



# Teaching Youth Justice

A Learning Resource for the *Youth Criminal Justice Act*

# **Teaching Youth Justice:**

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# Introduction

The *Youth Criminal Justice Act* (YCJA) recognizes the importance of maintaining a separate system for applying criminal law to young people aged 12-17. It is essential that society understands this, why this is, and what it accomplishes. With this in mind, *Teaching Youth Justice* has been written to provide instructional material around the concept of justice reflected in the *Youth Criminal Justice Act*, and to introduce the philosophy and procedures of the YCJA.

*Teaching Youth Justice* is divided into three sections, each with a specific focus:

Section One: Justice Outside of the Courtroom allows students to consider how and why the YCJA helps young people avoid the court process for less-serious crimes.

Section Two: Youth, the Police, and Arrest takes a closer look at the law when youth are in contact with the police.

Section Three: Youth and the Courts explores what happens when the youth justice process involves the Courts.

To illustrate these concepts, each section's lessons include relevant teacher background information, student handouts, and fictional incidents alongside real-life case studies. To substantively build understandings of these concepts, each lesson purposefully revisits key concepts to scaffold students into greater understandings.

Through its youth justice context, *Teaching Youth Justice* has been specifically written to support the three Foundational Knowledge/Content Objectives of the Saskatchewan Law 30 Curriculum's Criminal Law unit:

- know that the criminal law is based in written statutes
- know the rights and responsibilities of citizens in relation to the criminal justice system
- investigate the structure, functions, and purpose of the current criminal justice model in Canada

Of course, no single resource can successfully fulfill all the requirements of any curriculum. However, *Teaching Youth Justice* provides a comprehensive frame for teachers to approach the Criminal Law unit. Because teachers are the professionals situated closest to their students and the actual learning that takes place in Saskatchewan classrooms, teachers are encouraged to augment the materials in this resource in the manner they see best.

Your feedback on this or any other PLEA learning resource is always welcomed. Feel free to contact us at [plea@plea.org](mailto:plea@plea.org) with your thoughts on *Teaching Youth Justice*.





## Section One: Justice and the Community

Testing boundaries is part of growing up. Some youth act out, defiantly rebelling against societal norms. In most instances, this behaviour does not involve criminal activity. In some instances, though, youth do commit crimes. These youth may not have been equipped by their families, their communities, their schools, or society to deal with the forces that can lead to criminal activity.

Crime cannot be prevented by simply removing those who have committed a crime from the community. Incarceration in and of itself is not an effective deterrent beyond the period of incarceration. Instead, those who have committed offences need to learn to adjust to, respect, and appreciate their communities. By remaining in the community instead of being incarcerated, young people can learn to assume responsibility for solving their personal problems and learn to manage their own behaviour. This can help prevent future crimes, and help prevent youth from being incarcerated as adults.

There are many methods and ways to establish a place for youth in the community, such as restoring family ties, offering programs that create a positive sense of commonality, creating employment opportunities, and making education a viable alternative. Efforts like this help young people recognize themselves as functioning members of their community and society at large, bringing them into a community's social routines.

This section introduces the principles of the *Youth Criminal Justice Act* and their relation to active participation in the community. It begins with a discussion of the history of youth justice and the idea of criminal responsibility for youth (Lesson 1.1) then asks students to consider how they would address criminal scenarios that took place in their community (Lesson 1.2). With these basic understandings, students will explore the principles of the *Youth Criminal Justice Act* in more detail (Lesson 1.3) then study how its provisions can be used to address less-serious crimes (Lessons 1.4 and 1.5).



# Lesson 1.1 Youth Justice: An Introduction

## Rationale

This lesson explores the concept of accountability for wrongdoing. Students will understand that while youth should be responsible for their actions, their age and maturity must also be factored in.



## Teacher's Background Information: Youth and the Law

Debates surrounding what to do when youth commit crime are not new. There are many different ideas about how crime should be dealt with.

Some people argue that any special rules for youth should stress that society has the right and the need to protect itself from violent anti-social behaviour, and that the weight of the *Criminal Code* should be applied in its full force to control youth, including sentencing youth to “adult time” for “adult crime.” Others argue that a more restorative approach is the proper way forward. For them, care, guidance, community involvement, and the application of a treatment approach to misguided children is preferred.

To better inform such a debate, it is helpful to better-comprehend the underpinnings of the Canadian criminal law system. In it, one basic concept is that before a person may be punished for a serious crime and face serious penalty, that person must have intended to commit the crime. For this reason we have special provisions to protect individuals who are not capable of forming the necessary intent.

As children grow up their awareness of the world increases and society expects them to be more responsible. Still, it may be too much—under certain circumstances—to ask even a 14 or 15-year-old to be as responsible as an adult. For these reasons, the Canadian justice system deals with youth differently than adults. Very young children have no criminal responsibility for their actions. Adults are generally fully responsible for their actions. During the in-between period of ages 12 through 17, special rules apply. The *Youth Criminal Justice Act* is the law that spells out what these rules are regarding criminal responsibility of youth.

## Procedure

1. Using Teacher's Background Information as a basis, discuss the following question as a class:  
Do you think that young people should be held responsible for their actions in the same way adults are? Why or why not?
2. Distribute *History of Youth Justice* for class reading.

## KEY QUESTIONS:

Laws that apply to youth involved in criminal activity can be designed to achieve a number of goals. This includes holding young people accountable for their actions, helping the young offenders, and protecting society. All these goals are mentioned in the principles of the YCJA.

- Can the YCJA achieve all of these goals?
  - In what ways might some of these goals conflict with other goals?
  - Do you think any of these goals should be considered more important than any other? Why or why not?
3. Distribute *Age of Responsibility* to students so that they can consider the rationale for treating young people differently than adults under the law.

# Handout: History of Youth Justice

Most nations have separate justice systems for young people. However, this has not always been the case.

For a long time, there was only one criminal legal system. Youth and adults alike could be jailed, whipped, or even killed for breaking the law. Around 600AD, the Romans decided that children under the age of 7 should not be punished as criminals. By the 1700s, children under 13 were generally viewed as incapable of appreciating the nature and consequences of their conduct. During the 1800s, reformers began to develop a separate juvenile court and legal system. The philosophy of these reforms was an emphasis on rehabilitation. It was believed that saving young people from a life of crime was an important objective for society.

In Canada, our understandings of law and society have also evolved. Thus, the criminal justice system has changed over time.

## ***Evolution of Canadian Youth Justice***

### **1908: Juvenile Delinquents Act**

In 1908, the *Juvenile Delinquents Act* (JDA) marked the creation of Canada's separate juvenile justice system. The JDA:

- included youth aged 7 up to a maximum set by each province (age 16 in Saskatchewan)
- treated young persons in trouble with the law as misdirected and misguided children rather than as young adults legally responsible for their actions

### **1984: Young Offenders Act**

In 1984, the *Young Offenders Act* (YOA) replaced the JDA. Partially due to public demands for a stronger response to youth crime, the YOA:

- increased the age of criminal responsibility from 7 to 12
- moved away from a welfare-oriented approach to one of responsibility and accountability
- emphasized protection of the public while still recognizing that youth have special needs because they are not fully mature

The YOA was criticized for a number of reasons. It was said that it did not do enough to prevent youth-at-risk from entering a life of crime. As well, some argued that its sentencing options were inadequate to deal with and provide long-term rehabilitation for the most serious violent youth.

Criticism was also levelled because of the over-use of jail sentences for non-violent young offenders who could be better served through community-based approaches that emphasized responsibility and accountability.





## **2003: Youth Criminal Justice Act**

In 2003, the government responded to the perceived weaknesses of the YOA by replacing it with the *Youth Criminal Justice Act* (YCJA).

Referring to values such as accountability, respect, responsibility, and fairness, the YCJA's preamble explained the law's rationale, and stated that:

- addressing the needs of young people and preventing crime is a shared responsibility of society as a whole
- prevention should be accomplished by addressing underlying causes of crime
- youth have legal rights that must be respected
- the youth justice system should ensure accountability through meaningful consequences and rehabilitation and reintegration
- the most serious interventions should be reserved for the most serious crimes
- youth incarceration should be reduced
- accurate information about youth justice should be available to the public

The YCJA included principles to provide clear direction to those dealing with youth in conflict with the law; emphasized out-of-court and non-custodial options for non-violent youth; and focused on reintegration and rehabilitation. At the same time, the YCJA provided custody options for youth who committed more serious offences.

## **2012: Amendments to the Youth Criminal Justice Act**

In 2012 the government passed the *Safe Streets and Communities Act*, an Act that made important changes to the YCJA. The changes were designed to help ensure that youth who commit violent or repeat offences are held fully accountable.

Broadly speaking, the YCJA's general principles were amended and now highlight the protection of the public as a key goal of the youth justice system. The principles of the Act now state that the youth justice system is intended to protect the public by:

- holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of the responsibility of the young person
- promoting the rehabilitation and reintegration of young persons who have committed offences, and
- supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour

At the same time, the amendments also emphasize that the youth justice system must be based on the principle of diminished responsibility of young persons.

Additional amendments, dealing primarily with youth who commit violent and repeat offences, were also incorporated. These amendments are discussed in more detail a little later.

## ***Have These Evolving Laws Worked?***

Today, claims such as “youth crime is on the rise” and “youth crime is out of control” seem common in coffee shops and online message boards. There is one problem with such broad statements. They are not true.

The most recent data from Statistics Canada revealed that in 2013 the overall volume of youth crime declined by 16% from the previous year. This included drops in homicides, serious assaults, motor-vehicle thefts, and break-ins. This recent decline in youth crime is consistent with longer-term trends. In fact, Statistics Canada data reveals that crime has been in steady decline for over 20 years.

In 1991 nearly 9,500 crimes were recorded per 100,000 youth in Canada, a peak in recent history. When the *Youth Criminal Justice Act* became law in 2003, there were nearly 7,500 crimes per 100,000 youth. By 2013, the number of crimes per 100,000 youth fell to just under 4,500. This is a 40% decline since the YCJA was enacted.

While many factors contribute to Canada’s falling crime rates, the implementation of the *Youth Criminal Justice Act* may offer some explanation.





## Handout: Age of Criminal Responsibility

Young people are dealt with differently than adults in criminal law. Children under the age of 12 cannot be arrested or charged with a crime. Once youth reach the age of 12, they are dealt with in a separate youth justice system. While the same criminal laws apply to youth 12 and over, the administration of justice is carried out under the provisions of the *Youth Criminal Justice Act*. Once youth reach the age of 18, they are subject to the adult criminal justice system.

Some of the arguments used to justify 18 as the age where individuals are subjected to the “full” adult system of criminal responsibility include:

- by international standards, eighteen is the age when a person is believed to have reached maturity
- it is a good idea to keep young people out of adult prisons for as long a period as is possible
- in no province is the age of majority lower than 18 years

In addition to these reasons, it is also important to note that the *Youth Criminal Justice Act* requires the Crown to consider seeking an adult sentence when a youth 14 or older is charged with a serious violent offence. The YCJA also allows a court to hand down an adult sentence when certain requirements are met. When a youth receives an adult sentence, they will serve the sentence in a youth facility until they turn 18. This means that despite 18 as being the age of “full” responsibility, the law is flexible for exceptional circumstances.

For the administration of justice for children under the age of 12, the Department of Justice has suggested that “the small number of children under the age of criminal responsibility who exhibit serious behaviour problems can be dealt with more effectively by parents and the community without involving the state. When a more formal approach is required, child welfare or mental health systems are the preferred approach. These systems have access to a wide array of services that are more age-appropriate, family-oriented and therapeutic than those available through the criminal justice system.”

### Consider

1. Every crime has two parts: action and intent. For example, the crime of theft requires that something be taken from its owner, and that the person meant to take it. Young people don’t always understand their responsibility to act within the law. Do you agree that a 12-year-old is mature enough to be held criminally responsible for their actions?
2. The law must be certain that a person understands the meaning and the consequences of their actions in order to hold them legally responsible. This does not mean that a child under the age of 12 should not be subjected to any consequences for bad behaviour; it simply means they will not be subjected to a criminal penalty. Do you think this is fair?
3. As a whole, do you agree with the rationale behind how the justice system deals with criminal responsibility of youth? Why or why not?

## Lesson 1.2 Youth Justice: Considerations

### Rationale

This lesson is intended to generate discussion about the concept of laws and justice. It provides scenarios where formal involvement of the justice system may be required to resolve problems.



### Teacher's Background Information: Sentencing

The *Criminal Code* outlines the possible sentences when an adult is convicted of a crime. Each incident outlined in this lesson includes the applicable area of the *Criminal Code* and the adult sentencing provisions. Because the penalties listed are the *maximum* for adult offenders, they are not necessarily what the actual punishment would be. Further, because police are able to exercise some discretion when they encounter criminal activity, sometimes criminal charges can be circumvented entirely.

Youth found guilty of criminal offences are sentenced in accordance with the provisions of the *Youth Criminal Justice Act*. (These provisions will be dealt with in more detail in Lesson 1.3.) Under the YCJA, custodial sentences are reserved mainly for youth who commit violent or repeat offences. Other youth sentencing options include a reprimand, compensating the victim, community service, or a fine.

### Procedure

1. Ask students why it is important to consider all perspectives surrounding any conflict.
2. Break students into groups to examine incidents in “*But I was just having a little fun.*” Ensure that when looking at discussion questions, students consider the scenarios from two different points of view: that of the person doing the act, and that of the victim of the act.
3. Regroup to discuss answers as a group. For each incident, ask:
  - Do you think the conduct infringes on any values that society holds important? If so, which ones?
  - Do you think the conduct is criminal? If so, what type of sentence should be given? (Explaining the concepts of sentencing outlined in the Teacher's Background Information will be helpful for this question.)
  - Why is it important that authorities—from police to Judges—have some discretion when doling out consequences?

## ***“But I was just having a little fun”***

The following incidents are meant to get you thinking about justice. Review them and consider the corresponding questions.

### **Incident #1**

Sunday afternoon, Jimmy and Brittany head over to a vacant field where the local kids meet to play baseball. Riding their bikes down Main Street, they get into a discussion about who can throw furthest. Brittany challenges Jimmy to a contest. He agrees.

