

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Munroe, 2013 NSPC 45

Date: June 14, 2013

Docket: 2292280

Registry: Halifax

Her Majesty the Queen

v.

Matthew Munroe, a young person

DECISION

Judge: The Honourable Judge Jamie S. Campbell

Heard: May 27, 28, 30, 2013

Decision: June 14, 2013

Charge: cc 235(1)

Counsel: Christine Driscoll and Darrell Martin - Crown Attorneys
Eugene Tan - Defence Counsel

By the Court:

1. Matt Munroe's first formal involvement with the justice system was in January 2007. He was charged with uttering threats to cause death. At that time he was 13 years old. Anyone who has been working in the Halifax Youth Court since that time has essentially watched Matt Munroe grow up. He is now a young man of 20. His involvement in the system has been more or less continuous since that first court appearance.

Legal Issues:

2. On November 21, 2011 Matt Munroe was found guilty of first degree murder.¹ At the time of the incident that resulted in the death of Brandon Hatcher he was still a young person subject to the provisions of the Youth Criminal Justice Act, ("YCJA").

3. Both the Criminal Code and the YCJA have specific provisions dealing the sentencing of people under the age of 18 who have been found guilty of murder. The Crown has made an application to have Matt Munroe sentenced according to the provisions of s. 745.1(b) of the Criminal Code. That section sets out the sentence for people who are convicted of committing first degree murder when

¹ R. v. M.R.M. 2011 NSPC 83

they are 16 or 17 years old. It provides for a sentence of life imprisonment with parole eligibility set at ten years.

4. If he is sentenced under the YCJA, s. 42(2)(q) of that act would apply. That would mean that he would be sentenced to serve a sentence of no more than 10 years. There is no mandatory minimum sentence. The sentence for first degree murder could be less than ten years. The period of custody can be no more than 6 years from the date of committal followed by period of supervision in the community. An application can be made to extend the period in custody if there are reasonable grounds to believe that the young person is likely to commit an offence causing death or serious harm to another person. That determination is made before the person is scheduled to be released into the community and would be based to some extent on how the person has responded to incarceration and the availability of supervision programs. The extension however cannot go beyond the ten year sentence.

5. There is no compromise or middle ground. He is sentenced either to life imprisonment with parole eligibility set at ten years or to a period of no more ten years. The difference is very significant. An adult sentence is one of life imprisonment. Parole eligibility means only that the offender can be considered for parole after 10 years. It does not mean that he is released on parole at that time. A

youth sentence is limited to ten years in total duration, with a maximum of 6 years in jail subject to it being extended. There is no middle ground between the statutory maximum youth sentence and the statutorily imposed minimum adult sentence.

6. The issue is whether Matthew Munroe should be sentenced according to the provisions of the Criminal Code or the provisions of the YCJA. The matter is determined according to the considerations set out in section 72 of the YCJA. Section 72 was amended by Bill C-10. That amendment came into force last year. The specific amendment of s. 72 does not apply to cases in which the person was charged before the effective date of the amendment.

7. In any event the amendment does not drastically change the considerations. It makes clear that the onus is on the Crown to satisfy the court that an adult sentence should be imposed. That is not a change in the law but a clarification.

8. The new provisions require the Crown to show that the presumption of diminished moral blameworthiness or culpability has been rebutted and that a youth sentence imposed in accordance with the purpose and principles of sentencing would not be sufficient to hold the young person accountable for his behaviour.

9. The provisions that were in effect when Matthew Munroe was charged in this matter also refer to whether a youth sentence would be of sufficient length to hold the young person accountable. The section sets out a number of considerations in making that determination. They are very likely to be similar to those a court would consider in deciding whether the presumption of moral blameworthiness or culpability has been rebutted.

10. The sentencing judge has to consider:

the seriousness of the offence,

the age,

maturity,

character,

background,

previous record of the young person; and

any other factors the court considers relevant.

11. Those things are considered to determine whether a youth sentence “would not have sufficient length to hold the young person accountable for his or her offending behaviour.”

12. It is accountability that a judge in youth court has to consider in deciding whether a youth sentence or an adult sentence should be imposed.²

13. Accountability in the context of the YCJA has been held to be the equivalent of the adult sentencing principle of retribution. It is an,

*“objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk taking of the offender, the consequential harm caused by the offender, and the normative character of the offender’s conduct. Furthermore unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.”*³

14. Retribution is also not the same thing as denunciation. Retribution reflects the moral blameworthiness of this particular young person.

² R. v. Smith [2009] N.S.J. No. 30, 2009 NSCA 8, R. v A.O. [2007] O.J. No. 800, 2007 ONCA 144

³ R. v. M (C.A.) (1996), 105 C.C.C. (3d) 327 (S.C.C.) para. 80

15. In determining whether an adult sentence should be imposed denunciation and deterrence are not factors to be taken into account. In other words, the concern about making a statement on behalf of the community that gun violence among rival gangs will not be tolerated simply is not a consideration at this stage of the process. A young person cannot be sentenced as an adult to make that or any other point. Messages are not sent to a larger audience and statements are not made about what society will or will not tolerate.

16. The issue of whether a youth sentence or an adult sentence should be imposed can only be addressed having regard to the circumstances of the young person involved.

17. Young people must be held accountable but as Justice Abella of the Supreme Court of Canada has said they are “decidedly but differently accountable”.⁴ Young people are sometimes not able to appreciate the consequences of what they do. They can sometimes lack foresight and self-awareness. While they have to be held accountable that must be in a different way. That is referred to as the presumption of diminished moral culpability. Simply put, Canadian law treats young people and adults differently.

⁴ R. v. D.B. [2008] 2 S.C.R. 3, 2008 SCC 25.

18. That can be a difficult thing to accept. To the victim of a violent crime it matters not a whit whether the person who inflicts the life shattering injury is 16 or 56. Some young people are capable of performing acts of horrific violence. They cannot escape responsibility for those crimes because of their age. At the same time, the law requires that they be treated in a way that recognizes that they are less capable of exercising mature judgment.

19. Sometimes though, that presumption is lost. When the more limited form of accountability under the YCJA is not sufficient an adult sentence can be imposed. A judge in making that decision has to consider whether a youth sentence would be long enough for the purpose of accountability and long enough to provide for rehabilitation. In the case of first degree murder the parameters are defined. The issue is whether the ten year sentence, with an initial maximum period of 6 years in custody will be sufficient. The issue is not whether an adult sentence would be more effective in holding him accountable. It is only whether a youth sentence is capable of doing that.

20. That decision has to be made on the principles of the YCJA. Young people are to be held accountable for the crimes that they commit. That can most often be done through the provisions of the YCJA. In the case of first degree murder, the YCJA recognizes that the extreme seriousness of the offence calls for a longer

sentence than would be available otherwise. It provides specifically for a 10 year sentence. There is certainly no presumption that because of the seriousness of the offence every young person who is found guilty of first degree murder will be subject to an adult sentence. In fact, the presumption is the very opposite. The question is whether that sentence, in these circumstances is sufficient to hold this young person accountable. The onus is on the Crown to show that a sentence under the YCJA would not be sufficient to hold Matt Munroe accountable for the first degree murder of Brandon Hatcher.

21. Matt Munroe's own circumstances are of great importance in making this decision. As Mr. Tan quite properly noted the issue of whether a youth or adult sentence is imposed is driven to a great extent by the facts and circumstances of the case. An analysis of case law is valuable for the principles cited in those decisions rather than for the outcomes.ⁱ

Matt Munroe's life:

22. Matt Munroe's life story to date is one that needs to be told. He should not be held up as an example of anything. Troubled people, like unhappy families, are all troubled in their own ways. Yet, as with others, it is hard not to be left somehow

with the sense that we saw this day coming. Many people tried their level best to intervene. They saw a child careening toward this or something like it.

