced the previous grounds for committal to training schools by replacing them with requirements of criminality:

Section 9 of the said Act is repealed and the following substituted therefor:

Where,

a. a child has contravened any statute in force in Ontario which contravention would be punishable by imprisonment if committed by an adult; and

b. the child is at least twelve years of age and under sixteen years of age,

a judge may order that the child be made a ward of the Crown and that the child be committed to the care of the Minister.

[34] She submits that this legislation, introduced several decades after the named individual was committed to the Mercer Reformatory, created a closer relationship between the *TSA* and the *JDA*, but this relationship did not exist prior to the above change.

[35] The appellant references Order P-378, where the adjudicator considered the relationship between the training schools, the "offence of delinquency" under the *JDA*, and a transitional provision in the *YOA* that was similar to section 163 in the *YCJA*. In that order, the adjudicator found that, based on the evidence before him, it was not clear that the appellants attended the Grandview School for Girls (a training school) after being found to be juvenile delinquents, and he therefore found that the records about the appellants' time at Grandview may not be covered by the *YOA*.

[36] In the present appeal, the appellant submits that the evidentiary material available to her suggests that the records at issue are not the result of a criminal conviction, and therefore not covered by the *JDA*, and subsequently not captured by section 163 of the *YCJA*.

[37] The appellant also submits that, even if the *YCJA* applies to the records at issue, the named individual has been deceased for over 60 years, and the intent of the privacy protections of the *YCJA* are therefore no longer relevant. She states that the intent of the *YCJA*'s privacy protections are to protect the identity of offenders to ensure successful rehabilitation into society and protect youth from the stigma associated with a criminal past.²² She submits that this concern does not exist for the named individual, who has been deceased for several decades, and there is no danger to her rehabilitation,

²² The appellant references *R. v. Munroe*, 2013 NSPC 45 where the court commented on the purpose of the privacy provisions of the *YCJA*. She also referenced *F.N. (Re)*, [2000] 1 SCR 880, where the Supreme Court of Canada spoke about the purposive intent of the privacy protections of the *YOA*. Last, she references *R. v. Carvery*, 2012 NSCA 107 (CanLII), where the court commented on the publication of an adult's identity.

reintegration into society, or the possibility of continuing stigma.

[38] The appellant also refers to a decision by the Information and Privacy Commissioner of British Columbia, where it was noted that the Museum and Archives of British Columbia (the respondent in the appeal) offered to release *YCJA* records if it could be established that the individual they related to was deceased.²³ She submits that, considering the context of the request, the *YCJA* should not prohibit disclosure of the records through *FIPPA*.

Archives reply representations

[39] The archives submit that the records about the named individual relate to the “offence of incorrigibility,” and indicate that, after being committed to the training school, she was committed to serve the remainder of her sentence at the Mercer Reformatory under the authority of sections 26 and 27 of the *Prisons and Reformatories Act (PRA)*,²⁴ which state:

Incorrigible Offenders

26. Every one sentenced to imprisonment or detention in or ordered to be detained in any industrial refuge, industrial home or industrial school, by reason of incorrigible or vicious conduct, or with reference to the general discipline of the institution, who is beyond the control of the officer in charge of such institution, may, at any time before the expiration of his term of imprisonment or detention, be brought without warrant before any magistrate.

27. If the officer in charge of such refuge, home or school certifies in writing that the removal of such offender to a place of stricter imprisonment is desirable, and if the governing body of such refuge, home or school applies for such removal, and if sufficient cause therefor is shown to the satisfaction of such magistrate, he may order the offender to be removed to and to be kept imprisoned, for the remainder of his original term of imprisonment or detention, in any reformatory prison or reformatory school in which by law such offender may be imprisoned for an indictable offence; and when there is no such reformatory prison or school, the magistrate may order the offender to be removed to and to be kept imprisoned in any other place of imprisonment to which the offender may be lawfully committed.

[40] They submit that the named individual was charged as an “incorrigible offender” under sections 26 and 27 of the *PRA*, which allow for removal of incorrigible offenders to places of stricter custody, like a juvenile reformatory, where removal to a place of stricter imprisonment is certified in writing to be desirable. The archives also submit that the records at issue show that sections 26 and 27 of the *PRA* were referenced to authorize

²³ Paragraph 10 of Order F21-30.

²⁴ RSC 1927, c 163.

the named individual's transfer to the Mercer Reformatory.

