



HENEIN HUTCHISON LLP
BARRISTERS

THE YOUTH CRIMINAL JUSTICE SYSTEM

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GOVERNING LEGISLATION

- The *Youth Criminal Justice Act* is the law that governs Canada's youth justice system. It came into force in April 2003.
- The *YCJA* introduced significant reforms to address concerns about how the youth justice system had evolved under previous legislation.
- The *Criminal Code of Canada* is the federal legislation that governs Canada's adult justice system. The substantive offences in the *Criminal Code* also apply to young people, but are prosecuted under the procedures set out in the youth legislation.



WHO DOES
THE YCJA
APPLY TO?

- The YCJA applies to “young persons”.
 - A “young person” is defined as a person who is older than twelve years old, but less than eighteen years old.
- The age of the young person on the **date of the alleged commission of the offence** is the only factor in determining whether the accused is tried as an adult or a youth.
- The age of the accused at:
 - the time the charges are laid;
 - the commencement of trial; or
 - the date of conviction

are all irrelevant with respect to whether the YCJA applies or not.



YCJA'S PRINCIPLES DECLARATIONS

The YCJA contains a Declaration of Principle that contains statements from Parliament about the values upon which the legislation is based. The youth justice system is intended to protect the public by:

- (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,
 - (ii) promoting the rehabilitation and reintegration of young persons, and
 - (iii) supporting crime prevention by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour.
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- The youth justice system must also be separate from the adult system to reflect the diminished moral blameworthiness and culpability of young persons.



EXTRAJUDICIAL MEASURES

- One of the key objectives of the *YCJA* is to increase the use of effective and timely measures **outside of the court process** to less serious youth crime. This can be done through extrajudicial measures. The *YCJA* requires police officers to consider the use of extrajudicial measures before deciding to charge a young person.
- Police and prosecutors are specifically authorized to use various types of extrajudicial measures. Examples include: taking no further action, giving a warning, a police caution, a Crown caution, or a referral.
- These measures may provide meaningful consequences that allow the young person to repair the harm done to the victim. They also provide an opportunity for the community to play an important role in developing community-based responses to youth crime.



EXTRAJUDICIAL SANCTIONS

- An extrajudicial sanction may be used if the young person cannot adequately be dealt with by an extrajudicial measure.
- EJS may include counselling, community service, or restitution.
- EJS may only be used if:

It is part of an authorized program

The young person consents to be subjected to it

The young person accepts responsibility for the offence

The young person is satisfied the sanction is appropriate

The Crown believes there is sufficient evidence to proceed with the prosecution



LAYING A CHARGE

- Police must have **reasonable and probable grounds** to arrest someone for a crime.
- The analysis of “reasonable grounds” is approached as a whole looking at the cumulative effect of all the evidence known at the time.
- Evidence that forms the grounds may include (but is not limited to): witness statements, surveillance video, forensic evidence, documentary evidence, or any combination of the above.
 - Note: even one of the above-mentioned types of evidence in isolation may be sufficient to lay a charge (e.g. a complainant’s statement to police with an allegation of a sexual nature may result in a charge of sexual assault being laid without any further evidence).

