# PART 4

## SENTENCING

### *Purpose and Principles*

Purpose

**38.** (1) 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.

Sentencing principles

(2) 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 the responsibility in the young person, and an acknowledgment of the harm done to victims and the community.

Factors to be considered

(3) 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.

Committal to custody

**39.** (1) A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless

(*a*) the young person has committed a violent offence;

(*b*) the young person has failed to comply with non-custodial sentences;

(*c*) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statues of Canada, 1985; or

(*d*) in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

Alternatives to custody

(2) If any of paragraphs (1)(*a*) to (*c*) apply, a youth justice court shall not impose a custodial sentence under section 42 (youth sentences) unless the court has considered all alternatives to custody raised at the sentencing hearing that are reasonable in the circumstances, and determined that there is not a reasonable alternative, or combination of alternatives, that is in accordance with the purpose and principles set out in section 38.

Factors to be considered

(3) In determining whether there is a reasonable alternative to custody, a youth justice court shall consider submissions relating to

(*a*) the alternatives to custody that are available;

(*b*) the likelihood that the young person will comply with a non-custodial sentence, taking into account his or her compliance with previous non-custodial sentences; and

(*c*) the alternatives to custody that have been used in respect of young persons for similar offences committed in similar circumstances.

Imposition of same sentence

(4) The previous imposition of a particular non-custodial sentence on a young person does not preclude a youth justice court from imposing the same or any other non-custodial sentence for another offence.

Custody as social measure prohibited

(5) A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures.

Pre-sentence report

(6) Before imposing a custodial sentence under section 42 (youth sentences), a youth justice court shall consider a pre-sentence report and any sentencing proposal made by the young person or his or her counsel.

Report dispensed with

(7) A youth justice court may, with the consent of the prosecutor and the young person or his or her counsel, dispense with a pre-sentence report if the court is satisfied that the report is not necessary.

Length of custody

(8) In determining the length of a youth sentence that includes a custodial portion, a youth justice court shall be guided by the purpose and principles set out in section 38, and shall not take into consideration the fact that the supervision portion of the sentence may not be served in custody and that the

sentence may be reviewed by the court under section 94.

Reasons

(9) If a youth justice court imposes a youth sentence that includes a custodial portion, the court shall state the reasons why it has determined that a non-custodial sentence is not adequate to achieve the purpose set out in subsection 38(1), including, if applicable, the reasons why the case is an exceptional case under paragraph (1)(*d*).

*Pre-sentence Report*

Pre-sentence report

**40.** (1) Before imposing sentence on a young person found guilty of an offence, a youth justice court

(*a*) shall, if it is required under this Act to consider a pre-sentence report before making an order or a sentence in respect of a young person, and

(*b*) may, if it considers it advisable,

require the provincial director to cause to be prepared a pre-sentence report in respect of the young person and to submit the report to the court.

Contents of report

(2) A pre-sentence report made in respect of a young person shall, subject to subsection (3), be in writing and shall include the following, to the extent that it is relevant to the purpose and principles of sentencing set out in section 38 and to the restrictions on custody set out in section 39:

(*a*) the results of an interview with the young person and, if reasonably possible, the parents of the young person and, if appropriate and reasonably possible, members of the young person's extended family;

(*b*) the results of an interview with the victim in the case, if applicable and reasonably possible;

(*c*) the recommendations resulting from any conference referred to in section 41;

(*d*) any information that is applicable to the case, including

(i) the age, maturity, character, behaviour and attitude of the young person and his or her willingness to make amends,

(ii) any plans put forward by the young person to change his or her conduct or to participate in activities or undertake measures to improve himself or herself,

(iii) subject to subsection 119(2) (period of access to records), the history of previous findings of delinquency under the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, or previous findings of guilt for offences under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or under this or any other Act of Parliament or any regulation made under it, the history of community or other services rendered to the young person with respect to those findings and the response of the young person to previous sentences or dispositions and to services rendered to him or her,

(iv) subject to subsection 119(2) (period of access to records), the history of alternative measures under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or extrajudicial sanctions used to

deal with the young person and the response of the young person to those measures or sanctions,

(v) the availability and appropriateness of community services and facilities for young persons and the willingness of the young person to avail himself or herself of those services or facilities,

(vi) the relationship between the young person and the young person's parents and the degree of control and influence of the parents over the young person and, if appropriate and reasonably possible, the relationship between the young person and the young person's extended family and the degree of control and influence of the young person's extended family over the young person, and

(vii) the school attendance and performance record and the employment record of the young person;

(*e*) any information that may assist the court in determining under subsection 39(2) whether there is an alternative to custody; and

(*f*) any information that the provincial director considers relevant, including any recommendation that the provincial director considers appropriate.

Oral report with leave

(3) If a pre-sentence report cannot reasonably be committed to writing, it may, with leave of the youth justice court, be submitted orally in court.

Report forms part of record

(4) A pre-sentence report shall form part of the record of the case in respect of which it was requested.

Copies of pre-sentence report

(5) If a pre-sentence report made in respect of a young person is submitted to a youth justice court in writing, the court

(*a*) shall, subject to subsection (7), cause a copy of the report to be given to

(i) the young person

(ii) any parent of the young person who is in attendance at the proceedings against the young person

(iii) any counsel representing the young person, and

(iv) the prosecutor; and

(*b*) may cause a copy of the report to be given to a parent of the young person who is not in attendance at the proceedings if the parent is, in the opinion of the court, taking an active interest in the proceedings.

Cross-examination

(6) If a pre-sentence report made in respect of a young person is submitted to a youth justice court, the young person, his or her counsel or the adult assisting the young person under subsection 25(7) and the prosecutor shall, subject to subsection (7), on application to the court, be given the opportunity to cross-examine the person who made the report.

Report may be withheld from private prosecutor

(7) If a pre-sentence report made in respect of a young person is submitted to a youth justice court, the court may, when the prosecutor is a private prosecutor and disclosure of all or part of the report to the prosecutor might, in the opinion of the court, be prejudicial to the young person and is not, in the opinion of the court, necessary for the prosecution of the case against the young person,

(*a*) withhold the report or part from the prosecutor, if the report is submitted in

writing; or

(*b*) exclude the prosecutor from the court during the submission of the report or part, if the report is submitted orally in court.

Report disclosed to other persons

(8) If a pre-sentence report made in respect of a young person is submitted to a youth justice court, the court

(*a*) shall, on request, cause a copy or a transcript of the report to be supplied to

(i) any court that is dealing with matters relating to the young person, and

(ii) any youth worker to whom the young person's case has been assigned; and

(*b*) may, on request, cause a copy or a transcript of all or part of the report to be supplied to any person not otherwise authorized under this section to receive a copy or a transcript of the report if, in the opinion of the court, the person has a valid interest in the proceedings.

Disclosure by the provincial director

(9) A provincial director who submits a pre-sentence report made in respect of a young person to a youth justice court may make all or part of the report available to any person in whose custody or under whose supervision the young person is placed or to any other person who is directly assisting in the care or treatment of the young person.

Inadmissibility of statements

(10) No statement made by a young person in the course of the preparation of a pre-sentence report in respect of the young person is admissible in evidence against any young person in civil or criminal proceedings except those under section 42 (youth sentences), 59 (review of non-custodial sentence) or 71 (hearing - adult sentences) or any of sections 94 to 96 (reviews and other proceedings related to custodial sentences).

*Youth Sentences*

Recommendation of conference

**41.** When a youth justice court finds a young person guilty of an offence, the court may convene or cause to be convened a conference under section 19 for recommendations to the court on an appropriate youth sentence.