They position themselves and choose a garbage can as a target at the end of the block in front of the local hardware store. Jimmy throws first. He misses, shattering a plate glass window at the hardware store. They look at each other in horror, get on their bikes, and ride away as quickly as they can.

### **The Law**

Section 430(1)(a) of the *Criminal Code* reads:

*Everyone commits mischief who willfully destroys or damages property.*

Note: “Willfully” includes doing something with knowledge that the act will probably cause the occurrence and being reckless as to whether it occurs or not.

Section 21(1) of the *Criminal Code* says that a person who encourages someone, or does, something to help someone commit an offence is a party to that offence.

The maximum adult punishment for mischief depends on the type and value of the property destroyed:

General mischief over \$5000 – 10 years in jail

General mischief under \$5000 – 2 years in jail

### **Discuss**

1. Has Jimmy done something wrong?
2. Even though Jimmy did not plan to hit the plate glass window, should he have realized that it could have happened?
3. Has Brittany done anything wrong?
4. What are some of the possible consequences of the window being broken:
  - a. from the point of view of the store owner?
  - b. from the point of view of Jimmy?
  - c. from the point of view of Brittany?

## **Incident #2**

Some kids from a local high school like to hang out in front of a nearby convenience store after school. Some buy items from the store, but mostly they just stand out on the sidewalk and visit with their friends. Quite often there is a fairly large crowd by four o'clock.

The youth watch the people coming and going, and once in a while they crack jokes as they go by. Passers-by can sometimes hear them swearing as they talk to each other and at times it is difficult to enter the store because of the large crowd.

The store owners have told the kids not to hang around and asked them to move elsewhere. The kids respond by saying "It's a public sidewalk!" and "Hey, we're the public, aren't we?" Many of the store's customers are elderly. Some are afraid of the kids and have stopped coming to the store. Business is dropping off and the store owners are concerned.

### **The Law**

Sections 430(1)(c) and (d) of the *Criminal Code* read:

*Everyone commits mischief who willfully obstructs, interrupts or interferes with the lawful enjoyment or operation of property, or obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.*

The maximum adult penalty for mischief depends on the nature and value of the property involved:

General mischief over \$5000 – 10 years in jail

General mischief under \$5000 – 2 years in jail

Section 175(c) of the *Criminal Code* says:

*Everyone who loiters in a public place and in any way obstructs persons who are in that place ... is guilty of an offence punishable on summary conviction.*

"Loiter" means to stand idly about a place. The maximum penalty for a "summary offence" is a \$5000 fine and/or six months in jail.

### **Discuss**

1. Are the youth doing anything wrong?
2. Do the store owners have any right to ask the youth to move?

## Incident #3

Matt is a new student in Nick's class. Nick, known around school as the class clown, has taken to sneaking off with assorted items that belong to Matt. Last week he took Matt's gym shorts and hung them from the flagpole. The week before that he took Matt's backpack and hung it on the coat rack in the kindergarten wing of the school underneath a big name tag that read "Mattie." Just yesterday he switched an expensive pair of Matt's shoes with an old, worn out pair from the lost and found. Unfortunately, by the time Matt found out what had happened to his shoes, they really were gone.

Matt's parents are furious and say "enough is enough." They insist that the school call the police and have Nick charged with theft and maybe even intimidation.

## The Law

Theft – Section 322(1)(a) of the *Criminal Code* reads:

*Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything whether animate or inanimate, with intent, (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it.*

The maximum adult penalty for theft depends on the value of the property stolen:

Theft over \$5000 – 10 years in jail

Theft under \$5000 – 2 years in jail

Intimidation – Section 423(1)(d) of the *Criminal Code* reads:

*Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction (maximum punishment five thousand dollar fine and/or six months in jail ) who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing something that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,*

*(d) hides any tools, clothes or other property owned by that person, or deprives him or her of them or hinders him or her in the use of them.*

## Discuss

1. How might Matt be feeling? Nick?
2. What could the school community do in this situation?
3. Do you think involving the police would be a positive step?

# Lesson 1.3 Philosophy and Principles of the Youth Criminal Justice Act

## Rationale

Expanding on the concepts first introduced in Lesson 1.1, this lesson is designed to more fully introduce students to the main principles of the *Youth Criminal Justice Act* and to provide them with an opportunity to apply the principles to a simplified scenario.



## Procedure

1. Distribute *Philosophy and Principles of the Youth Criminal Justice Act*. Explain to students that the YCJA is intended to protect the public by holding young people accountable, promoting their rehabilitation and reintegration, and supporting crime prevention measures in the community that address the underlying causes of youth crime. At the same time the youth criminal justice system must be based on the principle of the diminished moral blameworthiness of young persons.

### KEY QUESTION:

- Why is rehabilitation a key concept of justice, especially youth justice?
2. Read *Incident: Alex and the Bicycle* as a class.
    - a. Ask students for ideas about what they would do about Alex if they were the police. List their suggestions on the blackboard.
    - b. Once a variety of options are listed, discuss and evaluate the consequences of each option.
    - c. Have students choose what they believe to be the best option. They should be prepared to justify their decision.
  3. Refer back to *Philosophy and Principles of the Youth Criminal Justice Act*. Discuss whether the various alternatives that students have proposed in Procedure 2 reflect the intent of the YCJA.



## Handout: **Philosophy and Principles of the Youth Criminal Justice Act**

Many laws have a preamble. It explains the rationale behind the law and what the law seeks to accomplish. This can help put the statute into perspective and help to interpret the law.

The preamble to the *Youth Criminal Justice Act* refers to values such as accountability, respect, responsibility, and fairness. It states:

- addressing the developmental challenges and needs of young people and preventing crime is a shared responsibility of society as a whole
- youth have legal rights that must be respected
- the youth justice system should ensure accountability through meaningful consequences and rehabilitation and reintegration
- the most serious interventions should be reserved for the most serious crimes
- youth incarceration should be reduced for non-violent young persons
- accurate information about youth justice should be available to the public

This preamble is the rationale behind the YCJA.

### ***Declaration of Principles***

The preamble of the YCJA is followed by the YCJA's Declaration of Principles. The Declaration of Principles contains more specific statements about youth justice policy.

The YCJA's principles must be considered at all times when dealing with the provisions of the YCJA. The principles can be summarized as follows.

1. The intent of the youth criminal justice system is to protect the public by:
  - holding persons accountable by using measures that fit the seriousness of the offence and the degree of responsibility of the young person
  - promoting rehabilitation and reintegration of young persons who commit offences
  - supporting crime prevention by making referrals to community agencies to address the issues underlying offending behaviour

2. The youth justice system must be separate from the adult system and must recognize the principle of diminished moral blameworthiness of young persons. It must emphasize:
  - rehabilitation and reintegration
  - fair and proportionate accountability given the greater dependency and reduced levels of maturity of young persons
  - enhanced procedural protections
  - timely intervention that emphasizes the link between the offending behaviour and its consequences
3. Measures taken must be fair and proportionate and should:
  - reinforce societal values
  - encourage the repair of the harm done to victims and the community
  - be meaningful to the young person and where appropriate involve parents, extended family, community, and social or other agencies in the youth's rehabilitation and reintegration
  - respect gender, ethnic, cultural, and linguistic differences and respond to the needs of Aboriginal young persons and young persons with special requirements
4. Special considerations apply within the youth justice system, particularly:
  - young persons have rights and freedoms in their own right and have the right to participate in decisions that affect them and have special guarantees of their rights and freedoms
  - victims should be treated with courtesy, compassion, respect, and should suffer the minimum degree of inconvenience as a result of their involvement in the youth criminal justice system
  - victims should be provided with information about the proceedings and be given an opportunity to participate and be heard
  - parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour





### ***Incident: Alex and the Bicycle***

Alex, 14 years old, notices an expensive mountain bike inside a partially opened garage on his way home from school. The garage faces the alley and no one seems to be around. Alex enters the garage, looks around, and decides to take the bicycle. After riding it around for a while he realizes he'd better get home. But he can't just show up with a bike that isn't his. He ditches the bike in an alley not too far from his house and then carries on.

Meanwhile, the owner of the bike has returned to his garage after going inside his house to get something to drink. He immediately notices that the bike is gone and calls the police. The police manage to recover the bike later that night. Acting on a tip, the police attend at Alex's home to question him about the incident.

The police inform Alex that he has the right to speak with a lawyer. As the police begin to ask Alex about his involvement, in the presence of both of his parents, Alex immediately confesses to having taken the bike, expresses his remorse, and acknowledges that it was a stupid thing to do.

Alex has no prior youth record. He is an average student and loves to play basketball and hockey.

# Lesson 1.4 Extrajudicial Measures

## Rationale

Students have now considered the principles and purpose of the *Youth Criminal Justice Act* and various crime scenarios. This lesson builds on these understandings by explaining that when a young person runs afoul of the law, the YCJA has provisions that allow for alternatives to the court process as a means of addressing less serious wrongdoing. This can be done through extrajudicial measures.



## Procedure

1. Ask students if they believe that it is always necessary to have police charge youth who have committed an offence. (It may be helpful to reflect upon the scenarios in the previous two lessons.)
2. Distribute the handout *Extrajudicial Measures*.

### KEY QUESTIONS:

- Do you think that it is a good idea to keep young people out of the formal youth court process if possible? Explain.
  - Do you think that extrajudicial measures are adequate to hold young people accountable for their actions?
3. Use *Incident: Jayne and Kirsten in Trouble* to either assign discussion questions as individual work, or lead class in considering them.



## Handout: Extrajudicial Measures

One of the objectives of the *Youth Criminal Justice Act* is to reduce the use of youth courts, particularly for less serious cases.

To accomplish this, the YCJA encourages the police and Crown Prosecutors to deal with youth outside the court system when they commit less serious offences. These options are called extrajudicial measures. They allow youth to be held accountable without turning to the more-formal Youth Justice Court system. Options for extrajudicial measures include:

- taking no further action
- warnings
- more formal police and Crown cautions (not offered in Saskatchewan)
- extrajudicial sanctions (these are discussed in the next lesson)

With the young person's consent, the police may also refer the young person to a community program or agency to address factors that appear to be related to their involvement in criminal behaviour. For example, a young person may be referred to agencies or programs that provide recreational opportunities, counselling services, or drug and substance abuse education and treatment.

The police are required to consider if any of these options are sufficient when encountering a young person who has allegedly committed an offence. If any of these measures are used no formal charges are laid and, unlike an extrajudicial sanction, youth are not required to admit guilt or responsibility for the incident.

Police must keep a record of any extrajudicial measure used to deal with a young person. While a record of past warnings, cautions, or referrals cannot be considered in sentencing for a further offence, the police and Crown Prosecutors can use the record to help decide whether to charge a young person or use further extrajudicial measures. A record of an extrajudicial sanction, however, may be considered when sentencing a young person for a further offence.

### ***What are the Principles Underlying Extrajudicial Measures?***

The portion of the YCJA that deals with extrajudicial measures includes a declaration of principles that governs their use. The principles state that:

- extrajudicial measures are often the most appropriate and effective way to address youth crime
- extrajudicial measures allow for effective and timely interventions
- extrajudicial measures should be used in all cases where they would be adequate to hold the young person accountable
- it must be presumed that extrajudicial measures are adequate to deal with first-time, non-violent youth
- extrajudicial measures may be used even if they have been used in relation to that young person before and even if that young person has previously been found guilty of another offence

Extrajudicial measures are also intended to encourage youths to repair the harm done to the victim and community, and encourage families and members of the community to get involved. Importantly, they provide victims with an opportunity to participate in the decision-making process.



### ***Incident: Jayne and Kirsten in Trouble***

Jayne and Kirsten, both 15 years old, are caught stealing clothes valued at \$190 from a clothing store. The police attend and after asking the girls a few questions, decide to take them home and interview them with the girls' parents present. As they drive towards the girls' homes they request any available background information from central records.

Jayne's parents are not at home, but are well-known to the police and social services for failing to provide adequate supervision to their children. The report on Jayne discloses one previous incident where she was caught trying to steal some costume jewelry, valued at \$28, from the same store. She was given a warning. Jayne has nothing to say about the stolen clothes.

Kirsten admits stealing the clothes together with Jayne. She says that she has never been in trouble with the law before and her report doesn't disclose any previous incidents. Kirsten's parents are very concerned to learn about her involvement in the theft and assure the police that she will be disciplined accordingly. They think the two girls should not be allowed to spend time together, although they attend the same school.

### ***Discuss***

1. Should Jayne and Kirsten be treated the same? Why or why not?
2. What options are open to the police?
3. What personal circumstances would you consider in determining an appropriate response to this incident?
4. If you were the officer involved, what action would you take in relation to each girl? Why?
5. Is having information about past incidents and how they were handled helpful? Explain.



# Lesson 1.5 Extrajudicial Sanctions

## Rationale

This lesson is a direct continuation of Lesson 1.4. It explains a more formal type of extrajudicial measure for more serious offences: an extrajudicial sanction. Extrajudicial sanctions are another way for crime to be dealt with in the community as opposed to laying a charge and moving the process to Youth Justice Court.



## Procedure

1. Brainstorm a list of possible crimes. Sort the crimes by their seriousness. Then ask students to consider what offences might be too serious to be dealt with by way of a warning, caution, or referral.
2. Distribute *Extrajudicial Sanctions* and read as a class. It may be a good idea to break students into discussion groups to address the corresponding questions.
3. As a summary of the reading, ask students to imagine that a youth successfully completes the requirements of an extrajudicial sanction (this could include such things as restitution or compensation, personal service work for the victim, community service work, mediation, counselling, and treatment programs). Two years go by without any further trouble with the law. The youth now has no record in relation to this incident.

### KEY QUESTIONS:

- Is this fair?
- What purpose does closing the record serve?
- Does this concept fit with the idea of the age of criminal responsibility (Lesson 1.1)?



## Handout: Extrajudicial Sanctions

Extrajudicial sanctions are the most formal type of extrajudicial measures. Extrajudicial sanctions create the possibility for youth to accept responsibility for their actions without being found guilty of an offence. Because of their more formal nature, extrajudicial sanctions must be part of a recognized program authorized by each province.