Birth to Age 11

23. Matt Munroe was born in June 1993. He lived with his mother and step father. His biological father, Robert Dillon, left when his son was three months old. Mr. Dillon's relationship with the child's mother broke up as a result of domestic violence. Mr. Dillon is reported to have been heavily involved in the criminal subculture and spent time in jail. He appeared in his son's life later, as a negative influence.

24. It was reported that Matt Munroe had a "fairly stable" upbringing with his mother, Denise Munroe-Ryer, and step father Paul Ryer, until he was about 11 years old. His mother described him as a "very active" young child who needed more than the typical level of supervision. His pediatrician, Dr. Michael White said that his "out of control" behaviors began when he was about 4 years old. As early as Grade One he would tease his classmates until they were in tears. By Grade 3 his problems were seen as severe, with frequent displays of aggression. When he was 9 years old, a behavioral plan had to be developed for him. He was at

that stage displaying an “unfriendly, defiant and rude” manner and was considered by school staff as “the most out of control student” in the school.

25. By the age of ten he was inciting his peers in inappropriate behaviors and by Grade 6 he was being suspended from school for aggressive and disruptive behaviours.

26. While there had been some difficulties with his following rules at home his behaviour escalated after a number of traumatic experiences. In 2003, when he was 10, his mother was diagnosed with having Leukemia. His paternal grandmother was diagnosed with lung cancer and died that year. A friend was killed in a car accident. Those things all appear to have contributed to a general deterioration in his behavior.

27. By this stage in his life, Matt Munroe was making some very dangerous friends and acquaintances. He was already associating with a group of people who were quite a bit older than he was. He started to have increased contact with the police because of his escalating anti-social behavior. He was getting involved then with property destruction, break and enter and theft. One source said that he would carry a knife because he felt threatened by those from whom he had stolen. He was beginning to be absent from the family home for days at a time. He had not yet

reached an age at which he could be held criminally responsible for his actions, yet his activities appear to have been at a level of criminal risk-taking beyond what one would expect for a child of 11 years old.

28. Health records from that time make reference to his threatening to get his step-father's gun and shoot his mother's friend, set fire to the house, and push his mother down the stairs. It was around this time as well that his mother found illegal drugs in his possession and took him to the police station. There were concerns as well that his older peers would coerce him into more serious crimes. Community Services became involved with the family in September 2004. Ms. Munroe-Ryer came into the emergency department at the IWK Children's Hospital and refused to take her son home because, based on his behaviour, she could not insure either his safety or that of her family.

29. In January 2005 while he was still 11 years old, he was admitted to 4 South at the IWK. That happened after an incident in a doctor's office. According to the IWK crisis team he became upset during a visit to the doctor's office. He threatened to stab the doctor with a needle and to break the windows in the office. He left, was apprehended by the police and taken to the IWK emergency department. From there he was admitted to 4 South, which is a residential

placement within the hospital for children with severe behavioural issues. He lived there and at the IWK Children's Response program for a year and 7 months.

Age 12 through 14

30. From the time he was 12 years old Matt Munroe resided at home with his mother for only brief periods. She simply couldn't control him. The discharge summary from the IWK from August 2005 stated that while on the unit he engaged in manipulative behavior with staff, incited arguments and fights amongst other clients and showed "no remorse for his conduct". It was stated as well that he acted much older than his chronological age.

31. Upon his discharge from the IWK his mother signed a Temporary Care Agreement with the Department of Community Services. He was described then as being out of control.

32. After leaving the IWK he continued to receive services through the Department of Community Services until October 31, 2006. The department was concerned that a return home would not work well so they arranged for the provision of intensive in-home supports. During his involvement with the agency he was offered services, such as an alternative worker and therapy through Alfred

Doucet or Martin Whitzman. Matt Munroe, then at the age of 13, refused to meet with the alternative worker and only attended a few sessions with each of the therapists.

33. Another voluntary care agreement was entered into in November 2006. Matt Munroe was placed at the Reigh Allen Centre. He was there for only 6 days. He was transferred to Cogswell House. During his stay at Cogswell House he spent some time remanded in Waterville or in secure custody at the Wood Street facility in Truro. It was reported that he did not do well with the behavior modification at Cogswell House. The agency received incident reports from the group home about his bullying behavior. It was reported that he would threaten and try to intimidate youth care workers and verbally threaten other residents.

34. People were scared of him. A presentence report from November 28, 2007 noted that he had “slapped, choked and verbally intimidated” other residents at Cogswell House. He would treat peers he saw as being vulnerable in a harsh and hurtful manner and those seen as “cooler” in an “ingratiating and obsequious manner.” He was AWOL on 41 different occasions between November 2006 and March 2007 and was described as “constantly on the run”.

35. It was during this period, in January 2007, when he was 13 that he first appeared on the docket of the Halifax Youth Justice Court. He was then charged with a break and enter and with uttering threats. The next month, February 2007, he was charged with a failing to comply with condition of his release. Later, in the same month, he was charged with two break and enter offences and, of course, other breaches. In March, he was charged with failing to attend court and later that month with another breach for failing to return to Cogswell House. He said that he hadn't come home for two days because he had been on a "coke binge". Again, he was 13 years old and this was the beginning of a very long trail of offences.

36. While at Cogswell House he had two admissions to Wood Street. The first was from April 5, 2007 to May 15 2007. Upon his release from Wood Street, in June 2007 he was involved with more breaches of court orders and vandalism of a newly constructed house in Sackville.

37. The second admission to Wood Street was from September 6, 2007 until October 31, 2007. While at Wood Street he made threats toward the staff. A Wood Street Treatment Plan from April 2007 showed that at 13 years old, he was engaging in name calling and intimidation of his peers. His interaction with peers was seen as being "opportunistic in being hurtful to others, but (also) included purposeful planning of ways to be hurtful towards others".

38. There was a gradual improvement in his behavior at Wood Street. When he would return from either Wood Street or Waterville, staff at Cogswell House noted a brief improvement in his behavior, but it would then get progressively worse. A person can be sentenced to serve a term at Waterville. It is a youth correctional facility not a treatment facility. The Wood Street Centre is a short term secure treatment facility. A young person can be required to go there and stay there, but only for periods of 30 days at a time.

39. In discussing the use of alcohol Matthew Munroe said that he first tried alcohol three years before. He was then ten years old. He noted that he continued to drink beer and spirits. He drank to get drunk. This was Matthew Munroe at 13.

40. When asked about drug use he said that he had used and continued to use various drugs. He first tried marijuana at ten. He had since experimented with cocaine, hashish, Valium and MDMA. He said that he used marijuana about once every two days. By age 13 he was using cocaine and was quite open about it. He expressed no interest in discontinuing his drug use and to this day does not seem to perceive it as a problem.

41. He refused to talk about his peer group. It seems he has always been a bit guarded about that. He said that he was, "Not a rat". He would only say that some

were involved in the criminal justice system and some were not. A later report noted that by Grade 6 he was not associating with age appropriate peers. He started hanging out with older teenagers and young adults. A number of those people were involved in criminal activity and drug use. One source said that he had, by this time, “made some very dangerous liaisons in the community.” There are some suggestion that by that age he was already involved to some extent in the group known as the Spryfield MOB, Money Over Bitches. His association with these people made others afraid of him.

42. He said that he disliked the police and the justice system and seemed to dislike any form of structure or rules. He could not or would not follow the rules in his mother’s home, at the IWK, at the Children’s Response Program, at Cogswell House, at the Wood Street Centre, or at the Reigh Allen Centre. That is consistent pattern of behaviour that has persisted into his time at the NSYF in Waterville.

43. When he was sentenced in May 2007, he was ordered to serve a term of 12 months probation. That did not go well. During that time he refused to attend the IWK substance abuse program, CHOICES or any program that was offered through Cogswell house when he lived there.