Considerations as to youth sentence

**42.** (1) A youth justice court shall, before imposing a youth sentence, consider any recommendations submitted under section 41, any pre-sentence report, any representations made by the parties to the proceedings or their counsel or agents and by the parents of the young person, and any other relevant information before the court.

Youth sentence

(2) When a youth justice court finds a young person guilty of an offence and is imposing a youth sentence, the court shall, subject to this section, impose any one of the following sanctions or any number of them that are not inconsistent with each other and, if the offence is first degree murder or second degree murder within the meaning of section 231 of the *Criminal Code*, the court shall impose a sanction set out in paragraph (*q*) or subparagraph (*r*)(ii) or (iii) and may impose any other of the sanctions set out in this subsection that the court considers appropriate:

(*a*) reprimand the young person;

(*b*) by order direct that the young person be discharged absolutely, if the court considers it to be in the best interests of the young person and not contrary to the public interest;

(*c*) by order direct that the young person be discharged on any conditions that the court considers appropriate and may require the young person to report to and be supervised by the provincial director;

(*d*) impose on the young person a fine not exceeding $1,000 to be paid at the time and on the terms that the court may fix;

(*e*) order the young person to pay to any other person at the times and on the terms that the court may fix an amount by way of compensation for loss of or damage to property or for loss of income or support, or an amount for, in the Province of Quebec, pre-trial pecuniary loss or, in any other province, special damages, for personal injury arising from the commission of the offence if the value is readily ascertainable, but no order shall be made for other damages in the Province of Quebec or for general damages in any other province;

(*f*) order the young person to make restitution to any other person of any property obtained by the young person as a result of the commission of the offence within the time that the court may fix, if the property is owned by the other person or was, at the time of the offence, in his or her lawful possession;

(*g*) if property obtained as a result of the commission of the offence has been sold to an innocent purchaser, where restitution of the property to its owner or any other person has been made or ordered, order the young person to pay the purchaser, at the time and on the terms that the court may fix, an amount not exceeding the amount paid by the purchaser for the property;

(*h*) subject to section 54, order the young person to compensate any person in kind or by way of personal services at the time and on the terms that the court may fix for any loss, damage or injury suffered by that person in respect of which an order may be made under paragraph (*e*) or (*g*);

(*i*) subject to section 54, order the young person to perform a community service at the time and on the terms that the court may fix, and to report to and be supervised by the provincial director or a person designated by the youth justice court;

(*j*) subject to section 51 (mandatory prohibition order), make any order of prohibition, seizure or forfeiture that may be imposed under any Act of Parliament or any regulation made under it if an accused is found guilty or convicted of that offence, other than an order under section 161 of the *Criminal Code*;

(*k*) place the young person on probation in accordance with sections 55 and 56 (conditions and other matters related to probation orders) for a specified period not exceeding two years;

(*l*) subject to subsection (3) (agreement of provincial director), order the young person into an intensive support and supervision program approved by the provincial director;

(*m*) subject to subsection (3) (agreement of provincial director) and section 54, order the young person to attend a non-residential program approved by the provincial director, at the times and on the terms that the court may fix, for a maximum of two hundred and forty hours, over a period not exceeding six months;

(*n*) make a custody and supervision order with respect to the young person, ordering that a period be served in custody and that a second period - which is one half as long as the first - be served, subject to sections 97 (conditions to be included) and 98 (continuation of custody), under supervision in the community subject to conditions, the total of the periods not to exceed two years from the date of the coming into force of the order or, if the young person is found guilty of an offence for which the punishment provided by the *Criminal Code* or any other Act of Parliament is imprisonment for life, three years from the date of coming into force of the order;

(*o*) in the case of an offence set out in subparagraph (*a*)(ii), (iii) or (iv) of the definition "presumptive offence" in subsection 2(1), make a custody and supervision order in respect of the young person for a specified period not exceeding three years from the date of committal that orders the young person to be committed into a continuous period of custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder of the sentence under conditional supervision in the community in accordance with section 105;

(*p*) subject to subsection (5), make a deferred custody and supervision order that is for a specified period not exceeding six months, subject to the conditions set out in subsection 105(2), and to any conditions set out in subsection 105(3) that the court considers appropriate;

(*q*) order the young person to serve a sentence not to exceed

(i) in the case of first degree murder, ten years comprised of

(A) a committal to custody, to be served continuously, for a period that must not, subject to subsection 104(1) (continuation of custody), exceed six years from the date of committal, and

(B) a placement under conditional supervision to be served in the community in accordance with section 105, and

(ii) in the case of second degree murder, seven years comprised of

(A) a committal to custody, to be served continuously, for a period that must not, subject to subsection 104(1) (continuation of custody), exceed four years from the date of committal, and

(B) a placement under conditional supervision to be served in the community in accordance with section 105;

(*r*) subject to subsection (7), make an intensive rehabilitative custody and supervision order in respect of the young person

(i) that is for a specified period that must not exceed

(A) two years from the date of committal, or

(B) if the young person is found guilty of an offence for which the

punishment provided by the *Criminal Code* or any other Act of Parliament is imprisonment for life, three years from the date of committal,

and that orders the young person to be committed into a continuous period of intensive rehabilitative custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder under conditional supervision in the community in accordance with section 105,

(ii) that is for a specified period that must not exceed, in the case of first degree murder, ten years from the date of committal, comprising

(A) a committal to intensive rehabilitative custody, to be served continuously, for a period that must not exceed six years from the date of committal, and

(B) subject to subsection 104(1) (continuation of custody), a placement under conditional supervision to be served in the community in accordance with section 105, and

(iii) that is for a specified period that must not exceed, in the case of second degree murder, seven years from the date of committal, comprising

(A) a committal to intensive rehabilitative custody, to be served continuously, for a period that must not exceed four years from the date of committal, and

(B) subject to subsection 104(1) (continuation of custody), a placement under conditional supervision to be served in the community in accordance with section 105; and

(*s*) impose on the young person any other reasonable and ancillary conditions that the court considers advisable and in the best interests of the young person and the public.

Agreement of provincial director

(3) A youth justice court may make an order under paragraph (2)(*l*) or (*m*) only if the provincial director has determined that a program to enforce the order is available.

Youth justice court statement

(4) When the youth justice court makes a custody and supervision order with respect to a young person under paragraph (2)(*n*), the court shall state the following with respect to that order:

You are ordered to serve (*state the number of days or months to be served*) in custody, to be followed by (*state one-half of the number of days or months stated above*) to be served under supervision in the community subject to conditions.

If you breach any of the conditions while you are under supervision in the community, you may be brought back into custody and required to serve the rest of the second period in custody as well.

You should also be aware that, under other provisions of the *Youth Criminal Justice Act*, a court could require you to serve the second period in custody as well.

The periods in custody and under supervision in the community may be changed if you are or become subject to another sentence.

Deferred custody and supervision order

(5) The court may make a deferred custody and supervision order under paragraph (2)(*p*) if

(*a*) the young person is found guilty of an offence that is not a serious violent offence; and

(*b*) it is consistent with the purpose and principles set out in section 38 and the restrictions on custody set out in section 39.

Application of sections 106 to 109

(6) Sections 106 to 109 (suspension of conditional supervision) apply to a breach of a deferred custody and supervision order made under paragraph (2)(*p*) as if the breach were a breach of an order for conditional supervision made under subsection 105(1) and, for the purposes of sections 106 to 109, supervision under a deferred custody and supervision order is deemed to be conditional supervision.