The *Youth Criminal Justice Act* encourages the use of extrajudicial sanctions in eligible circumstances. Extrajudicial sanctions are to be used only in situations where less formal extrajudicial measures such as warnings, cautions, or referrals are inadequate to deal with a young person who is alleged to have committed an offence. Warnings, cautions, and referrals may be inadequate because of:

- the seriousness of the offence
- the type and number of previous offences
- other aggravating circumstances

To use an extrajudicial sanction, there must be sufficient evidence to support prosecuting the offence. The young person has the right to consult with a lawyer (and must be advised of that right) and must consent to be subject to the extrajudicial sanction. The young person must be willing to accept responsibility for the offence.

Options for extrajudicial sanctions include:

- restitution or compensation
- personal service work for the victim
- community service work
- mediation
- counselling
- treatment programs

It is important that the young person be provided with an opportunity to speak with a lawyer before consenting to the use of extrajudicial sanctions. Evidence that a young person has been dealt with by way of an extrajudicial sanction can be used at sentencing for a later offence, and if a pattern of findings of guilt surfaces, could even give reason for a custodial sentence in the future.

If the young person completes all the requirements of the extrajudicial sanction program, the matter will not proceed to court and they will not be found guilty of the offence. Access to a record of extrajudicial sanctions is generally limited to two years after completion of the sanction.

If the young person does not complete the conditions of the extrajudicial sanction as agreed to, the young person may be charged and dealt with in Youth Justice Court for the original offence. As with extrajudicial measures, police are required to consider extrajudicial sanctions before deciding to lay a formal charge.

Some offences are too serious to be dealt with by way of an extrajudicial sanction. In Saskatchewan these offences include:

- cases involving a weapon or threat of a weapon
- serious, violent offences (such as aggravated assault or sexual assault)
- child sexual abuse cases
- family violence cases



### **Discuss**

1. Why are criminal offences considered crimes against the state (or society as a whole), and not just the victim?
2. Why should the young person have the right to talk to a lawyer before agreeing to extrajudicial sanctions?
3. Why is it important that a youth accept responsibility for an offence before being allowed to take part in extrajudicial sanctions?
4. Do you think that accepting responsibility makes you more or less likely to repeat the behaviour? Why?





## Section Two: Youth, the Police, and Arrest

The police are usually the first contact that young people have with the youth justice system. The police may question, warn, divert, charge, and in some circumstances arrest a young person if they reasonably believe that the young person has committed an offence or is about to do so.

As discussed in Section 1, extrajudicial measures under the *Youth Criminal Justice Act* must be considered by the police when they have reasonable grounds to believe that a young person has committed an offence. Options include:

- taking no further action
- warning the young person
- issuing a caution (if a cautioning program exists)
- referring the matter to a community program or agency, with the young person's consent

If none of these responses would be adequate to hold the young person responsible for their actions, the police must then consider a more formal extrajudicial sanction.

It is only after considering and rejecting all the extrajudicial options that a police officer can lay a charge in connection with an incident.

This section explores the law when youth are in contact with the police. As a continuation of Section 1, it builds on concepts of police discretion (Lesson 2.1). An overview of young people's rights on arrest is then put forth (Lesson 2.2). From there, deeper consideration is given to statements to the police and the right to counsel (Lesson 2.3). Finally, this section explores circumstances when individuals other than police officers may be in a position to detain and question young people (Lesson 2.4).



## Lesson 2.1 The Police and the YCJA

### Rationale

This lesson explores police discretion. Student understandings of the options available to the police when dealing with a youth in conflict with the law will be reinforced. As well, students will be introduced to some police-developed programs that help accomplish the principles of the *Youth Criminal Justice Act*.



### Procedure

1. Have students create a list of tasks performed by the police. This could include the specific functions required by the YCJA (outlined in Section 1), contributions to the community, and their roles in investigating crime and patrolling the streets.
2. Ask each student to consider the list of police tasks. Have them order tasks by level of importance. Their lists will be returned to a little later.
3. To illustrate some of the work that police do in crime prevention and rehabilitation, distribute *Police and the YCJA*. Have students read it and then complete discussion questions.
4. In addition to Procedure 3 above, teachers may wish to break students into small research groups to specifically review the work highlighted by the National Youth Justice Policing Award. Each group should focus on a particular program and report back to the class on it. Use the summary information found at <http://www.justice.gc.ca/eng/cj-jp/yj-jj/nyjpa-pnmjj/win-laur.html> as a launch-point.
5. Return to the police task list made at the beginning of the lesson. Now that students know more about the work that police do in crime prevention and rehabilitation, they should reconsider the list and its order of importance. Ask students to make any changes that they feel are required.

### KEY QUESTIONS:

- Can you single out one task as the most important? Why or why not?
- Have your choices changed from the beginning of this lesson? If so, how?



## Handout: Police and the YCJA

One of the jobs police perform is investigating crime. However, when police have reasonable and probable grounds to believe that a youth has committed or is about to commit a crime, they do not necessarily charge or arrest a suspect. Instead, at this point the police must consider several options. The police can:

- use an extrajudicial measure (as described in previous lessons)
- write out a summons or an appearance notice, in which case the young person would be released but would be required to appear in court at a later date, or
- arrest the youth and take them into custody

Having these options for responding to youth crime is referred to as “police discretion.” Police discretion must be exercised in a manner that is consistent with the *Youth Criminal Justice Act*. It is important to remember that the YCJA’s principles state that the youth justice system will protect the public by:

- holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person
- promoting the rehabilitation and reintegration of young persons who committed offences, and
- supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour

The police are vital in both promoting and maintaining these goals. In recognition of this, the Minister of Justice National Youth Justice Policing Award was created. This award honours creativity and innovation in dealing with youth in conflict with the law.

Since 2000, countless police officers have been nominated for their work on various programs and projects. These programs and projects promote positive change by addressing possible reasons behind offending behaviour. Recent award-winning projects include:

- Prince Albert’s Community Mobilization Program, a collaborative early-intervention program to help at-risk youth.
- Vancouver’s EASY (Eastside Aboriginal Space for Youth) Program, a nighttime program aimed at providing safe spaces to keep young people away from gangs.
- Charlottetown’s Police Service Horse Program, designed to develop practical skills and communication abilities for troubled youth by matching them with a brood mare ready to foal.
- Toronto’s Argos Foundation Stop the Violence initiative, which works to reduce gun violence through such efforts as having Toronto Argonaut players visit and mentor youth inside a full-custody youth centre.

A description of the Award, nomination instructions, and profiles of more award-winning programs can be found on the Department of Justice website: <http://www.justice.gc.ca/eng/cj-jp/yj-jj/nyjpa-pnmjj/index.html>.

## Discuss

1. a. What are some factors that you think might contribute to youth crime?  
b. Given these factors, what can the police do to prevent youth crime?
2. Should the police always arrest someone if they believe that the person has committed an offence? Why or why not?
3. How do the programs highlighted in this handout (and other programs profiled on Justice Canada's website) relate to the principles of the *Youth Criminal Justice Act*?





## Lesson 2.2 Rights on Arrest

### Rationale

Now that students have an understanding of police discretion, they will be able to better-understand that sometimes police must arrest a young person. This lesson will build student understandings of the rights of a young person on arrest.



### Procedure

1. Use *Reasonable Cause for Arrest* to explain to students that the police are required to have very specific reasons to arrest people.

2. Introduce the following scenario to students:

*Imagine walking home after dark. A police car pulls up. The police get out of the car and tell you that you are under arrest.*

Ask students what rights they would like to have at that moment and list them on the board. Keep this list up as it will be returned to later.

3. Go through *Arrest Flowchart* as a class.

#### KEY QUESTIONS:

- Why would the YCJA require that parents or guardians be contacted when a young person is arrested?
  - Do you think that the police should have the power to photograph and fingerprint people before they have been found guilty of an offence?
4. Distribute *Rights on Arrest* to explain to students that, by law, youth have the right to:
    - know the reason for arrest
    - remain silent
    - talk to a lawyer and parent or other adult of the young person's choice
    - be released from custody unless certain conditions are present

Students may find PLEA's "Your Rights under the *Youth Criminal Justice Act*" pocket information cards helpful for learning this. Order class sets at [plea.org](http://plea.org).

5. Return to the list created in Procedure 2. Determine which rights listed fall under the legal rights of a young person as described in *Rights on Arrest*. With the remaining items on list, have students debate why or why not these items should be protected rights.

# Overhead: Reasonable Cause for Arrest

The police cannot arrest anyone without evidence of a crime. Nor can the police arrest or punish people just because they dislike something about them or the way they look. The police do not have the power to arrest people on discriminatory grounds such as race, colour, religion, disability, sex, sexual orientation, or age.

To arrest someone, the police need reasonable and probable grounds to believe that a person has committed or is about to commit an indictable (serious) offence. Reasonable grounds mean that the police officer has a strong suspicion—and some evidence to back-up the suspicion—that a crime was or will be committed. The officer can then arrest and search the person for further evidence.

## Scenario

A police officer on patrol sees a red-faced young man in jogging shoes running down the street.

Does the officer have the right to arrest the young person?

*No. There is no evidence a crime has been committed.*

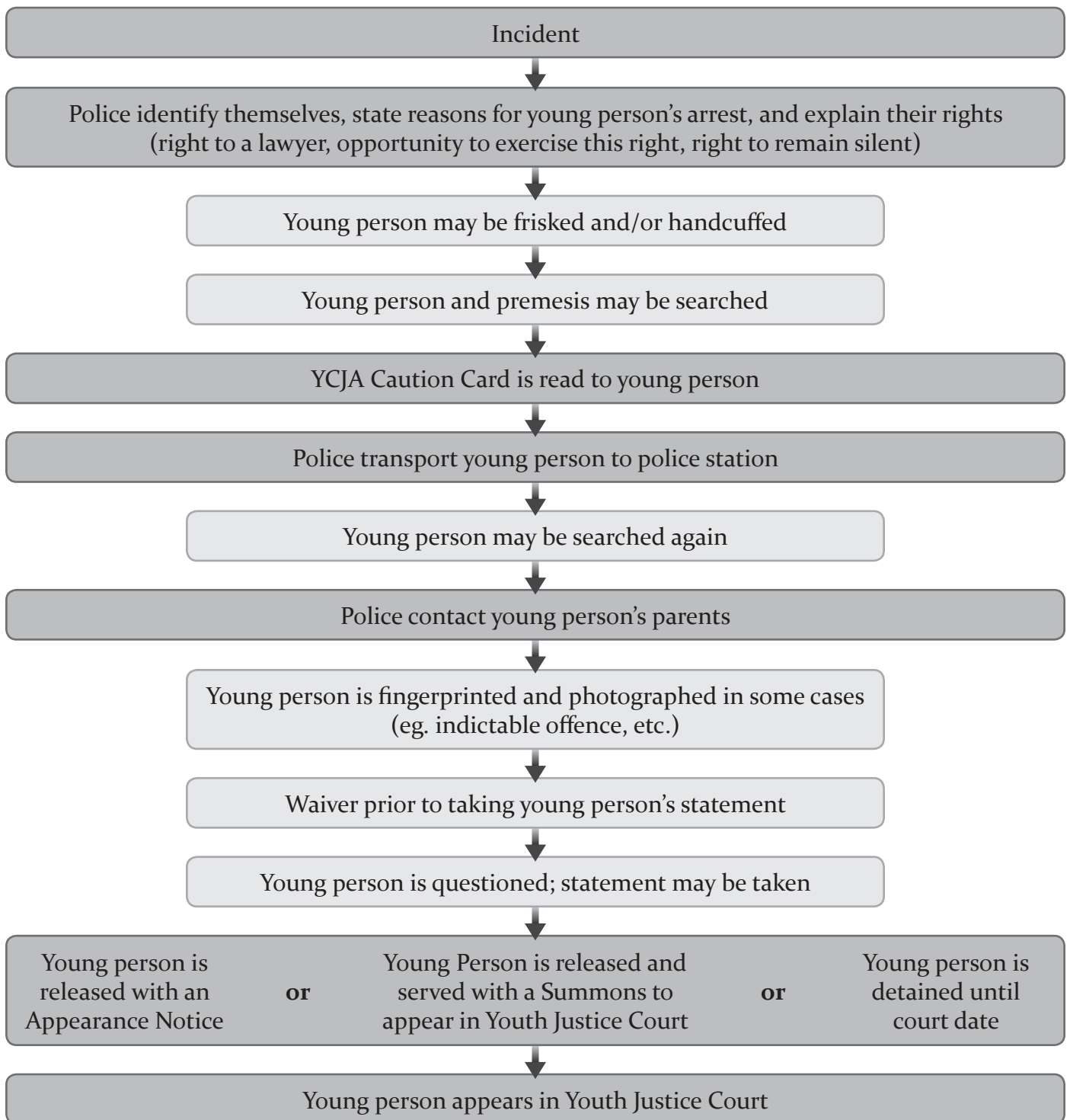
But then... An elderly man points at the red-faced young man and shouts “He stole my wallet!” There is a wallet in the young man’s hand.

Does the officer now have reasonable grounds to arrest the young person?

*Yes. There is some evidence which suggests an offence may have been committed.*

# Overhead: Arrest

(Assumes that extrajudicial measures have been considered and not used.)



**If you are arrested...**

**Remember your rights – they will be explained to you**

**Exercise your rights – be assertive but polite**

**Talk to a lawyer and parent or trusted adult**



## Handout: Rights on Arrest

When a person is placed under arrest it is important that certain procedures are adhered to and that certain rights are preserved. Our legal system has developed a number of rights for young persons accused of crimes in order to make sure that they are treated fairly. These rights include:

- *The right to be informed promptly of the reason for arrest*

The police cannot arrest a person without a good reason. Police officers must be able to state clearly the reasons for their action. This allows the person arrested to know what charge they face and eliminates the possible unfairness of general or vague accusations.

