

CANADA / JUDGMENT

## R. v. T.M.

2025 ONCA 862

### COURT

Court of Appeal for Ontario

### DECIDED

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Tulloch C.J.O., Roberts and Monahan JJ.A.

BETWEEN

His Majesty the King

Respondent (Appellant)

and

T.M. (a young person)

Applicant (Respondent)

Justin Reid, for the appellant

Lauren M. Wilhem, for the respondent

Heard: May 8, 2025

On appeal from the disposition imposed on June 5, 2024, by Justice Amanda J. Camara of the Ontario Court of Justice.

Tulloch C.J.O.:

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A. Introduction [1] These supplementary reasons follow this court's earlier decision of June 16, 2025, in *R. v. T.M.*, 2025 ONCA 436. In that decision, we resolved the appeal from the sentencing order made by the sentencing judge of the Ontario Court of Justice. We concluded that ss. 42(5)(a) and 42(2)(p) of the Youth Criminal Justice Act, S.C. 2002, c. 1 ("YCJA") – which prohibit deferred custody for offences involving serious bodily harm and limit such custody to six months – do not infringe ss. 7 or 15 of the Canadian Charter of Rights and Freedoms. We also varied the sentence by imposing a fit disposition of 18 months' probation with conditions and a community service order of 100 hours.

- [2] These reasons expand on the constitutional analysis underlying that conclusion. They explain in greater detail why ss. 42(5)(a) and 42(2)(p) of the YCJA do not violate ss. 7 or 15(1) of the Charter. In doing so, the judgment addresses both the equality rights concerns raised and the broader youth sentencing framework established under the Act.
- [3] The impugned provisions are constitutional. They do not compel a custodial sentence for a young person who is otherwise appropriate for a community-based disposition. The YCJA provides youth justice courts with a broad range of non-custodial sentencing options designed to promote rehabilitation and to respond to the developmental needs of young people. These options include youth probation – a dynamic sanction which is far more robust than adult probation and has long been used to hold young people accountable for serious bodily harm offences in appropriate cases – along with many other flexible dispositions, some of which are only available to young people. This framework reinforces individualized and proportionate sentencing and upholds the principle that custody must remain a last resort, especially for young people being sentenced for a first offence.
- [4] The provisions also do not detract from the YCJA's rehabilitative objectives or weaken the presumption in favour of non-custodial measures which underlies its careful scheme. Rather, they must be interpreted harmoniously with those very objectives and scheme. This contextual interpretation shows that Parliament added deferred custody to give youth justice courts more flexibility in cases not involving serious bodily harm – not to tie their hands in other cases by restricting additional options and reversing the settled jurisprudence authorizing the use of robust probation orders where appropriate.

- [5] Instead, the provisions place reasonable limits on the use of deferred custody. They prevent its overextension and avoid exposing young persons to an unwarranted risk of incarceration, while also signalling offence gravity and supplying an immediate consequence for causing or attempting to cause serious bodily harm – the unavailability of one sentencing option. In this case, the sentencing judge’s failure to apply those statutory limits would have subjected the respondent to an unnecessarily prolonged custodial risk, contrary to Parliament’s intent.

B. Background and Procedural History [6] As previously noted, the respondent, T.M., was 16 years old at the time of the offence on June 19, 2023. On December 6, 2023, he pleaded guilty to dangerous driving causing death, an offence that constitutes serious bodily harm, and was sentenced on June 5, 2024. Because the sentencing judge’s brief reasons accepting the parties’ joint submission did not address T.M.’s personal circumstances, I summarize them here to provide necessary context.

- [7] T.M. is a Black and Indigenous youth with no prior youth record or driving-related infractions. Through his maternal lineage, he is registered as a member of a First Nation in Ontario; he identifies as Indigenous and has recently taken steps to reconnect with his cultural heritage. He has a limited relationship with his biological father, who has been incarcerated since T.M. was young. According to his mother, his father’s prolonged absence deeply affected him, contributing to feelings of shame and social isolation.
- [8] Despite these challenges, T.M. benefits from a close and supportive family network, including his mother, stepfather, two younger siblings, and maternal grandparents. He also enjoys considerable support from his family’s religious community, long-standing pro-social friendships, community members, mentors, coaches, educators, and local leaders. Numerous character letters were filed on his behalf at sentencing, and both the Gladue[2] report and the pre-sentence report echoed these positive assessments. By all accounts, he is a central figure in his family, a role model for his siblings, and a hard-working, pro-social young person with no history of behavioural issues.
- [9] T.M. is also a talented athlete who excelled academically and on his varsity sports team. At the time of sentencing, he had earned a full athletic scholarship to a leading university.
- [10] T.M. accepted responsibility for his conduct. He expressed deep remorse for his actions and for the fatal and devastating consequences they caused. Following the offence, he participated in counselling and completed extensive community service, particularly through initiatives supporting Indigenous youth. Both the Gladue and pre-sentence reports recommended continued therapy and community engagement as part of his rehabilitation.
- [11] In sum, T.M. was a young person who took ownership of his actions, received substantial support from family and community, and demonstrated strong rehabilitative potential and promising future prospects.

[12] In light of these personal circumstances, the defence sought a deferred custody order, a community-based custodial sentence, for a period of two years less a day. However, ss. 42(2)(p) and 42(5)(a) of the YCJA precluded this disposition. Those provisions provide:

42(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:

\* \* \*

(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;

\* \* \*

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

(a) if the young person is found guilty of an offence other than one in the commission of which a young person causes or attempts to cause serious bodily harm;

[13] Because s. 42(5)(a) prohibits deferred custody for offences involving serious bodily harm, that option was statutorily unavailable. Furthermore, even if available, s. 42(2)(p) would have capped the period of deferred custody at six months. Accordingly, the defence brought a constitutional challenge to these provisions.

[14] The sentencing judge concluded that these statutory limits placed young persons at a disadvantage compared to similarly situated adults, who may receive conditional sentences of up to two-years-less-a-day under s. 742.1 of the Criminal Code, R.S.C. 1985, c. C-46. The sentencing judge refused to apply the YCJA restrictions on the basis that they violated ss. 7 and 15(1) of the Charter: *R. v. T.M.*, 2024 ONCJ 257. After this ruling, the parties jointly proposed a 24-month deferred custody order, which the sentencing judge approved.

[15] On appeal, we concluded that the sentencing judge erred by considering ss. 42(5)(a) and 42(2)(p) in isolation from the broader statutory framework of the YCJA. We determined that the provisions do not create a discriminatory disadvantage, nor do they infringe the principles of fundamental justice. The full constitutional analysis follows below.

C. Issues & Standard of Review [16] These reasons address three constitutional questions:

1. Whether s. 42(5)(a) of the YCJA violates s. 15(1) of the Charter;
2. Whether s. 42(2)(p) of the YCJA violates s. 15(1) of the Charter; and

3. Whether ss. 42(5)(a) and 42(2)(p) of the YCJA infringe s. 7 of the Charter.

[17] The sentencing judge's determinations on each of these questions are reviewed for correctness, as they involve the interpretation of the Charter and the YCJA. Because the sentencing judge made no factual findings in her constitutional analysis, the palpable and overriding error standard does not apply: *Working Families Coalition (Canada) Inc. v. Ontario (Attorney General)*, 2023 ONCA 139, 165 O.R. (3d) 241, at para. 47, *aff'd* 2025 SCC 5, 500 D.L.R. (4th) 193; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 S.C.R. 306, at para. 23.

[18] For the reasons that follow, the answer to each question is no.

D. Section 42(5)(a) Respects Equality Rights [19] The Crown submits that the sentencing judge erred in finding that s. 42(5)(a) of the YCJA violates the equality rights of young persons under s. 15(1) of the Charter. According to the Crown, the ruling failed to account for the Act's comprehensive sentencing framework, which is designed to serve the unique needs and interests of young people. I agree. When properly understood in its full statutory context, s. 42(5)(a) does not undermine the YCJA's remedial sentencing principles, nor does it prevent judges from avoiding the inappropriate incarceration of young persons. Rather, although the provision removes one sentencing option from consideration, it still leaves youth justice judges with a broad array of tools to impose proportionate, community-based sentences that keep young people out of custody.

(1) Legal Framework [20] Section 15(1) of the Canadian Charter of Rights and Freedoms provides:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[21] The governing two-step test for a s. 15(1) claim is well established. A claimant must demonstrate that the challenged law: (1) creates a distinction based on an enumerated or analogous ground; and (2) that the distinction is discriminatory. As the Supreme Court explained in *R. v. Sharma*, 2022 SCC 39, [2022] 3 S.C.R. 147, at para. 38, substantive equality is protected by means of this test. It requires an examination of the claimant group's full circumstances, the disadvantages it faces, and the actual impact of the impugned law: *Sharma*, at paras. 28, 37-38, 49, 51.