44. In July 2007 he went missing from Cogswell House again, for two days. He used a screwdriver to gain access to a vehicle and stole it. In October 2007 he was involved in an altercation at Wood Street. He spit on the floor near a supervisor, called her a bitch and told her to clean it up. He then spit in the face of one of the other supervisors. In November he stole another car, and tried to evade the police when he was caught.

45. By December 2007 he had been convicted of 22 charges. They included break and enter and various breaches.

46. Jenny Cameron, a social worker with the Department of Community Services noted in November 2007 that the Agency did not have the ability to manage a youth with extreme aggressive behaviors. While he had been offered many services he refused to accept them. In her opinion, “the issues this youth poses on a daily basis have escalated beyond any reasonable expectation for the agency to manage within a community setting.”

47. His mother said that she was at “wit’s end”.

Ms. Munroe-Ryer offers her opinion that “Matthew keeps getting slaps on the wrist” when addressing his criminal behaviors. She states that he must be held accountable for his actions as “he is getting worse and worse”. Ms. Munroe-Ryer

informs her son has “made a mockery of the system” and she would like to see him punished. She notes his behaviors have escalated out of control to the point where she is concerned for his safety as well as the safety of anyone affected by his actions. Denise Munroe-Ryer believes her son acts impulsively and is now associating with other individuals who are not a good influence on her son and in particular have introduced him into more dangerous drug use. Finally, according to this (sic) mother, she claims she is “fearful of what’s to come”. She believes he is in need of an extended time in a secure facility as she feels, based on his past and present behaviors, he will not comply with any community based programs.

48. When he was interviewed at the Nova Scotia Youth Facility in Waterville, where he had been remanded on November 13, 2007, he was reported to have answered questions “with an air of bravado”. “He boasted about his involvement with drugs and seemed proud of his illegal dealings to date.” He offered his own opinion that custody “creates monsters, you get bigger and better at crime.”

49. The Program Worker at Waterville, Debbie Balcom commented that Matthew Munroe had difficulty abiding by structure and rules. She said that he often deflected responsibility for his own behaviors and acted with an “air of entitlement”.

50. A sense of frustration is clear from the presentence report update from November 28, 2007 prepared by Rita Nadasdi. This was when Matt Munroe was 14 years old. His placement at that time was Cogswell House. That placement required cooperation of the youth to engage in programming. He simply would not cooperate with anything. Ms. Nadasdi put the situation plainly.

Mathew Munroe in fact has a difficult time behaving appropriately even when under the strict supervision offered within an institutional setting, such as that which is available both at Wood Street or the Youth Facility. Of particular concern to this writer is the degree to which this youth has been infiltrated into a criminal subculture and his lack of concern for his own safety and well being. At this time his most pressing need is his need to be protected from his own immature and potentially harmful actions while being afforded an opportunity to receive programming and treatment, in particular addictions treatment, where he does not have the ability to choose whether or not to attend.

51. This, once again, was written when he was 14 years old. He was a 14 year old child who was out of control, being dealt with by a system that had limited options for response. It would appear as though what may have been required at the time was treatment. He wouldn't accept treatment. It would have to have been done in some kind of secure facility. The only options available were Wood Street and Waterville. He could only go to Wood Street for 30 days at a time and in the

absence of some very serious charges, he could not be sentenced to Waterville for an extended time.

52. Things did not get better. In fact they just kept getting worse, it would appear, to the surprise of virtually no one.

Age 14 to 17

53. From May 2007, when he was just about to turn 15 years old, until December 2010, when he was 17 no one seems to know where he was living when he wasn't in custody. He was in custody for most of that time and with his mother for a few months otherwise he was on his own. During that time he amassed a substantial criminal record. Not including the conviction for murder his criminal record consists of 3 theft charges, 2 charges for possession of a weapon, 4 assaults, 3 thefts, a failure to stop a motor vehicle, 4 possession of stolen property, 3 failure to comply with an undertaking, 2 breaches of probation, 3 break and enter, 11 failures to comply with a sentence, committing an offence while operating a vehicle, breach of recognizance, 5 failures to comply with conditions, breach of probation, mischief, 2 break and enter with intent, failure to attend court, and uttering threats to cause death.

54. Those offences included an incident in April 2008, when he was 15 years old, in which he gained entry to a house and at knife point made a foreign exchange student give him her bank card and PIN. It included another where bear spray and a knife were used to rob a convenience store.

55. In March 2009 he committed three robberies in which knives were used. Two were at convenience stores and a third at a hotel. Later that year, in September he was in possession of a stolen vehicle in which were found cigarettes taken from a break and enter earlier the same day. In October he once again stole a car and tried to outrun the police. In November he committed an assault as one of several people who went to a hotel room to confront two others about a stolen television. He had been released on the bail supervision program and at the end of November was charged for failing to charge the battery on his ankle bracelet. In December of that year he had two more breaches and was also in possession of a weapon, in this case an aluminum barreled handgun.

56. During the time from March 2007 until his remand on this matter, he spent more time at the Nova Scotia Youth Facility in Waterville than he did living in the community. He has been at Waterville on 16 separate occasions, for periods ranging from a day to 15 months. He spent a total of 776 days of that period in custody.

57. He expressed and showed a complete lack of interest and motivation in being involved in any programming. While he was offered services such as anger management he had no interest in accepting them. Community referrals became increasingly difficult because of the time he was spending incarcerated.

58. In February 2008 for example, he was referred to the Halifax Youth Attendance Program. That is a remarkable program designed to address the needs of high risk youth through structured group and individual education programs. His attendance was sporadic and his file was closed after he was arrested for an incident in which another student was robbed. He went back to HYAC in September of that year but went back into custody in November. He started for the final time in February 2009 but stopped again in March when he was placed in Waterville. While involved in the program he was described as having demonstrated minimal effort and motivation.

Pretrial and Post-Conviction Custody:

59. Matt Munroe was remanded with respect to this matter in December 2010. The report from the Nova Scotia Youth Facility at Waterville, dated 22 March 2012 provides information about his response to programming at that institution. It notes that “from the beginning, Young Person Munroe was resistant towards any

educational programming.” Teachers’ reports were all negative. He did nothing with regard to his educational work and showed no willingness to do so. His negativity resulted in behavioural issues and he was transferred to another unit within the facility in the hope that this might bring about a change in his attitude.

60. He remained resistant to programming, to staff and to his peers at Waterville. He would spend evenings and overnight in a secure unit and participate in the regular programming during the day. He eventually seems to have settled in. His academic work began to show a strong effort.

61. Upon his conviction in November 2011 he was told that because of his behavioral history he would be on a specialized program. When he met with a program worker and youth worker to discuss the details of a new specialized program for him, he indicated that he was not interested in meeting with anyone on the clinical team of the IWK.

62. In January 2012 he was reported as continuing to put some effort into the educational program and was having some success. His academic ability seems to be a recurring theme. At the same time, a more prominent theme is his consistently bad behavior. His period of incarceration was described as having

been “a tumultuous one to say the least.” He was described as having a blatant disregard for authority.

63. He had an enduring pattern of behavior while at the Nova Scotia Youth Facility. He had social status within the facility that he used to his advantage. He was reported to have been vocal with his peers about his involvement with “a well known anti-social peer group in the community”. He used that to get respect and status. He then used that respect and status to incite and intimidate others.

64. Several of the staff at the facility described him as “an extreme security risk” because of his ability to instigate, intimidate and influence.

65. A report was prepared by Debra Jellicoe MA of the IWK Youth Forensic Services on 15 May, 2013. This was an update to the report filed on 30 March 2012. It is not encouraging. His involvement with programming at the NSYF in Waterville was described as “minimal” and as “going through the motions.” He would refuse to participate in some sessions because he simply was “not in the mood”. He was described as trying to undermine the therapeutic process by making negative comments which would influence other youth not to participate.

66. His behaviour in Waterville continued to be described as troubling. Because of his disruptive behaviour the facility decided to place him in “Program 4” which would separate him from the rest of the population in the institution. He then applied for a transfer to Central Nova Scotia Correctional Facility in Burnside, which is an adult jail. The authorities at Waterville supported that application, which was granted on 18 April 2013. While there, there have been no behavioural incidents reported.