Intensive rehabilitative custody and supervision order

(7) A youth justice court may make an intensive rehabilitative custody and supervision order under paragraph (2)(*r*) in respect of a young person only if

(*a*) either

(i) the young person has been found guilty of an offence under one of the following provisions of the *Criminal Code*, namely, section 231 or 235 (first degree murder or second degree murder within the meaning of section 231), section 239 (attempt to commit murder), section 232, 234 or 236 (manslaughter), or section 273 (aggravated sexual assault), or

(ii) the young person has been found guilty of a serious violent offence for which an adult is liable to imprisonment for a term of more than two years, and the young person had previously been found guilty at least twice of a serious violent offence;

(*b*) the young person is suffering from a mental illness or disorder, a psychological disorder or an emotional disturbance;

(*c*) a plan of treatment and intensive supervision has been developed for the young person, and there are reasonable grounds to believe that the plan might reduce the risk of the young person repeating the offence or committing a serious violent offence; and

(*d*) the provincial director has determined that an intensive rehabilitative custody and supervision program is available and that the young person's participation in the program is appropriate.

Safeguard of rights

(8) Nothing in this section abrogates or derogates from the rights of a young person regarding consent to physical or mental health treatment or care.

Determination by court

(9) On application of the Attorney General after a young person is found guilty of an offence, and after giving both parties an opportunity to be heard, the youth justice court may make a judicial determination that the offence is a serious violent offence and endorse the information or indictment accordingly.

Appeals

(10) For the purposes of an appeal in accordance with section 37, a determination under subsection (9) is part of the sentence.

Inconsistency

(11) An order may not be made under paragraphs (2)(*k*) to (*m*) in respect of

an offence for which a conditional discharge has been granted under paragraph (2)(*c*).

Coming into force of youth sentence

(12) A youth sentence or any part of it comes into force on the date on which it is imposed or on any later date that the youth justice court specifies.

Consecutive youth sentences

(13) Subject to subsections (15) and (16), a youth justice court that sentences a young person may direct that a sentence imposed on the young person under paragraph (2)(*n*), (*o*), (*q*) or (*r*) be served consecutively if the young person

(*a*) is sentenced while under sentence for an offence under any of those paragraphs; or

(*b*) is found guilty of more than one offence under any of those paragraphs.

Duration of youth sentence for a single offence

(14) No youth sentence, other than an order made under paragraph (2)(*j*), (*n*), (*o*), (*q*) or (*r*), shall continue in force for more than two years. If the youth sentence comprises more than one sanction imposed at the same time in respect of the same offence, the combined duration of the sanctions shall not exceed two years, unless the sentence includes a sanction under paragraph (2)(*j*), (*n*), (*o*), (*q*) or (*r*) that exceeds two years.

Duration of youth sentence for different offences

(15) Subject to subsection (16), if more than one youth sentence is imposed under this section in respect of a young person with respect to different offences, the continuous combined duration of those youth sentences shall not exceed three years, except if one of the offences is first degree murder or second degree murder within the meaning of section 231 of the *Criminal Code*, in which case the continuous combined duration of those youth sentences shall not exceed ten years in the case of first degree murder, or seven years in the case of second degree murder.

Duration of youth sentences made at different times

(16) If a youth sentence is imposed in respect of an offence committed by a young person after the commencement of, but before the completion of, any youth sentences imposed on the young person,

(*a*) the duration of the sentence imposed in respect of the subsequent offence shall be determined in accordance with subsections (14) and (15);

(*b*) the sentence may be served consecutively to the sentences imposed in respect of the previous offences; and

(*c*) the combined duration of all the sentences may exceed three years and, if the offence is, or one of the previous offences was,

(i) first degree murder within the meaning of section 231 of the *Criminal Code*, the continuous combined duration of the youth sentences may exceed ten years, or

(ii) second degree murder within the meaning of section 231 of the *Criminal Code*, the continuous combined duration of the youth sentences may exceed seven years.

Sentence continues when adult

(17) Subject to sections 89, 92 and 93 (provisions related to placement in adult facilities) of this Act and section 743.5 (transfer of jurisdiction) of the *Criminal Code*, a youth sentence imposed on a young person continues in effect in accordance with its terms after the young person becomes an adult.

Additional youth

**43.** Subject to subsection 42(15) (duration of youth sentences), if a young

sentences

person who is subject to a custodial sentence imposed under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) that has not expired receives an additional youth sentence under one of those paragraphs, the young person is, for the purposes of the *Corrections and Conditional Release Act*, the *Criminal Code*, the *Prisons and Reformatories Act* and this Act, deemed to have been sentenced to one youth sentence commencing at the beginning of the first of those youth sentences to be served and ending on the expiry of the last of them to be served.

Custodial portion if additional youth sentence

**44.** Subject to subsection 42(15) (duration of youth sentences) and section 46 (exception when youth sentence in respect of earlier offence), if an additional youth sentence under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) is imposed on a young person on whom a youth sentence had already been imposed under one of those paragraphs that has not expired and the expiry date of the youth sentence that includes the additional youth sentence, as determined in accordance with section 43, is later than the expiry date of the youth sentence that the young person was serving before the additional youth sentence was imposed, the custodial portion of the young person's youth sentence is, from the date the additional sentence is imposed, the total of

(*a*) the unexpired portion of the custodial portion of the youth sentence before the additional youth sentence was imposed, and

(*b*) the relevant period set out in subparagraph (i), (ii) or (iii):

(i) if the additional youth sentence is imposed under paragraph 42(2)(*n*), the period that is two thirds of the period that constitutes the difference between the expiry of the youth sentence as determined in accordance with section 43 and the expiry of the youth sentence that the young person was serving before the additional youth sentence was imposed,

(ii) if the additional youth sentence is a concurrent youth sentence imposed under paragraph 42(2)(*o*), (*q*) or (*r*), the custodial portion of the youth sentence imposed under that paragraph that extends beyond the expiry date of the custodial portion of the sentence being served before the imposition of the additional sentence, or

(iii) if the additional youth sentence is a consecutive youth sentence imposed under paragraph 42(2)(*o*), (*q*) or (*r*), the custodial portion of the additional youth sentence imposed under that paragraph.

Supervision when additional youth sentence extends the period in custody

**45.** (1) If a young person has begun to serve a portion of a youth sentence in the community subject to conditions under paragraph 42(2)(*n*) or under conditional supervision under paragraph 42(2)(*o*), (*q*) or (*r*) at the time an additional youth sentence is imposed under one of those paragraphs, and, as a result of the application of section 44, the custodial portion of the young person's youth sentence ends on a day that is later than the day on which the young person received the additional youth sentence, the serving of a portion of the youth sentence under supervision in the community subject to conditions or under conditional supervision shall become inoperative and the young person shall be committed to custody under paragraph 102(1)(*b*) or 106(*b*) until the end of the extended portion of the youth sentence to be served in custody.

Supervision when additional youth sentence does not extend the

(2) If a youth sentence has been imposed under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) on a young person who is under supervision in the community subject to conditions under paragraph 42(2)(*n*) or under conditional supervision under

period in custody

paragraph 42(2)(*o*), (*q*) or (*r*), and the additional youth sentence would not modify the expiry date of the youth sentence that the young person was serving at the time the additional youth sentence was imposed, the young person may be remanded to the youth custody facility that the provincial director considers appropriate. The provincial director shall review the case and, no later than forty-eight hours after the remand of the young person, shall either refer the case to the youth justice court for a review under section 103 or 109 or release the young person to continue the supervision in the community or the conditional supervision.

Supervision when youth sentence additional to supervision

(3) If a youth sentence has been imposed under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) on a young person who is under conditional supervision under paragraph 94(19)(*b*) or subsection 96(5), the young person shall be remanded to the youth custody facility that the provincial director considers appropriate. The provincial director shall review the case and, no later than forty-eight hours after the remand of the young person, shall either refer the case to the youth justice court for a review under section 103 or 109 or release the young person to continue the conditional supervision.