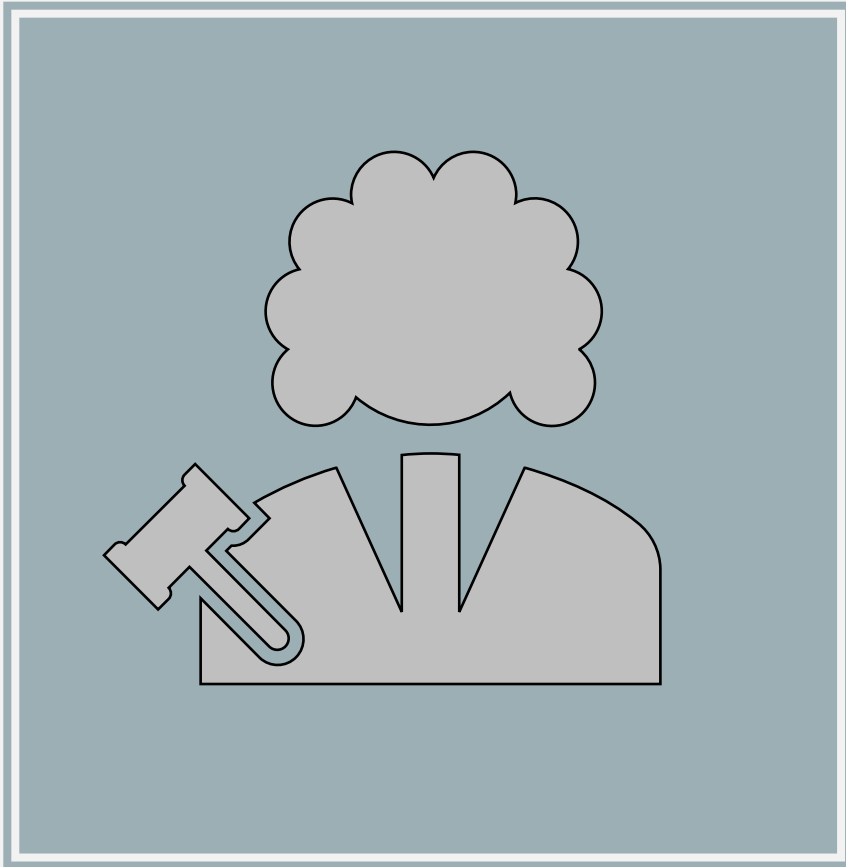


RIGHTS UPON ARREST

- A young person may be arrested and charged with a criminal offence if the police determine that extrajudicial measures or sanctions are not appropriate in the circumstances.
- Upon arrest, the police must advise the youth of the following information:
 - The reason for arrest
 - The right to remain silent
 - The fact that everything they say may be used against them in court proceedings
 - The right to retain counsel (including consultation with a lawyer free of charge)
 - The right to contact a parent or other adult



BAIL

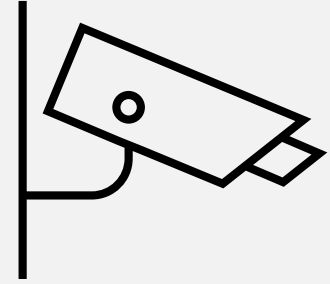


- Following arrest, a young person may be released (with or without conditions) or detained in custody pending their trial.
- A court may detain a youth if the following criteria are met:
 - (a) The youth is charged with a serious offence (for which an adult would be liable to 5+ years custody) or has a pattern of outstanding charges or findings of guilt;
 - (b) The judge is satisfied that: (i) the young person will not appear in court when required; (ii) detention is necessary for the protection or safety of the public or there is a substantial likelihood that the young person will commit a serious offence; or (iii) detention is necessary to maintain confidence in the administration of justice having regard to all of the circumstances



DISCLOSURE

- In criminal cases, the Crown (prosecutor) has a duty to disclose all evidence in its possession and control to the young person (or their lawyer) that could be relevant to the case. This is an ongoing duty.
- This duty does not depend upon whether the Crown will rely on that evidence at trial, thinks a witness is not worthy of belief, or whether the evidence helps or hurts the Crown's case.
- “Disclosure” may include the police notes, surveillance video, witness statements, photographs taken during the investigation, forensic analysis, etc.



COURT APPEARANCES

1) First Appearance:

- Following arrest, the young person will be given a court date. This is called the first appearance. The date can be found on the documentation given to them by the police or the court upon their release.
- This is not the trial date.
- This is when the court is notified by the young person or their parent if they are hiring a lawyer, if they have received or requested disclosure of the evidence, and any other initial updates.

2) Further Appearances:

- The court will want to know of the progress being made on the matter (e.g. if disclosure has been received and reviewed, if a meeting with the Crown prosecutor or a judicial pre-trial has been held or scheduled, if a date for plea, trial or sentencing has been scheduled, etc.)