[22] Section 15(1) therefore demands careful attention to the unique needs and vulnerabilities of young people: *R. v. C.P.*, 2021 SCC 19, [2021] 1 S.C.R. 679, at para. 161, per Wagner C.J. Young people are not simply "miniature adults": *McCormick v. McCormick*, 1981 CarswellOnt 2450 (S.C.), at para. 49, citing Jeffrey Wilson, *Children and the Law* (Toronto: Butterworth & Co., 1978); see also *R. v. I.M.*, 2025 SCC 23, 505 D.L.R. (4th) 1, at para. 171. They are less mature, less capable of moral reasoning, and more susceptible to the negative impacts of criminal justice involvement. At the same time, they possess strong rehabilitative potential because

their behavioural development and character formation remain ongoing. As I will explain, Parliament enacted the YCJA's separate youth justice and sentencing regime precisely to address these characteristics: *R. v. D.B.*, 2008 SCC 25, [2008] 2 S.C.R. 3, at paras. 41, 58, 62, 64, 93; *I.M.*, at para. 171.

- [23] Turning to the provision at issue, there is no dispute that the first step of the test is satisfied. Section 42(5)(a) draws a distinction based on age: it removes the option of deferred custody from young persons who cause or attempt to cause serious bodily harm, even though adults who commit the same conduct may still qualify for a conditional sentence under the Criminal Code.
- [24] The central question, therefore, is whether this age-based distinction is discriminatory. A distinction is discriminatory when it imposes a burden or withholds a benefit in a manner that reinforces, perpetuates, or exacerbates disadvantage. In short, it must worsen the claimant group's situation or negatively affect it. For example, a law that places individuals found not criminally responsible in a worse position than those found guilty discriminates on the basis of mental disability. By contrast, distinctions that have a neutral effect, or that leave the claimant group's circumstances unchanged, do not meet this threshold: *Sharma*, at paras. 28, 52; *C.P.*, at para. 153, per *Wagner C.J.*; *Ontario (Attorney General) v. G.*, 2020 SCC 38, [2020] 3 S.C.R. 629, at para. 67.
- [25] Assessing this second step requires an examination of the broader legislative context, which is an especially important consideration in sentencing. Sentencing provisions do not operate in isolation, and there is no constitutional right to any particular sentence, save one that does not infringe s. 12 of the Charter. Rather, the full sentencing framework, including all guiding principles and available options, shapes how the challenged provision functions and how it affects the claimant group: *Sharma*, at paras. 56-61.
- [26] It is also inappropriate to cherry-pick isolated features from fundamentally different legislative schemes or to demand point-by-point equivalence across regimes. Section 15(1) guarantees equal, not identical, treatment, and Parliament may draw age-based distinctions so long as they are not discriminatory: *Sharma*, at para. 58; *C.P.*, at paras. 144, 159, per *Wagner C.J.* This principle is directly relevant here because the YCJA establishes a distinct and purposely different sentencing regime than that which applies to adults under the Criminal Code: *I.M.*, at paras. 110, 171.
- (2) The Sentencing Judge's Error: Viewing s. 42(5)(a) in Isolation [27] The sentencing judge began from the correct premise: s. 42(5)(a) would discriminate against young persons if it required youth justice courts to incarcerate them for conduct for which adults may receive a community-based sentence under the Criminal Code. Such an outcome would be harmful to young people. Custody represents a greater loss of liberty and is generally less effective at promoting rehabilitation than community-based options: *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at paras. 40, 109. It can also disturb and unsettle a young person's education and social circumstances, often aggravating their pre-existing challenges: *I.M.*, at para. 180. As

the sentencing judge observed, differential treatment that increases young people's exposure to incarceration is inconsistent with their heightened vulnerability and reduced moral blameworthiness – considerations that the YCJA is designed to address, not aggravate. See also *R. v. T.R.*, [2005] O.J. No. 6179 (C.J.), at para. 43.

- [28] This conclusion remains sound despite the Crown's submission that open custody is not equivalent to traditional incarceration. Even open custody is typically more onerous for young people than deferred custody. Although it is less restrictive than adult penitentiary custody and permits some supervised community contact, open custody remains imprisonment. Young persons remain confined unless granted approved leave, which can strain their family and community relationships, expose them to negative peer influences, and hinder their rehabilitation. For these reasons, open custody is generally more detrimental to youth than deferred custody: *R. v. H. (M.)*, 1990 CarswellBC 849 (C.A.), at para. 15; *R. v. B.D.* (1986), 24 C.C.C. (3d) 187 (Ont. C.A.), at pp. 190-91; *R. v. C. (K.L.)* (2004), 252 Sask. R. 254 (Prov. Ct.), at para. 44; *R. v. G. (H.W.)*, 2003 SKPC 122, 236 Sask. R. 209, at para. 53; Justice Brock Jones et al., *Prosecuting and Defending Youth Criminal Justice Cases*, 3rd ed. (Toronto: Emond, 2024), at p. 288.
- [29] However, the sentencing judge erred by examining s. 42(5)(a) in isolation from the YCJA's broader statutory framework. The Act is designed to ensure that custody is used only as a last resort and that accountability is achieved, whenever appropriate, through a wide range of non-custodial and community-based measures. By failing to consider this context, the sentencing judge incorrectly concluded that s. 42(5)(a) displaced key sentencing principles and forced youth court judges to impose custody where non-custodial options remained available.
- [30] When the YCJA's full remedial framework is properly taken into account, the opposite is true. As Justice Katherine McLeod has explained, the mere unavailability of deferred custody "does not mean that a youth must go to jail." Instead, the YCJA provides judges with ample tools to craft community-based sentences where appropriate: "the tools are within the Act to structure a sentence that does not necessarily entail a loss of liberty ... if a sentencing judge believes a youth can and should serve a sentence in the community, that option is available": *R. v. Z. (M.)*, 2005 CarswellOnt 8447 (C.J.), at paras. 48, 51.
- [31] In what follows, I outline the YCJA's sentencing principles and the limited – though meaningful – role played by deferred custody within that framework. I then address the errors in the sentencing judge's analysis and explain why, when viewed in its full legislative context, s. 42(5)(a) does not place young persons at a disadvantage relative to adults. This discussion is guided by the Supreme Court of Canada's recent decisions in *I.M.* and its companion case, *R. v. S.B.*, 2025 SCC 24, 505 D.L.R. (4th) 101.

(3) The YCJA's Foundational Sentencing Principles [32] In seeking to promote the long-term protection of society while advancing the interests of young people, Parliament enacted the YCJA to “send a clearer message to ... restrict[] the use of custody ... [and] reduce the unacceptably high level of youth incarceration”: *R. v. C.D.*, 2005 SCC 78, [2005] 3 S.C.R. 668, at para. 48 (quotation omitted); see also *I.M.*, at para. 69. Parliament delivered that message through several interrelated measures:

- Adopting a more nuanced and youth-specific understanding of accountability, one that requires proportionate and constructive consequences that foster rehabilitation and reintegration and that take full account of young people's circumstances and social context;
- Closely linking proportionality with rehabilitation;
- Expanding the range of non-custodial alternatives;
- Establishing strong safeguards against the imposition of custody; and
- Ensuring that young people are not punished more harshly than similarly situated adults.

[33] These remedial sentencing principles must be interpreted and applied generously and purposively: *I.M.*, at para. 63, citing YCJA, s. 3(2).

- a. Parliament's Remedial Objectives [34] Parliament enacted the YCJA to advance the best interests and unique circumstances of young people, to reduce and restrict youth incarceration, and to protect the public. These objectives must be understood together and applied in harmony: *I.M.*, at paras. 63-65.

[35] First, “the YCJA is generally focused on the best interests of the young person”: *R. v. R.E.W.* (2006), 79 O.R. (3d) 1 (C.A.), at para. 40; see also *I.M.*, at paras. 64-65. As I will explain, the Act's careful and context-sensitive approach to youth accountability reflects this foundational commitment.

[36] Second, Parliament sought to reduce and strictly limit the use of incarceration for young people. It aimed to correct what had been described as a “national disgrace” – a prior legislative regime that resulted in Canada imprisoning a greater proportion of its youth than any comparable country: *R. v. J.K.E.*, 1999 YTYC 501, at paras. 60-61. That former scheme exposed first-time offenders to harsh conditions and, in some cases, punished young people more severely than adults: *C.D.*, at paras. 34-40, 48-49.

[37] Parliament's emphasis on the best interests of youth and on restricting youth custody is consistent with Canada's obligations under the United Nations Convention on the Rights of the Child, Can. T.S. 1992, No. 3. Articles 3(1) and 37(b) require that a young person's best interests be a primary consideration in any judicial decision concerning them and that detention be used only as a measure of last resort. Parliament intended the YCJA to “fully compl[y]” with these obligations, as the Minister of Justice stated during committee proceedings and as the statute's preamble reflects.[3] The Act should therefore be interpreted, as far as its text permits, in a manner that fulfills these commitments: *I.M.*, at

para. 65; C.D., at para. 35; R. v. R.C., 2005 SCC 61, [2005] 3 S.C.R. 99, at para. 41; Quebec (Minister of Justice) v. Canada (Minister of Justice) (2003), 175 C.C.C. (3d) 321 (Que. C.A.), at paras. 132-151 (“Quebec Reference”); Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Assn., 2022 SCC 30, [2022] 2 S.C.R. 303, at paras. 44-49.

