IN THE NOVA SCOTIA YOUTH JUSTICE COURT

Citation: R. v. G.D.S., 2007 NSSC 159

Date: 20070514
Docket: CR 266020
Registry: Halifax

Between:

Her Majesty the Queen

Respondent

v.

G.D.S.

Applicant

Restriction on publication: Restriction on publication pursuant to s. 110(1) of the *Youth Criminal Justice Act*

Judge: The Honourable Justice C. Richard Coughlan

Heard: May 7, 2007, in Halifax, Nova Scotia

Decision: May 14, 2007 (Orally)

Written Release: May 31, 2007

Counsel: Chandra Gosine, for the Applicant
Peter P. Rosinski and John A. Feehan, for the Respondent

<u>Publishers of this case please take note</u> that section 110(1) of the *Youth Criminal Justice Act* applies and may require editing of this judgment or its heading before publication. The subsection provides:

110. (1) **Identity of offender not to be published** - Subject to this section, no person shall publish the name of a young person, or any other information related to the young person, if it would identify the young person as a young person dealt with under this *Act*.

Coughlan, J.: (Orally)

[1] G.D.S. plead guilty to a charge that he committed the second degree murder of Kenneth James Purcell. At the date of the offence, December 25, 2005, G.D.S. was seventeen years and eight months old. The *Youth Criminal Justice Act*, S.C. 2002, c. 1 (the *YCJA*) requires that a young person who has attained the age of fourteen years, or in a province where the lieutenant governor in council has fixed an age greater than fourteen years under s. 61, the age so fixed, guilty of an offence of second degree murder receive an adult sentence, unless the young person applies to the Court and discharges the onus of satisfying the Court a youth sentence is sufficient to hold the young person accountable for his offending behaviour.

[2] G.D.S. challenges the constitutionality of certain sections of the *YCJA* and seeks the following orders:

> 1. **THAT** sections 62 and 63 subsections 64(1) and (5) subsections 72(1) and (2) and subsection 73(1) of the Youth Criminal Justice Act violate s. 7 of the Canadian Charter of Rights and Freedoms to the extent that they place the proof of factors justifying the imposition of a Youth sentence rather than an adult sentence on a young person who has committed a presumptive offence and that these provisions cannot be justified under section 1 of the Charter.
>
> 2. **THAT** s. 75 and subsection 110(2)(b) of the Youth Criminal Justice Act violate s. 7 of the Charter to the extent that they impose on a young person the burden of justifying maintenance of the ban against publication rather than imposing on the prosecution the burden of justifying the removal of the ban.

Onus Provision

[3] The first issue is whether the onus on the young person who committed a presumptive offence to satisfy the Court that a youth sentence, rather than an adult sentence, is appropriate violates s. 7 of the *Canadian Charter of Rights and Freedoms*.

[4] Section 7 of the *Charter* provides:

> **7. Life, liberty and security of person** - Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[5] The relevant sections of the *YCJA* are 2(1), 62, 63, 64(1) and (5), 72(1) and (2), 73(1), 3 and 38, which are attached as Appendix A.

[6] The applicant bases his application on the principles of fundamental justice as found by the Quebec Court of Appeal in *Quebec (Minister of Justice) v. Canada (Minister of Justice)*, (2003) 175 C.C.C. (3d) 321 at p. 390:

> Young offenders must be dealt with separately from adults;
>
> Rehabilitation, rather than suppression and dissuasion, must be at the heart of legislative and judicial intervention with young persons;
>
> The justice system for minors must limit the disclosure of the minor's identity so as to prevent stigmatization that can limit rehabilitation;
>
> It is imperative that the justice system for minors consider the best interests of the child.

[7] And at p. 398:

> Hence, s. 72(2) of the YCJA violates the rights guaranteed by s. 7 of the Charter to the extent that the young person has the burden of proving the circumstances of the commission of the offence, the absence of prior convictions at the time of the application for non-imposition and the other factors listed in s. 72(1).

[8] In the result, the Quebec Court of Appeal held the sections of the *YCJA* in question violated the *Charter* and were not saved by s. 1 of the *Charter*.