[41] The archives argue that the offence of incorrigibility is captured by the offence of delinquency in the *JDA*. They reference the definitions of "juvenile delinquent" and "delinquency" in the *JDA*:

2(1) "juvenile delinquent" means any child who violates any provision of the Criminal Code or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute.

Delinquency 3(1) The commission by a child of any of the acts enumerated in the definition *juvenile delinquent* in subsection 2, constitutes an offence to be known as a delinquency, and shall be dealt with as hereinafter provided.

[42] The archives submit that the offence of incorrigibility would result in an individual being classified as a "juvenile delinquent" since the individual was committed to an industrial school or juvenile reformatory under a federal or provincial statute. They also reference an article by Jane Sprott on status offences in the youth justice system:

[under] the Juvenile Delinquents Act (JDA), the offence of "delinquency" covered not only regular violent, property, and drug offences but also encompassed provincial and municipal by-laws and status offences – offences that would not be criminal if committed by an adult... "Incorrigibility" and "sexual immorality or similar forms of vice" were the main status offences under the JDA[.]²⁵

[43] The archives also reference *BG v. British Columbia*,²⁶ where the court considered the term delinquency. The court cited the definition of "juvenile delinquent", emphasizing "or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute" as a reason to withhold the records under the *YOA*, even though it had not been established that all of the records pertained to offences of delinquency.

[44] The archives assert that the records show that the named individual was charged with incorrigibility and was later moved to Mercer Reformatory under sections 26 and 27 of the *PRA* as an "incorrigible offender." They submit that the offence of incorrigibility falls under the offence of delinquency, as defined in the *JDA*, and section 163 of the *YCJA* therefore applies.

[45] With respect to the appellant's claim that the privacy protections of the *YCJA* are

²⁵ Jane B. Sprott, "The Persistence of Status Offences in the Youth Justice System" (2012) 54:3 Canadian Journal of Criminology and Criminal Justice 309 at 310.

²⁶ 2002 BCCA 69.

not relevant in this appeal, the archives submit that this does not change that Part 6 of the *YCJA* has been held to be “an exclusive and comprehensive regime governing the disclosure of information about young persons involved in the youth criminal justice system.”²⁷ They note that section 118(1), which prohibits the disclosure of any information that would identify a young person as being dealt with under the *YCJA*, has been described as an “unequivocal and unqualified prohibition against access to records kept by the court, police, or Crown except as required or authorized under the Act.”²⁸ The archives state that there is no provision in the *YCJA* that permits disclosure of information concerning a young person because they are deceased, and submit that the appellant’s submission on this is an overly narrow interpretation of the *YCJA*. They submit that the application of section 163 to youth records under the *YCJA* does not change because an individual has passed away.

Appellant sur-reply representations

[46] The appellant acknowledges that the “language of incorrigibility” likely applied to the named individual’s circumstances. However, she submits that the term “incorrigible” was frequently used as grounds for the detention of female youth. She refers to several pieces of legislation from the period that use the term incorrigible:

Section 1(j)(viii) of the *Children's Protection Act*, RSO 1937, c. 312:

"Neglected child" shall mean,

- viii) a child who by reason of inadequate parental control is delinquent or incorrigible, or who is growing up without salutary parental control or tender circumstances[.]

Section 5 of the *Female Refuges Act*, RSO 1927, c. 347, which reads:

The inspector may direct the removal of any inmate who proves unmanageable or incorrigible from an industrial refuge to a common gaol or to the Andrew Mercer Ontario Reformatory for Females.

Section 7(1) of the *Training Schools Act*, RSO 1950, c. 396:

Any person may bring before a judge any boy or girl apparently under the age of 16 years who, (g) proves unmanageable or incorrigible.

[47] She references an article about the treatment of young women in Ontario training schools, which explains that under the *Female Refuges Act*, all that was needed was a

²⁷ Order MO-4421, at paras 30 and 38, citing *SL v NB*, [2005] OJ No 1411 (CA).

²⁸ *SL v. NB*, [2005] OJ No 1411 (CA) at paras 44–45.

sworn statement about the woman's "incurrigibility," rather than a formal charge.²⁹ The article further details that "rebellious teenagers" serving time in industrial schools could have their punishment extended by sending them to the Mercer Reformatory as soon as they were fifteen or sixteen years old, for up to two more years.