- [38] Third, Parliament sought to protect society in the long term. The YCJA’s sentencing principles are the means by which this objective is achieved: I.M., at para. 63; R. v. B.W.P., 2006 SCC 27, [2006] 1 S.C.R. 941, at para. 31, citing YCJA, s. 38(1).
- [39] Public protection is inseparable from promoting young people’s interests and limiting the use of custody, because “public safety is best achieved through rehabilitation”: I.M., at para. 66. Non-custodial sentences harness young people’s strong rehabilitative potential, which incarceration often undermines. Effective rehabilitation benefits society by enabling young people to reach their full potential, reducing youth crime, and preventing the young person who appears before the court today from becoming the repeat adult offender of tomorrow: I.M., at paras. 179-80; R. v. K.J.M., 2019 SCC 55, [2019] 4 S.C.R. 39, at para. 55; D.B., at para. 62; C.D., at para. 48; R. v. M. (J.J.), [1993] 2 S.C.R. 421, at p. 429; Quebec Reference, at paras. 135-137.
- b. The Three Pillars of Youth Accountability [40] To achieve its objectives, Parliament placed a multifaceted, nuanced, and context-sensitive conception of accountability at the centre of youth sentencing. Section 38(1) identifies three essential components of accountability: (1) the imposition of “just sanctions,” (2) that have “meaningful consequences for the young person,” and (3) that “promote ... rehabilitation and reintegration into society.” I explain each principle, how they relate to one another, and how social context evidence assists courts in applying them.
- [41] It is important to acknowledge that this approach has not always been fully appreciated. In R. v. A.O., 2007 ONCA 144, 84 O.R. (3d) 561, this court interpreted “accountability” and “meaningful consequences” primarily through the lens of retribution, a principle which is a component of proportionality: paras. 46-50.[4] However, I.M. expressly rejected A.O.’s narrower view. The Supreme Court made clear that meaningful consequences are distinct from proportionality,[5] and that “[a]ccountability ... cannot be equated solely with retribution”: I.M., at para. 170. As binding authority, I.M. now governs the interpretation of these concepts in this province.
- [42] The first pillar – just sanctions – corresponds to proportionality. Sentences must be proportionate to the seriousness of the offending behaviour and the young person’s degree of responsibility: Ipeelee, at para. 37. This requires courts to consider the factors set out in A.O. – the youth’s culpability, the harm caused, and the normative character of the conduct. These considerations ensure that the youth justice system maintains public confidence and responds appropriately to more serious, harmful, or blameworthy behaviour: I.M., at para. 173; see also A.O., at paras. 46-47; S.B., at para. 63; YCJA, preamble & ss. 3(1)(a), 38(1), 38(2) (c).

- [43] Parliament modified the proportionality principle to reflect the realities of young people's lives, which require sensitivity, restraint, and age-appropriate responses. Youth proportionality sets an upper limit and prohibits imposing disproportionately harsh sentences, whether to punish or to rehabilitate: A.O., at paras. 47, 50. At the same time, it departs from the more punitive orientation of adult proportionality by emphasizing that accountability must "be consistent with the greater dependence of young persons and their reduced level of maturity": YCJA, s. 3(1)(b)(ii). This approach is grounded in young people's developmental needs, diminished blameworthiness, and heightened vulnerability to the effects of custody: I.M., at paras. 110, 129, 171, 175; R. v. S.J.L., 2009 SCC 14, [2009] 1 S.C.R. 426, at para. 75.
- [44] The second pillar – meaningful consequences – requires consequences that have a constructive, forward-looking impact on the young person. This meaning governs because the English and French versions of s. 38(1) share it: R. v. Mac, 2002 SCC 24, [2002] 1 S.C.R. 856, at paras. 5-6. The French text refers to "perspectives positives," comprising the sense of "meaningful" or "constructive prospects." Thus, meaningful consequences should positively shape the young person's future trajectory, including by promoting a sense of responsibility: LSJPA - 0713, 2007 QCCA 114, at para. 52; LSJPA - 0715, 2007 QCCA 116, at paras. 47-48; R. c. D.N., 2010 ONCA 168, 253 C.C.C. (3d) 455, at para. 36; Le Robert & Collins, 11th ed. (New York: HarperCollins Publishers, 2020), at pp. 721, 758 (definitions of "positif, -ive" and "perspective").
- [45] Judges must therefore impose consequences that are meaningful for the individual young person and tailored to their needs and stage of development. Such consequences must address the underlying circumstances of the offending behaviour and foster the young person's respect for societal values, sense of responsibility, willingness to acknowledge and repair harm, and connection to family and community. These are person-centred, individualized measures tailored to the young person's unique circumstances: I.M., at paras. 170-171; B.W.P., at paras. 25, 31, 33; D.B., at paras. 61-65; R. v. A.A.Z., 2013 MBCA 33, 298 C.C.C. (3d) 59, at paras. 30-32; YCJA, ss. 3(1)(a)(iii), 3(1)(c)(i)-(iii), 38(2)(e)(iii).
- [46] The third pillar – rehabilitation and reintegration – is a central focus of the YCJA. Whereas the Criminal Code identifies rehabilitation as only one of several discretionary objectives, the YCJA situates rehabilitation and reintegration at the heart of accountability. This represents a fundamentally different approach to youth sentencing: see D.B., at paras. 1, 93. Section 38(1) explicitly requires both meaningful consequences and the promotion of rehabilitation and reintegration. These objectives take priority over denunciation and specific deterrence: I.M., at paras. 129, 170, 175; R. v. Okemow, 2017 MBCA 59, 353 C.C.C. (3d) 141, at paras. 45-46, 70. Judges must, therefore, "emphasize ... rehabilitation and reintegration" and select the sentence "most likely to" achieve these goals, subject to proportionality: YCJA, ss. 3(1)(b)(i), 38(2)(e)(ii).

- [47] The second and third pillars reflect Parliament’s commitment to advancing the best interests of young people: R.E.W., at para. 40. Interpreted purposively and in light of Canada’s obligations under the Convention on the Rights of the Child, they reflect a legislative judgment that treating constructive consequences, rehabilitation, and reintegration as primary considerations will promote young people’s best interests in the sentencing context. They must be applied with this purpose front of mind. This does not mean that custody is never appropriate, nor that best interests override proportionality. Rather, courts must give effect to those interests as fully as possible within the constraints of proportionality: Quebec Reference, at paras. 132-151.
- [48] Parliament expected youth court judges to harmonize these three pillars and to apply each of them as fully as possible. As I.M. emphasized, accountability “encompasses sanctions that are not only proportionate but also promote meaningful consequences and societal reintegration,” requiring “sentences that reflect young offenders’ circumstances while addressing the gravity of their actions”: para. 170; see also S.B., at para. 62. An integrated approach is essential to “guide [young people] into adulthood” through individualized measures which match their developmental needs and rehabilitative potential: I.M., at paras. 104, 171.
- [49] It is, therefore, an error in principle to treat proportionality – or retribution – as the dominant or isolated focus of youth sentencing: Sirois c. R., 2017 QCCA 558, at paras. 40, 50. While some earlier decisions such as R. v. S.J.N.S., 2013 BCCA 379, 305 C.C.C. (3d) 160, at para. 27, suggested a more hierarchical model, I.M. clarified that youth accountability requires a holistic approach. Accountability is not measured solely by the severity or length of a sentence, but also by whether the sentence fosters constructive outcomes that support rehabilitation and reintegration. These three pillars cannot be cleanly separated. A sentence that undermines rehabilitation, exacerbates a young person’s vulnerabilities, or fails to produce constructive consequences will often be disproportionately harsh: I.M., at para. 179; M. (C.A.), at para. 82; R. v. Habib, 2024 ONCA 830, 99 C.R. (7th) 110, at paras. 34, 36; R. v. Hills, 2023 SCC 2, 477 D.L.R. (4th) 1, at paras. 135, 165.
- [50] As Professor Malcolm Thorburn notes, the YCJA’s approach calls on courts “to embrace more creativity in the crafting of sentences and not be restricted by an undue emphasis on retribution.” Judges should therefore seek “the type of sentence ... most conducive to the rehabilitation and reintegration of the young person,” while still respecting proportionality: “Accountability and Proportionality in Youth Criminal Justice” (2009) 55 Crim. L.Q. 304, at pp. 308, 321-322. In practice, this often favours non-custodial sanctions, which can promote responsibility and strengthen the social bonds that incarceration risks severing.
- [51] I.M. also emphasized that social context evidence is “often indispensable” in assessing accountability: at para. 179. Such evidence provides a fuller understanding of a young person’s background, vulnerabilities, judgment, needs, and the inequities they may have experienced: I.M., at para. 166; S.B., at para. 50. It informs proportionality by clarifying the youth’s degree of responsibility and shapes all three pillars by illuminating how a particular

sanction will affect the young person. Social context evidence may reveal, for example, that a custodial sentence would be disproportionate, not constructive, and harmful to rehabilitation because it “could exacerbate the young person’s vulnerabilities”: I.M., at para. 179.