Exception when youth sentence in respect of earlier offence

**46.** The total of the custodial portions of a young person's youth sentences shall not exceed six years calculated from the beginning of the youth sentence that is determined in accordance with section 43 if

(*a*) a youth sentence is imposed under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) on the young person already serving a youth sentence under one of those paragraphs; and

(*b*) the later youth sentence imposed is in respect of an offence committed before the commencement of the earlier youth sentence.

Committal to custody deemed continuous

**47.** (1) Subject to subsections (2) and (3), a young person who is sentenced under paragraph 42(2)(*n*) is deemed to be committed to continuous custody for the custodial portion of the sentence.

Intermittent custody

(2) If the sentence does not exceed ninety days, the youth justice court may order that the custodial portion of the sentence be served intermittently if it is consistent with the purpose and principles set out in section 38.

Availability of place of intermittent custody

(3) Before making an order of committal to intermittent custody, the youth justice court shall require the prosecutor to make available to the court for its consideration a report of the provincial director as to the availability of a youth custody facility in which an order of intermittent custody can be enforced and, if the report discloses that no such youth custody facility is available, the court shall not make the order.

Reasons for the sentence

**48.** When a youth justice court imposes a youth sentence, it shall state its reasons for the sentence in the record of the case and shall, on request, give or cause to be given a copy of the sentence and the reasons for the sentence to

(*a*) the young person, the young person's counsel, a parent of the young person, the provincial director and the prosecutor; and

(*b*) in the case of a committal to custody under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*), the review board.

Warrant of committal

**49.** (1) When a young person is committed to custody, the youth justice court

shall issue or cause to be issued a warrant of committal.

Custody during transfer

(2) A young person who is committed to custody may, in the course of being transferred from custody to the court or from the court to custody, be held under the supervision and control of a peace officer or in any place of temporary detention referred to in subsection 30(1) that the provincial director may specify.

Subsection 30(3) applies

(3) Subsection 30(3) (detention separate from adults) applies, with any modifications that the circumstances require, in respect of a person held in a place of temporary detention under subsection (2).

Application of Part XXIII of *Criminal Code*

**50.** (1) Subject to section 74 (application of *Criminal Code* to adult sentences), Part XXIII (sentencing) of the *Criminal Code* does not apply in respect of proceedings under this Act except for paragraph 718.2(*e*) (sentencing principle for aboriginal offenders), sections 722 (victim impact statements), 722.1 (copy of statement) and 722.2 (inquiry by court), subsection 730(2) (court process continues in force) and sections 748 (pardons and remissions), 748.1 (remission by the Governor in Council) and 749 (royal prerogative) of that Act, which provisions apply with any modifications that the circumstances require.

Section 787 of *Criminal Code* does not apply

(2) Section 787 (general penalty) of the *Criminal Code* does not apply in respect of proceedings under this Act.

Mandatory prohibition order

**51.** (1) Despite section 42 (youth sentences), when a young person is found guilty of an offence referred to in any of paragraphs 109(1)(*a*) to (*d*) of the *Criminal Code*, the youth justice court shall, in addition to imposing a sentence under section 42 (youth sentences), make an order prohibiting the young person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance during the period specified in the order as determined in accordance with subsection (2).

Duration of prohibition order

(2) An order made under subsection (1) begins on the day on which the order is made and ends not earlier than two years after the young person has completed the custodial portion of the sentence or, if the young person is not subject to custody, after the time the young person is found guilty of the offence.

Discretionary prohibition order

(3) Despite section 42 (youth sentences), where a young person is found guilty of an offence referred to in paragraph 110(1)(*a*) or (*b*) of the *Criminal Code*, the youth justice court shall, in addition to imposing a sentence under section 42 (youth sentences), consider whether it is desirable, in the interests of the safety of the young person or of any other person, to make an order prohibiting the young person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court decides that it is so desirable, the court shall so order.

Duration of prohibition order

(4) An order made under subsection (3) against a young person begins on the day on which the order is made and ends not later than two years after the young person has completed the custodial portion of the sentence or, if the young person is not subject to custody, after the time the young person is found guilty of the offence.

Reasons for the prohibition order

(5) When a youth justice court makes an order under this section, it shall state its reasons for making the order in the record of the case and shall give or

cause to be given a copy of the order and, on request, a transcript or copy of the reasons to the young person against whom the order was made, the counsel and a parent of the young person and the provincial director.

Reasons

(6) When the youth justice court does not make an order under subsection (3), or when the youth justice court does make such an order but does not prohibit the possession of everything referred to in that subsection, the youth justice court shall include in the record a statement of the youth justice court's reasons.

Application of *Criminal Code*

(7) Sections 113 to 117 (firearm prohibition orders) of the *Criminal Code* apply in respect of any order made under this section.

Report

(8) Before making an order referred to in section 113 (lifting firearms order) of the *Criminal Code* in respect of a young person, the youth justice court may require the provincial director to cause to be prepared, and to submit to the youth justice court, a report on the young person.

Review of order made under section 51

**52.** (1) A youth justice court may, on application, review an order made under section 51 at any time after the end of the period set out in subsection 119(2) (period of access to records) that applies to the record of the offence that resulted in the order being made.

Grounds

(2) In conducting a review under this section, the youth justice court shall take into account

(*a*) the nature and circumstances of the offence in respect of which the order was made; and

(*b*) the safety of the young person and of other persons.

Decision of review

(3) When a youth justice court conducts a review under this section, it may, after giving the young person, a parent of the young person, the Attorney General and the provincial director an opportunity to be heard,

(*a*) confirm the order;

(*b*) revoke the order; or

(*c*) vary the order as it considers appropriate in the circumstances of the case.

New order not to be more onerous

(4) No variation of an order made under paragraph (3)(*c*) may be more onerous than the order being reviewed.

Application of provisions

(5) Subsections 59(3) to (5) apply, with any modifications that the circumstances require, in respect of a review under this section.

Funding for victims

**53.** (1) The lieutenant governor in council of a province may order that, in respect of any fine imposed in the province under paragraph 42(2)(*d*), a percentage of the fine as fixed by the lieutenant governor in council be used to provide such assistance to victims of offences as the lieutenant governor in council may direct from time to time.

Victim fine surcharge

(2) If the lieutenant governor in council of a province has not made an order under subsection (1), a youth justice court that imposes a fine on a young person under paragraph 42(2)(*d*) may, in addition to any other punishment imposed on the young person, order the young person to pay a victim fine surcharge in an amount not exceeding fifteen per cent of the fine. The surcharge shall be used to provide such assistance to victims of offences as the lieutenant governor in

council of the province in which the surcharge is imposed may direct from time to time.

Where a fine or other payment is ordered

**54.** (1) The youth justice court shall, in imposing a fine under paragraph 42(2)(*d*) or in making an order under paragraph 42(2)(*e*) or (*g*), have regard to the present and future means of the young person to pay.

Discharge of fine or surcharge

(2) A young person on whom a fine is imposed under paragraph 42(2)(*d*), including any percentage of a fine imposed under subsection 53(1), or on whom a victim fine surcharge is imposed under subsection 53(2), may discharge the fine or surcharge in whole or in part by earning credits for work performed in a program established for that purpose

(*a*) by the lieutenant governor in council of the province in which the fine or surcharge was imposed; or

(*b*) by the lieutenant governor in council of the province in which the young person resides, if an appropriate agreement is in effect between the government of that province and the government of the province in which the fine or surcharge was imposed.

Rates, crediting and other matters

(3) A program referred to in subsection (2) shall determine the rate at which credits are earned and may provide for the manner of crediting any amounts earned against the fine or surcharge and any other matters necessary for or incidental to carrying out the program.

Representations respecting orders under paras. 42(2)(*e*) to (*h*)

(4) In considering whether to make an order under any of paragraphs 42(2)(*e*) to (*h*), the youth justice court may consider any representations made by the person who would be compensated or to whom restitution or payment would be made.