- *The right to remain silent*

A person does not have to give a statement to the police or answer questions that the police ask. Exercising this right to remain silent will not be used against the person. If an accused person voluntarily says anything, it can be used against them.

The police cannot threaten the accused or promise a favour in order to obtain a statement. If the accused person makes a statement under these circumstances, it is not admissible in court (this means it cannot be used as evidence against the accused).

It is important to remember that the right to remain silent does not include the right to lie to the police. This could result in a separate criminal charge being laid.

- *Justification for detention*

A young person can only be held in custody before sentencing if they:

- have been charged with a serious offence\*, or
- have a history that shows a pattern of either outstanding charges or findings of guilt

Additionally there must be a likelihood that:

- they will not go to court as required
- their detention is necessary for the protection or safety of the public, or
- in the case of a youth charged with a serious offence, there are exceptional circumstances that warrant detention and are necessary to maintain confidence in the administration of justice, and
- there are no conditions or combination of conditions that would adequately address any of these concerns

\*A “serious offence” means an offence for which an adult would be liable to imprisonment of five years or more, such as impaired driving causing bodily harm, aggravated assault, and theft over \$5000.

- *The right to talk to a lawyer and parent or other suitable adult of the young person’s choice*

Upon arrest, the young person must be advised without delay about their right to a lawyer. The police must also provide the young person with an opportunity to obtain a lawyer.

If an accused young person cannot talk to a lawyer, they may have no idea what other rights they have. They may be frightened of the police or others in authority, and do or say things without understanding the consequences. A lawyer can help by explaining the law and outlining the rights of the accused. The lawyer can also advise the young person about what to do and what not to do. Finally, the lawyer can explain what steps may be taken against the young person and ensure that the authorities treat the young person fairly.

Young persons also have the right to talk to their parents or guardian and to have them present when the police are questioning them. The young person doesn't have to choose between calling a lawyer or their parents – they can do both and have both present during questioning.

In addition to the above stipulations, the *Youth Criminal Justice Act* requires that police notify a parent that a young person has been arrested and detained as soon as possible. In some cases, the police have the right to take fingerprints and photographs after they have charged a young person.

It is important to remember that a young person does not have to be arrested to be charged with a criminal offence. Sometimes charges are laid without arresting the suspect. If this is the case, the police will give them an appearance notice or a promise to appear at court. These are legal forms that indicate where and when the young person must appear in court, and if and when the young person must go to the police station to be photographed and fingerprinted.





## Lesson 2.3 Statements to the Police and Rights to Counsel

### Rationale

Now that students have a basic understanding of the circumstances when young persons can be placed under arrest, the purpose of this lesson is to build student understandings about statements to the police and young persons' rights to counsel.



### Procedure

1. Review *Rights on Arrest* from previous lesson.
2. Read *Statements to the Police* as a group.

#### KEY QUESTIONS:

- Why is it important that young people are honest to the police about their age?
  - Is it reasonable that the rules about statements to the police and people in authority positions do not apply if the young person made a spontaneous outburst before their rights could be explained to them?
3. Teachers may wish to go through *Summary of a Statement of a Young Person Form* as a further examination of the process of statements to the police.
  4. Read *Rights to Counsel* under the YCJA as a group, then assign discussion questions.

#### KEY QUESTIONS:

- Why is it important that a person be able to talk to their lawyer in private?
  - What would be the consequences if the law did not provide young people the right to counsel?
5. Review *Case Study: R. v. C.L.M.* as an examination of the concepts introduced in this lesson.



## Handout: Statements to the Police

Questioning suspects is a critical aspect of police investigation. When police are investigating a crime, they usually hope to get statements from the suspect that will further their investigation and help prove guilt at trial.

Everyone has the right to remain silent when questioned by the police, whether they are an adult or young person. The right to remain silent is a principle of fundamental justice and is protected under section 7 of the *Canadian Charter of Rights and Freedoms*. If a statement is to be used against someone in court, it must be shown that it was made voluntarily. Statements made because a person is afraid or intimidated by threats or because they were promised some advantage are not truly voluntary.

Because young people might be more easily intimidated by adults generally, and police and other authority figures in particular, the YCJA provides special protection to young persons regarding statements made to persons in authority. Statements made by young persons cannot be used as evidence against them unless:

- the statement is voluntary
- the police explain, in a way that the young person can understand, that:
  - the young person is under no obligation to say anything
  - any statements made can be used against the young person in proceedings against them
  - the young person has a right to talk to a parent or other adult and a lawyer before saying anything
  - the young person has the right to have a parent or other adult and a lawyer present when any statements are made
  - the young person has a reasonable opportunity to talk to a parent or other adult and a lawyer before making the statement
  - the young person has a reasonable opportunity to make the statement in the presence of the persons consulted

It is important to remember that while young persons have the right to remain silent, police have the right to ask questions. It is up to the young person to exercise their right to remain silent.

The right to remain silent does not include a right to lie. If a young person decides to lie rather than remain silent, they could face a separate criminal charge. As well, if a young person lies to the police about their age, leading the police to believe that the youth is 18 years of age or older, the police do not have to comply with all the special safeguards intended to protect young people.

If a youth wants to give up the right to remain silent or their right to talk to a parent and lawyer, or to have a parent and lawyer present, they must “waive” the right. A waiver must usually be in writing, or audiotaped or videotaped, and indicate that the young person has been informed of their rights and understands them and is making the statement voluntarily.

The special safeguards related to young persons and statements to police or persons in authority do not apply where a young person makes a spontaneous outburst before the police have a reasonable chance to follow the requirements set out above. For example, if the police encounter a couple of young persons with a stolen bike and one youth blurts out, “I did it – I stole the bike! I’m sorry!” the statement could be used against the youth even though the police didn’t have a chance to comply with the requirements under the YCJA.





## Handout: Summary of Statement of a Young Person Form

Time: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Name of officer(s) taking the statement: \_\_\_\_\_

Name of Young Person: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Name of Parent(s): \_\_\_\_\_

Address of Parent(s): \_\_\_\_\_ Telephone: \_\_\_\_\_

We are investigating the offence(s) of...

And

\_\_\_ you have been charged

\_\_\_ you may be charged

The law requires that you be told about your rights before I can ask you if you want to make a statement. That is what is going to happen now. I will explain your rights to you and ask you if you understand what I have said.

- A. If you do not understand a word or something that I have said, tell me and I will explain it to you. It is important that you understand what I am saying. If you do not understand something, stop me at any time and ask.

Do you understand? Answer: \_\_\_\_\_

- B. You do not have to make a statement. This means that you do not have to say anything to me. But, if you make a statement, anything that you have to say, write, or do can be used as evidence in court or in other proceedings.

Do you understand? Answer: \_\_\_\_\_

- C. Even if you have already talked to the police or someone else, you do not have to make a statement now.

Do you understand? Answer: \_\_\_\_\_

- D. You should not make a statement because of a favour given or a promise made to you. You should not make a statement because you hope for something in return.

Do you understand? Answer: \_\_\_\_\_

- E. You should not make a statement because you feel threatened or afraid that someone will hurt you or anyone else.

Do you understand? Answer: \_\_\_\_\_

- F. You have the right to retain and instruct counsel in private, without delay. This means that you can talk to and get advice from a lawyer now without the police present. A lawyer's job includes telling you what your rights are and giving you advice about whether you should answer my questions or sign this form.

Do you understand? Answer: \_\_\_\_\_

- G. You have the right to consult your parent, an adult relative, or another appropriate adult in private, without delay. This means that you can talk to and get advice from that person now without the police present. If you decide to talk to a lawyer or parent or another adult, you can choose the order in which you contact them.

Do you understand? Answer: \_\_\_\_\_

- H. You have the right to have a lawyer and the adult with whom you consult here with you. This means that you can ask a lawyer or an adult or both of them to be here with you while we are talking to you and to be with you if we take a statement from you.

Do you understand? Answer: \_\_\_\_\_

- I. You may consult any lawyer you want for immediate legal advice. You can also ask a lawyer to be here with you. I can give you a telephone book or a list of lawyers to call. Or, I can help you to reach a free lawyer, through legal aid or duty counsel. I can help you reach a lawyer now. Once you do, police will leave. Your conversation with the lawyer is private.

Do you understand? Answer: \_\_\_\_\_

- J. Do you want to talk to a lawyer in private now? Answer: \_\_\_\_\_

*Record details of outcome (If yes...; If no...) and any other relevant information.*





- K. If the young person does not want to contact a lawyer or has contacted a lawyer but does not want a lawyer present...You may consult your parent, an adult relative, or another appropriate adult, in private now. You can also ask that person to be here with you. I can help you reach the person now. Once you do, the police will leave. Your conversation is private.

Do you understand? Answer: \_\_\_\_\_

- L. If the young person is waiting to contact a lawyer or waiting for a lawyer to arrive...While you are waiting for a lawyer, you may consult your parent, an adult relative, or another appropriate adult, in private now. You can also ask that person to be here with you. I can help you reach the person now. Once you do, police will leave. Your conversation is private.

Do you understand? Answer: \_\_\_\_\_

Do you want to talk to your parent or another adult in private now? Answer: \_\_\_\_\_

*Record details of outcome (If yes...; If no...) and any other relevant information.*

POLICE MUST STOP NOW IF...

THE YOUNG PERSON WANTS TO TALK TO A LAWYER/PARENT/OTHER ADULT  
BUT HASN'T BEEN ABLE TO DO SO

– OR –

THE YOUNG PERSON WANTS TO HAVE THEIR LAWYER/PARENT/OTHER ADULT  
PRESENT AND THAT PERSON HAS NOT ARRIVED.

THE POLICE MUST NOT MOVE ON TO THE NEXT STEP UNTIL THESE CONDITIONS ARE MET.

M. Do you want to make a statement now? Answer: \_\_\_\_\_

*If yes, have appropriate waivers signed. If no, STOP.*

### ***Waiver of Rights***

My rights have been explained to me.

\_\_\_\_\_ [initial] I do not want to talk to a lawyer now. I know I have the right to talk to and get advice from a lawyer now, without the police present.

\_\_\_\_\_ [initial] I do not want to have a lawyer here with me. I know I have the right to have a lawyer here with me.

\_\_\_\_\_ [initial] I do not want to talk to my parent or another adult now. I know I have the right to talk to and get advice from my parent, another adult relative, or another appropriate adult now without the police present.

\_\_\_\_\_ [initial] I do not want to have my parent or another adult here with me. I know I have the right to have my parent, another adult relative, or another appropriate adult here with me.

\_\_\_\_\_  
[signature of young person]



N. I want to remind you that if you decide to make a statement and say, write, or do anything now, you can stop at any time. The police will stop asking you questions. You can also, at any time, talk to a lawyer and have a lawyer here with you and talk to a parent or other adult and have that person here with you.

Do you understand? Answer: \_\_\_\_\_

Do you have any questions? Answer: \_\_\_\_\_

As I told you at the beginning we are investigating the offence(s) of: \_\_\_\_\_

Time: \_\_\_\_\_

I am making this statement freely. This is my statement.

- \_\_\_ My statement has been read to me.
- \_\_\_ I have read my statement over.
- \_\_\_ I have listened to the audiotape.
- \_\_\_ I have watched the videotape.
- \_\_\_ I have \_\_\_\_\_ [other review of statement]
- \_\_\_ I do not want to review my statement.

Name and signature of young person: \_\_\_\_\_

Name and signature of witness: \_\_\_\_\_

Name of other person(s) present: \_\_\_\_\_

Time statement concluded: \_\_\_\_\_



## Handout: Rights to Counsel under the YCJA

The right to counsel is essential to a fair legal system. Accused young persons may have no idea of their rights. They may be frightened or intimidated by the police and others in authority, and may say things that they do not mean. A lawyer can explain the process to the young person, explain what the young person's rights are, and make sure that the authorities follow fair procedures.

Under the *Youth Criminal Justice Act*, an accused young person has the right to talk to a lawyer as well as the right to talk to a parent, guardian, or other suitable adult of their choice at the earliest opportunity. An arresting officer must advise the young person without delay of the right to have a lawyer and must provide the young person with an opportunity to exercise this right in private. This must be explained in words that they can understand.

The young person must be informed of this right when they are being held for questioning, when arrested, and before considering taking part in an extrajudicial sanction instead of a court proceeding. The right to counsel is the young person's right and is independent of their parents.

It is up to the young person to exercise this right or knowingly waive this right.

The accused person has the right to talk to a lawyer at any stage throughout the arrest and detainment proceedings. As well, an accused young person is not limited to making one phone call.

If the matter goes to court, the young person has a guaranteed right to legal counsel. If the youth cannot afford a lawyer and is declined legal counsel through legal aid, the Court may appoint a lawyer for the young person. This is one way that the YCJA recognizes that youth, by virtue of their level of maturity and dependence, have special needs and may be incapable of representing themselves.

### Discuss

1. Imagine that a police officer arrived at your school to confront you in the principal's office about a bag of marijuana that she says was found in your locker.
  - a. Would you want the opportunity to have a parent or other adult there with you? Why?
  - b. Would having an adult there make the process more or less fair? Explain.
2. What might happen if the police were allowed to hold a young person indefinitely without allowing them to contact a lawyer or family member? What is wrong with this?
3. Imagine that a 12-year-old is arrested and advised that she has a "right to obtain counsel" before making a statement. She waives this right because she doesn't understand what "counsel" means, nor does she know how to "obtain" counsel.
  - a. Should the police offer some assistance so that a young person can get a lawyer?
  - b. Imagine you are a Judge and this case comes before you in court. Because this youth does not understand the word "counsel" nor how to "obtain counsel," have the police properly informed her of her right to a lawyer?

# Handout: Case Study: R. v. C.L.M.\*



## The Facts

Fourteen-year-old C.L.M. was charged with second degree murder. She had been arrested at about 11 p.m. one evening and taken into custody. She smelled of alcohol but didn't appear intoxicated. She was given the standard police warnings and caution that an adult would receive before she fell asleep in her jail cell.

She was awakened by police about five hours later and taken to a videotaping room where she was advised of her rights in detail. She was given an opportunity to speak with a lawyer and did so briefly. She indicated clearly that she wanted to talk to her mother or other family member and two attempts to contact her mother and one attempt to contact her stepfather were unsuccessful.

