**CANADA**
**PROVINCE OF NOVA SCOTIA**
**COUNTY OF HALIFAX**

#952308, 960572

**IN THE PROVINCIAL COURT**

**HER MAJESTY THE QUEEN**

versus

**NATASHA PROSPER**

# DECISION
## Application for Publication Ban
**Cite as: R. v. Prosper,** 2001 NSPC 33

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| **HEARD BEFORE:** | The Honourable Judge Patrick. H. Curran, J.P.C. |
| **PLACE HEARD:** | Halifax, Nova Scotia |
| **Application Heard:** | November 7, 2001 |
| **Date of Decision:** | November 29, 2001 |
| **COUNSEL:** | Christopher Nicholson, for the Crown |
| | Vince Calderhead, for the Defence |

(1) Natasha Prosper has been charged under s. 213 of the **Criminal Code** with communication for the purpose of prostitution. She admits the facts alleged against her, but says the charges against her should be dismissed because some of the elements of the offence are unconstitutionally vague or broad. She has asked the court to impose a ban on the publication or broadcast of her identity.

(2) According to her affidavit, Natasha Prosper is a 20 year old Aboriginal with a history of drug abuse. During part of the time since these charges were laid, she was employed at local fast-food outlets, although at the time of her most recent affidavit, she was unemployed. Ms. Prosper says a publication of her identity in this case would unduly affect relations with her family and could prevent her from being employed. She also fears she might be harmed physically by someone who might seek her out because of the notoriety of constitutional challenge.

(3) On behalf of Ms. Prosper, Mr. Calderhead says a publication of her identity would violate the equality provisions in s. 15 of the **Charter** by adding to the disadvantages she has as a result of her age, gender and race.

(4) Criminal trials are not merely private disputes between the state and accused persons. Rather,in a free society, criminal trials are public events an, with few exceptions, the public has a right to know everything about them. The public nature of trials is not explicitly recognized in the **Charter**, but it is part and parcel of the notion of Canada as a free and democratic society.

(5) In a series of decisions over the past few years, the Supreme Court of Canada has recognized that freedom of expression, and specifically freedom of the press, is related to the notion of a public trial: **Degenais v. Canadian Broadcasting Corp.**, [1994] 3 S.C.R. 935 (S.C.C.); **C.B.C. v. New Brunswick (A.G.)** (1996), 110 C.C.C. (3d) 193 (S.C.C.) **R. v. Mentuck**, 2001 SCC 76. The Supreme Court has made it clear that there is a heavy onus on anyone who wishes to limit the public's right to know about criminal trials. In **C.B.C. v. New Brunswick (A.G.)**, for example LaForest J. said, on behalf of the court, that public access, including media access, to criminal proceedings should be restricted only "where there is present the need to protect social values of superordinate importance." (para. 39) Even then, the court says, access and publication bans are justified only if there is no reasonable alternative to them and they are as limited as possible in their scope and effect.

(6) Nevertheless, when faced with an application for a ban on publication by someone who claims that publication would affect a fundamental right, whether constitutionally recognized (**Dagenais**) or not(**Mentuck**), the court must examine the claimed infringement to see whether it is substantial enough to outweigh the value of public trials and freedom of the press.

(7) In upholding bans on distribution of records containing the identity of young persons charged under the **Young Offenders Act**, the Supreme Court of Canada has described the identity of young persons as only a "sliver of information":N.(F.), Re(2000), 35 C.R.(4th) 1, at para. 12. It must be borne in mind, however, that the rehabilitation of the young person is the overriding goal of the **Young Offenders Act** and publicly identifying the young person is likely to limit the possibility of rehabilitation. Rehabilitation is one of the goals of sentencing under the

**Criminal Code,** but it is not the only one, and identifying the accused is not consistent with the other goals. In fact, identifying the accused could be particularly important for the goals of deterring the accused person from committing further offences and denouncing the crime.

(8) Altogether apart from the consequences of sentencing, which of course merit limited consideration in the case of someone merely accused of a crime and having the presumption of innocence, there is a public right to know about pending criminal charges so that other members of the public can adjust their own way of living. For example, a parent might well want to know whether persons associating with their children are subject to criminal charges, including charges related to prostitution. Likewise, an employer dealing with the general public has the right and probably an obligation, to take care of the legality of it's employees' behaviour on the job. A prospective employer undoubtedly has the right to know whether the prospective employee is facing any criminal charges and, if so, what they are. In my view, those public rights outweigh whatever claim an accused person has to privacy in relation to pending charges.

(9) Mr. Calderhead says allowing the publication of Ms. Prosper's identity would infringe upon her right to equality under s. 15 of the **Charter** because publication would worsen the disadvantages she already faces because of her youth, gender and race. I disagree. First of all, although Ms. Prosper is youthful, she is not a "youth" for purposes of the law, but is an adult. I fail to see how allowing publication of Ms. Prosper's identity would in any way worsen her circumstances as a youth, as a women or as an Aboriginal person. In my view, any disadvantages she would suffer as a result of publication of identity would be no different, and no worse, than those that would be suffered by an adult, male non-Aboriginal accused.

(10) That leaves the fear expressed by Ms. Prosper that publication of her identity, especially in light of her challenge to the constitutionality of s. 213 of the **Criminal Code**, could lead to someone seriously injuring her. There is no doubt that women who engage in prostitution run the risk of being harmed by their clientele. As much as such harm is to be deplored, there is no evidence before me , nor am I aware of it ever happening, that publication of the identity of an alleged prostitute has ever led to the person being harmed. It seems to me that any harm has been the result, not of publication, but of continued involvement in prostitution.

(11) In reaching this conclusion, I have considered the letters provided to me by Mr. Calderhead from Dr. Lois Jackson of Dalhousie University and Angela Peckford of the Stepping Stone Association, although neither of those letters was properly in evidence before me. I consider their comments about the effects publication of Ms. Prospers' name would have on her safety to be speculative. Those comments do not provide factual support for this aspect of the application.

(12) Because I am not satisfied there is a factual basis for the safety concerns expressed by and on behalf of Ms. Prosper, there is no need for me to consider whether potential risk to an accused person's safety could ever justify a publication ban. It is enough to say for now that I am unaware of any case in which a ban has been ordered for that reason.

(13) Finally, Mr. Calderhead says Ms. Prosper may not proceed with her constitutional

challenge if there is no publication ban. He goes so far as to sat it would be unconscionable for the court to permit that outcome. That is a most unfortunate choice of words and does not present a true picture of the court's duty in deciding upon the application. Issues have to be decided on their own merits, not on the basis of what the applicant or respondent might do as a result of the decision.

(14) At my request, notice of the application was given to local and regional news organizations through the Publication Ban Notice Pilot Project of the Media-Courts Liaison Committee. The project is operated in conjunction with the University of King's College School of Journalism, using an interactive website. Unfortunately, none of the news organizations responded to the notice, except for the Halifax Chronicle- Herald which stated, through one of its reporters, that it did not oppose the application.

(15) The application for a permanent publication ban is dismissed and the interim publication ban is vacated.

(16) Because of Ms. Prosper's stated intention not to proceed with a challenge to the constitutionality of s. 213 if there is no publication ban, I will not rule on the application by the Stepping Stone Association for intervenor status until Ms. Prosper appears in court and clarifies her position.

Dated at Halifax, Nova Scotia on November 29, 2001

Patrick H. Curran
Provincial Court Judge