67. Ms. Jellicoe describes Matthew Munroe as being in the “pre-contemplative stage of motivation.” He is, in other words in denial that there is a problem. He doesn’t see himself as having anti-social attitudes at all. As Ms. Jellicoe says, “This reflects how entrenched such beliefs are for Matthew; the thoughts and behaviours of an anti-social lifestyle are normalized for him.” Until he is able to address those factors his risk for violence will remain high.

68. At 20 years old, Matthew Munroe has spent his formative years either in jail or living a life of crime unconstrained by any concern for social norms. He has become a young man who sees violence as just normal.

Nature of the Offence:

69. Brandon Hatcher was murdered. There is little more that needs to be said to convey the seriousness of the crime that was committed here. It was a premeditated shooting.

70. The seriousness of the crime does not itself lead to the conclusion that an adult sentence is appropriate. The YCJA itself has a penalty for first degree murder. Those aspects of the crime that legally make it first degree murder, including its premeditated nature, would not then in themselves militate toward an adult sentence.

71. Everything about the offence has to be considered. In doing so, some things need to be said and addressed head on that some may prefer to have remain an unspoken part of the back story. This shooting was part of an ongoing dispute among people either very directly associated with or on the edges of groups involved in criminal activities. What if anything Brandon Hatcher had to do with the attack earlier that day on Colin Gillis is unknown. He was however clearly associated with what might be described as “the other side”.

72. Matthew Munroe and his associates went to seek revenge and were in direct contact with Brandon Hatcher. Hatcher, the victim of the murder, was not a bystander. He came out to meet them carrying a gun. That does not make his murder less morally reprehensible. Murder is a crime against society. It is not rendered less so by virtue of the victim having himself been involved in the criminal subculture.

73. Assessing precise levels of moral reprehensibility within the crime of first degree murder is impossible. There are far too many factors within factors to consider, from the nature of the victim, the nature of the crime and the circumstances of the murderer. Yet, it would be unfair to fail to acknowledge that if such a scale existed the shooting at some distance of an armed rival would fall at least some distance on that scale from the random selection of an innocent child victim for a brutal and sadistic torture killing.

74. The murder of Brandon Hatcher was of such a nature that those who shot at him were some distance physically removed from him. They were able to be detached to some extent from the act itself. That detachment applies also in that they were able to be emotionally detached from it. There was no intense hatred. Matthew Munroe does not seem to have hated Brandon Hatcher. He hardly knew

him. Brandon Hatcher was just the guy on the other side. Matt Munroe himself said that it wasn't meant "personally".

75. The act of killing a person in that emotionally removed way would seem to require an ability to deny any sense of the victim's humanity. The very basis upon which morality in any meaningful form is founded are missing.

Age and maturity:

76. Matthew Munroe was 17 ½ years old when Brandon Hatcher was shot. Had the offence taken place 6 months later, his age would not be an issue in this sentencing. Though a mere 6 months from being an adult for purposes of the criminal justice system, he was, like most 17 year olds, far from being mature with respect to his judgment and decision making abilities. Yet, he was not a 13 year old. He was at the upper end of the age range for people in youth court. That must be considered.

77. His level of maturity is another factor. An immature 17 year old may be chronologically close to adulthood but even farther from maturity than others in his age cohort. Matt Munroe has not grown up like most other people. He has been involved with the criminal justice system likely for as long as he can remember. He

does not function with what might be called “maturity beyond his years”, in any positive sense. Mr. Tan noted that in terms of his behaviour he was, immature. He has consistently made choices that were short sighted and ill considered. As Judge Anne Derrick noted in *R. v. Skeet*⁵, the ability to “live an autonomous anti-social life” does not make a young person mature. Matt Munroe is not mature in a positive sense.

78. Yet, he is not a young man who functions at a lower intellectual or social level than his peers. He does not behave in ways that would be appropriate for or characteristic of younger adolescents. He is not naïve, in the sense of being emotionally vulnerable or inexperienced in the ways of the world. To the contrary, he is described as having a level of anti-social sophistication.

Intellectual functioning:

79. Matt Munroe does not suffer from any learning disabilities. Cognitively, his test results were not consistent with his directly observed cognitive abilities, recent school history or other testing. He has shown recent academic success and has shown the ability to reason in an abstract manner. He has demonstrated an ability

⁵ [2013] N.S.J. No. 22, 2013 NSPC 3, 325 N.S.R. (2d) 322 para .119

to plan and to reside independently in the community. The report of Debra Jellicoe states that cognitive and academic abilities were not a significant concern for the purposes of that assessment.

Character:

80. Character is hard to define. It is not merely how a person acts, nor is it what he thinks. It would seem to involve the disposition to act in certain ways in certain sorts of circumstances. Those dispositions are both stable, in the sense that they are relatively long lasting, and robust in the sense that they are consistent. Character traits help to define a person's general character.

81. People are sometimes said to have acted out of character. People who usually behave in certain ways can sometimes act in ways that are perplexingly different. When that happens it has to be considered.

82. Matt Munroe is a young man who has been described as having entrenched criminal attitudes. A lack of respect for authority and authority figures is not necessarily a moral shortcoming. It can sometimes be a sign of courage and respect for more fundamental values. What matters is the context in which that lack of respect manifests itself. Matt Munroe has not stood up against authority for anyone

else or for any recognizable principle. He does not want to comply with any rules or values established or enforced by anyone else. He is in that sense self-centered.

83. A person is morally responsible for his or her character. Before being too quick to assign blame it is worth considering another view. He may be born with his character traits, he may have learned and developed them over time or he may have acquired them as a combination of the two. In any case, to what extent can he be blamed for his own character?

84. A person is not judged in this context on his character. His sentence does not depend on his being assessed against positive or negative character traits. What is significant is that he is not a young man who acted in a way that is inconsistent with his long established attitudes and patterns of behavior. Young people, perhaps more so than adults, can step outside their normal patterns of behavior. They can act violently in a moment of recklessness.

85. Matt Munroe has, from his early years, acted in ways that reflect little respect for other people. He has not shown a skeptical disrespect for authority. He has shown himself to be cynical, self-centered and violent. Other people just don't seem to matter very much. He has what the psychologist, Debra Jellicoe, described as entrenched anti-social attitudes. As she says, he "demonstrated deficits in

empathy and remorse”. He endorses violence as a legitimate and sometimes the only legitimate solution to resolving conflict. His behavior, far from being out of character, was disturbingly within character.

Background:

86. Matt Munroe did not come from a deprived family. His mother and step father appear to have been able to provide for his physical needs. There is no evidence of abuse or neglect.

87. His biological father was far from being a positive role model.

88. His mother however, tried consistently to get help from an early stage in dealing with a young child who had become uncontrollable. He was seen by a pediatrician, offered counseling and had access to programs from the IWK. He was offered help with addictions issues.

89. He is not a forgotten person who has fallen between the cracks of society’s floor. He had a family and particularly a mother who seems to have tried her best. Resources were made available at every step along the way.

90. It is reassuring in a way to be able to identify something that was missed, or some program that could have helped or some person who might have stepped in and done more. That says that there is some predictability and control. “If only” is a phrase that conveys frustration but also is oddly reassuring. Similarly, if it could be said that society had let Matt Munroe down, there would be some strange solace in that. But there are times, it seems, when the state, or society just can’t “fix” or “save” everyone.

91. In Matt Munroe’s case the pattern of behavior was becoming apparent when he was a very young child. Resources were made available. Professionals were involved. Many things were tried. Nothing worked. By the time he was 13 years old things had spun out of control. The trajectory toward today was, if not firmly in place, at least identifiable. He was offered help and refused. He simply could not be controlled.