[9] In *R. v. D.B.*, [2006] O.J. No. 1112, the Ontario Court of Appeal also found the relevant sections of the *YCJA* violated s. 7 of the *Charter*, but based its decision on two principles of fundamental justice. In giving the Court's decision, Goudge, J.A. stated at para. 53:

> Keeping these criteria in mind, there are two principles of fundamental justice that are of central relevance in this appeal. The first relates to the need to treat young persons separately and not as adults in administering criminal justice. The second relates to the burden on the Crown to prove aggravating circumstances when a more severe penalty is sought. Since these principles are

> sufficient to determine the issues in this appeal, I do not propose to address the other three substantive principles that the Quebec Court of Appeal found to be principles of fundamental justice.

[10] In *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 at p. 92, in giving the majority judgment, McLachlin, C.J. set out the criteria which must be met to establish a principle of fundamental justice:

> Jurisprudence on s. 7 has established that a "principle of fundamental justice" must fulfill three criteria: *R. v. Malmo-Levine*, [2003] 3 S.C.R. 571, 2003 SCC 74, at para. 113. First, it must be a legal principle. This serves two purposes. First, it "provides meaningful content for the s. 7 guarantee"; second, it avoids the "adjudication of policy matters": *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, at p. 503. Second, there must be sufficient consensus that the alleged principle is "vital or fundamental to our societal notion of justice": *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, at p. 590. The principles of fundamental justice are the shared assumptions upon which our system of justice is grounded. They find their meaning in the cases and traditions that have long detailed the basic norms for how the state deals with its citizens. Society views them as essential to the administration of justice. Third, the alleged principle must be capable of being identified with precision and applied to situations in a manner that yields predictable results. Examples of principles of fundamental justice that meet all three requirements include the need for a guilty mind and for reasonably clear laws.

[11] Are the principles put forward by the applicant principles of fundamental justice, in that, they meet the criteria set out by the Supreme Court of Canada?

[12] In the *Canadian Foundation* case, *supra,* the Court held that "best interests of the child" is not a principle of fundamental justice.

[13] The applicant submits "rehabilitation must be at the heart of legislative and judicial intervention with young persons" is a principle of fundamental justice. I disagree. Rehabilitation is a legal principle. Following the reasoning in the *Canadian Foundation* case, *supra*, while rehabilitation is an important factor to be considered, it is not a fundamental requirement for the dispensation of justice. In the declaration of principle in s. 3 of the *YCJA*, rehabilitation is listed as one of the ways of promoting the long term protection of the public. The sentencing principles set out in s. 38 of the *YCJA* provide the sentence must be proportionate

to the seriousness of the offence and the responsibility of the young person. Rehabilitation is not the only consideration. The legal principle of rehabilitation, in the words of McLachlin, C.J., may not "trump all other concerns in the administration of justice" and "while an important legal principle and a factor for consideration in many contexts, is not vital or fundamental to our societal notion of justice, and hence not a principle of fundamental justice".

[14] The declaration of principles of the *YCJA* in s. 3(1)(b) provide the criminal justice system for young persons must be separate from that of adults and emphasizes the matters set out in the subsection. G.D.S. says it is a principle of fundamental justice that young persons be treated separately from adults in administering justice. In *R. v. D.B., supra,* the Ontario Court of Appeal agreed it was a principle of fundamental justice.

[15] There can be no doubt it is a long standing legal principle. The *Juvenile Delinquents Act*, followed by the *Young Offenders Act*, and now the *YCJA* have for many years established a separate regime for young persons. Canada has also ratified international treaties which reflect this legal principle. The first criteria of a principle of fundamental justice is met.

[16] However, it does not meet the second criteria. There are situations in which the legal principle of "young persons must be dealt with separately from adults", conflicts with other factors. There may be fact situations which require a young person to be dealt with as an adult, for example, to receive an adult sentence to ensure the protection of the public. G.D.S. does not dispute that an adult sentence may be imposed, but objects to the onus being on the young person to satisfy the Court of the matters in s. 72(1) of the *YCJA*.

[17] That young persons need to be dealt with separately from adults is not a principle of fundamental justice, rather the need for procedural fairness is the principle of fundamental justice engaged. In *R. v. Rodgers*, [2006] 1 S.C.R. 554, the Court was dealing with a provision of the *Criminal Code* which on an *ex parte* application authorized the collection of DNA samples. Mr. Rodgers argued *ex parte* hearings are exceptional, and notice and participation are principles of fundamental justice - any departure from which must be justified in order to meet minimal constitutional norms. In giving the majority opinion, Charron, J. stated at p. 588:

> I will return later to the circumstances and the conclusion of the Court in *Ruby*. However, it is important to note at the outset that the fallacy in Mr. Rodgers' argument is that it presupposes that notice and participation are themselves principles of fundamental justice, any departure from which must be justified in order to meet the minimal constitutional norm. As I read his reasons, Fish J. adopts the same reasoning. With respect, it is my view that this is not the proper approach. The constitutional norm, rather, is procedural fairness. Notice and participation may or may not be required to meet this norm - it is well settled that what is fair depends entirely on the context ...