- [52] Social context considerations are especially important for racialized young people who face discrimination: I.M., at paras. 164-65, citing *R. v. Morris*, 2021 ONCA 680, 159 O.R. (3d) 641. This aligns with Parliament’s direction that sanctions must “respect ... ethnic, cultural, and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements”: YCJA, s. 3(1)(c)(iv). As a result, the principles developed in *Gladue*, *Ipeelee*, and *Morris* apply with full force – and often greater weight – in youth sentencing because the YCJA places stronger emphasis on rehabilitation, reintegration, and meaningful consequences, along with reduced reliance on custody, and correspondingly less emphasis on punishment: I.M., at paras. 162-67, 179; *R. v. C.P. & J.A.*, 2009 NBCA 65, 349 N.B.R. (2d) 214, at para. 25; *R. v. T.J.D.*, 2016 MBCA 67, 330 Man. R. (2d) 146, at para. 4.
- c. Expanding Non-Custodial Options & Restricting Custody [53] To equip judges to achieve accountability in a manner that is sensitive to young people’s social context, Parliament aimed to give judges more options – not fewer. Thus, the YCJA expanded the range of non-custodial sentencing options. The Act introduced two new youth-specific dispositions – intensive support and supervision orders and non-residential programs. Together with existing dispositions such as probation, community service, and prohibition orders, these measures give judges greater capacity to reduce the use of custody for young persons: *R. v. J.S.M.*, 2005 BCCA 417, 200 C.C.C. (3d) 400, at para. 33; Justice Andrea E.E. Tuck-Jackson, “Evaluating the Youth Sentencing Regime in Comparison with Adult Court,” in David Cole & Julian Roberts, eds., *Sentencing in Canada: Essays in Law, Policy, and Practice* (Toronto: Irwin Law, 2020) 315, at pp. 327-328.
- [54] These non-custodial options can often best achieve accountability, advance young people’s best interests, and protect the public. As the Supreme Court has noted, they may “provide more meaningful consequences and be more effective in rehabilitating young persons” than incarceration: C.D., at para. 48 (quotation omitted); see also *R. v. K.O.*, 2012 NLCA 55, 326 Nfld. & P.E.I.R. 55, at para. 31. They promote rehabilitation by allowing young people to address their difficulties in their own social environments, supported by family and community. They also enable the imposition of consequences such as reparations and participation in programming, which can be more constructive, developmentally appropriate, and responsive to young people’s needs than custody: I.M., at paras. 129, 171; *R. v. P.R.*, 2018 SKCA 27, 365 C.C.C. (3d) 120, at paras. 98-99; Nicholas Bala & Sanjeev Anand, *Youth Criminal Justice Law*, 3rd ed. (Toronto: Irwin Law, 2012), at p. 500.
- [55] Incarceration, by contrast, risks deepening young people’s existing challenges and vulnerabilities. As the late Chief Justice McMurtry recognized, it may have little or no constructive effect on those who, because of developmental difficulties, peer pressure, or limited life options, are indifferent to custody or perceive it as a “rite of passage” that will

enhance their social standing: I.M., at paras. 179-80; P.R., at paras. 98-99; R. v. Morrisseau, 2017 ONCJ 307, 38 C.R. (7th) 190, at para. 94; The Hon. Roy McMurtry & Dr. Alvin Curling, The Review of the Roots of Youth Violence Report, Vol. 1: Findings, Analysis and Conclusions (Toronto: Queen's Printer for Ontario, 2008), at p. 277.

- [56] For these reasons, Parliament prioritized restraint and imposed strict limits on the use of incarceration. Section 39(1) of the YCJA makes custody a measure of last resort by prohibiting custodial sentences unless one of four statutory “gateways” is met. Even where custody is available, Parliament enacted strong, interlocking safeguards. Judges must select the least restrictive proportionate sentence capable of achieving accountability and must first consider non-custodial alternatives, taking into account the likelihood of the young person’s compliance, the pre-sentence report, and the youth’s own sentencing proposal. Judges are prohibited from imposing custody if any of these alternatives is reasonable and must explain why less restrictive options are inadequate if a custodial sentence is ordered: YCJA, ss. 38(2)(d)-(e), 39(2)-(3), (6), and (9); see also I.M., at paras. 129, 176; C.D., at paras. 39, 48; D.B., at para. 43.
- [57] Taken together, these provisions establish a general rule against incarceration and in favour of non-custodial sanctions. While custody may be necessary in some cases involving violent, serious, or repeat offending, it remains an exceptional last resort, and community-based dispositions are the norm: I.M., at paras. 129, 176; R.E.W., at para. 44; R. v. J.S. (2006), 81 O.R. (3d) 511 (C.A.), at para. 45; Okemow, at para. 42.
- [58] This general rule carries special force for young people being sentenced for their first offence. Non-custodial dispositions are strongly preferred for those young people, while custody is reserved for the most serious cases and avoided whenever possible. This enduring principle, which emerged in earlier caselaw and is now reflected in ss. 38-39 of the YCJA, advances a compelling policy – to protect society and advance young people’s best interests, every effort should be made to ensure that a young person’s first offence is also their last. Practising restraint achieves this crucial goal by promoting rehabilitation, preserving family and community ties, and keeping impressionable young people away from the negative peers and influences to which custody risks exposing them: R. v. M.F., 2025 ONCA 596, at paras. 25-26; see also, e.g., R. v. P.L.M. (1985), 69 N.S.R. (2d) 99 (C.A.), at para. 5; R. v. W.S.G. (1991), 90 Nfld. & P.E.I.R. (N.L.C.A.), at para. 17; R. v. S.B. (1994), 125 Sask. R. 303 (C.A.), at paras. 39-41; R. v. K.(E.P.) (1997), 154 Nfld. & P.E.I.R. 359 (P.E.I.C.A.), at paras. 3-4.
- [59] In addition, through s. 38(2)(a), Parliament prohibited judges from punishing young people more harshly than adults who commit the same offence in similar circumstances. This requirement is mandatory, not discretionary: D.B., at para. 43. It reflects Parliament’s view that young persons “presumptively do not bear the same level of responsibility as adults” and that youth accountability must reflect their developmental realities rather than the Criminal Code’s more punitive approach to adult sentencing: I.M., at paras. 67, 110, 171.

- d. Summary of the YCJA's Governing Sentencing Principles [60] For ease of reference, I summarize the YCJA's relevant foundational sentencing principles below:
1. The YCJA must be applied generously to achieve its aims of advancing young people's best interests, reducing and restricting youth incarceration, and protecting the public.
  2. Accountability is achieved by (a) proportionality, (b) meaningful consequences, and (c) rehabilitation and reintegration. Judges must harmonize these three pillars instead of treating proportionality as predominant and should advance young people's best interests as much as possible when applying them.
    - a. Proportionate sentences must account for young people's diminished blameworthiness and developmental challenges in addition to the seriousness of the offending behaviour.
    - b. Meaningful consequences are person-centred sanctions that respond constructively to young people's needs and circumstances.
    - c. Rehabilitation and reintegration must be prioritized and the proportionate sentence most likely to achieve these objectives must be selected.
  3. Social context evidence is vital to accountability because it can reduce moral blameworthiness and shed light on which consequences will be meaningful and promote rehabilitation and reintegration – especially for young people who belong to racialized groups and face discrimination.
  4. Non-custodial sanctions are normally the best way to achieve accountability – they should be considered first and must be selected if they are a reasonable alternative to custody.
  5. Custody is a last resort.
  6. Young people cannot be punished more harshly than adults who committed the same offence in similar circumstances.
- (4) The Role of Deferred Custody [61] To advance its policy of giving youth justice courts more flexibility, Parliament created a deferred custody option in addition to expanding non-custodial alternatives. This disposition “allows the youth to serve what would otherwise be a custodial sentence in the community but subject to strict conditions and with the possibility of immediate apprehension and placement in a custody facility if the youth is believed to have breached or to be about to breach any of the conditions”: C.D., at para. 3 (quotation omitted). As the authoritative statements of the Minister's Parliamentary Secretary and departmental officials make clear, its purpose is to promote rehabilitation by keeping young people in their communities and away from the negative influences associated with custody, while also preventing recidivism and protecting the public.[6]
- [62] Deferred custody is often described as the youth justice counterpart to the adult conditional sentence. As I explain later, that comparison is imperfect, given that the YCJA provides numerous non-custodial options capable of achieving the same sentencing objectives that

conditional sentences serve in the Criminal Code's distinct regime. However, the two sanctions do share similarities: each involves a custodial sentence served in the community, subject to mandatory and discretionary conditions, and each permits incarceration if those conditions are breached: T.R., at paras. 30-31.