92. Putting him in jail was a short term fix. It kept him off the streets for periods of time but seems to have done nothing to change him or his behaviour in any fundamental way. It certainly didn’t seem to deter him. A secure treatment plan and a facility in which it could be delivered might have had some positive effect. Given his resistance to treatment throughout his life that may be grasping at the “if only” straw.

Criminal record:

93. Matt Munroe has a long youth court record. He now has about 50 criminal convictions. More importantly he is criminally sophisticated and versatile. He has committed a broad range of criminal acts including acts of violence. He is firmly entrenched in a world where criminal attitudes prevail. He sees those people as his real “family”. He perceives loyalty to that group and to the values they maintain as being important to him. He has been associated with criminals, guns and drugs since he was ten years old.

Institutionalization:

94. There is a concern that exposing a young person to jail will expose them to people and attitudes that are not conducive to their becoming contributing members of society. In Matt Munroe’s case he has spent significant time at the NSYF in Waterville. As noted in the report his “primary social group from an early age has been an older antisocial group”. Custody in an adult facility would not be his first exposure to those people.

95. His age is significant in this sense as well. He was at the upper range of young people subject to the YCJA. Yet, he is now only 20 years old. If he serves a

youth sentence he would likely come out of custody a number of years from now. If he serves an adult sentence he will not be eligible for parole for 10 years. In either case, having spent those years when most people are maturing, working and establishing themselves in a family and in a community, he will be growing more and more accustomed to the norms, values and rhythms of prison life. That is a sad prospect to contemplate for anyone who sees Matt Munroe as a fellow human being.

96. Justice must administer punishment. It shouldn't revel in it.

Release of name:

97. If Matt Munroe receives an adult sentence his identity can be made public. That is an issue to be considered. The ban on publication of the identity of a young person exists for good reason. Young people should be allowed to reintegrate into their community after serving a sentence. The stigma that attaches to a conviction can hamper efforts to move on with life. For some young people that is a significant issue.

98. In Matt Munroe's case it is not. Other factors involved in the consideration of an adult sentence far outweigh the publication of his name. The prospect of 10

years in jail or 6 years in jail is not tipped in one direction or the other by concerns for his privacy.

Psychiatric Assessment:

99. Dr. Aileen Brunet is a psychiatrist at the East Coast Forensic Hospital. She was qualified to provide opinion evidence in the area of forensic psychiatry.

100. Dr. Brunet saw Matthew Munroe in March 2012 and provided a report dated 10 April 2012. She has not seen him since that time but noted that her opinion would not have changed in the meantime given the information she had received from the social worker, Jodi Butler and psychologist Debra Jellico with respect to Mr. Munroe.

101. Her opinion, which was not challenged, was that Matthew Munroe does not have a clinically significant mental illness. His sole mental disorder diagnosis is severe Conduct Disorder, Childhood – Onset type. He has presented with aggression, destruction of property, deceitfulness and serious violation of rules over a sustained period, beginning in childhood. Dr. Brunet did not recommend psychiatric treatment as part of Mr. Munroe's sentence. There was no indication of DSM-IV mood, anxiety or psychotic disorder.

102. Dr. Brunet noted that Matthew Munroe's responses to questions were indicative of his being "an individual who is not at all psychologically minded, reflective or curious". He has few interests and little inclination to talk about the future. He does not have any goals or ambitions and seems to have never really had any. "His answers suggested that he has been carried along through life, having "totally random" experiences that he doesn't incorporate or register."

Dr. Gerald Hann:

103. Dr. Gerald Hann was qualified to give expert opinion evidence in the area of psychology and specifically in the areas of therapeutic and counseling relationships. Dr. Hann is a psychologist in private practice with extensive experience in those areas.

104. Dr. Hann had not met with Matt Munroe. His opinions were based on having reviewed the report from Dr. Brunet and report from Ms. Jellicoe and Ms. Butler. In his opinion the methodology employed in the preparation of the reports was appropriate and followed accepted principles and practices. He also offered that the conclusions are generally consistent with the data and information collected by the assessors. He took really only one issue with the reports.

105. In Dr. Hann's opinion the treatment approach recommended was not the right one. His view, again, based on the information available to him, was that the basis for Matt Munroe's problems is rooted in his troubled upbringing and disrupted attachment. When he was about ten years old he lost his grandmother and his mother was diagnosed with cancer. His mother was present but Dr. Hann noted that she may have been less able to provide him with the kind of attentive parenting that he required. His father had been out of his life since he was a baby. When he did appear in Matt Munroe's life it was as an antisocial role model. Matt Munroe has for some time been unable to form attachments and has instead gravitated toward relationships that are maladaptive and antisocial. People want to form some kind of attachment and if they are unable to form positive ones they will form them in ways that are negative.

106. Dr. Hann noted that what Matt Munroe needs is a form of therapy that will get under the armour of his psychological defences and address the root problem rather than the symptoms. In his view, two forms of therapy would be best to accomplish that. Dialectic Behavioural Therapy (DBT) or Intensive Short-term Dynamic Psychotherapy (ISTDP) would both help to uncover what might be at the root of his problems.

107. Dr. Hann agreed with the reports that the prognosis for Matt Munroe's improved psychological functioning and rehabilitation is quite guarded. A great deal depends on his willingness to participate. While Dr. Hann said that the two other forms of therapy were worth trying and might offer some potential for success. His opinion did not differ from that of Dr. Brunet and Ms. Jellicoe with regard to the challenges faced by any effort to rehabilitate Matt Munroe.

Time required for rehabilitation:

108. People are not sentenced until they are "cured" of their criminality. Offenders are sentenced for their crimes. In considering whether a YCJA sentence is sufficient however, the length of time it will take to address rehabilitation is a factor.

109. Matthew Munroe has antisocial attitudes that are described as being quite entrenched. He has a hedonistic approach to life. He enjoys a lifestyle where he has had access to money, girls, parties and drugs. His life has been like that for some time.

110. He does not have any major psychiatric disorders. He has the ability to succeed academically. He has a well developed ability to compartmentalize his

life. He keeps his thoughts and his emotions separate. He doesn't think about the past or the future. He has "deficits in empathy and remorse".

111. Matt Munroe has a long history of violence, associates himself with a delinquent peer group, has been heavily involved with drug use since he was a child, and has antisocial attitudes that are resistant to change. The severity of his acts of violence has increased over time.

112. His risk to the community has not been managed by probation, deferred custody or incarceration. Periods of time in custody at Waterville have not changed him. He resists efforts to provide him with counseling and in any event those efforts have not resulted in any change in his attitudes. Even his involvement in the death of Brandon Hatcher, which he now acknowledges, does not seem to have brought about any serious self-analysis. Even after that night, which by any measure would have to be seen as a profoundly significant event, he continued with his established pattern of defiance and denial.

113. Matthew Munroe is described as being at a high risk to reoffend in a violent way. Some factors that lead to that assessment are static, in the sense that they cannot be changed. They include his history of violence, the early onset of his violent behavior and the failure of past efforts at supervision. The dynamic factors

that lead to that assessment are antisocial attitudes, peer delinquency, low empathy and remorse and negative attitudes toward interventions. They are described as being quite entrenched and difficult to mitigate.

114. He is said to use his maturity and relative sophistication to pursue antisocial goals.

115. He accepts some responsibility for his involvement in the offence. He shows a moderate degree of insight into his antisocial lifestyle. He has some engaging character traits and has the cognitive ability to engage in treatment. Those will all help in treatment.

116. At the same time, there are some factors that will make treatment difficult. Ms. Jellicoe noted that the literature in the area suggests that those who demonstrate antisocial behaviors beginning in childhood are more difficult to treat. Treatments undertaken to date have not been successful for him. He has been unwilling to participate in treatment. He has pro-criminal attitudes and deficits in empathy that are difficult to treat. Even at this point, it was noted that he remained uncertain about engaging in further therapy. His lack of motivation, long standing antisocial values, and his lack of responsivity indicate that it would be “extremely

challenging to achieve such fundamental and pervasive change, even under the extended youth sentence available.”