The police then told her they didn't know what more could be done at the moment and advised her that it was up to her whether she wanted to tell the police now or later what had happened. They asked her what she wanted to do, but she didn't answer them. Instead she simply began telling them about her movements the night before. The police then began asking her detailed questions, which she answered. The police went on to suggest some scenarios and indicated that they thought that she was lying. She then asked again to call her mother. The police left the room and gave her an opportunity to do so. Attempts to reach her mother were again unsuccessful.

At trial, the prosecution wanted to use the videotaped statement against the accused and contended that the statement was admissible. C.L.M.'s defence lawyer argued that the statement was inadmissible, saying that the accused young person had not waived her right to consult with a parent or other adult relative and to make her statement in the presence of such a person.

## The Law

Section 146(2) of the YCJA states:

*No oral or written statement made by a young person ... to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless...*

*(c) the young person has, before the statement was made, been given a reasonable opportunity to consult*

*(i) with counsel, and*

*(ii) with a parent or, ... in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person...; and*

*(d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.*



### **Questions to Consider**

1. The accused young person had the opportunity to speak with a lawyer and did so. Do you think that the police should still have waited for her to speak with a parent or other adult before taking a statement? Why or why not?
2. Do you think the accused waived her right to consult with a parent or other adult or to have them present when she gave her statement? What should a young person have to do to waive these rights?
3. Do you think the statement should be admissible?

### **The Decision**

The Court held that the videotaped statement was inadmissible as evidence at trial.

### **The Reasons**

The Judge stated that the right to talk to a parent or adult and to have that parent or adult present when making any statement is a “fundamental right that is not satisfied by the right to counsel.” He went on to say that because the accused was only 14 years of age, it is unlikely that she fully appreciated the benefits of legal counsel. As well, she may have felt uncomfortable talking on the phone to a stranger.

The police knew that she wanted to talk to her mother or another adult. There was no pressing need to get a statement from her in the middle of the night; the police had the young person in custody and could have waited for morning to allow her to reach her mother or other adult before taking a statement. The Judge further stated that he was “convinced, on the basis of her demeanor and conduct during the interview as evidenced by the videotape, that had she been asked directly if she was waiving her right to consult with an adult and to have that adult present, she would have answered in the negative.”

The Judge noted that the relevant section of the YCJA “exists to protect all young people, particularly the shy and the frightened, the nervous and the naïve... [but the requirements] must be complied with whether the authorities are dealing with the nervous and the naïve or the street-smart and worldly-wise.”

- \* Although this case was decided under the *Young Offenders Act*, the wording of the relevant section remains unchanged under the YCJA. [R. v. C.L.M., Saskatchewan Court of Queen’s Bench, March 16, 2000].

## Lesson 2.4 Statements: Persons in Authority

### **Rationale**

This lesson is an extension of Lesson 2.3. Its purpose is to help students gain an appreciation of the complexity of interpreting the law as it applies to young persons making statements to persons in authority.



### **Procedure**

1. Review with class what they have learned about statements to the police and the right to counsel.
2. Using the handout *Statements: Persons in Authority and the Law*, explain that the safeguards that are in place for police questioning youth may also apply to certain other people.

#### KEY QUESTION:

- Who are some persons in authority in your life?
3. To illustrate this concept, distribute *Case Studies: Persons in Authority* for students to work on. It may be preferable to have students work in small groups due to the complexity of the law in question.



## Handout: Statements: Persons in Authority and the Law

The police must follow certain rules set out in the *Youth Criminal Justice Act* when taking statements from young people who are under arrest or being detained. However, it is not just the police that these rules apply to. The rules also apply to other “persons in authority” when young people are being questioned about criminal offences. This safeguard recognizes that young persons may be more susceptible to pressure and less likely to exercise their right to remain silent when being interrogated by an authority figure, such as a school principal, security guard, or social worker.

The YCJA specifically provides that certain safeguards must be met before any statement made by a young person is admissible in court. These safeguards are set out in section 146(2) of the YCJA.

Under section 146(2), when a young person is under arrest or being detained, any statements they make to a police officer or other person in authority can’t be used as evidence against them in court unless...

- the statement was voluntary
- they have been told they don’t have to make a statement and understand that
  - any statements made can be used against them
  - they have a right to consult a lawyer and parent or other adult they choose
  - any statements made must be made in the presence of a parent or other adult consulted unless the young person says they don’t want them present
- they had a reasonable opportunity to consult a lawyer and parent or other adult they chose, and
- if they consulted with a lawyer, parent, or other adult they had a reasonable opportunity to make the statement in the presence of the lawyer, parent, or other adult

### ***Who is a person in authority?***

Most people, even young people, recognize that there could be serious consequences if they make a statement to a police officer concerning a criminal offence. It is important for young persons to understand that making a statement regarding criminal activity to a person such as a school principal or other “person in authority” could have the same consequences.

But just who is considered to be a person in authority? To a large extent, the answer is it depends on the circumstances. Generally speaking, anyone who is involved in the investigation of an offence or the interrogation of a young person could be considered a person in authority. It’s important to look at the question from the point of view of the young person and whether the young person would be influenced, pressured, or intimidated to make a statement to that particular person in those circumstances.

The issue of determining whether a person falls within the legal definition of a person in authority is critical because a person in authority must comply with the safeguards of section 146(2) of the YCJA. If they do not, a statement made to them will be inadmissible and cannot be used as evidence in court. The following cases illustrate the type of factors a court will consider to determine whether a person is a “person in authority.”





## Handout: Case Studies: Persons in Authority

### ***R. v. M.A. | The Facts***

A 13-year-old allegedly smashed the windows of an old truck that was out in a hay field of a neighbour's ranch. The young person, a foster child, made a statement to his foster mother after she insisted on knowing whether he was responsible for the damage to the truck. The prosecutor wanted to use this statement against the young person in court.

The defence lawyer argued that the statement was inadmissible because the foster mother was a “person in authority” and the safeguards relating to statements and young persons had not been met. The young person was not advised of his right to remain silent and was not given an opportunity to talk to a lawyer before he made the statement to his foster mother.

### ***Questions to Consider***

1. Was the foster mother, in law, a person in authority?
2. If so, was the statement free and voluntary and were the safeguards relating to young persons and statements met?

### ***The Decision***

In *R. v. M.A.* the British Columbia Youth Court decided that the statement the young person made to his foster mother was a statement to a “person in authority” and that the safeguards related to young persons and statements were not followed. The statement could not be used against the young person in court.

### ***The Reasons***

The Court found that the purpose behind the foster mother's interrogation of the accused young person was to tell the police whatever the young person might confess to her. When a statement is made by a young person to a person in authority, certain safeguards must be followed because the young person might be unduly pressured by an authority figure to waive the right to remain silent. If these safeguards are not satisfied, the statement will not be allowed into evidence. This case was unlike other cases where a parent, or person in place of a parent, was found not to be a person in authority, where, for example, they had no intention of calling the police or had begged a young person to tell them the truth so that they could get help for the young person.

## **R. v. H. | The Facts**

A grade eight teacher left her purse in the classroom while she went to a meeting. When she returned she found that her purse was open, her wallet was gone, and \$65 was missing. The teacher reported the incident to the vice-principal. The next day she spoke to her class about the incident and told them that if the money was returned that would be the end of the matter. After the teacher said this, student H and some boys came forward, admitted the theft, and returned some of the money. The teacher brought this to the principal's attention. The principal then called the boys into the office and questioned them about the theft. The principal decided to call the police and have the boys charged with theft. When the case went to court, student H argued that what he had said to the principal could not be used as evidence against him because his rights had been violated.



## **Questions to Consider**

1. Do the safeguards of the YCJA concerning statements apply to statements a young person makes to a principal? A teacher? Why or why not?
2. Were student H's rights violated? If so, how? Does the fact that the teacher promised the matter would end if the money was returned make any difference?

## **The Decision**

In *R. v. H.*, the Edmonton Provincial Court decided that the statements student H made to the principal and the teacher could not be used in these circumstances because the requirements of the Act were not met.

## **The Reasons**

The Judge said that both the teacher and the principal were “persons in authority” in this case. Someone is a person in authority if the accused believes this person has some power over them and could make good on a promise or carry out a threat. The Judge found that a 13-year-old boy like student H would believe that a teacher or a principal could exercise power over him.

The Judge decided that none of the requirements in the YCJA had been met. He noted that the confession to the teacher was not voluntary because she promised there would be no further consequences if the person came forward. The Judge said student H relied on this promise when he admitted the theft to the teacher and when he admitted the theft to the principal. The Judge also found that neither the teacher nor the principal told the student he could talk to a lawyer or his parents, nor did they give him a chance to do so.

The decision of the Provincial Court was appealed to Queen's Bench Court. The higher court agreed that in these circumstances the principal and the teacher were persons in authority and the requirements under the YCJA were not met. The statements made by student H to the teacher and the principal could not be used against him in court.



### ***R. v. D.J. | The Facts***

The young person was arrested and held on a number of charges including aggravated assault and kidnapping. After speaking with his lawyer, he indicated that he would not be making a statement and was then placed in a jail cell. He also spoke with his mother some time later.

An undercover officer was placed in an adjacent cell and struck up a conversation with the young person. The young person believed the undercover officer was a fellow prisoner. Over the course of a few hours the young person made several incriminating statements and admissions about his involvement in the assault and kidnapping.

At trial, the Crown sought to have the statements used as evidence in the case against the young person. The young person's lawyer argued that the statements made to the undercover officer were inadmissible as they were given to a person in authority without the benefit of the safeguards set out in section 146(2).

### ***Questions to Consider***

1. Should the undercover officer be considered a person in authority? Why or why not?
2. What, if any, difference does it make that the young person didn't know the real identity of the undercover officer?

### ***The Decision***

The Court found that the undercover officer in this case was not a person in authority and that the statements were admissible.

### ***The Reasons***

There was no relationship of trust between the young person and the undercover officer and the young person was not obligated or vulnerable to the undercover officer. The undercover officer was permitted to engage in trickery, lie, and allow himself to be misidentified to the extent that he did. The statements made by the young person were not actively elicited by the undercover officer or the result of an interrogation by the undercover officer. The undercover officer didn't press for answers or repeatedly try to get more detailed answers. The young person conversed with the undercover officer openly and freely, without reservations or qualms.



## Section Three: Youth and the Courts

Sometimes, police discretion or extrajudicial measures are not enough to address a crime. As discussed in Section 2, there are certain circumstances where young persons will be detained by the police and charged with a crime. If the Crown determines that charges should be pursued, youth will likely find themselves in Youth Justice Court.

This section explores what happens in Youth Justice Court and how a sentence will be carried out if a young person is convicted of a crime. It begins by introducing Youth Justice Court's personnel and procedures (Lesson 3.1). From there, it explores court procedures in more detail by explaining court appearances (Lesson 3.2), and considers why publication bans usually apply to Youth Justice Court (Lesson 3.3).

If a young person is determined to be guilty of a crime, there are many options available to the Youth Justice Court. Options for sentences—including probation and adult sentences—are considered (Lessons 3.4 to 3.6), then a discussion of how custody, supervision, and reintegration will play out is put forth (Lesson 3.7). As a summary activity that envelops the knowledge gained about the principles of the *Youth Criminal Justice Act*, a discussion of Conferences closes this resource to provide understandings of how the community can play a role in youth justice (Lesson 3.8).



# Lesson 3.1 Overview of Youth Justice Court

## Rationale

In order for students to gain an appreciation of what takes place in Youth Justice Court, this lesson will introduce the Court's personnel and procedures.



## Procedure

1. As a class, brainstorm what is known about courts and trials. Portrayals in fiction, the news, and/or personal experience may be some sources to draw upon. This list will be returned to at the lesson's close.
2. As a class, lead group reading of *Youth Justice Court: An Overview*.

### KEY QUESTIONS:

- Why must a Judge be impartial?
  - Why do Judges only make their decisions after all the evidence is heard?
  - Why is the accused presumed innocent?
  - Why is it important that if an accused is convicted, Judges have some discretion in what their sentence will be?
3. To understand the roles of court officials, break students into groups to review *Youth Justice Court Personnel*. As a summary, students can play "Who Am I?" to identify each official.
  4. Review original brainstorming session as a class, using the following questions to guide learning:
    - What did you know about courts and trials that was true?
    - Were any misconceptions about courts and trials cleared up?
    - What do you still want to learn about courts and trials?



## Handout: Youth Justice Court: An Overview

Under the *Youth Criminal Justice Act*, all youth cases will be heard in Youth Justice Court.

Once in court, a young person has a guaranteed right to legal representation. This means that if the young person wishes to obtain counsel but is unable to, the Court will order that counsel be provided if the young person asks.

In most cases the trial will be open to the public and members of the news media. The media are not usually permitted to publish or broadcast any information which reveals the identity of any young person involved in the trial. Publication is discussed more fully under Lesson 3.3.

The young person's parents or guardians must be notified of all proceedings and are encouraged, or may be required, to attend. Where a parent or guardian has not attended court proceedings, the Judge may issue a written order requiring the parent or guardian to attend at any stage of proceedings.

At the trial, the Crown Prosecutor and counsel representing the young person (if the young person has counsel) present their cases and may call witnesses. After both sides present their cases, the Judge must make a decision based on the evidence.

If the young person is found not guilty, they will be acquitted, and that is the end of the case. If there is no appeal, all records will be sealed or destroyed two months after the appeal period passes. If there is an appeal, and that appeal is not successful, all records will be sealed or destroyed three months after the appeal proceedings.

If the Judge finds the young person guilty, the Judge may request a Community Youth Worker to prepare a pre-sentence report. Under some circumstances, such as the possibility of a sentence involving custody, a written pre-sentence report must be ordered. However, a pre-sentence report may be dispensed with if the young person, the Crown Prosecutor, and the Judge agree not to have one. A pre-sentence report is an assessment of the young person's age, behaviour, attitude, previous contact with the law, experience with extrajudicial measures and sanctions, school records, and relationships with parents. An appraisal of the programs and facilities available to the Court will also be included. The Community Youth Worker preparing the report will interview the young person, the parents or guardian, and the victim (where there is an identifiable victim and where an interview is appropriate). In most cases, copies of the report must be made available to the young person, the parents, and legal counsel.

