

Are courts granting anonymity to those who don't deserve it?

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TORONTO - A Mississauga mother charged with brutally beating her daughter to death is on trial but her name is now safely shielded from the public.

Parents convicted of failing to seek medical attention for their son suffering from scurvy and open sores on his buttocks and shoulder are lucky enough to have their identities protected by the legal system as well.

And a Toronto dad who murdered his toddler in a case that generated headlines for decades in this city, is now anonymous again after the courts imposed a publication ban.

In all these cases, these parents accused — and even convicted — of harming their children are allowed to have their names kept secret, ostensibly to protect the identities of the other siblings — whether they want it or not. In the Toronto case, one of the surviving sons, now an adult, is bitter that despite his father's heinous crime, he will be released one day and no one will be the wiser about what he's done.

For a court system predicated on the importance of openness, why are these parents being afforded the luxury of anonymity?

The Toronto Sun will go to court next week to seek the overturn of the latest publication ban — which we were only notified about on Thursday, a month after it was imposed.

According to the notice sent to various media outlets, Justice Deena Baltman issued a publication ban Jan. 12 on the name of the accused Mississauga mother who went on trial Monday as well as on the name of her dead three-year-old daughter — even though their identities and photos have been in the news since the mom's arrest for second-degree murder three years ago.

"A publication ban at this point is outrageous," says lawyer Iain MacKinnon, who has acted for the Toronto Sun. "It's one thing if there's never been any publicity about the case but once the public already knows about it, the horse has left the barn, you can't close the door."

MacKinnon complained the routine issuing of these discretionary publication bans is undermining the open court principle upheld by the Supreme Court as critical for democracy. Judges are supposed to apply the highest court's Dagenais-Mentuck test, where restricting access to court proceedings can only be done if the need is proven necessary to prevent a serious risk to the administration of justice and that risk is "well-grounded in evidence."

But many judges aren't applying that test, the lawyer said.

When the test is applied, the publication ban often falls. Last month, Justice John Sproat lifted the ban on the names of Sean and Maria Hosannah, convicted of manslaughter in the death of their two-year-old daughter Matinah. It had originally been sought by the Crown to protect the couple's surviving children.

"The routine granting of publication bans on the identity of adult accused persons and offenders would be a radical change in the law. If a publication ban is necessary in this case it would be necessary in any case in which a heinous crime was committed by a person with children and an uncommon surname," Sproat ruled.

To routinely ban the names of accused parents so their surviving children can be spared further pain would be "a step too far," he said.

And yet that's what happens all too often.

Witness this recent Court of Appeal decision where a publication ban means only initials are used to describe the parents who received just a six-month jail sentence for the horrific mistreatment of their son.

Sent away at eight-months-old to live with his grandparents in India, the boy was brought home two years later. Three months after his return, he suffered a seizure and was rushed to Sick Kids where doctors found he was "malnourished, anemic, had vitamin C levels consistent with scurvy, three open wounds, and scars all over his body."

Acquitted of aggravated assault, the parents were convicted of failing to provide the necessities of life for not seeking medical attention. They never sought to see him again and the poor little boy was put up for adoption. Their other two children were seized but eventually returned to their care.

Who are these heinous people? We aren't allowed to know. Instead, S.J. and S.J. have the anonymity they don't deserve.

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