Matthew Munroe’s evidence:

117. Matthew Munroe testified at the sentencing stage of this matter. He did not testify at the trial. At the time of trial inferences were made based on the evidence. His testimony at the sentencing about his intent cannot be used to “undo” those findings. He has been found guilty of first degree murder for the reasons noted in that decision.

118. His evidence did show a breathtaking lack of insight. This is a young man who in December 2010 was involved in the murder of another person. He has had a lot of time to think about it.

119. He testified about his childhood to the extent that he could recall it. He told of how he became involved with groups, which he seemed to reluctantly agree could be characterized as gangs, in the Spryfield area. He said they were just friends whom he had met. He knew from the outset that what they were doing was illegal. He couldn’t say why he got involved with them. To use his words they,

“appealed to me for some reason”. He has given little or no thought to why he was attracted to those people and that lifestyle.

120. He told of how by 13 years old he was pretty much self-sufficient. He was able to sell drugs and stolen property and make enough money to buy his own clothing and food. He acknowledged that in order to make that level of money legally upon his release, he would need more than a high school education.

121. While in the NSYF in Waterville he attained a fairly high status. As an older young person in that facility, charged with an extremely serious crime he was at the top of the hierarchy. He was able to make the transition to the adult facility at Burnside and while he no longer has the same status, seems to be functioning.

122. He has skills that have allowed him to achieve a measure of comfort and success in the world of Halifax street crime and while in jail. His level of functioning is much lower when he has to abide by the rules of society. Given his long associations with one of the rival street crime gangs in Halifax, the access to money, drugs and young women that those associations offered him, the criminal status that he has attained, no doubt enhanced by a murder conviction, his loyalty to that group and his criminal skills, there will be both reasons and opportunities

for him to keep those connections during the period of his incarceration. They will be waiting for him upon his release.

123. With regard to the murder of Brandon Hatcher he said that there was “nothing personal going on”. He had no personal “beef” with Hatcher. His comments about it, after some years to be able to reflect, to some extent reveal how nervous, inarticulate and taciturn this young man was. To some extent they also suggest that whatever thinking he has done has not been very deep. When asked about it by the psychologist didn’t say very much. He told the court that at the time he didn’t want to talk about it and “I just didn’t feel like it.”

124. In court he said that, “It wasn’t worth doing.” That is an unsettling statement on its own. Does that mean that what drove the killing really wasn’t worth it? Or, does it mean that killing Brandon Hatcher wasn’t something for which it was worth spending time in jail? Either way, it’s perplexing. Either way, it doesn’t sound much like remorse.

125. He was asked about his reaction to the matter some considerable time after the fact. He said that he thought about it a lot. He felt sick about it and lost sleep over it. He said that this was all over “something stupid”. That once again, could

be because he was sorry for what had happened or because he's sorry about the consequences for him.

126. There is no requirement for a person convicted of a crime to show remorse for the victim. A harsher sentence is not proper because of a lack of remorse or because of the inability to articulate it. There was certainly no expression of remorse for the loss of a life or any expression of sympathy for the family of Brandon Hatcher. There is no doubt that Matthew Munroe wishes that he had not been involved in this matter at all. That does not seem to be because a person has been killed but because he was convicted of murder.

127. He was asked as well about changing his life. His answer was that he "100%" needed to change. When asked what he needed to change, having had since December 2010 to ponder that question, he had no answer at all. "It's not something I've sat down and thought about." Two and a half years after the night on which he went out with a gun and a bullet proof vest and was involved in the murder of a young man, and two years after being sent to jail, he has not "sat down" and thought about what he needs to change about his life.

128. Practically, he had not been an active participant in counseling programs. He said that it was hard to do therapy. "It's not for me. I don't know." As to whether

he would participate in the future he said it would depend on the “setting”. Given that he expressed a dislike for both group and individual therapy he was asked what setting might work. He answered that he didn’t know.

129. When asked if he would return to his former lifestyle upon his release his answer was hardly a ringing endorsement of an attitude of change. He said, “Not really, no.”

130. Matthew Munroe remains entirely focused on the present. He has shown little ability to reflect on his past and little ability or desire to think about his future. His evidence is consistent with Dr. Brunet’s assessment. He appears to see his life as just a bunch a random events happening around him.

Conclusion:

131. Incarceration of Matt Munroe has not, to this point, helped in moving him away from a life of crime. Its main purpose to date has been to remove him from society. He remains at high risk to reoffend.

132. In the time since the murder of Brandon Hatcher 2 and a half years have gone by. That night he knew he was involved in something far more serious than ever before. That was not an experience that impressed upon him the importance of

change. Matthew Munroe just hasn't thought much about that kind of thing. He continued to resist the imposition of any kind of rules or structure while at the NSYF in Waterville. He didn't like rules when he was 13 and he doesn't like them any more now.

133. Whatever chance there may be of giving Matt Munroe the ability to make choices that are more positive, it will take a considerable period of time.

134. In this case a youth sentence is not sufficiently long to either hold him accountable for the murder of Brandon Hatcher or to address the issues of rehabilitation and reintegration in any meaningful way. Both of those considerations matter.

135. Matt Munroe has been developing into the young man he now is since he was a young child. No intervention has had any measure of success. Counseling has not worked. Treatment has not worked. Supervision has not worked.

Incarceration has not worked. He has not been ignored. All of those things have been tried or offered. Other forms of therapy can be tried. There is nothing to suggest that Matt Munroe will be significantly more responsive to it than he has been to other kinds of treatment that have been consistently offered to him. He is

still in the “precontemplative stage” or, to use his turn of phrase, he just hasn’t thought that much about these things.

136. Matt Munroe, at the time of Brandon Hatcher’s murder was a 17 ½ year old, criminally sophisticated long time gang hanger on who was acting in accordance with the attitudes and code of conduct espoused by the culture he had adopted. Loyalty to that group drove him to act in a way that coldly failed to respect the value of human life. To him the killing of Brandon Hatcher was a “situation”. Hatcher was a casualty, whose identity it seems didn’t matter very much at all.

137. Matt Munroe is not intellectually delayed and is not mentally ill. He was on cocaine on the night of the murder but he was fully aware of what he was doing. He did not act in a moment of rage. He was not immature in the sense of someone who operated socially in ways more appropriate to those who are younger.

138. A youth sentence in this case would not reflect the level of Matt Munroe’s culpability in the murder of Brandon Hatcher. It would simply allow Matthew Munroe to bide his time in jail, where he has become accustomed to life and where he resists all interventions. All the while he would know that he would eventually be released into the community with the reputation he has cultivated. His behaviour to date would strongly suggest that he would simply use the time in jail

to build on the gangster self-image that he has had since he was a child. Public safety requires that a longer sentence be imposed. That sentence should be in which his eventual release will depend on his willingness to accept the need to change and the need to work for that change, and in which his liberty will depend on his no longer being a danger to the community.

139. Matthew Munroe is sentenced to an adult sentence for first degree murder. That sentence is life imprisonment with parole eligibility after ten years.

ⁱ A summary of case law may have some utility but great care needs to be taken. A perceived pattern in the application of the YCJA by judges should not have the result of subtly changing the legislation by privileging some considerations or factors that seem to be recurring over others that are not. Even the process of summarizing case law may involve an unintentional highlighting of factors that are seen as having application to the case being considered.

No other case is exactly like this one. No other case involves the consideration of these very circumstances in this particular way. The case law serves to confirm that the decision is focused by a set of factors but is not limited by those factors.

R. v. T.P.D. [2009] N.S.J. No. 556, 2009 NSSC 332, 284 N.S.R. (2d) 19 : A 17 year old was convicted of second degree murder for stabbing and killing a person on the street in an argument about money. He ran away but turned himself in a few days later. He had a long criminal record but was noted as being immature in his decision making abilities, as well as socially. He acknowledged his problems and sought to change his life. His record was not one of escalating violence. There was a treatment plan in which the authors of the plan expressed reasonable grounds to believe that his risk of reoffending could be reduced. He was sentenced to the maximum youth sentence of 7 years.