If the Judge considers that the young person is suffering from physical or mental illness, the Judge can ask for a medical, psychological, or psychiatric assessment. A medical, psychological, or psychiatric report can be ordered by the Court when it is deciding on a youth sentence.

# Handout: Youth Justice Court Personnel



## Judge

- decides the facts
- attempts to discover the truth
- decides if all the elements of the charge have been proven beyond a reasonable doubt
- where there is a guilty verdict, the Judge must decide what sentence to impose

Note: It is extremely rare to have a jury in Youth Justice Court. A young person who is charged with murder may choose to be tried by a Queen's Bench Judge with a jury. That Court will be deemed to be a Youth Justice Court for the trial.

## Crown Prosecutor

- a lawyer employed by the provincial Ministry of Justice
- prepares criminal case after the charges have been laid
- tries to prove beyond a reasonable doubt that the accused person is guilty
- makes submissions regarding sentence when there is a guilty plea or finding of guilt

## Defence Lawyer

- hired by the accused, supplied by legal aid, or appointed by the Court
- tries to raise some doubt in the Judge's mind as to the guilt of the accused
- makes submissions regarding sentence when there is a guilty plea or finding of guilt

Note: An accused is presumed innocent until proven guilty.

## Clerk of the Court

- maintains records and assists the Judge
- reads the charge to the accused
- administers the oath or affirmation to all witnesses
- marks exhibits entered as evidence
- records the decision and sentence

## Court Reporter

- records the proceedings in court
- when necessary, produces a typed transcript that is a court record of all proceedings in the case

## Witnesses

- usually stay outside of the court room until they testify, so their testimony is not influenced by the testimony of other witnesses
- testify as to what they saw, heard, or felt



## Lesson 3.2 First Appearance

### Rationale

This lesson will explore court procedures in more depth through an explanation of the process of first appearance.



### Teacher's Background Information: Innocent until Proven Guilty

It is a basic principle of our law that an individual is presumed innocent until the Crown proves that they are guilty of an offence. An accused person has a right to have the case against them heard in a court of law. A “not guilty” plea simply means that the accused requires the Crown to prove its case against them. The Crown is required to prove its case beyond a reasonable doubt. This means that the evidence and the facts establish the guilt of the accused and do not show any other sensible explanation of the events. The requirement to prove guilt beyond a reasonable doubt is because of the serious nature of convicting a person of a crime.

### Procedure

1. Introduce students to the concept of innocent until proven guilty. Ask students why they believe that the Crown should be required to prove an accused person's guilt rather than the accused person being required to prove their innocence.
2. As a class, lead group reading of *First Appearance*.

#### KEY QUESTIONS:

- Why should young people have the guarantee that a lawyer will help them when adults do not have that same guarantee?
  - Given the high cost of lawyers, should all adults be entitled to this guarantee as well?
3. Ask students to answer the following question in a brief writing assignment:
    - How does the absolute right to counsel in Youth Justice Court meet the intent and principles of the YCJA?

Students will need to look back to the handout *Philosophy and Principles of the Youth Criminal Justice Act* to complete this assignment.



## Handout: First Appearance

The first time a young person appears in Youth Justice Court is called the “first appearance.” The criminal charge will be read to the young person. Then the Judge will ask if the young person wants to plead guilty (i.e., admit the crime) or not guilty (i.e., require the Crown to prove the charge). The entering of a plea may be adjourned to a later date while the young person gets legal counsel.

If the young person decides to plead not guilty, a trial date will be set. Usually, the trial date will be sometime after the first appearance in court. This gives the Crown Prosecutor and defence counsel time to prepare their cases and their arguments.

The accused young person has an absolute right to be represented by a lawyer in proceedings against them. If a young person appears in court without counsel, the Youth Justice Court Judge must advise the young person that they have the right to retain and instruct counsel, and the Judge must give the young person a reasonable opportunity to get a lawyer. If the young person wants to get a lawyer but cannot, (i.e., by hiring one, or by receiving legal aid), they can make a request for counsel to the Judge and the Judge must order that counsel be provided.

The young person’s absolute right to counsel throughout proceedings is a right that adults do not enjoy. An adult generally only has a lawyer if the adult can pay for a lawyer or if the adult qualifies for legal aid.

## Lesson 3.3 Publication and Information Sharing

### Rationale

This lesson continues an exploration of court procedures in more depth through building student understandings of why publication bans usually apply to Youth Justice Court.



### Procedure

1. Ask students if they believe that people should be judged by their past actions or present actions. How do their beliefs fit into the concept of rehabilitation?
2. As a class, lead group reading of *Publication and Information Sharing* then have students complete discussion questions.
3. Teachers may wish to engage the class in a discussion about the merits and drawbacks of the publication of youth names. The following arguments as to why or why not the identity of people involved in a Youth Justice Court case should be published will make a useful starting point for discussion.

Reasons to not allow publication of youth names include:

- Society should protect the reputations of accused young people so that they will not be labelled for life.
- Young people have a right to a fresh start after completing the sentence imposed upon a finding of guilt.
- The public need not know the identity of a young person in order to see that justice is done.

Reasons to allow publication of youth names include:

- Justice must be seen. The public must have access to all information about court proceedings to ensure that the courts reflect society's values.
- Young people will be deterred from committing crimes if they know that their names will be published.
- Young people should be accountable to the public, as well as the courts, for their crimes. Their wrongdoing should be publicized and their reputations affected.
- Publication may be necessary to protect the public.

Be sure to have students locate and understand relevant research on their stance.



## Handout: Publication and Information Sharing

One of the special protections a young person has under the *Youth Criminal Justice Act* is a general “right to privacy” as an accused, witness, or victim. The YCJA states that:

*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.*

The term “publication” is defined as “the communication of information by making it known or accessible to the general public through any means, including print, radio or television broadcast, telecommunication or electronic means.” This means that individuals cannot use social media to share names.

Even though there are publication bans, Youth Justice Court is generally open to the public. They can only be closed by the Judge for good reasons. Reporters may be present. The facts of the case can be published, but only if the facts will not reveal the identity of any young person involved.

The name and other identifying information of a young person being dealt with under the YCJA can only be published in very limited circumstances. These circumstances include:

- The identity of a young person is not protected in the event that they receive an adult sentence following a guilty finding in Youth Justice Court.
- Publication is necessary to protect the public because the young person has received a sentence for a violent offence and poses a significant risk of committing another violent offence.

There are other situations where a young person’s identity can be published.

- A young person can ask the Court for an order permitting publication of their involvement under the YCJA and the Court can make such an order if it is satisfied that publication would not be contrary to the young person’s best interests or the public interest.
- A police officer can request, and a Youth Justice Court can permit, the publication of information that could identify a young person who has committed an indictable (serious) offence if:
  - there is reason to believe that the young person is a danger to others; and
  - publication is necessary to assist in apprehending the young person.(Note: These orders only last for five days.)

In adult court, all trials are open to the public unless closed by the Judge. The press has the right to be present and the right to report the details of the trial, including the name of the person charged with the crime, and the names of witnesses. Open courts ensure that the public knows trials are conducted fairly. Judges sometimes order the press not to publish names of adults in order to protect victims of crimes such as sexual assault.

Protecting information about the identity of young persons who have been dealt with under the YCJA recognizes that the publication of this information can have a negative effect on the rehabilitative goals of the YCJA. These provisions underscore the belief that a young person's mistakes should not stigmatize them into adulthood.



### **Discuss**

1. What bad effects would publicity have on a young person?
2. Is there a good reason why the media should treat a young person differently than an adult?
3. When might protection of the public require a young person to be identified?
4. Can you think of a good reason why, in adult courts, the press is free to identify the accused and witnesses?
5. Why shouldn't all trials be held in secret?



## Lesson 3.4 Sentences under the YCJA

### Rationale

This lesson begins a multi-lesson exploration of what happens if a young person is found guilty of a crime. Students will learn about the types of sentences that a Judge can impose on a young person convicted of a criminal offence in Youth Justice Court, and the principles to be applied in creating that sentence.



### Teacher Background Information

Under the *Youth Criminal Justice Act*, youth sentences are to:

*hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.*

The purpose of youth sentences is to hold the young person accountable for the offence committed. The YCJA gives a Youth Justice Court Judge a wide range of choices in sentencing. It is important to remember that all reasonable alternatives to custody must be considered. The choices available include:

- a **reprimand** of the young person (This is a firm scolding from a Judge.)
- an **absolute discharge** (There are no further consequences for the young person.)
- a **conditional discharge** (A conditional discharge is similar to an absolute discharge except that the Judge sets conditions that the offender must fulfill. If the young person satisfies the conditions, the discharge becomes absolute and there are no further consequences for the young person.)
- a **fine of up to \$1,000** (The young person's ability to pay is taken into account.)
- **paying** a victim a sum of money, compensating them "in-kind" or performing personal service, as compensation for property loss, personal injuries, or loss of income
- **personal service** to compensate the victim for any loss, damage, or injury
- a **community service order** (This would require the young person to perform a specified amount of work for the community not to exceed 240 hours, and to be completed within 12 months.)
- **order of prohibition, seizure, or forfeiture**
- **probation** (This is for up to two years; conditions may include a requirement that the young person attend school, maintain a particular residence, keep a curfew, or not have contact with certain individuals.)
- **referral** to a provincially-run support and supervision program (This option is not available in Saskatchewan but there is a similar option available through the intensive probation program.)
- **attendance order** requiring the young person to attend a program at specified times (This option is not available in Saskatchewan but it may be addressed as part of a probation order.)

- **deferred custody and supervision** where a young person stays in the community under conditions set by the Youth Justice Court Judge; failure to comply with the conditions can result in the terms being changed or the young person being ordered to serve the remainder of their sentence as a custody and supervision order (This option is not available to a young person sentenced for an offence that caused or attempted to cause serious bodily harm.)
- **custody and supervision order**, involving a period of time in custody, followed by a period of supervision in the community to assist with the transition from custody back to the community; maximum sentences vary:
  - for most offences where custody is appropriate, a maximum of two years, with 2/3 of the sentence usually being served in custody and 1/3 being served in the community
  - where the *Criminal Code* provides for a possible life sentence for an adult, a maximum sentence of three years, usually with at least 2/3 of the sentence being served in custody
  - for first degree murder, a maximum of ten years, of which at most six years is in custody (unless the prosecutor applies to increase the custodial portion)
  - in the case of second degree murder, a maximum of seven years, of which a maximum of four years is in custody (unless the prosecutor applies to increase the custodial portion)

## Procedure

1. Using the Teacher's Background Information, lead a discussion with students on what they know about the options for sentences if a youth is found guilty of a crime. Several of these options will be explored in greater detail in coming lessons.
2. Distribute *Youth Sentences* to read as a group, and then lead class in completion of corresponding questions.
3. To illustrate how Judges acquire the information they need to make their sentences appropriate, read *Pre-sentence Reports*.

### KEY QUESTION:

- How can the information contained in a pre-sentence report help the Judge accomplish the sentencing goals of the YCJA?

# Handout: Youth Sentences

Because Canada once had one of the highest rates of youth incarceration in the western world, part of the thrust behind the *Youth Criminal Justice Act* is to establish a more targeted approach to the use of custody for young persons and to increase the use of community-based sentences for non-violent youth crime.



Under the YCJA, there are a number of sentencing options available to the Youth Justice Court. Many of these options do not involve a custodial sentence. In fact, under the YCJA, the use of custodial sentences is prohibited unless one of the following applies:

- the young person has committed a violent offence
- the young person has failed to comply with non-custodial orders
- the young person has committed a serious (indictable) offence and has a pattern of either judicial sanctions or findings of guilt or both
- the young person has committed a serious (indictable) offence and there are other aggravating circumstances that call for a custodial sentence

Even in cases where a custodial sentence would not be prohibited under the YCJA, the Youth Justice Court must still explore all reasonable alternatives to custody. The Youth Justice Court can't sentence a young person to custody as a substitute for appropriate child protection, mental health, or other social measures. In other words, young persons shouldn't be placed in custody "for their own good" or in situations where an adult wouldn't be jailed for the same behaviour.

Non-custodial sentencing options include reprimands, discharges, restitution, compensation orders, community service orders, prohibition orders, and probation. When determining a sentence, the Youth Justice Court must remember that the purpose of sentencing under the orders is to hold the young person accountable by using fair sanctions with meaningful consequences, and promoting their rehabilitation and reintegration into society. This principle is based on the belief that this is an effective way to contribute to the long-term protection of the public.

A sentence must not result in the young person receiving a harsher sentence than an adult would receive for the same offence in similar circumstances. There should be consistency between sentences, meaning that young persons found guilty of the same offence committed in similar circumstances should receive similar sentences.

It is important that sentences be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence. Under the Act youth courts have the ability to ensure that violent or repeat offenders receive a sentence that takes into consideration the serious nature of the offence and the degree of responsibility of the young person.

Non-custodial sentences that are reasonable in the circumstances should be considered for all young persons. The YCJA directs that particular attention be paid to the circumstances of Aboriginal persons.



A sentence generally must be the least restrictive option that is still capable of holding the young person accountable by using fair sanctions with meaningful consequences. The sentence must be the one most likely to rehabilitate the young person and to reintegrate them into society. It must promote a sense of responsibility in the young person and an acknowledgement of the harm done, both to the victim and the community. It may also be used to denounce the unlawful conduct and deter the young person from committing offences.

When a Youth Justice Court is deciding on a sentence for a young person, the following factors must be considered:

- the young person's level of involvement in the offence
- the harm to the victim and whether it was intentional or reasonably foreseeable
- whether the young person has compensated or otherwise made amends to the victim or the community
- time already spent in custody awaiting trial or sentencing
- any aggravating circumstances that support a more severe sentence than average, or any mitigating factors that would support a more lenient sentence than average
- the young person's previous findings of guilt

Most youth records will become inaccessible and unusable if the young person does not commit further offences for a specified period. In many cases where a youth record is still accessible, subsequent convictions for offences committed by the young person after they turn 18 will serve to convert active youth records to adult status.