Notice of orders under paras. 42(2)(*e*) to (*h*)

(5) If the youth justice court makes an order under any of paragraphs 42(2)(*e*) to (*h*), it shall cause notice of the terms of the order to be given to the person who is to be compensated or to whom restitution or payment is to be made.

Consent of person to be compensated

(6) No order may be made under paragraph 42(2)(*h*) unless the youth justice court has secured the consent of the person to be compensated.

Orders under par. 42(2)(*h*), (*i*) or (*m*)

(7) No order may be made under paragraph 42(2)(*h*), (*i*) or (*m*) unless the youth justice court is satisfied that

(*a*) the young person against whom the order is made is a suitable candidate for such an order; and

(*b*) the order does not interfere with the normal hours of work or education of the young person.

Duration of order for service

(8) No order may be made under paragraph 42(2)(*h*) or (*i*) to perform personal or community services unless those services can be completed in two hundred and forty hours or less and within twelve months after the date of the order.

Community service order

(9) No order may be made under paragraph 42(2)(*i*) unless

(*a*) the community service to be performed is part of a program that is approved by the provincial director; or

(*b*) the youth justice court is satisfied that the person or organization for whom the community service is to be performed has agreed to its

performance.

Application for further time to complete youth sentence

(10) A youth justice court may, on application by or on behalf of the young person in respect of whom a youth sentence has been imposed under any of paragraphs 42(2)(*d*) to (*i*), allow further time for the completion of the sentence subject to any regulations made under paragraph 155(*b*) and to any rules made by the youth justice court under subsection 17(1).

Conditions that must appear in orders

**55.** (1) The youth justice court shall prescribe, as conditions of an order made under paragraph 42(2)(*k*) or (*l*), that the young person

(*a*) keep the peace and be of good behaviour; and

(*b*) appear before the youth justice court when required by the court to do so.

Conditions that may appear in orders

(2) A youth justice court may prescribe, as conditions of an order made under paragraph 42(2)(*k*) or (*l*), that a young person do one or more of the following that the youth justice court considers appropriate in the circumstances:

(*a*) report to and be supervised by the provincial director or a person designated by the youth justice court;

(*b*) notify the clerk of the youth justice court, the provincial director or the youth worker assigned to the case of any change of address or any change in the young person's place of employment, education or training;

(*c*) remain within the territorial jurisdiction of one or more courts named in the order;

(*d*) make reasonable efforts to obtain and maintain suitable employment;

(*e*) attend school or any other place of learning, training or recreation that is appropriate, if the youth justice court is satisfied that a suitable program for the young person is available there;

(*f*) reside with a parent, or any other adult that the youth justice court considers appropriate, who is willing to provide for the care and maintenance of the young person;

(*g*) reside at a place that the provincial director may specify;

(*h*) comply with any other conditions set out in the order that the youth justice court considers appropriate, including conditions for securing the young person's good conduct and for preventing the young person from repeating the offence or committing other offences; and

(*i*) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order.

Communication of order

**56.** (1) A youth justice court that makes an order under paragraph 42(2)(*k*) or (*l*) shall

(*a*) cause the order to be read by or to the young person bound by it;

(*b*) explain or cause to be explained to the young person the purpose and effect of the order, and confirm that the young person understands it; and

(*c*) cause a copy of the order to be given to the young person, and to any parent of the young person who is in attendance at the sentencing hearing.

Copy of order to parent

(2) A youth justice court that makes an order under paragraph 42(2)(*k*) or (*l*) may cause a copy to be given to a parent of the young person who is not in attendance at the proceedings if the parent is, in the opinion of the court, taking an active interest in the proceedings.

Endorsement of order by young person

(3) After the order has been read and explained under subsection (1), the young person shall endorse on the order an acknowledgement that the young person has received a copy of the order and had its purpose and effect explained.

Validity of order

(4) The failure of a young person to endorse the order or of a parent to receive a copy of the order does not affect the validity of the order.

Commencement of order

(5) An order made under paragraph 42(2)(*k*) or (*l*) comes into force

(*a*) on the date on which it is made; or

(*b*) if a young person receives a sentence that includes a period of continuous custody and supervision, at the end of the period of supervision.

Effect of order in case of custody

(6) If a young person is subject to a sentence that includes both a period of continuous custody and supervision and an order made under paragraph 42(2)(*k*) or (*l*), and the court orders under subsection 42(12) a delay in the start of the period of custody, the court may divide the period that the order made under paragraph 42(2)(*k*) or (*l*) is in effect, with the first portion to have effect from the date on which it is made until the start of the period of custody, and the remainder to take effect at the end of the period of supervision.

Notice to appear

(7) A young person may be given notice either orally or in writing to appear before the youth justice court under paragraph 55(1)(*b*).

Warrant in default of appearance

(8) If service of a notice in writing is proved and the young person fails to attend court in accordance with the notice, a youth justice court may issue a warrant to compel the appearance of the young person.

Transfer of youth sentence

**57.** (1) When a youth sentence has been imposed under any of paragraphs 42(2)(*d*) to (*i*), (*k*), (*l*) or (*s*) in respect of a young person and the young person or a parent with whom the young person resides is or becomes a resident of a territorial division outside the jurisdiction of the youth justice court that imposed the youth sentence, whether in the same or in another province, a youth justice court judge in the territorial division in which the youth sentence was imposed may, on the application of the Attorney General or on the application of the young person or the young person's parent, with the consent of the Attorney General, transfer to a youth justice court in another territorial division the youth sentence and any portion of the record of the case that is appropriate. All subsequent proceedings relating to the case shall then be carried out and enforced by that court.

No transfer outside province before appeal completed

(2) No youth sentence may be transferred from one province to another under this section until the time for an appeal against the youth sentence or the finding on which the youth sentence was based has expired or until all proceedings in respect of any such appeal have been completed.

Transfer to a province when person is adult

(3) When an application is made under subsection (1) to transfer the youth sentence of a young person to a province in which the young person is an adult, a youth justice court judge may, with the consent of the Attorney General, transfer the youth sentence and the record of the case to the youth justice court

in the province to which the transfer is sought, and the youth justice court to which the case is transferred shall have full jurisdiction in respect of the youth sentence as if that court had imposed the youth sentence. The person shall be further dealt with in accordance with this Act.

Interprovincial arrangements

**58.** (1) When a youth sentence has been imposed under any of paragraphs 42(2)(*k*) to (*r*) in respect of a young person, the youth sentence in one province may be dealt with in any other province in accordance with any agreement that may have been made between those provinces.

Youth justice court retains jurisdiction

(2) Subject to subsection (3), when a youth sentence imposed in respect of a young person is dealt with under this section in a province other than that in which the youth sentence was imposed, the youth justice court of the province in which the youth sentence was imposed retains, for all purposes of this Act, exclusive jurisdiction over the young person as if the youth sentence were dealt with within that province, and any warrant or process issued in respect of the young person may be executed or served in any place in Canada outside the province where the youth sentence was imposed as if it were executed or served in that province.

Waiver of jurisdiction

(3) When a youth sentence imposed in respect of a young person is dealt with under this section in a province other than the one in which the youth sentence was imposed, the youth justice court of the province in which the youth sentence was imposed may, with the consent in writing of the Attorney General of that province and the young person, waive its jurisdiction, for the purpose of any proceeding under this Act, to the youth justice court of the province in which the youth sentence is dealt with, in which case the youth justice court in the province in which the youth sentence is dealt with shall have full jurisdiction in respect of the youth sentence as if that court had imposed the youth sentence.