[48] The appellant submits that, considering the above, the "offence of incurrigibility" the archives refer to in their reply could have emerged from placement under the *Training Schools Act*, or the *Female Refuges Act*. She states that these "offences" are distinct from the criminal convictions covered by the *JDA* or its successor legislation. She refers to primary source narratives in the above article detailing the transfer of young women to Mercer Reformatory for reasons such as "sexual promiscuity," "not learning the value of wage work," or "venereal infections." She states that in these cases the women were not subject to the *JDA*. She argues that the named individual could have been transferred under the *PRA* without requiring a conviction. She acknowledges that incurrigibility was a common offence under the *JDA* but submits that the evidence shows that the term was so ubiquitously employed that it cannot be said to apply to any one piece of legislation with certainty.

[49] The appellant further states that the archives' reply representations rely on a narrow reading of the *JDA*, which she submits was designed as procedural jurisprudence and does not match the circumstances of the named individual. She refers to section 3(1) of the *JDA*, which states:

the Commission by a child of any of the acts enumerated in the definition juvenile delinquent in subsection 2, constitutes an offence to be known as a delinquency and shall be dealt with as hereinafter provided.

[50] She refers to the CAS notes she discussed in her original representations, and states that the way the named individual was treated does not align with her being convicted of delinquency under the *JDA*. She references an article outlining the process for juvenile detention in the time period and submits that this reinforces her position that the named individual was likely dealt with through an act other than the *JDA*.³⁰ She refers to another article that states that the *JDA* is a complete code in itself.³¹ She also submits that *JDA* proceedings are criminal in essence, with similar procedural rights as adults in a criminal proceeding.³² She states that the timelines provided in the CAS notes do not allow for the procedural requirements of the *JDA* to be met, and therefore the named

²⁹ The appellant references Sangster, Joan. "Incarcerating "Bad Girls": The Regulation of Sexuality through the Female Refuges Act in Ontario, 1920-1945" in *Journal of the History of Sexuality*, Vol. 7, No. 2 (Oct.,1996), University of Texas Press. pp. 239-275.

³⁰ The appellant references Walker, J. and Glasner, A. "The Process of Juvenile Detention: The Training School Act, the Child Welfare Act." *Osgoode Hall Law Journal* 3.2 (1965): 343-361, which provides an overview of the juvenile court process.

³¹ The appellant references E. Pepler, *The Juvenile Delinquents Act, 1929, 1952* 30-8 *Canadian Bar Review* 819, 1952 *CanLIIDocs* 30 in support of this statement.

³² The appellant references Brian Kaliel, *Civil Rights in Juvenile Courts, 1974* 12-3 *Alberta Law Review* 341, 1974 *CanLIIDocs* 91 in support of this statement.

individual's "incurribility" would not have been criminal in nature.

Archives sur-sur-reply representations

[51] In response to the appellant's sur-reply representations, the archives submit that based on the records at issue, the transfer of the named individual to the Mercer Reformatory fell "within the ambit of the *JDA*." They argue that, as shown in the records at issue, she was transferred to the Mercer Reformatory for being deemed incorrigible under sections 26 and 27 of the *PRA*.

[52] The archives submit that the appellant's claim that the named individual being deemed 'incorrigible' under these sections does not constitute evidence of her conviction under the *JDA* is not the appropriate approach to determining whether the transitional provisions in the *YCJA* are applicable to the records at issue. They dispute the appellant's claim that the offence of incorrigibility is distinct from criminal convictions covered under the *JDA*. They refer to section 2(1)(g) of the *JDA*:

2(1)(g) "juvenile delinquent" means any child who violates any provision of the Criminal Code or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute. (emphasis added)

[53] The archives argue that the *JDA* does not specify that the child must be convicted of a criminal offence under the *Criminal Code of Canada*, and that it is instead enough that the child is committed to an industrial school or juvenile reformatory under any federal or provincial statute. They submit that, therefore, the fact that the named individual was committed to a reformatory school under the *PRA* means that she would fall under the definition of a juvenile delinquent.

[54] They also reference section 3 of the *JDA*, outlined above. From this, they assert that the named individual being deemed incorrigible means that she was a juvenile delinquent and, therefore, committed the offence of delinquency outlined in section 3 of the *JDA*, and the transitional provision in section 163 of the *YCJA* therefore applies.