[18] And at p. 590:

> ... This Court has made it clear, not only that what is fair in a particular case depends entirely on the context, but that the constitutional question is referable to the *minimal* standard mandated by the *Charter.* Parliament and the legislatures can, and often do, legislate beyond minimal constitutional requirements on matters engaging constitutionally guaranteed rights and freedoms.

[19] Whether young persons should be dealt with separately from adults will depend on whether it is necessary for procedural fairness in the context of the particular case. Procedural fairness is the minimal standard mandated by the *Charter*.

[20] However, a young person guilty of a presumptive offence is dealt with separately from adults in the Youth Justice Court. If a young person receives an adult sentence, parole eligibility is different than if an adult receives the sentence. The principle of a separate system for young persons is not breached.

[21] G.D.S. submits the sections of the *YCJA* in question violate the principle of fundamental justice, that the Crown must prove beyond a reasonable doubt aggravating facts which warrant a more severe penalty. In *R. v. D.B., supra*, the Ontario Court of Appeal agreed with that position.

[22] There is no question the Crown has the burden of proving beyond a reasonable doubt aggravating facts which warrant a more severe penalty. However, the sections in question do not engage that principle. With regard to s. 72(2) of the *YCJA*, it is incorrect to discuss the section in terms of proof beyond a reasonable doubt. The judge may order a youth sentence if the judge "is of the opinion" it is appropriate. The young person has an onus of satisfying the court of the matters necessary for a youth sentence. In dealing with similar wording in *R. v.*

M.(S.H.), [1989] 2 S.C.R. 446, McLachlin, J., as she then was, in giving the majority judgment, stated at p. 463:

> ... Parliament set out in detail the factors which must be weighed and balanced, and stipulated that if after considering them the court was satisfied that it was in the interests of society and the needs of the young person that he or she should be transferred, the order should be made. ...

[23] And at p. 464:

> Nor do I find it helpful to cast the issue in terms of a civil or criminal standard of proof. Those concepts are typically concerned with establishing whether something took place. It makes sense to speak of negligence being established “on a balance of probabilities”, or to talk of the commission of a crime being proved “beyond a reasonable doubt”. But it is less helpful to ask oneself whether a young person should be tried in ordinary court “on a balance of probabilities”. One is not talking about something which is probable or improbable when one enters into the exercise of balancing the factors and considerations set out in s. 16(1) and (2) of the *Young Offenders Act*. The question rather is whether one is satisfied, after weighing and balancing all the relevant considerations, that the case should be transferred to ordinary court.

[24] The judge is to weigh and balance the relevant considerations and determine if, in the judge’s opinion, a youth sentence would have sufficient length to hold the young person accountable for his or her offending behaviour. Proof beyond a reasonable doubt is not required for the decision to be made.

[25] Section 62 and 63, s-ss. 64(1) and (5), s-ss. 72(1) and (2), and s-s. 73(1) of the *YCJA* do not violate s. 7 of the *Canadian Charter of Rights and Freedoms.*

Non-Publication

[26] G.D.S. says s. 75 and s-ss. 110(2)(b) of the *YCJA* violate s. 7 of the *Charter* to the extent they impose a burden on a young person of justifying maintenance of the ban against publication. The relevant provisions of the *YCJA* are:

> **75. (1) Inquiry by the court to the young person** - If the youth justice court imposes a youth sentence in respect of a young person who has been found guilty of having committed a presumptive offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2(1), or an offence under paragraph (b) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence), the court shall at the sentencing hearing inquire whether the young person or the Attorney General wishes to make an application under subsection (3) for a ban on publication.
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> **(2) No Application for a ban** - If the young person and the Attorney General both indicate that they do not wish to make an application under subsection (3), the court shall endorse the information or indictment accordingly.
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> **(3) Order for a ban** - On application of the young person or the Attorney General, a youth justice court may order a ban on publication of information that would identify the young person as having been dealt with under this Act if the court considers it appropriate in the circumstances, taking into account the importance of rehabilitating the young person and the public interest.
>
> **(4) Appeals** - For the purposes of an appeal in accordance with section 37, an order under subsection (3) is part of the sentence.
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> . . . .
>
> **110. (1) Identity of offender not to be published** - Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.
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> **(2) Limitation** - Subsection (1) does not apply
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> . . . .
>
> (b) subject to sections 65 (young person not liable to adult sentence) and 75 (youth sentence imposed despite presumptive offence), in a case where the information relates to a young person who has received a youth