## **Discuss**

1. Think about the move away from custodial sentences for youth who have committed minor criminal offences and the restrictions on custodial sentences. Why would it be a good idea to keep youth who commit less serious crimes out of custody? Are there enough restrictions on the use of custody? Are there too many?
2. Some people suggest that youth criminal behaviour may be less established and easier to correct with proper support and supervision, because of the young person's level of development and maturity.
  - a. How is this reflected in the YCJA generally?
  - b. How is it specifically reflected in the sentencing provisions?
3. What different functions should a sentence serve?

# Handout: Pre-sentence Reports



The Youth Justice Court Judge is a Provincial Court Judge who decides cases under the *Youth Criminal Justice Act*. The role of the Judge is to listen to the evidence at the trial. Then, after the Crown Prosecutor and the lawyer for the young person argue their positions, the Judge must decide what happened and apply the law to the facts that they have heard.

If the Judge decides the young person is guilty, or if the young person admits guilt, the Judge must decide what action to take. The lawyers from both sides will give the Judge information about the young person and about the crime that was committed. Then the Judge will decide an appropriate sentence for the young person. Under the *Youth Criminal Justice Act*, youth sentences are to:

*hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.*

The Judge usually needs to know more about the young person before deciding on a sentence. The Judge can order a pre-sentence report to gather background information that would be useful in this regard. A Community Youth Worker interviews the young person, their parents or guardians, and where appropriate, members of the young person's extended family. The Community Youth Worker will write a pre-sentence report based on this investigation and provide it to the Court.

If the Judge is considering making an order that the young person be kept in custody, the Judge must order and consider a pre-sentence report, unless the Crown and defence agree otherwise. Pre-sentence reports must also be requested when the Court is deciding on whether or not to impose an adult sentence. In other situations, the Judge may or may not order a pre-sentence report.

A copy of the pre-sentence report will be provided to the Crown and the young person, their lawyer, and parents of the young person involved in the process. The pre-sentence report includes the following information:

- information from the interview with the young person and the young person's family
- information provided by the victim
- any recommendations from a conference held to gather information about an appropriate sentence

The report may also include other relevant information, such as:

- the age, maturity, character, behaviour, attitude of the young person, and willingness to make amends
- any plans put forward by the young person for rehabilitation
- the young person's prior contact with the formal youth justice system
- the young person's response to prior contact with the formal youth justice system, including extrajudicial sanctions



- the availability and appropriateness of community services for young persons, and the willingness of the young person to avail him or herself of such services
  - the relationship of the young person with their family or extended family and their ability to supervise and control the young person
  - school attendance and performance
  - employment history
  - drug and alcohol use
  - after-school activities and friends
  - the young person's attitude towards the offence
- any medical and psychiatric history
  - any other information that might help the Court to determine whether there is a reasonable alternative to a custody order

## Lesson 3.5 Sentencing in Depth: Probation

### Rationale

This lesson continues the exploration of what happens if a young person is found guilty of a crime. Students will learn about probation orders and explore how they are applied.



### Procedure

1. Review what students know about youth sentences from previous lesson.
2. Distribute *Probation* to read as a group, then lead class in completion of corresponding questions.
3. To introduce the application of probation, distribute *Case Study: D.P. v. R.* to consider as a class.
4. Break students into smaller groups to consider *Case Study: R. v. S.B.* Students should discuss these questions:
  - What types of behaviour are the conditions designed to control?
  - How does this relate to the offence committed?
  - How does this relate to the rehabilitation of the young person?
5. In order for students to understand the consequences of breaching parole, have smaller groups next consider *Case Study: R. v. J.H.* Students should again discuss these three questions:
  - What types of behaviour are the conditions designed to control?
  - How does this relate to the offence committed?
  - How does this relate to the rehabilitation of the young person?



## Handout: Probation

A Youth Justice Court can place a young person on probation for a period of up to two years. A probation order allows a young person to be released into the community under supervision. With a view to rehabilitation, conditions are attached to the probation order. Conditions should have a clear and direct relationship to the young person's offending behaviour. It is important to remember that a probation order is part of the youth criminal justice system; conditions should not attempt to deal with issues that are related only to child protection, mental health, or other social matters.

All probation orders include orders requiring the young person to:

- “keep the peace and be of good behaviour,” which means to stay out of trouble
- appear before the Youth Justice Court when required to do so

A probation order may also require the young person to follow conditions, such as:

- report to and be supervised by a Community Youth Worker
- notify the appropriate parties of any change in address, place of employment, education, or training
- remain within a particular area
- make reasonable efforts to obtain and maintain suitable employment
- attend school or another place of learning, training, or recreation as appropriate
- reside with a parent, or another appropriate adult, who is willing to provide for the young person's care and maintenance
- reside at a specified place
- comply with other reasonable conditions as set out in the order to secure the good conduct of the young person and prevent them from committing other offences
- not own, possess, or have the control of any weapon or ammunition

Under the previous *Young Offenders Act*, failure to comply with conditions of a probation order often resulted in a separate charge of breach of probation. In fact, the Department of Justice estimates that approximately 50% of young persons found guilty of a breach of a condition of probation under the YOA received a custodial sentence and that approximately 20% of all custodial sentences were the result of a finding of guilt for breach of probation. It is important to note that the behaviour that resulted in the breach charge was not typically something that would result in a criminal charge had the probation order not existed.

For example, a young person could face a breach charge, and possibly custody, because of failing to keep a curfew or not attending school. Under the *Youth Criminal Justice Act* it is still possible for a young person to be charged with breach of probation for failing to comply with a condition of the probation order, but it is not required. The YCJA now provides for a possible review of all non-custodial sentences, including probation. So, if the young person has had a change in their personal circumstances or they are having difficulty complying with the terms of the probation order, the matter can be reviewed.

## **Discuss**

1. Do you think a probation order is harsher punishment than a fine? Why or why not?
2. What place do you think punishment plays in a probation order? How does this fit with the principles of the YCJA?
3. What responsibility do you think parents or guardians have in relation to the actions of their children? What responsibility do they have in relation to the young person's rehabilitation? How does this relate to an order for probation?





## Handout: Case Study: D.P. v. R.

### The Facts

Fifteen-year-old D.P. pled guilty to a drinking and driving charge. He was stopped by the police at 2 a.m. after they observed him speeding and swerving. In addition to D.P. there were three other teenaged passengers in the car. D.P. was a new driver and as such was not allowed to drive after midnight. The police found open, partly empty, liquor bottles, marijuana, and paraphernalia for using marijuana in the car. A Breathalyzer test showed D.P.'s blood alcohol content to be .1 which was over the limit of .08 but not a particularly high reading.

The pre-sentence report indicated that D.P. had never been involved with the criminal justice system before, that he was a high school student with plans to take engineering at university, that he participated in sports, and that he held down a part-time job. The report also explained that D.P.'s parents were divorced and that his mother had moved to another country. As a result D.P. had little contact with his mother. His father struggled with depression and alcohol abuse. D.P. had begun drinking alcohol and using marijuana as well as exhibiting some anger issues.

The trial Judge sentenced D.P., to probation. D.P.'s lawyer had argued for a conditional discharge. The prosecutor asked for probation but did not submit any arguments against a conditional discharge. Probation is a harsher sentence than a conditional discharge mainly because with probation a youth's record can be accessed for a longer period of time.

In deciding on probation the sentencing Judge referred to another case where she sentenced an adult to jail for causing someone's death while driving under the influence of alcohol, as well as referring to the need to impress on youthful offenders that drinking and driving is a serious criminal matter and her concern that D.P.'s alcohol and marijuana use could lead D.P. to drink and drive again.

D.P. appealed the probation sentence arguing that it did not conform to the sentencing principles of the YCJA. A Court of Appeal heard the case.

### The Law

The YCJA has a number of sentencing principles. Below is a summary of some of the ones considered in this case.

The YCJA states that youth sentences *must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence*. Keeping this rule in mind youth sentences must also:

- *be the least restrictive sentence that is capable of achieving the purpose set out in the Act*
- *be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and*

- *promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community*

and may also have the following objectives:

- *to denounce unlawful conduct*
- *to deter the young person from committing offences*

### **Questions to Consider**

1. Which of the above principles do you think the trial Judge relied on in choosing the harsher sentence of probation?
2. Did the Judge consider any sentencing principles not included above?
3. When a sentence is appealed the court hearing the appeal cannot change the sentence just because they would have given a different sentence. They can only change the sentence if the trial Judge did not apply the principles in the YCJA properly. Do you think the above principles were applied properly in this case?

### **The Decision**

The Court determined that the trial Judge failed to consider some relevant factors under the YCJA, overturned the decision of the trial Judge, and sentenced D.P. to a conditional discharge.

### **The Reasons**

The Court of Appeal found that the trial Judge had not considered the requirement to impose the least restrictive sanction capable of achieving the guiding principles of sentencing under the YCJA or the need to emphasize rehabilitation and reintegration. The Court also found that the trial Judge had overemphasized the need to deter D.P. from drinking and driving again and the need to deter other young people. The Court came to this conclusion based on the Judge's comments about the impaired driver she had sentenced to jail as well as other comments she made before and after this comment about the need to deter D.P. and others from drinking and driving.





## Handout: Case Study: R. v. S.B.

### **The Facts**

S.B. pled guilty to assault and assault with a weapon, theft, and five counts of breach of undertaking. The assault with a weapon charge was the result of a physical altercation, involving S.B. waving a kitchen knife at his older brother. A few days later he and a friend stole a charitable contribution box from a grocery store. For this, S.B. was charged with theft. He was released with conditions but went on to breach his undertakings related to curfew, no contact with his co-accused, and keeping the peace and being of good behaviour. He also pushed a social worker, resulting in the assault charge. Following the breaches and new assault charge he was held in custody until his sentencing, for a total of about 8 weeks.

At the time of the offences he was 14 years old and had no prior convictions. He suffered from fetal alcohol syndrome, ADHD, and social anxiety. In the months leading up to the charges he had experienced the death of a grandmother, younger sister, and close family friend. Family members had indicated he had begun to act out, was argumentative, and possibly suicidal.

### **The Decision**

S.B. was sentenced to probation for two years and 20 hours of community service work. He was also ordered to report to a youth court worker and follow all directions received from the youth court worker, attend counselling or treatment as directed, refrain from consuming alcohol or drugs, not carry or possess any knives, and reside in a location as directed by his youth court worker for the first 60 days of the probation order.

### **The Reasons**

In the case at hand the assault with a weapon was defined as a violent offence under the *Youth Criminal Justice Act*, namely...

- an offence committed by a young person that includes an element of causing bodily harm
- an attempt or threat to commit an offence as described above, or
- an offence where the young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm

While the facts indicate that the young person's actions were a threat to cause bodily harm and could result in a custodial sentence, the Court needed to consider all reasonable alternatives to custody. Ultimately the Court found that a period of probation could satisfy the requirements and intent of the YCJA, noting that the young person was only 14 years of age and had no prior record. It was further noted that the public would be best served if the young person was provided an opportunity that was most likely to result in his rehabilitation and reintegration, and to him becoming a productive, law-abiding member of society. Although his mother was experiencing difficulty addressing his behaviour, she was supportive and well-intentioned. Residing with someone other than his mother for a period of time would provide the young person with more guidance and structure before returning home. A probation order with the conditions listed was thought to be the most appropriate sentence.

# Handout: Case Study: R. v. J.H.



## ***The Facts***

J.H. was charged with two counts of breaching his probation. The charges involved breaching a no-contact order and breaking curfew. His criminal history included guilty findings for assault, possession of stolen property, theft of a motor vehicle, and breach of probation. Some of the previous offences took place while the young person was already on probation.

J.H. pled guilty to the two breach charges but maintained he didn't do anything wrong when he had contact with the other young person and that his curfew breach was simply because he had fallen asleep at his girlfriend's house.

His pre-sentence report indicated that he had dropped out of high school and had issues with alcohol and drugs. He had enrolled in an adult basic education program, was working part-time and had begun seeing an addictions counsellor. However, he had missed his last addictions appointment and his counsellor was concerned about his level of motivation. His parents remained supportive and attributed his behaviour to the crowd he hung out with and his drug use.

## ***The Decision***

J.H. was sentenced to a total of 60 days for the two breaches and a \$200 victim surcharge.

## ***The Reasons***

J.H. had received non-custodial sentences in the past, as well as two suspended sentences and one 14-day custodial sentence that he was allowed to serve intermittently. These sentences had not specifically deterred him from re-offending. Both a conditional sentence and an intermittent sentence would require the youth to comply with an order of the Court. In light of his history, it was unrealistic to expect that he would comply now. The next logical step in sentencing was a period in custody.



## Lesson 3.6 Sentencing in Depth: Adult Sentences

### **Rationale**

This lesson continues the exploration of what happens if a young person is found guilty of a crime. The YCJA requires Crown Prosecutors to consider whether an adult sentence would be appropriate for young persons 14 years of age and older who have been charged with a serious violent offence. Further, if they decide not to seek an adult sentence in these circumstances they must advise the Court. When not required, the Crown may still choose to seek an adult sentence in some circumstances. Students will explore the conditions and consequences of adult sentences.



### **Procedure**

1. Ask students to consider scenarios where a young person has committed a serious, violent crime, (such as murder, attempted murder, manslaughter, aggravated sexual assault). Discuss what they would consider to be an appropriate punishment. Have students justify their decisions.
2. Distribute *Adult Sentences* to read as a group, then lead class in completion of corresponding questions.
3. Ask students to think back to the principles of the *Youth Criminal Justice Act*. Why is it important that there are special considerations for sentencing a youth to an adult sentence? How does this fit with both the general principles of the Act and the sentencing principles of the Act?



## Handout: Adult Sentences

Two principles of the *Youth Criminal Justice Act* are that the youth criminal justice system must be separate from the adult system and that it must be based on the principle of diminished moral blameworthiness of young people. Because the youth criminal justice system must be separate, all young persons are tried in Youth Justice Court and have the benefit of the safeguards and protections afforded by the youth criminal justice system. Because of the presumption of reduced moral blameworthiness, there are restrictions on when a youth can receive an adult sentence.