[55] In response to the appellant's claim that they are relying on a narrow reading of the *JDA* and that the named individual's circumstances do not meet the procedural requirements of the *JDA*, the archives submit that this analysis would only apply to offences under the *Criminal Code*. They reiterate that juvenile delinquent is defined in the *JDA* as a child who violates any provision of the *Criminal Code*, or any federal or provincial statute, or any by-law or ordinance of a municipality, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory. They reference a legal article in support of this:

[T]he Act [JDA] creates a new offence not previously known to the law, the offence of delinquency, which comprises all criminal offences and all offences against provincial laws[.]³³

[56] They submit that a child that interacted with the *JDA* by contravening a statute that was not criminal in nature would still be considered a juvenile delinquent under the *JDA* and would still be deemed to have committed the offence of delinquency. However, they argue that they would not be dealt with in the same manner as a child accused of a criminal offence under the *Criminal Code*. They argue that the *JDA*'s procedural guidelines support the position that it was an overarching statute for dealing with children, including those interacting with the statute in a non-criminal manner.

[57] The archives refer to section 5 of the *JDA*, which outlines that prosecutions and trials under the act shall proceed summarily, but also states that they would be governed by the provisions of the *Criminal Code*. They submit that this suggests that trials and prosecutions under the *JDA* were reserved for children charged with an offence under the *Criminal Code* and were not used in "status offences" or offences under other statutes. They also refer to section 14, which states that the court may postpone or adjourn the hearing of a charge of delinquency" and submit that this suggests that children brought before a Juvenile Court for the "charge of delinquency" may be dealt with in a single hearing. Last, they refer to section 33, which states that "every juvenile delinquent shall be treated not as a criminal but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance" and submit that this indicates that the *JDA* was more than just a statute for dealing with criminal youth.

[58] With respect to the named individual, they submit that she was before the Juvenile Court for the non-criminal offence of "incurability" under the *PRA* and would have been dealt with under the *JDA* in a non-criminal manner. They state that there would have been no trial, and the proceeding would have been procedurally simple and brief. They explain that the named individual was caught running away from her training school in 1948, and would have been charged with incurability under sections 26 and 27 of the *PRA*.³⁴ They submit that there is nothing in the *JDA* to indicate that the named individual's interactions with the *JDA* needed to be any more procedurally complex, or that she needed to be afforded any further procedural protections, such as a trial.

[59] The archives argue that the only procedural requirement would be that the named individual be dealt with in a Juvenile Court, pursuant to section 4 of the *JDA*, and any additional procedural requirements would be dictated by sections 26 and 27 of the *PRA*, cited above. The archives submit that these procedures were followed in the case of the named individual, supporting that she was dealt with in accordance with the procedural requirements outlined in the *JDA*, and her conduct constituted the offence of

³³ Pepler, E., *The Juvenile Delinquents Act, 1929, 1952 30-8 Canadian Bar Review* 819, 1952.

³⁴ The archives provide additional information about the outcome of the charge, based on the contents of the records at issue. As this would reveal the contents of the records, I have not produced them here.

delinquency.³⁵

Analysis and finding

[60] If the transitional provision at section 163 of the *YCJA* applies to the information about the named individual, the records at issue are excluded from the scope of *FIPPA* and the IPC cannot order disclosure. Considering the information before me, I find that the records all relate to the offence of delinquency under the *JDA*, and they are therefore excluded from the scope of *FIPPA* by section 163 of the *YCJA*.

[61] The parties agree that section 163 applies to "records relating to the offence of delinquency" under the *JDA*; they disagree about whether the named individual's interactions with the legal system around 1948 relate to the offence of delinquency. The appellant submits that the named individual's procedural history, as far as it can be known, shows that while she was committed to a training school as a child (as defined in the *JDA* as an individual under the age of 16), her later move to the Mercer Reformatory, a juvenile reformatory, occurred through legislation other than the *JDA*. The archives submit that the named individual committed the offence of "incurability," and was therefore a juvenile delinquent, as defined in the *JDA*. I have considered the representations of both parties, and for the reasons that follow, I find that the *YCJA* applies to the information in the records at issue, and the IPC therefore does not have jurisdiction to order its disclosure.

[62] The appellant's representations focus on the information available in the named individual's CAS notes. She submits that they show that, prior to her committal to the Mercer Reformatory, the named individual was likely committed to a training school under the *TSA*. In support of her submission, she outlines the individual's history and argues that based on the relevant timelines and various statements in the CAS notes, a process other than that stipulated by the *JDA* was followed in committing the individual to the training school, prior to her transfer to the Mercer Reformatory under the *PRA*.

[63] The archives do not dispute, and I accept, that the named individual does not appear to have been convicted of a *Criminal Code* offence. However, section 163 of the *YCJA* does not require an individual to have been convicted under the *JDA* for the transitional provision to apply. Rather, it only requires that the records relate to the "offence of delinquency," as defined in the *JDA*.