> sentence for an offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2(1), or an offence set out in paragraph (b) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence); and

[27] The applicant relies on *Quebec (Minister of Justice) v. Canada (Minister of Justice), supra,* that the provisions in question contravene the principle of fundamental justice of the confidentiality of a young person's identity and the principle of fundamental justice that the Crown must bear the burden of establishing those factors which produce a more severe penalty for an offender. He also relies on *R. v. D.B., supra*, where the Court agreed with the Quebec Court of Appeal in *Quebec (Minister of Justice) v. Canada (Minister of Justice), supra,* that the sections contravened the principle the Crown must bear the burden of establishing those facts which yield a more severe penalty. In *R. v. D.B., supra,* the Court did not address whether limiting disclosure of a young person's identity is a principle of fundamental justice.

[28] Confidentiality or non-publication of a young person's name is not a principle of fundamental justice. While a long standing legal principle, as with "best interests of the child", it may in appropriate contexts be subordinated to other concerns, such as protection of the public. Therefore, it does not meet the second criteria for a principle of fundamental justice.

[29] Publication or non-publication of a young person's name is not a principle of fundamental justice. Young person's names are not published to assist in their rehabilitation. In dealing with the non-disclosure of identifies of young offenders, Binnie, J., in giving the Court's judgment in (*Re) F.N.,* [2000] 1 S.C.R. 880 at p. 894 and p. 895 stated:

> **11** The non-disclosure provisions of the Act reflect this ambivalence. Confidentiality assists rehabilitation, but the safety of society must be protected, and those involved in the youth criminal justice system (or with the young offender in other settings) must be given adequate information on a "need-to-know" basis to do their jobs.
>
> . . . .
>
> **14** Stigmatization or premature "labelling" of a young offender still in his or her formative years is well understood as a problem in the juvenile justice system. A young person once stigmatized as a lawbreaker may, unless given help and

> redirection, render the stigma a self-fulfilling prophecy. In the long run, society is best protected by preventing recurrence. Lamer C.J., in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, pointed out in another context that non-publication is designed to "maximize the chances of rehabilitation for 'young offenders'" (p. 883). A concern about stigma was also emphasized by Rehnquist, J. (as he then was) of the United States Supreme Court in *Smith, Judge v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979), at pp. 107-8:
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>> This insistence on confidentiality is born of a tender concern for the welfare of the child, to hide his youthful errors and "bury them in the graveyard of the forgotten past".... The prohibition of publication of a juvenile's name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State.... Publication of the names of juvenile offenders may seriously impair the rehabilitative goals of the juvenile justice system and handicap the youths' prospects for adjustment in society and acceptance by the public. [Citations omitted]

[30] Normally courts are open to the public and their proceedings accessible to all who have an interest (see *(Re) F.N., supra,* at p. 893).

[31] Is the publication of the identity of a young person as having been dealt with under the *YCJA* part of the young person's sentence, thereby triggering the principle of fundamental justice that the Crown has a burden of proving beyond a reasonable doubt aggravating facts which warrant a more severe penalty? Subsection 75(4) provides for the purposes of an appeal of a decision concerning a ban on publication of the identity of a young person the order is part of the sentence.

[32] The publication of a young person's identity is not part of the young person's sentence, but rather a determination under the facts of a particular case the public's interest in openness outweighs the public interest in confidentiality of the young person's identity to help with the rehabilitation of the young person. It is only part of the sentence as a mechanism for an appeal of the order for the ban.

[33] Section 75 and s-ss. 110(2)(b) of the *YCJA* do not violate s. 7 of the *Canadian Charter of Rights and Freedoms.*

Coughlan, J.

Appendix A

2. (1) Definitions - The definitions in this subsection apply in this Act.

. . . .