- [63] Parliament did not intend deferred custody to be overused. Shortly before the YCJA was enacted, a federal-provincial-territorial task force warned that introducing community-based custody could lead judges to impose it as a substitute for probation rather than as an alternative to actual incarceration. The task force cautioned that such “net-widening” could result in more young people being incarcerated for breaching conditions: Federal-Provincial-Territorial Task Force on Youth Justice, *Review of the Young Offenders Act and the Youth Justice System in Canada* (Ottawa: Department of Justice, 1996), at pp. 223-226. Aware of this risk, Parliament subjected deferred custody to the limits in s. 39. Under s. 42(5)(b), deferred custody is available only when a s. 39(1) gateway to incarceration is open and when no reasonable non-custodial alternative exists under s. 39(2): R. v. C.D.J., 2005 ABCA 293, 205 C.C.C. (3d) 564, at paras. 13-14, 29; R. v. K. and S., 2012 YKYC 3, at paras. 72, 78.
- [64] Parliament also imposed further limits through the challenged provisions, ss. 42(5)(a) and 42(2)(p). Section 42(5)(a) removes deferred custody as an option where the young person causes or attempts to cause serious bodily harm. Section 42(2)(p) caps the length of deferred custody at six months. As I later explain in greater detail, neither provision suggests that Parliament intended to curtail the availability of non-custodial alternatives more broadly. Indeed, these provisions have remained largely unchanged since 2002, aside from a 2012 amendment clarifying that s. 42(5)(a) is mandatory rather than discretionary: R. v. J.A.H., 2016 MBCA 58, 330 Man. R. (2d) 93, at paras. 12-18. As the Crown notes, both provisions signal Parliament's cautious, incremental approach to introducing deferred custody as a new youth disposition – mindful of its potential to widen the net and expose young people to unnecessary incarceration for breaches.
- [65] The legislative history also shows that Parliament designed s. 42(5)(a) to reinforce the distinction the YCJA draws between more serious offending that causes (or attempts to cause) serious bodily harm and less serious conduct.[7] This provision imposes an immediate consequence in the former category of cases – judges are required to rely on other YCJA tools to respond to serious offending because deferred custody is unavailable. This aligns with s. 3(1)(b)(iv)'s emphasis on timely intervention and underscores the seriousness of the conduct – considerations that bear directly on proportionality and accountability: I.M., at para. 177. As explained in detail below, however, there is no indication that Parliament intended these provisions to broadly restrict the availability of non-custodial alternatives.
- (5) Section 42(5)(a) Preserves Non-Custodial Alternatives [66] Although the sentencing judge recognized the YCJA's remedial sentencing principles, she concluded that s. 42(5)(a) prevented her from applying them and required custody. That conclusion was incorrect. Section 42(5)(a) must be read harmoniously with the YCJA's scheme, in light of settled non-

custodial sentencing practices, and to respect Parliament's intent to give judges more flexibility – not less. Thus, it preserves judicial discretion to select non-custodial options and merely restricts one newly created community-based custodial disposition – deferred custody. Instead of jumping from the unavailability of deferred custody to another custodial sentence, judges must follow Parliament's directive and carefully evaluate all potential non-custodial alternatives against the remaining custodial options. This conclusion honours legislative intent, respects the gravity of offences involving serious bodily harm, and is consistent with precedent.

- a. Parliament Intended to Preserve Non-Custodial Alternatives [67] Beginning with the Act itself, a textual, contextual, and purposive interpretation shows that Parliament meant to preserve judicial discretion to select non-custodial sanctions – not to require “exceptional circumstances” before they may be imposed or to make custody the default.
- [68] First, the text of s. 42(5)(a) neither makes custody the default nor requires “exceptional circumstances” to impose a non-custodial sanction. It contains no such language. Instead, it only removes a single sanction – deferred custody. Because the text is central to statutory interpretation, this clear and precise language strongly suggests that Parliament did not intend an exceptional-circumstances test for other, non-custodial sanctions: *R. v. G.D.P.*, 2018 ABPC 278, at para. 35; see also *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316, at paras. 24, 28; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10.
- [69] Second, s. 42(5)(a)'s context reinforces that it does not restrict access to non-custodial options. Where Parliament wanted to require custody or impose an exceptional-circumstances test, it did so expressly elsewhere in the YCJA: ss. 29(2)(b)(iii), 39(1)(d), 42(2)(q)-(r). The absence of any such language in s. 42(5)(a) indicates that it does not perform those functions: *University Health Network v. Ontario (Minister of Finance)* (2001), 208 D.L.R. (4th) 459 (Ont. C.A.), at para. 31, leave to appeal refused, [2002] S.C.C.A. No. 23.
- [70] Section 42(5)(a)'s legal context reinforces this conclusion. In addition to introducing several new community-based non-custodial dispositions, the YCJA preserved the pre-existing non-custodial alternative of youth probation. For decades, youth justice courts had employed this latter sanction – which, as I later explain, is much more robust than adult probation – to respond to serious bodily harm offences under the YCJA's predecessor, the Young Offenders Act, R.S.C. 1985, c. Y-1.[8] Parliament would not have reversed such a settled non-custodial sentencing practice or restricted youth justice courts' authority to employ additional non-custodial alternatives in the same manner without using direct language. Instead, it must have meant to achieve what it did expressly – place careful limits on the use of a single novel sanction: *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575, at paras. 55-57.

- [71] Thus, I do not accept the suggestion in *R. v. P.K.K.*, 2006 ABCA 1, 206 C.C.C. (3d) 222, at para. 17, that barring deferred custody implicitly bars other non-custodial options unless exceptional circumstances exist. This reasoning is inconsistent with basic interpretive principles. Where a statute creates one specific exception, courts must not infer additional unstated exceptions: *Canadian Private Copying Collective v. Canadian Storage Media Alliance*, 2004 FCA 424, [2005] 2 F.C.R. 654, at para. 96, leave to appeal refused, [2005] S.C.C.A. No. 70. Because Parliament chose to exclude only deferred custody from s. 42(2)'s general rule that all sentencing dispositions are available, courts cannot read additional exclusions into the statute.
- [72] Third, the YCJA's scheme and purpose provide further confirmation. Treating custody as the default would clash with both ss. 38-39's strict constraints on incarceration and s. 38(2)(a)'s prohibition against punishing young people more harshly than adults, for whom conditional sentencing remains available. This would undercut both the Act's scheme and its overarching goal – to restrict youth incarceration by requiring restraint and giving judges more options, not fewer. Such an internally inconsistent interpretation which frustrates legislative purpose cannot be correct: *Willick v. Willick*, [1994] 3 S.C.R. 670, at p. 689; *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795, at para. 50.
- [73] In contrast, preserving non-custodial options harmonizes s. 42(5)(a) with the YCJA's scheme and purpose. Under this approach, courts may not “jump directly from the rejection of a deferred custody and supervision order to a custody and supervision order”: *R. v. L.L.*, 2019 CanLII 13619 (N.L. Prov. Ct.), at para. 32. Instead, they must follow Parliament's direction by applying ss. 38-39 and conducting a contextual analysis comparing custodial and non-custodial dispositions and assessing how each aligns with the statute's sentencing principles: *I.M.*, at paras. 168-73. Where deferred custody is unavailable, a judge may still properly conclude that non-custodial options are preferable to actual custody, even if deferred custody would have been ideal: *G. (H.W.)*, at para. 54.
- b. Non-Custodial Alternatives Respect Offence Gravity [74] The gravity of the offence and the harm caused are consistent with this conclusion. These factors are highly relevant to proportionality and accountability: *I.M.*, at paras. 141, 176-77; *S.B.*, at para. 63. But two considerations demonstrate that seriousness alone does not compel custody.
- [75] First, the YCJA does not make incarceration the default for serious offences. Except for murder, no offence mandates custody. In some cases, non-custodial alternatives can still be proportionate. The gravity of the offence is important but not determinative, because Parliament recognized that young people's developmental immaturity, reduced moral blameworthiness, and strong rehabilitative prospects are core premises of the YCJA. Judges must therefore consider developmental age – which may differ from chronological age – when assessing accountability: *I.M.*, at paras. 104-5, 152-53; *S.B.*, at para. 31; *S.J.L.*, at para. 75; *R. v. M.M.*, 2022 NSCA 46, 415 C.C.C. (3d) 536, at paras. 68-70; *R. v. M.W.*, 2017 ONCA 22, 134 O.R. (3d) 1, at paras. 101-04; *LSJPA – 1547*, 2015 QCCQ 10851, at paras. 76-77.