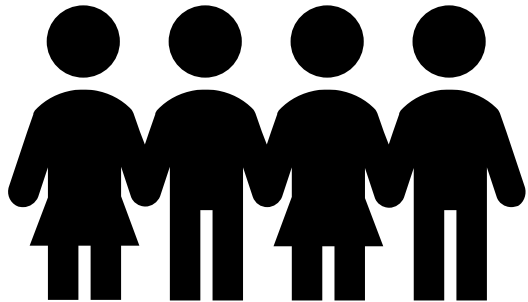


NOTE:
PUBLICATION
BANS

- A cornerstone of youth justice in Canada is that, as a general rule, the identity of a young person should be protected during the criminal justice process.
- “Publication” means the communication of information about the proceeding by making it known or accessible to the general public through any means. This includes by electronic means (e.g. social media).
- Posting about a proceeding in violation of a publication ban may attract a criminal charge of breaching a court order.
- However, publication is allowed in certain limited circumstances (e.g., if an adult sentence is imposed, or a youth sentence is imposed for a violence offence).



TRIAL VS. RESOLUTION



- Once the young person or their lawyer has received and reviewed the disclosure, they must decide if they will proceed to trial or resolve the matter before a trial.
- Resolution may involve a guilty plea, extrajudicial sanctions, or some other form of resolution. Details of resolution are typically negotiated between the young person (or their lawyer) and the Crown.
- Trials are often scheduled many months after a young person has been charged.



SENTENCING PRINCIPLES

- If found guilty of a criminal offence, whether after a trial or after a guilty plea, specific sentencing principles emphasize that a youth sentence must:
 - be proportionate to the seriousness of the offence and the degree of responsibility of the young person
 - be similar to other youth sentences in similar cases
 - be the least restrictive alternative that is most likely to rehabilitate and reintegrate the young person
 - promote in the young person a sense of responsibility and an acknowledgement of the harm done by the offence
 - not be more severe than what an adult would receive for the same offence



SENTENCING OPTIONS

- The *YCJA* provides youth court judges with many different sentencing options, such as:
 - Reprimand
 - Absolute or conditional discharge
 - Fines or restitution orders
 - Probation
 - Community service
 - Community-based sentences such as an intensive support and supervision program or deferred custody and supervision (where the youth serves their sentence in the community, often under strict conditions)
 - Custody and supervision sentences (which includes both time in a youth custody facility and a period of community supervision), which includes intensive custody and supervision (a special and rare sentence for a serious violent offender)



CUSTODIAL SENTENCES

- Custodial sentences are intended to be reserved primarily for violent offenders and serious repeat offenders.
- Before the court can impose a custodial sentence, it must consider all reasonable alternatives to custody and determine that there is no reasonable alternative capable of holding the young person accountable.
- The YCJA provides youth court judges with many different sentencing options including community-based sentences (where the youth serves their sentence in the community, often under strict conditions), and custody and supervision sentences (which includes both time in a youth custody facility and a period of community supervision).



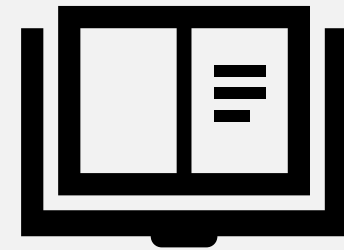
YOUTH RECORDS

- The YCJA strictly governs access to youth records.
- For how long and to whom a youth record is disclosable depends on the applicable "period of access", which is dependant on how the matter resolves and the how the Crown proceeds with the charge. The period of access is typically between **two and five years**.
- During the period of access, certain people may be given access to the youth record (e.g. the young person, the victim, the parents of the young person, the victim, etc.) When the period of access expires, no person shall be given access to a youth record.
- If a young person is charged with another criminal offence as a youth **within the period of access**, their youth record may be disclosed for court purposes. If a person is convicted of an offence committed when they are an adult during the period of access, the youth record will be converted into an adult record and would be retained indefinitely unless there is an adult pardon.



COLLATERAL CONSEQUENCES

- An outstanding charge or a criminal conviction may have other collateral consequences on a young person, including:
 - Immigration (crossing the border)
 - Education (suspension, expulsion, or admission to post-secondary)
 - Employment (record checks)



Under the YCJA:



Victims are to be given information about the proceeding



Victims should have an opportunity to participate and be heard



Victims have a right to access youth court records



Victims' participation in community-based approaches is encouraged

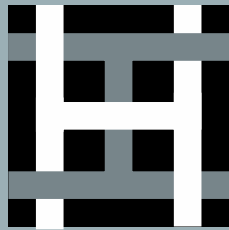


Victims shall be informed how the offence has been dealt with through extrajudicial sanctions

VICTIM'S RIGHTS



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