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YOUTH CRIMINAL JUSTICE ACT MANUAL

The Honourable Miriam H. Bloomenfeld

Release No. 3, December 2024

What's New in this Update:

This release features updates to the commentary and case law in Chapters 6 (Sentencing), 8 (Publication, Records and Information), 11 (Adult Sentence Hearing Cases) and 12 (Sentencing Under the YCJA).

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Highlights:

- *R. v. Canadian Broadcasting Corporation*, 2024 ONCA 765 — The Court of Appeal affirmed the conclusions of the youth justice court judge and the superior court certiorari judge that media access to youth records is determined according to the test set out in YCJA s. 119(1)(s). Those seeking records access via YCJA s. 119(1)(s) must submit an application on notice. The Dagenais-Mentuck test should inform the access considerations but does not displace the YCJA s. 119(1)(s) criteria. The youth justice court judge may also impose parameters and restrictions on any access order.
- *R. v. Q.M.*, 2024 ABCA 221 — The Court of Appeal upheld a non-custodial sentence for young person who was found guilty after a trial of sexually assaulting his girlfriend by penetrating her anally while she was sleeping.
- *R. v. L.G.*, 2024 ABCA 264 — The Court of Appeal quashed the probation sentence for a sexual assault and substituted a six-month custody and supervision sentence followed by twelve months probation. The Court found that the mitigating factors cited by the sentencing judge were insufficient to constitute "exceptional circumstances," that would justify a non-custodial sentence. The Court also observed that, generally, a "major sexual assault" would necessitate a custodial sentence in order to hold the young person accountable in accordance with the principles of YCJA s. 38 and s. 39. The Court was further influenced by the fact that a DCSO was unavailable, because the offence involved serious bodily harm.
- *R. v. B.J.M.*, 2024 SKCA 79 — The majority of the Court of Appeal held that the two requirements in s. 72(1)(a) and (b) have different standards of proof. The standard of proof for s. 72(1)(a) is beyond a reasonable doubt. Section 72(1)(b) does not require proof beyond a reasonable doubt. If the youth justice court is satisfied beyond a reasonable doubt that the Crown has rebutted the presumption of diminished moral blameworthiness or culpability pursuant to s. 72(1)(a), then the court must determine whether it is satisfied, having weighed and balanced the relevant factors, that a youth sentence imposed in accordance with the purpose and principles set out in s. 3(1)(b)(ii) and s. 38 would not be of sufficient length to hold the young person accountable for his or her offending behaviour, pursuant to s. 72(1)(b). In the instant case, the sentencing judge erred in law by failing to apply the proof beyond a reasonable doubt standard to his s. 72(1)(a) analysis. This error, however, had no impact on the sentence, because, upon examination of the record, the Court of Appeal was satisfied that the Crown had discharged its onus under s. 72(1)(a) beyond a reasonable doubt.