- [76] Second, s. 42(5)(a) applies to a wide range of conduct with varying levels of seriousness and moral culpability, both of which are essential to proportionality: *I.M.*, at paras. 176-77. It captures any offence in which a young person causes or attempts to cause substantial physical or psychological injury. Because it is triggered by harm rather than by the offender's mental state, it applies even where the young person did not use force, did not intend the harm, or could not reasonably have foreseen it. It therefore encompasses negligent conduct, as well as indirect participation (including aiding and abetting without a causal link to the harm) and attempts that produce no injury: *R. v. M.A.H.*, 2013 ONCA 235, 298 C.C.C. (3d) 470, at paras. 21-25, 28-31; *R. v. K.C.*, 2011 ONCA 257, 105 O.R. (3d) 1, at paras. 43, 59, 61-62, 68-69; *R. v. V.J.T.*, 2007 MBCA 45, 218 C.C.C. (3d) 563, at paras. 29, 32.
- [77] For both reasons, broad assertions that the gravity of offences involving serious bodily harm make custody "the only realistic option" are unhelpful and inconsistent with the statutory scheme: *G.D.P.*, at paras. 34-35. Instead of forcing cases into rigid exceptional-circumstances categories, courts should focus on Parliament's direction to apply the YCJA's principles: *R. v. I.G.*, 2024 ABCA 264, at para. 27; *R. v. K.S.*, 2009 NLCA 46, 290 Nfld. & P.E.I.R. 291, at paras. 26-28; see also *R. v. Pike*, 2024 ONCA 608, 173 O.R. (3d) 241, at paras. 180-82; *R. v. Parranto*, 2021 SCC 46, [2021] 3 S.C.R. 336, at para. 40.
- c. Preserving Non-Custodial Options Respects Precedent [78] Finally, preserving courts' ability to select non-custodial alternatives respects precedent. The jurisprudence interpreting s. 42(5)(a) – even cases which incorrectly assume that imprisonment is generally required – confirms that youth probation, intensive support and supervision orders, non-residential programs, and other non-custodial sanctions remain available, and that the YCJA's principles designed to limit the use of incarceration continue to govern the analysis: *I.G.*, at paras. 27-28, citing *K.S.*, at paras. 25-28; *L.L.*, at paras. 32-36; *G.D.P.*, at paras. 34-35.
- [79] In fairness to the sentencing judge, certain judicial comments may appear to support her reasoning. In *C.D.*, the Supreme Court stated that s. 42(5)(a) "suggests that Parliament intended that an actual custodial sentence should be imposed": at para. 24. This court, in *K.C.*, similarly observed that when s. 42(5)(a) applies, "in practical terms ... absent exceptional circumstances, an actual custodial sentence will be the only realistic sentencing option": at para. 26. Some decisions have assumed that these comments were meant to be definitive: see, e.g., *K.S.*, at para. 25; *J.A.H.*, at para. 27; *R. v. B.S.*, 2017 MBCA 102, at para. 10; *P.R.*, at paras. 78, 90-91 (citing *J.A.H.* and *B.S.*); *I.G.*, at para. 33.
- [80] However, these incidental observations in *C.D.* and *K.C.* did not purport to decide the issue: *R. v. Kirkpatrick*, 2022 SCC 33, [2022] 2 S.C.R. 480, at para. 85. Section 42(5)(a) was not at issue because both cases addressed different provisions – *C.D.* concerned s. 39(1)(a)'s "violent offence" gateway, and *K.C.* addressed the former "serious violent offence" designation in s. 42(9). Instead, their references to s. 42(5)(a) were merely passing: background comments in *K.C.*, and, in *C.D.*, a brief illustration that Parliament intended the underlying conduct to qualify as a "violent offence" for purposes of s. 39(1)(a) – thus, merely opening the door to custody rather than mandating it. Neither decision meant to deal with it

definitively so as to preclude the full interpretative analysis of s. 42(5)(a) conducted in this judgment: Kirkpatrick, at para. 123, per Côté, Brown and Rowe JJ. (concurring).

- (6) The YCJA Provides Viable Non-Custodial Alternatives [81] The sentencing judge also concluded that, without the option of a deferred custody order, no viable alternative to actual incarceration remained. That conclusion is incorrect. The YCJA furnishes judges with a broad array of tools designed to prevent the inappropriate imprisonment of young people, including robust probation orders, intensive support and supervision orders, non-residential programs, and other community-based measures. These alternatives enable judges to impose proportionate and constructive consequences, safeguard the public, and, where appropriate, denounce wrongdoing and promote individual deterrence. When applied together, these tools are generally capable of achieving the same sentencing objectives that conditional sentences serve within the Criminal Code's distinct adult sentencing regime.
- a. Probation Can Achieve Proportionality [82] Like its predecessor, the YCJA authorizes the imposition of stringent probation conditions to hold young people accountable for offences involving serious bodily harm. Youth probation is not adult probation. Rather, this much more flexible and robust disposition has long been used to sanction grave and highly blameworthy conduct. The sentencing judge therefore erred in concluding that a probation order could not approximate the level of restriction available under a deferred custody order.
- [83] Unlike its adult counterpart, youth probation has long been capable of responding to more serious offending. Under the Criminal Code, probation is typically ill-suited to hold offenders accountable for grave and highly blameworthy wrongdoing which requires denunciation and deterrence: Proulx, at para. 32. Youth justice courts, however, employed youth probation to meet these very needs for decades under the Young Offenders Act, especially for young people being sentenced for their first offence, and even in cases involving serious bodily harm: see, e.g., L. (W.), at para. 20; J.D.M., at para. 8; R.H.C.S., at para. 9. This sanction's flexibility empowered courts to match serious offending with vigorous conditions, such as education and programming, residence requirements, curfew, and even house arrest: Nicholas Bala, *Young Offenders Law* (Concord, Ont.: Irwin Law, 1997), at p. 234; R. v. S.C.W. (1993), 113 Sask. R. 8 (C.A.); R. v. B. (J.P.) (1993), 31 B.C.A.C. 81 (C.A.); R. v. E. (S.M.), 1989 CarswellOnt 1729 (C.A.); R. v. H. (R.R.), 1988 CarswellOnt 2037 (C.A.).
- [84] To advance its goal of giving judges more options not fewer, the YCJA preserved its predecessor's dynamic probation regime. Under the Act, probation may be used to impose proportionate and meaningful consequences for serious offending, not solely to foster rehabilitation. Section 55(2)(h) of the YCJA – mirroring s. 105(3)(h) governing deferred custody – permits the court to impose any condition it considers appropriate. This includes conditions directed at proportionality and, where warranted, denunciation and individual deterrence, consistent with the purposes in s. 38(1) and prior jurisprudence under the

Young Offenders Act: *R. v. Singh*, 2016 MBCA 38, 334 C.C.C. (3d) 423, at para. 17; *R. v. J.R.L.*, 2007 NSCA 62, 254 N.S.R. (2d) 344, at paras. 54-64; *R. v. M.A.C.*, 2022 NSCA 4, at paras. 26-27; *R. v. C.N.A.C.*, 2013 SKPC 202, 434 Sask. R. 244, at para. 87.

- [85] To preserve flexibility, probation supplies many powerful tools to respond to more serious offending. As noted in *Z. (M.)*, probation conditions can, in practice, be as restrictive as those in deferred custody orders: at para. 49. The YCJA provides nearly identical optional conditions for both dispositions, and probation conditions may mirror even the mandatory terms applicable to deferred custody: *R. v. V.F.*, [2005] O.J. No. 5917 (C.J.), at paras. 19-21; compare ss. 55(1)-(2) with ss. 105(2)-(3). Curfews, house-arrest-like restrictions, mandatory counselling, and frequent reporting are all permissible, just as was the case under the Young Offenders Act. These tools remain consistent with the YCJA's proportionality requirements and its distinct approach to youth accountability: *Singh*, at para. 17.
- [86] Since the YCJA's enactment, the courts have used the robust probation tools which Parliament provided to hold young people accountable for offences involving serious bodily harm. They have achieved proportionality by imposing substantial periods of probation – up to two years for an individual offence, rising to three years for multiple offences sentenced jointly. As well, they have set vigorous probation conditions – including curfews, residence requirements, mandatory programming, and close supervision – to respond to the gravity and culpability of the offence, denounce wrongdoing, deter reoffending, and provide immediate protection to the public. See, e.g., *K.S.*, at para. 27; *M.M.*, at paras. 68, 101, 108; *J.A.H.*, at paras. 29-43; *K.O.*, at paras. 19, 64; *C.N.A.C.*, at para. 87.
- [87] Robust probation also often offers long-term public protection – a goal which matters most in cases involving serious bodily harm. Probation advances rehabilitation through conditions that protect young people from negative peer influences, help them address their underlying challenges, and provide close supervision and timely intervention to prevent backsliding. These benefits are powerful, especially for young people being sentenced for a first offence. Probation shields those young people from a prison environment that may endanger long-term public safety by entrenching them in the justice system and intensifying destructive behaviours. By guarding against these risks, probation helps ensure that a first offence remains the last and only, safeguards young people from becoming the repeat adult offenders of tomorrow, and “keep[s] future potential victims from becoming actual victims”: *J.A.H.*, at para. 41; see also *K.S.*, at para. 27; *P.R.*, at paras. 98-99; *R. v. S.L.*, 2003 BCCA 563, 179 C.C.C. (3d) 97, at para. 60.
- [88] The sentencing judge's contrary reasoning – that youth probation was not robust enough to respond to offences involving serious bodily harm – may have been influenced by the Criminal Code distinction between punitive conditional sentences and rehabilitative probation. Under s. 732.1(3)(h), punitive probation conditions are prohibited, whereas s. 742.3(2)(f) authorizes punitive conditions for conditional sentences: *R. v. Shoker*, 2006 SCC 44, [2006] 2 S.C.R. 399, at para. 13, citing *Proulx*, at para. 34. Some appellate decisions have assumed the YCJA adopts a similar distinction: see, e.g., *R. v. K.G.B. & S.R.B.*, 2005 NBCA 96,

