

CANADA / JUDGMENT

R. v. MacKay

2021 BCCA 87

COURT

British Columbia Court of Appeal

DECIDED

4 January 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCCA 87 R. v. MacKay COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. MacKay, 2021 BCCA 87 Date: 20210104 Docket: CA44514 Between: Regina Respondent And Kurk Joshua MacKay Appellant And Ministry of Children and Family Development Intervenor Restriction on publication: A publication ban has been mandatorily imposed under

s. 486.4(2) of the Criminal Code in cases involving sexual offences to ban the publication, broadcasting or transmission in any way of evidence that could identify a complainant or any witness under the age of 18. This publication ban applies indefinitely unless otherwise ordered. Pursuant to s. 16(4) of the Sex Offender Information Registration Act [SOIRA], no person shall disclose any information that is collected pursuant to an order under SOIRA or the fact that information relating to a person is collected under SOIRA. FILE SEALED IN PART Before: The Honourable Mr. Justice Willcock The Honourable Madam Justice Dickson The Honourable Mr. Justice Butler On appeal from: An order of the Supreme Court of British Columbia, dated March 9, 2017 (R. v. MacKay, Victoria Docket 165264). Oral Ruling re In Camera Proceedings Counsel for the Appellant (via videoconference): T.J. Russell Counsel for the Respondent (via videoconference): M.G. Scott Counsel for the Intervenor (via videoconference): L. Hawes Place and Date of Hearing: Vancouver, British Columbia January 4-5, 2021 Place and Date of Judgment: Vancouver, British Columbia January 4, 2021 Summary: The appellant applies for an order that the entire appeal be held in camera, or, in the alternative, an order that the grounds of appeal addressing errors relating to the trial judge's application of ss. 278.93 and 278.3 of the Criminal Code be held in camera. Held: Application granted in part. The application to hear the entire appeal in camera is dismissed, but the application to hear the grounds of appeal addressing ss. 278.93 and 278.3 in camera is granted.

- [1] WILLCOCK J.A.: The appellant applies for an order that this appeal be heard in camera pursuant to s. 9 of the Court of Appeal Act, R.S.B.C. 1996, c. 77, and our general jurisdiction.
- [2] In the alternative, he seeks an order that those aspects of the appeal founded upon the grounds the trial judge erred in addressing the application pursuant to s. 278.93 of the Criminal Code, R.S.C. 1985, c. C-46 for the determination that evidence of a complainant's sexual activity might be admitted into evidence be heard in camera, and an order that that

aspect of the appeal founded on the grounds of the trial judge erred in addressing an application for production of third party records in possession of the intervenor, Ministry of Children and Family Development, be heard in camera.

- [3] We are of the view the application to hear the entire appeal in camera ought to be dismissed.
- [4] We will hear those grounds of appeal founded upon the alleged error in addressing s. 278.93 in relation to a complainant's prior sexual activity, and the appeal founded upon an alleged error in relation to s. 278.3 for production of third party records in camera. These appeals may require us to make determinations that are required to be made following an in-camera hearing pursuant to the applicable provisions of the Criminal Code. "The Honourable Mr. Justice Willcock" "The Honourable Madam Justice Dickson" "The Honourable Mr. Justice Butler"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/21/00/2021BCCA0087.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-mackay-2021-bcca-87>

Prepared on 26 October 2026 · Esheria