[64] As the archives notes in its representations, section 3(1) of the *JDA* broadly defines delinquency as "the commission of a child of any of the acts enumerated in the definition of juvenile delinquent in subsection 2[.]" Subsection 2(1) defines "juvenile delinquent" similarly broadly as "any child who violates any provision" of the Criminal Code, any federal or provincial statute, any municipal by-law or ordinance, or who is guilty of "sexual immorality or any similar form of vice" or who is "liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial

³⁵ The archives provide additional evidence to support their submission, based on the contents of the records at issue. As this would reveal the contents of the records, I have not produced them here.

statute.”

[65] Considering the above definitions, and the evidence before me, I find that the named individual’s committal to a training school under the *TSA* would have qualified her as a “juvenile delinquent” within the meaning of the *JDA*, and her records would therefore be protected under the *YCJA* through section 163. I acknowledge the appellant’s submission that the CAS notes suggest that some procedural elements of the juvenile court process under the *JDA* may not have been followed, but this does not change that the circumstances of the named individual meet the definition of delinquency.

[66] Even if, as the appellant submits, the named individual was committed to a training school through the *TSA* process, I find that this still qualifies as relating to the “offence of delinquency” within the meaning of the *JDA*, given the broad definition described above. Based on the information before me, the named individual was placed in a training school as a child, as defined in the *JDA*. Section 7(1) of the *TSA*, referenced by the appellant in her representations, states that any person may bring before a judge any boy or girl apparently under the age of sixteen years for various reasons, including because the individual “proves unmanageable.” Section 7(6) further states:

If the judge is satisfied on inquiry that it is expedient to deal with the boy or girl under this Act, he shall make his order in writing that the boy or girl be sent to a training school.

[67] In her representations, the appellant notes that the named individual was committed to a training school by a magistrate the day before her sixteenth birthday. In my view, the named individual was therefore someone “who is liable by reason of any other act to be committed to an industrial or juvenile reformatory under any federal or provincial statute,” and therefore qualifies as a juvenile delinquent. Accordingly, the records at issue are, through the *YCJA*’s section 163 transitional provision, excluded from the scope of *FIPPA*.

[68] I acknowledge that the records at issue relate to the named individual at a time when she was over the age of 16. The IPC has recently issued multiple decisions finding that, given the language of the *YCJA* and the *JDA*, the *YCJA* would not apply to records of an individual who was over 16 at the time of their offence.³⁶ However, in the present appeal, given that the records at issue all flow from the individual’s committal to the training school, they would still serve to identify the named individual as a young person dealt with, through the transitional provision in the *YCJA*, as a young person under the *YCJA*.³⁷

[69] The appellant references Order P-378 where the adjudicator was not satisfied,

³⁶ Orders PO-4759, PO-4750, and PO-4751.

³⁷ See Order PO-4607, where although an individual in a youth detention facility may have been over 18 at the time an incident occurred, records relating to that incident were found to still reveal information about his detention in the youth facility. It was found that disclosing these records would identify him as an individual dealt with under the *YCJA*, and the records were therefore found to be outside the scope of *FIPPA*.

without having seen the records at issue, that individuals who attended a training school did so as juvenile delinquents. The adjudicator therefore found that the *YOA* may not apply to the information at issue, and an affidavit from the ministry was requested. I note that in addition to being committed to a training school under section 7 of the *TSA*, individuals could also be sent to a training school by a minister under section 10 of the *TSA*. In the article the appellant references, "The Process of Juvenile Detention: The Training School Act, the Child Welfare Act,"³⁸ the section 10 provision is described as an exercise of administrative discretion. In my view, an individual being sent to a training school under section 10 may not qualify as a juvenile delinquent. However, in the present appeal, based on the information before me, particularly that the named individual was specifically committed to a training school, I am satisfied that her placement would have been done under section 7 of the *TSA*, and the *YCJA* therefore applies to the information at issue.

[70] Accordingly, I find that the IPC does not have jurisdiction to order disclosure of the information at issue. With respect to the appellant's submissions that the privacy protections of the *YCJA* should not apply because the named individual has been deceased for some time, I agree with the archives' submission that there is no provision in the *YCJA* that states that the *YCJA* does not apply due to the death of an individual.

ORDER:

I uphold the archives' decision and dismiss the appeal.

Original Signed by: _____
Chris Anzenberger
Adjudicator

_____ March 9, 2026

³⁸ *Supra* note 30.