"presumptive offence" means

(a) an offence committed, or alleged to have been committed, by a young person who has attained the age of fourteen years, or, in a province where the lieutenant governor in council has fixed an age greater than fourteen years under section 61, the age so fixed, under one of the following provisions of the *Criminal Code*:

(i) section 231 or 235 (first degree murder or second degree murder within the meaning of section 231),

(ii) section 239 (attempt to commit murder),

(iii) section 232, 234 or 236 (manslaughter), or

(iv) section 273 (aggravated sexual assault); or

(b) a serious violent offence for which an adult is liable to imprisonment for a term of more than two years committed, or alleged to have been committed, by a young person after the coming into force of section 62 (adult sentence) and after the young person has attained the age of fourteen years, or, in a province where the lieutenant governor in council has fixed an age greater than fourteen years under section 61, the age so fixed, if at the time of the commission or alleged commission of the offence at least two judicial determinations have been made under subsection 42(9), at different proceedings, that the young person has committed a serious violent offence.

. . . .

62. Imposition of adult sentence - An adult sentence shall be imposed on a young person who is found guilty of an indictable offence for which an adult is liable to imprisonment for a term of more than two years in the following cases:

(a) in the case of presumptive offence, if the youth justice court makes an order under subsection 70(2) or paragraph 72(1)(b); or

(b) in any other case, if the youth justice court makes an order under subsection 64(5) or paragraph 72(1)(b) in relation to an offence committed after the young person attained the age of fourteen years.

63. (1) Application by young person - A young person who is charged with, or found guilty of, a presumptive offence may, at any time before evidence is called as to sentence or, where no evidence is called, before submissions are made as to sentence, make an application for an order that he or she is not liable to an adult sentence and that a youth sentence must be imposed.

(2) Application unopposed - If the Attorney General gives notice to the youth justice court that the Attorney General does not oppose the application, the youth justice court shall, without a hearing, order that the young person, if found guilty, is not liable to an adult sentence and that a youth sentence must be imposed.

64. (1) Application by Attorney General - The Attorney General may, following an application under subsection 42(9) (judicial determination of serious violent offence), if any is made, and before evidence is called as to sentence or, where no evidence is called, before submissions are made as to sentence, make an application for an order that a young person is liable to an adult sentence if the young person is or has been found guilty of an offence, other than a presumptive offence, for which an adult is liable to imprisonment for a term of more than two years, that was committed after the young person attained the age of fourteen years.

. . . .

(5) Application unopposed - If the young person gives notice to the youth justice court that the young person does not oppose the application for an adult sentence, the youth justice court shall, without a hearing, order that if the young person is found guilty of an offence for which an adult is liable to imprisonment for a term of more than two years, an adult sentence must be imposed.

. . . .

72. (1) Test - adult sentences - In making its decision on an application heard in accordance with section 71, the youth justice court shall consider the seriousness and circumstances of the offence, and the age, maturity, character, background and previous record of the young person and any other factors that the court considers relevant, and

(a) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed; and

(b) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that an adult sentence be imposed.

(2) Onus - The onus of satisfying the youth justice court as to the matters referred to in subsection (1) is with the applicant.

. . . .

73. (1) Court must impose adult sentence - When the youth justice court makes an order under subsection 64(5) or 70(2) or paragraph 72(1)(b) in respect of a young person, the court shall, on a finding of guilt, impose an adult sentence on the young person.

. . . .

3. (1) Policy for Canada with respect to young persons - The following principles apply in this Act:

(a) the youth criminal justice system is intended to

(i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,

(ii) rehabilitate young persons who commit offences and reintegrate them into society, and

(iii) ensure that a young person is subject to meaningful consequences for his or her offence

in order to promote the long-term protection of the public;

(b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:

(i) rehabilitation and reintegration,

(ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,

(iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,

(iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and

(v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should

(i) reinforce respect for societal values,

(ii) encourage the repair of harm done to victims and the community,

(iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,

(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

(2) Act to be liberally construed - This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

. . . .

38. (1) Purpose - The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

(2) Sentencing Principles - A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

(a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;

(b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;

(c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons with particular attention to the circumstances of aboriginal young persons; and

(e) subject to paragraph (c), the sentence must

(i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),

(ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and

(iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community.

(3) Factors to be considered - In determining a youth sentence, the youth justice court shall take into account

(a) the degree of participation by the young person in the commission of the offence;

(b) the harm done to victims and whether it was intentional or reasonably foreseeable;

(c) any reparation made by the young person to the victim or the community;

(d) the time spent in detention by the young person as a result of the offence;

(e) the previous findings of guilt of the young person; and

(f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.