R. v. C.K. [2006] O.J. No.2982, 2006 ONCJ 283, 211 C.C.C. (3d) 426 : Two young people were convicted of the first degree murder of their mother when they were 15 and 16. Their mother was described as being drunk "all the time". The girls themselves called Children's Aid about the situation. They eventually made a plan to drown their mother when she was drunk. Neither of the girls had a criminal record or any history of serious anti-social behaviour for that matter. Both were of superior intelligence. Both were at a low risk to reoffend. They were sentenced under the provisions of the YCJA.

R. v. Van Buskirk [2007] B.C.J. No. 2855, 2007 BCSC 1924, 77 W.C.B. (2d) 44: The young person pleaded guilty to first degree murder. He had hid in a treed area close to the victim's residence and shot him in the back of the head. He had been hired to do the killing. It was days short of his 18th birthday. The Crown did not oppose the imposition of a youth sentence. At the time of sentencing he was serving an adult sentence of two years for contempt for failing to name the person who had hired him. That sentence was to be served before the youth sentence commenced. Because there was a joint recommendation and no presentence report there was little information in the decision about the person's background, circumstances or potential for rehabilitation.

R. v. I.C. [2010] O.J. No. 2622, 2010 ONSC 3359 : The young person was convicted of first degree murder of another youth who was involved in a street gang. The victim had been trying to get away from gang life and the young person lured him to an area of a public housing complex where there was no surveillance. The victim was attacked by several young men and stabbed to death by the young person, I.C. While the Crown argued for an adult sentence the defence did not formally concede but did not argue strongly for a youth sentence. An adult sentence was imposed. I.C. was described as the principal actor in the murder of a friend whom he had betrayed. The attack was noted as "cowardly, brazen and savage". I.C. was immature and had a record of increasing seriousness. His criminal record consisted of 13 offences. His increasingly antisocial behaviour suggested little capacity for rehabilitation. I.C. came from a troubled and traumatic background. He arrived in Canada as a refugee from the civil war in Sierra Leone. There was dispute as to the reliability of evidence about the extent to which he was exposed to violence in Sierra Leone.

R. v. Casavant [2009] A.J. No. 1281, 2009 ABQB 672, 16 Alta. L.R. (5th) 201, 484 A.R. 103, 2009 Carswell Alta 1885: Casavant pleaded guilty to first degree murder when he was 17. He was paid \$7,000 to kill the operator of a dial-a-dope operation. He shot the man in the head twice. He went to a friend's home afterward and they took pictures of each other with the cash that Casavant had been paid for the murder. They then got a hotel room and went shopping with the cash. The videos from the stores showed that Casavant exhibited little remorse or regret. He started to show discipline problems when he was about 14 and was eventually kicked out of the family home from drug and alcohol use. He was considered a high risk to reoffend and lacked emotional insight into the effects of his actions on others. His moral blameworthiness for the crime was extremely high. He was motivated by greed and was indifferent about the impact of his crime. He was sentenced under the Criminal Code, to life imprisonment with no parole eligibility for ten years.

R. v. Turcotte [2008] S.J. No. 773, 2008 SKQB 478, 328 Sask. R. 89: Turcotte was 16 when he stabbed and killed Lawrence Moser. He was one of two teens involved with a shoplifting from a convenience store. When the clerk confronted them outside the store, Moser got out of his car to help her. Turcotte stabbed him from behind. Turcotte had a record that included assault, a poor candidate for treatment. He had a record of violence and little or no remorse for his crimes. He had violent fantasies and antisocial values. He was involved with a gang and expressed a willingness to do whatever a gang member asked. The court ruled that only life-long state control over his life was capable of protecting the public.

R. v. G.D.S. [2007] N.S.J. No. 366, 2007 NSSC 250, 257 N.S.R. (2d) 189, 157 C.R.R. (2d) 328, 74 W.C.B. (2d) 682: GDS was 17 at the time he pleaded guilty to second degree murder. He stabbed a cab driver 11 times. He had begun using drugs at 13 and by 19 had developed a serious abuse problem. He had an extensive youth record for weapons offences and violence. He was diagnosed as having paranoid personality disorder. Justice Coughlan held that a youth sentence would not be long enough for the treatment that GDS would require.

R. v. J.M. [2004] O.J. No. 2796, 2004 ONCJ 100, 62 W.C.B. (2d) 404: JD was a 15 year old boy who pleaded guilty to strangling to death a 14 year old classmate. He did not have a history of crime and nor did he have a particularly difficult childhood. He did however show elements of personality disorders, cognitive and perceptual distortions and

a lack of remorse. He was noted as being at a high risk to reoffend. The court held that while more appropriate programming would be available in a youth facility, a youth sentence would not be consistent with the seriousness of the offense. He was directed to serve the entire 7 year custodial portion of the sentence at a youth facility subject to review.

R. v. Ferriman [2006] O.J. No. 3950, 71 W.C.B. (2d) 139, 72 W.C.B. (2d) 711: Ferriman was convicted of manslaughter. He was 15 years old at the time of the killing. Kevin Madden was convicted of first degree murder and attempted murder. The facts were described by Justice McCombs as “horrific”. Three young people gathered at the Madden home where Kevin Madden told them of his plan to murder his family one by one as they came home. The three young people drank, smoked and vandalized the home while they waited for family members to arrive. Kevin Madden’s brother arrived, and was stabbed and slashed to death. Ferriman did not participate directly in that murder but his words and actions had the effect of encouraging Kevin Madden to carry it out. When Madden’s step father arrived home, Ferriman saw him, said he was sorry and left. Madden then tried to kill his step father who managed to escape. An adult sentence was imposed on Ferriman. He had participated in a hideous and senseless crime. He provided the murder weapon and joined in the initial assaults on Madden’s brother. He failed to warn the step father of what was about to happen to him. He was ashamed and remorseful for what he had done. He had made major strides in his education and had done well in an institutional environment. He remained a deeply disturbed individual however. With regard to Madden, the court held that a youth sentence would be inadequate to hold him accountable. He suffered from a deeply entrenched personality disorder and psychopathy that rendered him highly resistant to successful treatment. He harboured violent fantasies and had antisocial values. He blamed others for his actions and considered himself superior to others. The court held that he remained a serious danger to the public.

R. v. M.B.W. [2007] A.J. No. 1170, 2007 ABPC 292: MBW pleaded guilty to first degree murder. The offence included the sexual assault, sexual assault with a weapon and kidnapping of 13 year old girl. MBW and others had lured her to a wooded area. They wanted to kill someone after raping them. MBW was just short of his 18th birthday at the time. He had severe behavioural and emotional problems, and exhibited antisocial and psychopathic traits. From the age of four he could not be parented, educated, managed or counselled effectively. His criminal record involved only one assault. An adult sentence was imposed. The seriousness of the facts and the minimal progress made since incarceration, his strong and pervasive attitudes condoning crimes of violence, and his very limited empathy or remorse, suggested that there was little hope that he could be held accountable with the ten year period of a youth sentence.

R. v. Williams [2008] A.J. No. 1024, 2008 ABCA 317, 437 A.R. 325: Williams pleaded guilty to the first degree murder of a 13 year old girl. He was 17 at the time of the offence. He and others lured the girl to a secluded area of a golf course, where she was brutally sexually assaulted and murdered. He appealed from the decision to impose an adult sentence. The appeal was denied.