291 N.B.R. (2d) 372, at paras. 58-60; *R. v. J.H.-D.*, 2013 BCCA 295, 299 C.C.C. (3d) 32, at para. 23.

- [89] That assumption incorrectly overlooks Parliament's intent to expand, not erode, judicial discretion. The Criminal Code limitations do not apply to the YCJA unless expressly incorporated, and no such incorporation is present here: *I.M.*, at para. 110; *B.W.P.*, at paras. 22-23. Under ss. 38(2)(e.1)(i) and 55(2)(h), probation conditions may advance any of the purposes listed in s. 38(1), including the imposition of proportionate and meaningful consequences: *Singh*, at para. 17; *M.A.C.*, at paras. 26-27. Thus, the YCJA preserves – and does not sever – the decades-old tradition of using robust probation conditions to respond to serious offending. It gives judges the flexibility they need to achieve proportionality through non-custodial alternatives, especially for a first offence.
- [90] The use of probation to impose proportionate consequences neither circumvents the Act's limits on custody nor conflicts with s. 42(5)(a). While deferred custody includes many strict mandatory conditions, it was not meant to shrink the menu of options by overturning the longstanding jurisprudence authorizing equally robust discretionary probation conditions. Instead, the distinction between probation and deferred custody lies in the response to breach: *V.F.*, at paras. 21-22. Deferred custody permits immediate apprehension and detention upon a belief that the young person has breached or is about to breach a condition: *C.D.*, at para. 3; YCJA, ss. 106-109. In contrast, a custodial response to a probation breach requires proof beyond a reasonable doubt of intentional disobedience, the availability of a s. 39 gateway, and the absence of a reasonable non-custodial alternative: *R. v. D.J.M.*, 2010 BCSC 448, at para. 23; *R. v. A.M.*, 2007 CanLII 4853 (N.L. Prov. Ct.), at paras. 25-34; YCJA, s. 137.
- [91] The YCJA further safeguards against probation conditions that are so onerous as to set young persons up to fail. A probation order cannot require residence in a custodial facility, consistent with the Act's limits on custody and with jurisprudence under the former Young Offenders Act: see *E. (S.M.)*. In addition, s. 38(2)(e.1) requires that all conditions be necessary to achieve a legitimate sentencing purpose, not serve as substitutes for social services, and be reasonably capable of compliance. Such conditions must therefore be imposed only where demonstrably required, not as a default.
- b. Other Non-Custodial Options Can Meet Sentencing Needs [92] The sentencing judge also failed to consider several significant non-custodial sentencing options under the YCJA, including intensive support and supervision programs, non-residential programs, community service, and prohibition orders. These dispositions can impose proportionate and meaningful consequences while ensuring public protection, often rendering custody unnecessary: *Z. (M.)*, at paras. 43-46; *J.S.M.*, at para. 38. They help ensure that the YCJA fulfils its mandate of providing age-appropriate, constructive responses to offending behaviour that promote rehabilitation and reintegration (*I.M.*, at paras. 129, 171), and they give judges a wide range of options to keep young people out of custody, especially for a first offence.

- [93] Intensive support and supervision orders and non-residential programs permit young persons to remain in the community without compromising public safety. Intensive support and supervision orders provide enhanced monitoring and structured assistance, thereby increasing compliance with conditions. Non-residential programs engage youth in organized activities – particularly during high-risk periods – which reduces the likelihood of reoffending or engaging in antisocial conduct. Both options also improve the detection of non-compliance, which may serve as a more effective deterrent than the prospect of severe punishment, such as imprisonment upon breach of deferred custody or an adult conditional sentence: see, by analogy, *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 113. These measures advance proportionality and rehabilitation by combining firm expectations and accountability with community-based supports that address the root causes of offending, promote behavioural change, and assist young persons in realizing their potential: *YCJA*, ss. 42(2)(l)-(m); *I.M.*, at paras. 104, 171; *R. v. Z.K.*, 2012 ABPC 275, at paras. 78-80, *aff'd* 2013 ABCA 166; *Tuck-Jackson*, at pp. 327-328.
- [94] Judges may also employ prohibition orders and community service orders under ss. 42(2)(i)-(j) to further proportionality and individual deterrence. For example, a driving prohibition combined with targeted probation conditions may impose consequences sufficient to obviate the need for custody, as my colleague Justice Copeland explained in her former capacity as a trial judge in *R. v. A.H.*, 2017 ONCJ 521, at paras. 81, 90; see also *R. v. M.A.N.*, 2007 ONCA 12, 40 M.V.R. (5th) 161, at para. 3. Community service orders likewise deliver proportionate and constructive consequences while advancing the *YCJA*'s broader objectives by reinforcing respect for societal values, promoting restorative justice, and encouraging community participation in the youth's rehabilitation: *I.M.*, at para. 64; *R. v. K.H.*, 2019 ONCJ 525, at para. 64; Sherri Davis-Barron, *Youth and the Criminal Law in Canada*, 2nd ed. (Toronto: LexisNexis, 2015), at p. 423, citing *YCJA*, s. 3(1)(c).
- (7) No Discriminatory Impact Proven [95] When the *YCJA*'s comprehensive sentencing framework is properly applied, it becomes clear that s. 42(5)(a) does not place young persons at a disadvantage relative to adults. The *YCJA* offers a wide range of dispositions and preserves substantial judicial discretion. Judges retain numerous non-custodial options capable of serving the same functional purposes as conditional sentences under the Criminal Code – including robust probation orders, which met this need long before deferred custody was ever introduced. Because s. 42(5)(a) does not render youth worse off than adults, s. 15(1) of the Charter does not demand a line-by-line correspondence between the *YCJA* and the Criminal Code, nor does it entitle the respondent to extract the most favourable elements from the adult regime while retaining the distinctive advantages of the youth sentencing system.
- [96] The result in this case – namely, that a non-custodial sentence was appropriate – illustrates the point. At sentencing, the respondent, who had no prior record, demonstrated genuine progress toward rehabilitation and reintegration through community-based programs, volunteer work, and educational pursuits. A custodial sentence would have significantly

disrupted that progress. Such a consequence would not have been constructive and would have undermined, rather than advanced, the respondent's rehabilitation. This would have frustrated the overriding goal in first offence cases – to protect society and advance the young person's best interests by making every effort to ensure that the first offence is also the last.

- [97] Although accountability also requires proportionality, the YCJA did not require resort to deferred custody to craft a proportionate sanction in this case. In the adult system, judges often prefer conditional sentences to probation to achieve proportionality because the Criminal Code restricts the imposition of punitive probation conditions. Under the YCJA, by contrast, equally robust probation conditions are expressly authorized and could have been imposed here if necessary. Additional proportional consequences – such as a driving prohibition or community service – were also available. In any event, individual deterrence and public protection were not pressing concerns, given that the offence was out of character and the respondent demonstrated genuine remorse and rehabilitation.
- [98] Even if s. 42(5)(a) had not been applicable, s. 39(2) would have precluded a custodial disposition in this case. By overlooking the breadth of the YCJA's non-custodial tools and presuming that deferred custody was the only meaningful alternative to incarceration, both the parties and the sentencing judge expanded the reach of youth custody beyond Parliament's intent. This approach exposed the respondent to an unnecessary risk of immediate incarceration – a consequence that would have been neither constructive nor conducive to rehabilitation, that risked exacerbating his vulnerabilities, and that would have frustrated the policy of avoiding imprisonment for first offences whenever possible: I.M., at paras. 179-80.
- [99] While individual deterrence and short-term public protection may be more salient in other cases, incarceration is not the inevitable response. Youth justice courts can use non-custodial alternatives to achieve these objectives by imposing proportionate and constructive consequences, ensuring adequate supervision, and insulating young persons from negative influences – just as they did for decades before deferred custody emerged. As well, certain options – such as intensive support and supervision and non-residential programs – are available only to youth and may offer stronger deterrent effects than custody, which, as the late former Chief Justice McMurtry observed, frequently fails to deter young offenders and may instead exacerbate their vulnerabilities. These programs compensate for the unavailability of deferred custody under s. 42(5)(a), ensuring that youth are not treated more harshly than adults: J.S.M., at para. 38; Z. (M.), at paras. 44-46; D.B., at para. 64; I.M., at paras. 179-80; Tuck-Jackson, at pp. 327-328; McMurtry & Curling, at p. 277.
- [100] Moreover, actual incarceration is not automatically required even where it may appear to offer greater individual deterrence or short-term public protection. As I.M. emphasized, the YCJA subordinates individual deterrence to proportionality and prioritizes rehabilitation and restraint over denunciation and deterrence: at para. 176. Denunciation and individual deterrence are discretionary objectives. While public safety is vital, the YCJA

further long-term protection through individualized dispositions that address the causes of offending, promote rehabilitation and reintegration, and impose proportionate and constructive consequences: B.W.P., at para. 31. Judges therefore retain discretion to impose non-custodial sentences when their rehabilitative and long-term protective benefits outweigh the marginal additional deterrence offered by incarceration: Okemow, at paras. 43-44, 57; P.R., at paras. 62, 66, 74-76, 79, 99. This may often be the case for young people without a prior record, where the cardinal policy is to ensure that their first offence remains their last: M.F., at paras. 25-26; K.(E.P.), at paras. 3-4.