Review of youth sentences not involving custody

**59.** (1) When a youth justice court has imposed a youth sentence in respect of a young person, other than a youth sentence under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*), the youth justice court shall, on the application of the young person, the young person's parent, the Attorney General or the provincial director, made at any time after six months after the date of the youth sentence or, with leave of a youth justice court judge, at any earlier time, review the youth sentence if the court is satisfied that there are grounds for a review under subsection (2).

Grounds for review

(2) A review of a youth sentence may be made under this section

(*a*) on the ground that the circumstances that led to the youth sentence have changed materially;

(*b*) on the ground that the young person in respect of whom the review is to be made is unable to comply with or is experiencing serious difficulty in complying with the terms of the youth sentence;

(*c*) on the ground that the young person in respect of whom the review is to be made has contravened a condition of an order made under paragraph 42(2)(*k*) or (*l*) without reasonable excuse;

(*d*) on the ground that the terms of the youth sentence are adversely affecting the opportunities available to the young person to obtain services, education or employment; or

(*e*) on any other ground that the youth justice court considers appropriate.

Progress report

(3) The youth justice court may, before reviewing under this section a youth sentence imposed in respect of a young person, require the provincial director to cause to be prepared, and to submit to the youth justice court, a progress report on the performance of the young person since the youth sentence took effect.

Subsections 94(10) to (12) apply

(4) Subsections 94(10) to (12) apply, with any modifications that the circumstances require, in respect of any progress report required under subsection (3).

Subsections 94(7) and (14) to (18) apply

(5) Subsections 94(7) and (14) to (18) apply, with any modifications that the circumstances require, in respect of reviews made under this section and any notice required under subsection 94(14) shall also be given to the provincial director.

Compelling appearance of young person

(6) The youth justice court may, by summons or warrant, compel a young person in respect of whom a review is to be made under this section to appear before the youth justice court for the purposes of the review.

Decision of the youth justice court after review

(7) When a youth justice court reviews under this section a youth sentence imposed in respect of a young person, it may, after giving the young person, a parent of the young person, the Attorney General and the provincial director an opportunity to be heard,

(*a*) confirm the youth sentence;

(*b*) terminate the youth sentence and discharge the young person from any further obligation of the youth sentence; or

(*c*) vary the youth sentence or impose any new youth sentence under section 42, other than a committal to custody, for any period of time, not exceeding the remainder of the period of the earlier youth sentence, that the court considers appropriate in the circumstances of the case.

New youth sentence not to be more onerous

(8) Subject to subsection (9), when a youth sentence imposed in respect of a young person is reviewed under this section, no youth sentence imposed under subsection (7) shall, without the consent of the young person, be more onerous than the remainder of the youth sentence reviewed.

Exception

(9) A youth justice court may under this section extend the time within which a youth sentence imposed under paragraphs 42(2)(*d*) to (*i*) is to be complied with by a young person if the court is satisfied that the young person requires more time to comply with the youth sentence, but in no case shall the extension be for a period of time that expires more than twelve months after the date the youth sentence would otherwise have expired.

Provisions applicable to youth sentences on review

**60.** This Part and Part 5 (custody and supervision) apply with any modifications that the circumstances require to orders made in respect of reviews of youth sentences under sections 59 and 94 to 96.

*Adult Sentence and Election*

Age for purpose of presumptive offences

**61.** The lieutenant governor in council of a province may by order fix an age greater than fourteen years but not more than sixteen years for the purpose of the application of the provisions of this Act relating to presumptive offences.

Imposition of adult sentence

**62.** 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 a 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.

Application by young person

**63.** (1) 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.

Application unopposed

(2) 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.

Application by Attorney General

**64.** (1) 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.

Notice of intention to seek adult sentence

(2) If the Attorney General intends to seek an adult sentence for an offence by making an application under subsection (1), or by establishing that the offence is a presumptive offence within the meaning of paragraph (*b*) of the definition ``presumptive offence'' in subsection 2(1), the Attorney General shall, before the young person enters a plea or with leave of the youth justice court before the commencement of the trial, give notice to the young person and the youth justice court of the intention to seek an adult sentence.

Included offences

(3) A notice of intention to seek an adult sentence given in respect of an offence is notice in respect of any included offence of which the young person is found guilty for which an adult is liable to imprisonment for a term of more than two years.

Notice to young person

(4) If a young person is charged with an offence, other than an offence set out in paragraph (*a*) of the definition ``presumptive offence'' in subsection 2(1), and the Attorney General intends to establish, after a finding of guilt, that the offence is a serious violent offence and a presumptive offence within the meaning of paragraph (*b*) of the definition ``presumptive offence'' in subsection 2(1) for which the young person is liable to an adult sentence, the Attorney General shall, before the young person enters a plea or, with leave of the youth justice court under subsection (2), before the commencement of the trial, give notice of that intention to the young person.

Application unopposed

(5) 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.

Presumption does not apply

**65.** If the Attorney General at any stage of proceedings gives notice to the youth justice court that an adult sentence will not be sought in respect of a young person who is alleged to have committed an offence set out in paragraph (*a*) of the definition ``presumptive offence'' in subsection 2(1), the court shall order that the young person is not liable to an adult sentence, and the court shall order a ban on publication of information that would identify the young person as having been dealt with under this Act.

No election if youth sentence

**66.** If the youth justice court has made an order under subsection 63(2) or section 65 before a young person is required to be put to an election under section 67, the young person shall not be put to an election unless the young person is alleged to have committed first degree murder or second degree murder within the meaning of section 231 of the *Criminal Code*.

Election - adult sentence

**67.** (1) Subject to section 66, the youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (2) if

(*a*) the young person is charged with having committed an offence set out in paragraph (*a*) of the definition ``presumptive offence'' in subsection 2(1);

(*b*) the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence for an offence committed after the young person has attained the age of fourteen years;

(*c*) the young person is charged with having committed first or second degree murder within the meaning of section 231 of the *Criminal Code* before the young person has attained the age of fourteen years; or

(*d*) the person to whom section 16 (status of accused uncertain) applies is charged with having, after attaining the age of fourteen years, committed an offence for which an adult would be entitled to an election under section 536 of the *Criminal Code*, or over which a superior court of criminal jurisdiction would have exclusive jurisdiction under section 469 of that Act.

Wording of election

(2) The youth justice court shall put the young person to his or her election in the following words:

You have the option to elect to be tried by a youth justice court judge without a jury and without having had a preliminary inquiry; or you may elect to have a preliminary inquiry and to be tried by a judge without a jury; or you may elect to have a preliminary inquiry and to be tried by a court composed of a judge and jury. If you do not elect now, you shall be deemed to have elected to have a preliminary inquiry and to be tried by a court composed of a judge and jury. How do you elect to be tried?

Election - Nunavut

(3) Subject to section 66, in respect of proceedings in Nunavut, the youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (4) if

(*a*) the young person is charged with having committed an offence set out in

paragraph (*a*) of the definition "presumptive offence" in subsection 2(1);

(*b*) the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence for an offence committed after the young person has attained the age of fourteen years;

(*c*) the young person is charged with having committed first or second degree murder within the meaning of section 231 of the *Criminal Code* before the young person has attained the age of fourteen years; or

(*d*) the person to whom section 16 (status of accused uncertain) applies is charged with having, after attaining the age of fourteen years, committed an offence for which an adult would be entitled to an election under section 536.1 of the *Criminal Code*.

Wording of election

(4) The youth justice court shall put the young person to his or her election in the following words:

You have the option to elect to be tried by a judge of the Nunavut Court of Justice alone, acting as a youth justice court without a jury and without a preliminary inquiry; or you may elect to have a preliminary inquiry and to be tried by a judge of the Nunavut Court of Justice, acting as a youth justice court without a jury; or you may elect to have a preliminary inquiry and to be tried by a judge of the Nunavut Court of Justice, acting as a youth justice court with a jury. If you do not elect now, you shall be deemed to have elected to have a preliminary inquiry and to be tried by a court composed of a judge and jury. How do you elect to be tried?