R. v. MacKenzie [2009] O.J. No. 1068: MacKenzie was found guilty of first degree murder. When he was 17 years old he confronted a person on the bus and demanded his Ipod at knifepoint. When the victim refused MacKenzie placed him in a headlock and stabbed him in the heart. The victim was a stranger to him. MacKenzie had no other criminal record. He was raised in a single parent home of modest means. He had a history of aggressive and difficult behavioural problems. He was an outstanding athlete with an exemplary part-time employment record with children at a community centre. While in custody he showed confidence and was able to improve his educational situation. A psychiatric assessment concluded that he posed a low to moderate risk to reoffend. The court held that a youth sentence was not sufficient to hold Williams accountable. He had been involved in the deliberate killing of a person over an IPod. That was described as being at the furthest end of the spectrum in terms of severity. He had exhibited

a pattern of antisocial behaviour. A youth sentence did not reflect the level of moral culpability based on his intentional risk taking and the consequential harm.

R. v. Todorovic [2009] O.J. No. 3246: Melissa Todorovic was found guilty of first degree murder. Her boyfriend fatally stabbed the 14 year old victim after Todorovic's unrelenting campaign to cause her death. She had demonized the victim as a threat to her relationship with her boyfriend. She was found guilty based on her abetting the murder. She showed no remorse for the death and didn't seem to accept any responsibility for it at all. She had no criminal record and presented no disciplinary problems at home or in school. A youth sentence was held to be insufficient to hold her accountable. She did not have reduced responsibility for the murder. The court held that a person who planned, orchestrated and directed another person to take someone's life was at least as morally culpable as the person who did the act. The puppet master was not less blameworthy than the puppet. While her positive background was a consideration it was outweighed by other facts that suggested a character flaw that was frightening in its prospects.

R. v. Bagshaw [2009] O.J. No. 4123: David Bagshaw pleaded guilty to first degree murder. He was 4 days short of his 18th birthday when he stabbed and killed a 14 year old. He lured the girl onto the street and stabbed her six times, leaving her to die alone. He was acting at the request of his girlfriend Melissa Todorovic (above). Bagshaw had a history of noncompliance with treatment and medication. He was an academic underachiever with significant impulsivity and increasing aggression over time. Despite his expressions of remorse and prospects for rehabilitation he remained a threat to the public. Continued supervision of his conduct was required.

R. v. J.T.T. [2010] M.J. No. 292, 2010 MBQB 216, 257 Man.R. (2d) 129: JTT was convicted of three counts of first degree murder. He was 15 years old at the time of the offences. Along with another person he fired 19 shots into a residence where a birthday party was going on. The motive wasn't clear but it appeared as though he had done it simply because the older member of the street gang he was a part of asked him to do it. JTT was an aboriginal young person with no intellectual impairments. He had street gang affiliations. He had a prior record and was assessed as a high risk to reoffend. His involvement was direct and premeditated and he showed a callous attitude toward the victims. A youth sentence was held to be insufficient to hold him accountable.

R. v. Wellwood [2011] B.C.J. No. 973, 2011 BCSC 690: Wellwood and Moffat pleaded guilty to the first degree murder of Ms. Proctor and to offering indignity to her remains. The two offenders planned in advance to sexually assault her and kill her. She was selected because they believed she would be an easy target. They lured her to Wellwood's home where they sexually assaulted and brutalized her over several hours. They killed her, mutilated her body and stored it in a freezer. They then took the body to a remote area, soaked it in fuel and set it on fire. At the time Wellwood was 16 and Moffat was almost 18. The evidence showed that each was a full and willing participant. Wellwood had deviant sexual disorders and strong traits of psychopathy. He was at a high risk of committing a similar crime in the future. Moffat was described as passive aggressive, rebellious, hostile toward authority figures, manipulative and profoundly remorseless. He was at a high risk to reoffend. A youth sentence was not sufficient for either of them.

R. v. A.A. [2011] A.J. No. 1036, 2011 ABQB 598: AA was 17 when he murdered his uncle who was a major cocaine dealer. He lived with his uncle and helped him with parts of the operation. His uncle kicked AA out of the house after accused him of stealing drugs. AA and a friend waited at the uncle's house and fired several shots, hitting him three times. The psychiatrists' reports differed with respect to the risk of recidivism and whether AA had antisocial personality disorder. The court held that a youth sentence was appropriate. The murder was planned and deliberate. The motive did not reduce the level of moral culpability. AA had a troubled background and a history of substance abuse. The court concluded however that a youth sentence could be fashioned that would hold the young person accountable.

R. v. M.M. 2012 CarswellAlta 1012, 2012 ABPC 153, 103 W.C.B. (2d) 119, [2012]A.W.L.D. 4843: When the accused was two months past his 17th birthday he shot a person in the head and killed him. The accused had prior convictions for hit and run, taking a motor vehicle, driving while disqualified and assault. He had grown up in a dysfunctional family and began using marijuana when he was 12. He sold drugs and was involved with people in the illegal drug trade. He did not accept responsibility for the death of the victim. While he had the ability to engage in meaningful pro-social change his motivation at the time of the sentencing was only marginal. In order for him to be motivated to make positive changes he needed to know that he could stay out of jail only if he became and remained a law abiding citizen. He would not engage in therapy in a meaningful way if he could simply do his time and walk away as a free person. An adult sentence was imposed.

R. v. M.(S.) 2012 CarswellOnt4471, 2012 ONCA, 290 O.A.C. 315, 102 W.C.B. (2d) 317: SM was convicted of the first degree murder of 23 year old Michael Oatway. MS was 17 at the time. He had spent an evening with some friends and got on a bus at around 11pm. They went to the back of the bus where Oatway, who was unknown to him, was listening to his Ipod. One of the others approached Oatway and asked for a cigarette. SM got a butterfly knife from another member of the group and then got in the seat beside Oatway. He asked to listen to the Ipod. When Oatway refused both stood up and after a struggle Oatway was stabbed. SM said that he wasn't trying to kill Oatway but was just trying to scare him until Oatway grabbed the knife. The trial judge did not put self-defence to the jury. The case was upheld on appeal. SM was sentenced as an adult. The case report does not include any reference to considerations that lead to that conclusion.

R. v. Prince 2012 CarswellMan 570, 2012 MBQB 263: Michael Prince was four months short of his 18th birthday when he became involved with three others in a series of robberies and in the murder of Joseph Hall. Mr. Hall died as a result of a stab wound in the back and from a wound that almost severed his right hand at the wrist. The circumstances were described as a robbery gone bad. Prince was involved with street gangs and he and his friends agreed to rob anyone they happened to run into that evening. Violence was threatened and used. The murder of Mr. Hall was gratuitous, unmitigated brutality. Michael Prince was an almost 18 year old aboriginal person. He was living an adult lifestyle as a member of a gang. He was described as being relatively mature, and had wielded a fair bit of influence over his peers while in custody, likely due to his involvement with the gang, the Notorious Bloods. Mr. Prince had a history of drug abuse, with crack cocaine, pills, marijuana, and alcohol. His criminal record went back to when he was 13, with numerous convictions. Many resources were directed to him over the years to attempt to rehabilitate him. Despite that, nothing seemed to have worked. The court noted that under an adult sentence he would spend the rest of his life under supervision. An adult sentence was imposed.

R. v. Skeete [2013] N.S.J. No. 22, 2013 NSPC 3, 325 N.S.R. (2d) 322: Melvin Skeete was found guilty of second degree murder. He killed his girlfriend by stabbing her 104 times. He was drunk and believed that she had been unfaithful to him. She was drunk and unconscious at the time of the attack. He was 16 at the time of the killing. He had had trouble with the law from the time he was 13 years old and had amassed a record of 58 convictions. Judge Anne Derrick held that Skeete was highly morally culpable for his girlfriend's death. He engaged in a brutal and sustained attack and he was motivated to kill her. Judge Derrick found that Melvin Skeete could not be rehabilitated within the seven years of a youth sentence. He had shown himself to be dangerous and his adolescent years had been characterized by his poor emotional regulation, serious chronic substance abuse, a high level of impulsivity and a propensity toward aggression and violence. He was assessed as being at a high risk to re-offend violently. An adult sentence was imposed.