Only youth who are least 14 can be sentenced as adults. Provinces can change the minimum age to 15 or 16. If a youth, who is at least 14 years old, has been found guilty of an indictable offence that an adult could receive a sentence of two or more years in prison for, the prosecution can apply to the Court for an adult sentence. If the youth has been found guilty of a serious violent offence – murder, attempted murder, manslaughter, or aggravated sexual assault – the prosecutor *must* consider applying for an adult sentence. If they decide not to seek an adult sentence in these circumstances they must advise the Court.

The Court can impose an adult sentence only if the prosecution has shown that in the case before the Court, the presumption of reduced moral blameworthiness should not apply. This presumption essentially means that the starting point is that youth are less at fault for committing crimes simply because they are not yet adults. The Court must also find that a youth sentence would not be long enough to hold the youth accountable before giving a youth an adult sentence.

### Consequences of an Adult Sentence

If a young person receives an adult sentence, their identity can be published. Their criminal record for that offence is not protected in the same way that youth records are. The sentence may also be much longer, as the limits on youth sentences do not apply. So the young person is subject to the same maximum sentence that an adult could get. However, young people sentenced to an adult sentence must be held in a youth facility until they reach 18 and possibly beyond.

### Discuss

1. The principle that youth are presumed to be less blameworthy was added to the YCJA in 2012. This change was in response to a Supreme Court of Canada case that found “because of their age, young people have heightened vulnerability, less maturity, and a reduced capacity for moral judgment.” Do you think that is true in most cases for youth between 14 and 17? Why or why not?
2. Why is it important that the Crown must consider asking for an adult sentence in the case of a serious, violent offence? What purpose does this requirement serve?
3. Why is it important to keep young people sentenced as adults out of adult detention centres? How does this provision reflect the principles of the YCJA?

## Lesson 3.7 Sentencing in Depth: Custody, Supervision, and Reintegration



### **Rationale**

This lesson continues the exploration of what happens if a young person is found guilty of a crime. Students will consider the purpose and principles of the YCJA that relate specifically to custody and supervision.

### **Procedure**

1. Remind students that youth who are sentenced to custodial sentences not only enter custody, but they also at some point will be released from custody. What does this suggest about what should take place while a young person is in custody?
2. Distribute *Custody, Supervision, and Reintegration* to read as a group, then lead class in completion of corresponding questions.
3. Divide the class into small groups and distribute *Review of Custodial Sentences* and assign the accompanying case study activity that looks at moving a young person named Adam to open custody. For this activity, teachers may wish to have a third group play the role of Youth Justice Court and determine whether or not Adam should be transferred to open custody.



## Handout: Custody, Supervision, and Reintegration

As we have seen, the *Youth Criminal Justice Act* encourages, and in some cases requires, the use of non-custodial sentences. Where a custodial sentence appears appropriate, the YCJA requires that all available, reasonable alternatives to custody still be considered. Particular attention must be paid to the circumstances of Aboriginal youth. There are situations where a custodial sentence is required to hold the young person accountable.

In these circumstances the young person will be sentenced to a period of custody and supervision. Custodial sentences must focus on eventual reintegration and ways to assist the young person to not re-offend.

Under the YCJA, all periods of custody are followed by a period of supervision and support in the community. Generally, a young person who receives a custody and supervision order will serve the first 2/3 of the sentence in custody and the last 1/3 under supervision in the community. In very limited circumstances, a young person could be ordered to serve their entire sentence in custody. This can happen only when the Youth Court Judge decides that the young person is likely to commit a serious violent crime while serving the remainder of their sentence in the community.

The custody provisions of the YCJA recognize that the young person will eventually be released back into the community and set out the framework for programs and services throughout the custodial period. Additionally, the YCJA calls for support during the young person's transition from custody back into the community. As soon as the custodial portion of the sentence begins, the young person begins to work with a youth worker to plan for the young person's reintegration into the community. Together the young person and the youth worker will develop a reintegration plan aimed at maximizing the youth's chances for successful reintegration. When the young person is released into the community, the youth worker will supervise the young person and provide help and support in putting the reintegration plan into action and respecting the conditions of release.

During the community supervision portion of a custody and supervision order, the young person is required to abide by a number of conditions. These conditions include orders that the young person:

- keep the peace and be of good behaviour
- report to a supervisor, or other person, as required
- inform a supervisor immediately if the young person is arrested or questioned by police
- advise a supervisor of any change of address, employment, education, family, or financial situation, and other circumstances that could affect their ability to abide by conditions of their sentence
- not own, possess, or have control of any weapon, ammunition, etc. without the supervisor's authorization

The young person may also be required to follow any other conditions imposed to address the needs of the young person and their reintegration, or the protection of the public. These conditions typically include orders to do things such as attend school, maintain employment, obey a curfew, abstain from alcohol and drugs, or attend counselling. If the young person breaches a community supervision

condition, conditions will be reviewed. This could result in the conditions being modified or the young person being returned to custody.

The custody and supervision section of the YCJA provides clear statements about the purpose of custody and supervision orders and how young persons in custody and under supervision are to be treated. The purpose of custody and supervision is to contribute to the protection of society by:

- carrying out sentences in a safe, fair, and humane manner
- assisting the young person to be rehabilitated and reintegrated into society as a law-abiding citizen through effective custody and supervision programs



The principles specific to custody and reintegration call for:

- using the least restrictive measures that are consistent with the protection of the public, the people that work with the young person, and the young person
- retaining the same rights for young persons sentenced to custody as those afforded to other young persons (except those rights which are necessarily removed as a consequence of their sentence)
- involving families of young persons and members of the public
- ensuring direct, fair, and timely custody and supervision decisions, and access to an effective review process

These principles are in addition to the general principles of the YCJA that apply throughout the entire youth justice system. The youth criminal justice system must be separate from the adult system and based on the principle of diminished blameworthiness. It must emphasize:

- rehabilitation and reintegration
- young persons have enhanced procedural protections
- measures must be proportionate and consistent with a young person's level of dependency and maturity
- measures must be meaningful
- parents, family, community, and social agencies should be involved in the young person's rehabilitation and reintegration
- measures should respect gender, cultural, and linguistic differences
- young persons have rights and freedoms in their own right, including the right to be heard and to participate in processes that affect them
- measures should respond to the needs of Aboriginal young persons and young persons with special requirements

The custody and supervision provisions of the YCJA are designed to allow authorities to monitor the young person closely and ensure that the young person receives the necessary treatment and support required in order to return safely to the community.



## **Discuss**

1. Until the introduction of the YCJA, there was no requirement for a young person to begin thinking about reintegration and to actually formulate a reintegration plan while they were still in custody. Nor was there any requirement that there be supervised reintegration after custody.
  - a. Why is the emphasis on reintegration an important concept for society as a whole?
  - b. How does it fit with the principles and policies of the YCJA?
2. What issues might a reintegration plan address? What things do you think would be important to deal with as a young person prepares for reintegration? How do they relate to offending behaviour?
3. How important is it to involve the young person in this process? Why? Is it valuable to involve others also, such as the young person's parents and family, community members, and social agencies? What and how can they contribute?

# Handout: Review of Custodial Sentences

Each province must have at least two levels of custody for young persons, distinguished by the degree of restraint on the young person. The minimum two levels are generally referred to as open custody and secure (or closed) custody.

Open custody provides supervised, community-based residential settings where the young person may be encouraged to attend a community school, find a job, receive treatment, and take part in recreational opportunities in the community. Open custody provides a significant degree of supervision and guidance.

Secure custody allows for very limited access to the community. Young persons sentenced to secure custody must earn the privilege of going on outings or participating in activities in the community. Education, job training, and counselling are provided within the facility. Secure custody provides close supervision at all times.

The decision whether to sentence a young person to open or secure custody takes into consideration factors such as the:

- seriousness of the offence
- needs and circumstances of the young person
- safety of other persons in custody
- interests of society

With the above in mind, the choice of level of custody should be the one that places the least possible restrictions on the young person and still adequately addresses these points. Availability of programs suited to the young person's needs and behaviour must also be considered, as well as the likelihood of escape.

Young persons serving custodial sentences of over one year will have their sentence reviewed on an annual basis. Optional reviews may be requested at other times where, for example, the young person has made sufficient progress to justify a change in the sentence, new services and programs become available, or opportunities for rehabilitation in the community expand. Progress reports will be prepared for all reviews to report on the performance of the young person since the sentence took effect. Progress reports may also contain information relating to the personal and family history of the young person, as well as information about their present environment.

After considering the needs of the young person and the interests of society, the Youth Justice Court has options, including:

- confirming the young person's sentence (no changes)
- releasing the young person on conditional supervision





## Handout: Case Study

Adam was serving a sentence of two years secure custody followed by one year of supervision in the community after being found guilty of extortion and causing danger to life. The Youth Court Judge had noted that “[t]his is one of those extremely difficult cases dealing with the sentencing of a young person where the offender is not the worst offender, but the offence is one of the worst offences.”

Briefly, the facts that led to the charges are as follows. Adam entered a restaurant and approached the assistant manager to ask whether the restaurant was interested in “protection” for two thousand dollars a month. The assistant manager didn’t take the matter seriously and Adam left. Two days later three bullets came through the front window of the restaurant, narrowly missing people inside. The next morning Adam returned to the restaurant and told the assistant manager that he was responsible for the shooting, exposing a gun underneath his jacket.

The police were called and Adam was arrested, but not without incident. Adam pulled a gun on one of the arresting officers, causing another officer to be hit by a car as he tried to intervene. Following his arrest, the police found a fully loaded handgun in Adam’s possession. At trial, gang activity was alleged, but never proven.

Adam is one of three children from an apparently close and loving family that provided for all of his financial and emotional needs. His youth worker describes his home life as “above average as he comes from a reasonably affluent family.” He had a very poor record of attendance at his school and had received some counselling for mild behaviour problems at school. He was not, however, very interested in counselling and missed most of his appointments. The school noted that despite their efforts, Adam’s parents didn’t have much control or influence over Adam.

During the first twelve months of his sentence, Adam’s family has continued to be supportive. He hasn’t been in any trouble during his time in secure custody. Adam has taken some academic classes but has not willingly participated in any counselling. He admits to using drugs, but doesn’t think that that has anything to do with the trouble that he is in. His worker feels that he has benefited from a more structured environment and is beginning to respect authority.

### Activity

Your assignment is to consider both sides of a transfer to an open custody facility through a custodial review.

To do this, form two small groups. Have one group prepare a brief report in support of Adam’s transfer to an open custody facility. Have the other group prepare a brief report in support of Adam remaining in the closed custody facility.

For your report, detail Adam’s progress and related concerns as the basis for your decision.

When you are finished, compare the reports. Discuss the similarities and differences, and why those conclusions were made.

## Lesson 3.8 Conferences under the YCJA

### Rationale

The purpose of this closing activity is to provide students with an opportunity to review their lessons and apply their knowledge of the principles of the *Youth Criminal Justice Act*. This lesson introduces the concept of conferences and helps students gain an understanding of the role that individuals in the community can play.



### Procedure

1. Ask students to consider reasons why the input of people in the community is important to the administration of justice for youth.
2. Distribute *Conferences under the YCJA* to read as a group, then lead class in completion of corresponding questions.
3. If time permits, teachers may wish to break students into small groups, use a fact set from any Case Study in this resource, and create their own mock conference. Students should:
  - review applicable material from case study or scenario
  - discuss the purpose of the conference
  - consider which individuals should be invited to this conference
  - create a goal for what the conference hopes to accomplish

With this information established, students can take on roles and engage in mock conference.



## Handout: Conferences Under the YCJA

Many factors in a young person's life may contribute to offending behaviour. Substance abuse, poor social skills, learning difficulties, parental neglect or abuse, and other issues may play a part in decisions that can lead to offending behaviour. The principles of the *Youth Criminal Justice Act* clearly indicate that the youth criminal justice system should attempt to prevent crime by addressing the personal circumstances of young persons who offend.

The YCJA provides for gathering people together to help make decisions regarding young persons who are involved in the youth justice system. This is called a "conference." A conference can help identify the needs of the young person so that, where appropriate, these needs can be considered when a decision regarding the young person is made. Generally speaking, the use of conferences can be divided into two categories: conferences used to provide advice to a decision-maker and conferences used to coordinate the use of community services to assist the young person.

Conferences are typically made up of persons such as the young person's parents, other individuals who are familiar with the young person, the victim, and professionals who may be able to offer some expertise regarding the decision to be made.

Conferences can be used at various stages of the procedure and may be called by a police officer, a youth worker, a prosecutor, or a Youth Justice Court Judge. Conferences can be used to help make decisions regarding:

- extrajudicial measures
- pre-trial detention
- conditions for release pending trial
- sentencing
- reintegration into the community

According to Justice Canada:

*Conferences provide an opportunity to increase community involvement in the youth criminal justice system and to develop innovative, community-based responses at various stages of the youth justice process. The conferencing provisions of the YCJA seek to encourage the involvement of appropriate agencies, the young person's family and the community itself to support finding measures of accountability for wrongdoing that are meaningful to the young person and to promote pro-social behaviour. The aim of the conferencing provisions is to provide the decision-maker with informed advice as to the appropriate decisions.*

It is important to note that conferences are only designed to give advice about a decision that must be made under the YCJA. The decision-maker can consider anything that the conference puts forward, but must ultimately be responsible for making the decision and ensuring that it fits with the requirements of the YCJA.

## Discuss

1. How does the concept of conferences fit within the general principles of the YCJA?
2. How could conferences be used by victims of crime?
3. Conferences can consume a lot of time and energy. Should conferences be reserved for more serious matters only? What would be gained by holding a conference? Can this be achieved through other means?
4. The role of a conference is to provide suggestions and advice. The participants cannot dictate what the outcome will be – this must be left with the person who has authority under the YCJA to make decisions. Do you think this limits the effectiveness of a conference? Why might the YCJA impose this restriction?





Legal Information for Everyone