Mode of trial where co-accused are young persons

(5) When two or more young persons who are charged with the same offence, who are jointly charged in the same information or indictment or in respect of whom the Attorney General seeks joinder of counts that are set out in separate informations or indictments are put to their election, then, unless all of them elect or re-elect or are deemed to have elected, as the case may be, the same mode of trial, the youth justice court judge

(*a*) may decline to record any election, re-election or deemed election for trial by a youth justice court judge without a jury, a judge without a jury or, in Nunavut, a judge of the Nunavut Court Justice without a jury; and

(*b*) if the judge declines to do so, shall hold a preliminary inquiry unless a preliminary inquiry has been held prior to the election, re-election or deemed election.

Attorney General may require trial by jury

(6) The Attorney General may, even if a young person elects under subsection (1) or (3) to be tried by a youth justice court judge without a jury or a judge without a jury, require the young person to be tried by a court composed of a judge and jury.

Preliminary inquiry

(7) When a young person elects to be tried by a judge without a jury, or elects or is deemed to have elected to be tried by a court composed of a judge and jury, the youth justice court referred to in subsection 13(1) shall conduct a preliminary inquiry and if, on its conclusion, the young person is ordered to stand trial, the proceedings shall be conducted

(*a*) before a judge without a jury or a court composed of a judge and jury, as the case may be; or

(*b*) in Nunavut, before a judge of the Nunavut Court of Justice acting as a youth justice court, with or without a jury, as the case may be.

Preliminary inquiry provisions of *Criminal Code*

(8) The preliminary inquiry shall be conducted in accordance with the provisions of Part XVIII (procedure on preliminary inquiry) of the *Criminal Code*, except to the extent that they are inconsistent with this Act.

Parts XIX and XX of *Criminal Code</I*

(9) Proceedings under this Act before a judge without a jury or a court composed of a judge and jury or, in Nunavut, a judge of the Nunavut Court of Justice acting as a youth justice court, with or without a jury, as the case may be, shall be conducted in accordance with the provisions of Parts XIX (indictable offences - trial without jury) and XX (procedure in jury trials and general provisions) of the *Criminal Code*, with any modifications that the circumstances require, except that

(*a*) the provisions of this Act respecting the protection of privacy of young persons prevail over the provisions of the *Criminal Code*; and

(*b*) the young person is entitled to be represented in court by counsel if the young person is removed from court in accordance with subsection 650(2) of the *Criminal Code*.

Proof of notice under subsection 64(4)

**68.** (1) When a young person is found guilty of an offence, other than an offence set out in paragraph (*a*) of the definition ``presumptive offence'' in subsection 2(1), committed after he or she attained the age of fourteen years, and the Attorney General seeks to establish that the offence is a serious violent offence and a presumptive offence within the meaning of paragraph (*b*) of the definition ``presumptive offence'' in subsection 2(1), the Attorney General must satisfy the youth justice court that the young person, before entering a plea, was given notice under subsection 64(4) (intention to prove prior serious violent offences).

Determination of serious violent offence

(2) If the youth justice court is satisfied that the young person was given notice under subsection 64(4) (intention to prove prior serious violent offences), the Attorney General may make an application in accordance with subsection 42(9) (judicial determination of serious violent offence).

Inquiry by court and proof

(3) If the youth justice court determines that the offence is a serious violent offence, it shall ask whether the young person admits to the previous judicial determinations of serious violent offences made at different proceedings. If the young person does not admit to any of it, the Attorney General may adduce evidence as proof of the previous judicial determinations in accordance with section 667 of the *Criminal Code*, with any modifications that the circumstances require. For the purposes of that section, a certified copy of the information or indictment endorsed in accordance with subsection 42(9) (judicial determination of serious violent offence) or a certified copy of a court decision is deemed to be a certificate.

Determination by court

(4) If the youth justice court, after making its inquiry under subsection (3), is satisfied that the offence is a presumptive offence within the meaning of paragraph (*b*) of the definition ``presumptive offence'' in subsection 2(1), the youth justice court shall endorse the information or indictment accordingly.

Determination by court

(5) If the youth justice court, after making its inquiry under subsection (3), is not satisfied that the offence is a presumptive offence within the meaning of

paragraph (*b*) of the definition ``presumptive offence'' in subsection 2(1), the Attorney General may make an application under subsection 64(1) (application for adult sentence).

Paragraph (*a*) "presumptive offence" - included offences

**69.** (1) If a young person who is charged with an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1) is found guilty of committing an included offence for which an adult is liable to imprisonment for a term of more than two years, other than another presumptive offence set out in that paragraph,

(*a*) the Attorney General may make an application under subsection 64(1) (application for adult sentence) without the necessity of giving notice under subsection 64(2), if the finding of guilt is for an offence that is not a presumptive offence; or

(*b*) subsections 68(2) to (5) apply without the necessity of the Attorney General giving notice under subsection 64(2) (intention to seek adult sentence) or (4) (intention to prove prior serious violent offences), if the finding of guilt is for an offence that would be a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1) if a judicial determination is made that the offence is a serious violent offence and on proof of previous judicial determinations of a serious violent offence.

Other serious offences - included offences

(2) If the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence and the young person, after he or she has attained the age of fourteen years, is found guilty of committing an included offence for which an adult is liable to imprisonment for a term of more than two years, the Attorney General may make an application under subsection 64(1) (application for adult sentence) or seek to apply the provisions of section 68.

Inquiry by court to young person

**70.** (1) The youth justice court, after hearing an application under subsection 42(9) (judicial determination of serious violent offence), if any is made, and before evidence is called or, where no evidence is called, before submissions are made as to sentence, shall inquire whether a young person wishes to make an application under subsection 63(1) (application for youth sentence) and if so, whether the Attorney General would oppose it, if

(*a*) the young person has been found guilty of a presumptive offence;

(*b*) the young person has not already made an application under subsection 63(1); and

(*c*) no order has been made under section 65 (young person not liable to adult sentence).

No application by young person

(2) If the young person indicates that he or she does not wish to make an application under subsection 63(1) (application for youth sentence) or fails to give an indication, the court shall order that an adult sentence be imposed.

Hearing - adult sentences

**71.** The youth justice court shall, at the commencement of the sentencing hearing, hold a hearing in respect of an application under subsection 63(1) (application for youth sentence) or 64(1) (application for adult sentence), unless the court has received notice that the application is not opposed. Both parties and the parents of the young person shall be given an opportunity to be heard at

the hearing.

Test - adult sentences

**72.** (1) 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 have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that an adult sentence be imposed.

Onus

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

Pre-sentence reports

(3) In making its decision, the youth justice court shall consider a pre-sentence report.

Court to state reasons

(4) When the youth justice court makes an order under this section, it shall state the reasons for its decision.

Appeals

(5) For the purposes of an appeal in accordance with section 37, an order under subsection (1) is part of the sentence.

Court must impose adult sentence

**73.** (1) 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.

Court must impose youth sentence

(2) When the youth justice court makes an order under subsection 63(2), section 65 or paragraph 72(1)(*a*) in respect of a young person, the court shall, on a finding of guilt, impose a youth sentence on the young person.

Application of Parts XXIII and XXIV of *Criminal Code*

**74.** (1) Parts XXIII (sentencing) and XXIV (dangerous and long-term offenders) of the *Criminal Code* apply to a young person in respect of whom the youth justice court has ordered that an adult sentence be imposed.

Finding of guilt becomes a conviction

(2) A finding of guilt for an offence in respect of which an adult sentence is imposed becomes a conviction once the time allowed for the taking of an appeal has expired or, if an appeal is taken, all proceedings in respect of the appeal have been completed and the appeal court has upheld an adult sentence.

Interpretation

(3) This section does not affect the time of commencement of an adult sentence under subsection 719(1) of the *Criminal Code*.

Inquiry by the court to the young person

**75.** (1) 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.

No application for a ban

(2) 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.

Order for a ban

(3) 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.

Appeals

(4) For the purposes of an appeal in accordance with section 37, an order under subsection (3) is part of the sentence.

Placement when subject to adult sentence

**76.** (1) Subject to subsections (2) and (9) and sections 79 and 80 and despite anything else in this Act or any other Act of Parliament, when a young person who is subject to an adult sentence in respect of an offence is sentenced to a term of imprisonment for the offence, the youth justice court shall order that the young person serve any portion of the imprisonment in

(*a*) a youth custody facility separate and apart from any adult who is detained or held in custody;

(*b*) a provincial correctional facility for adults; or

(*c*) if the sentence is for two years or more, a penitentiary.

When young person subject to adult penalties

(2) The youth justice court that sentences a young person under subsection (1) shall, unless it is satisfied that to do so would not be in the best interests of the young person or would jeopardize the safety of others,

(*a*) if the young person is under the age of eighteen years at the time that he or she is sentenced, order that he or she be placed in a youth custody facility; and

(*b*) if the young person is eighteen years old or older at the time that he or she is sentenced, order that he or she not be placed in a youth custody facility and order that any portion of the sentence be served in a provincial correctional facility for adults or, if the sentence is two years or more, in a penitentiary.

Opportunity to be heard

(3) Before making an order under subsection (1), the youth justice court shall give the young person, a parent of the young person, the Attorney General, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard.

Report necessary

(4) Before making an order under subsection (1), the youth justice court shall require that a report be prepared for the purpose of assisting the court.

Appeals

(5) For the purposes of an appeal in accordance with section 37, an order under subsection (1) is part of the sentence.

Review

(6) On application, the youth justice court shall review the placement of a young person under this section and, if satisfied that the circumstances that resulted in the initial order have changed materially, and after having given the young person, a parent of the young person, the Attorney General, the provincial director and the representatives of the provincial and federal correctional

systems an opportunity to be heard, the court may order that the young person be placed in

(*a*) a youth custody facility separate and apart from any adult who is detained or held in custody;

(*b*) a provincial correctional facility for adults; or

(*c*) if the sentence is for two years or more, a penitentiary.

Who may make application

(7) An application referred to in this section may be made by the young person, one of the young person's parents, the provincial director, representatives of the provincial and federal correctional systems and the Attorney General, after the time for all appeals has expired.

Notice

(8) When an application referred to in this section is made, the applicant shall cause a notice of the application to be given to the other persons referred to in subsection (7).

Limit - age twenty

(9) No young person shall remain in a youth custody facility under this section after the young person attains the age of twenty years, unless the youth justice court that makes the order under subsection (1) or reviews the placement under subsection (6) is satisfied that remaining in the youth custody facility would be in the best interests of the young person and would not jeopardize the safety of others.

Obligation to inform - parole

**77.** (1) When a young person is ordered to serve a portion of a sentence in a youth custody facility under paragraph 76(1)(*a*) (placement when subject to adult sentence), the provincial director shall inform the appropriate parole board.

Applicability of *Corrections and Conditional Release Act*

(2) For greater certainty, Part II of the *Corrections and Conditional Release Act* applies, subject to section 78, with respect to a young person who is the subject of an order under subsection 76(1) (placement when subject to adult sentence).

Appropriate parole board

(3) The appropriate parole board for the purposes of this section is

(*a*) if subsection 112(1) of the *Corrections and Conditional Release Act* would apply with respect to the young person but for the fact that the young person was ordered into a youth custody facility, the parole board mentioned in that subsection; and

(*b*) in any other case, the National Parole Board.

Release entitlement

**78.** (1) For greater certainty, section 6 of the *Prisons and Reformatories Act* applies to a young person who is ordered to serve a portion of a sentence in a youth custody facility under paragraph 76(1)(*a*) (placement when subject to adult sentence) only if section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code* would direct that the young person serve the sentence in a prison.

Release entitlement

(2) For greater certainty, section 127 of the *Corrections and Conditional Release Act* applies to a young person who is ordered to serve a portion of a sentence in a youth custody facility under paragraph 76(1)(*a*) (placement when subject to adult sentence) only if section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code* would direct that the young person serve the sentence in a penitentiary.

If person convicted under another Act

**79.** If a person who is serving all or a portion of a sentence in a youth custody facility under paragraph 76(1)(*a*) (placement when subject to adult sentence) is sentenced to a term of imprisonment under an Act of Parliament other than this Act, the remainder of the portion of the sentence being served in the youth custody facility shall be served in a provincial correctional facility for adults or a penitentiary, in accordance with section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code*.

If person who is serving a sentence under another Act is sentenced to an adult sentence

**80.** If a person who has been serving a sentence of imprisonment under an Act of Parliament other than this Act is sentenced to an adult sentence of imprisonment under this Act, the sentences shall be served in a provincial correctional facility for adults or a penitentiary, in accordance with section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code*.

Procedure for application or notice

**81.** An application or a notice to the court under section 63, 64, 65 or 76 must be made or given orally, in the presence of the other party, or in writing with a copy served personally on the other party.

Effect of absolute discharge or termination of youth sentence

**82.** (1) Subject to section 12 (examination as to previous convictions) of the *Canada Evidence Act*, if a young person is found guilty of an offence, and a youth justice court directs under paragraph 42(2)(*b*) that the young person be discharged absolutely, or the youth sentence, or any disposition made under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, has ceased to have effect, other than an order under section 51 (mandatory prohibition order) of this Act or section 20.1 (mandatory prohibition order) of the *Young Offenders Act*, the young person is deemed not to have been found guilty or convicted of the offence except that

(*a*) the young person may plead *autrefois convict* in respect of any subsequent charge relating to the offence;

(*b*) a youth justice court may consider the finding of guilt in considering an application under subsection 63(1) (application for youth sentence) or 64(1) (application for adult sentence);

(*c*) any court or justice may consider the finding of guilt in considering an application for judicial interim release or in considering what sentence to impose for any offence; and

(*d*) the National Parole Board or any provincial parole board may consider the finding of guilt in considering an application for conditional release or pardon.

Disqualifications removed

(2) For greater certainty and without restricting the generality of subsection (1), an absolute discharge under paragraph 42(2 )(*b*) or the termination of the youth sentence or disposition in respect of an offence for which a young person is found guilty removes any disqualification in respect of the offence to which the young person is subject under any Act of Parliament by reason of a finding of guilt.

Applications for employment

(3) No application form for or relating to the following shall contain any question that by its terms requires the applicant to disclose that he or she has been charged with or found guilty of an offence in respect of which he or she has, under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, been discharged absolutely, or has completed the

youth sentence under this Act or the disposition under the *Young Offenders Act*:

(*a*) employment in any department, as defined in section 2 of the *Financial Administration Act*;

(*b*) employment by any Crown corporation, as defined in section 83 of the *Financial Administration Act*;

(*c*) enrolment in the Canadian Forces; or

(*d*) employment on or in connection with the operation of any work, undertaking or business that is within the legislative authority of Parliament.

Finding of guilt not a previous conviction

(4) A finding of guilt under this Act is not a previous conviction for the purposes of any offence under any Act of Parliament for which a greater punishment is prescribed by reason of previous convictions, except for

(*a*) the purpose of establishing that an offence is a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1); or

(*b*) the purpose of determining the adult sentence to be imposed.