- [101] For example, in this case, permitting T.M. to remain with his family and within his community best promotes long-term public safety. The record demonstrates that this environment is optimal for supervising his behaviour and fostering his rehabilitation and reintegration following his first offence, including within his Indigenous community. Incarceration would jeopardize that progress by separating him from positive supports and potentially exposing him to negative peers, thus frustrating the overriding policy to make every effort to ensure that his first offence is also his last: G. (H.W.), at para. 53; I.M., at paras. 179-80. Even deferred custody would “unnecessarily limit[]” his family’s supervisory role and increase the risk of harsher sanctions for minor future lapses: R. v. T.D.P., 2004 SKPC 57, 250 Sask. R. 3, at para. 54. Any additional deterrence these stricter options might offer is unnecessary, given T.M.’s low risk of reoffending.
- [102] The sentencing judge erred in assuming that, if deferred custody would have been preferable to other non-custodial dispositions, then actual custody must be the next-best option. That is not how the YCJA operates. Non-custodial options are not evaluated in isolation. Rather, as explained earlier, s. 39(2) requires a contextual analysis comparing available custodial and non-custodial dispositions and assessing how each aligns with the statute’s sentencing principles. Thus, a judge may still properly conclude that non-custodial options are preferable to actual custody, even if deferred custody would have been ideal.
- [103] Finally, s. 38(2)(a) reinforces the constitutionality of this approach by requiring that young persons not be punished more harshly than adults who committed the same offence in similar circumstances. This mandatory principle required the sentencing judge to impose a non-custodial disposition if a similarly situated adult would have received a conditional sentence. Together with the YCJA’s broader sentencing framework, this safeguard ensures that s. 42(5)(a) does not produce discriminatory outcomes: D.B., at para. 43; R. v. F. (E.), 2007 ONCJ 113, 157 C.R.R. (2d) 189, at paras. 116, 159; J.S.M., at para. 37; R. v. A.T., 2004 ABPC 91, 362 A.R. 157, at paras. 67, 72.

E. Section 42(2)(p) Respects Equality Rights [104] The sentencing judge also held that s. 42(2)(p) of the YCJA – which limits deferred custody orders to six months – violates s. 15(1) of the Charter. She reasoned that the provision creates a discriminatory, age-based distinction because youth are restricted to six months of community custody, while adults may receive conditional sentences of up to two years less a day. In her view, this shorter limit prevents youth court judges from using longer periods of community custody to avoid imposing actual incarceration.

[105] This conclusion is incorrect. The six-month cap in s. 42(2)(p) does not create a discriminatory age-based distinction; rather, it is a contextual sentencing limit that reflects the YCJA's distinct framework and its protective orientation. In the adult regime, maximum custodial sentences are often far higher than both the maximum conditional sentence and the YCJA's custodial ceilings. Dangerous driving causing death – the respondent's offence – carries a maximum adult sentence of life imprisonment, whereas the maximum youth custodial sentence would ordinarily be two or three years. The six-month limit on deferred custody mirrors this structural difference. Like the adult scheme, the YCJA ensures that community-based custody remains shorter than actual custody, consistent with the statute's emphasis on restraint and proportionality: T.R., at paras. 49–51; J.S.M., at para. 36.

[106] Moreover, s. 42(2)(p) does not unduly constrain judicial discretion because deferred custody may be combined with longer non-custodial dispositions. If a judge concludes that six months of deferred custody alone is insufficient to fulfill the objectives of sentencing, they may follow it with probation or impose an intensive support and supervision order, neither of which is subject to a six-month cap: J.S.M., at para. 40; J.H.-D., at paras. 20-21, 26-37.

[107] The six-month limit also serves important protective purposes tailored to the needs and vulnerabilities of young persons. It prevents “net-widening” by ensuring that youth are not subjected to extended periods during which a breach can result in immediate incarceration. Prolonged exposure to such conditions can be particularly harmful for young people, who experience time differently and feel more acutely the pressures of the justice system: C.P., at paras. 149, 161, per Wagner C.J.; S.J.L., at para. 64. A longer deferred custody period, such as two years, could lead to disproportionately severe consequences, heighten vulnerability, and increase the risk of deeper entrenchment in the justice system: I.M., at paras. 179-80.

[108] By declining to apply s. 42(2)(p), the sentencing judge expanded the reach of custody beyond Parliament's intention. Her approach would have required the respondent to live under the threat of immediate incarceration for nearly two years, an extraordinarily long period in the life of a young person, instead of the six months prescribed by the YCJA, followed by probation. This reasoning failed to account for the respondent's developmental needs as a young person and his particular vulnerability to the criminal justice system involvement, especially, as a racialized and Indigenous young person: S.J.L., at para. 64; R. v. Le, 2019 SCC 34, [2019] 2 S.C.R. 692, at para. 90.

F. The Provisions Respect the Right to Liberty [109] Finally, the sentencing judge erred in concluding that ss. 42(5)(a) and 42(2)(p) of the YCJA infringe young persons' right to liberty under s. 7 of the Charter.

[110] Section 7 of the Charter provides:

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.

[111] These YCJA provisions would violate s. 7 only if they deprive young persons of liberty in a manner inconsistent with the principles of fundamental justice: D.B., at para. 37. That threshold is not met. Neither provision offends those principles.

[112] First, the sentencing judge erred in holding that a breach of s. 7 arises merely because the provisions distinguish between youth and adults. Arguments premised solely on differential treatment relative to adults fall within s. 15(1), the equality rights guarantee – not s. 7: C.P., at para. 130, per Wagner C.J., and at para. 166, per Kasirer J. (concurring).

[113] Second, the judge was wrong to conclude that the provisions infringe the principle of diminished moral culpability for young persons. This principle is indeed a principle of fundamental justice that underpins the YCJA's distinct sentencing regime: D.B., at para. 41. It prevents the state from denying young people the benefit of youth sentencing "because of the crime [they committed] and despite their age": D.B., at para. 76 (emphasis in original). But ss. 42(5)(a) and 42(2)(p) do no such thing. They do not remove the YCJA's protections, elevate offence seriousness to the overriding consideration, or require incarceration, contrary to the sentencing judge's assumption. Youth court judges must still apply the YCJA's governing principles and retain broad discretion to impose a wide range of non-custodial sanctions, thereby ensuring that young persons are not inappropriately sentenced to custody.

G. Conclusion [114] Read in their full statutory and contextual setting, ss. 42(5)(a) and 42(2)(p) of the YCJA do not infringe ss. 7 or 15(1) of the Charter. Neither provision mandates incarceration, nor do they result in harsher treatment of young persons relative to adults. Rather, they operate within a nuanced youth-specific accountability framework that harmonizes proportionality with meaningful consequences and rehabilitation. The YCJA equips judges with a wide array of non-custodial sentencing tools, enabling them to advance both objectives while fulfilling Parliament's central aim of reducing youth incarceration.

[115] The sentencing judge erred by examining ss. 42(5)(a) and 42(2)(p) in isolation, without properly situating them within the YCJA's broader remedial and protective architecture. Because these provisions are constitutional, the judge was required to apply them as written and to rely on the extensive suite of non-custodial options available under the YCJA to craft a fit sentence for the respondent, who displayed significant rehabilitative potential and accepted responsibility for his conduct.

[116] The Crown appeal is, therefore, allowed. The sentence is varied to 18 months' probation, including 100 hours of community service, on the terms jointly proposed by counsel and set out in the initial judgment.

Released: December 11, 2025 "M.T."

*"M. Tulloch C.J.O."*

*"I agree. Roberts J.A."*

*"I agree. P.J. Monahan J.A."*

- [1] This appeal is subject to a publication ban and a restriction on disclosure of identifying information pursuant to ss. 110, 118 and 129 of the Youth Criminal Justice Act, S.C. 2002, c. 1.
- [2] See *R. v. Gladue*, [1999] 1 S.C.R. 688.
- [3] See Canada, Parliament, Senate, Standing Committee on Legal and Constitutional Affairs, Proceedings, 37th Parl., 1st Sess., No. 11 (September 27, 2001), at p. 23 (Hon. Anne McLellan). Explanations by the Minister, the Minister's Parliamentary Secretary, the Senator who introduces the legislation, or departmental staff can provide authoritative evidence of legislative intent: Sharma, at para. 90.
- [4] The Supreme Court explained that retribution is a component of proportionality in *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, at para. 37, and *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at paras. 77-80.
- [5] I.M. stated that "[a]ccountability ... encompasses sanctions that are not only proportionate but also promote meaningful consequences and societal reintegration": at para. 170.
- [6] Canada, Parliament, House of Commons Debates, 37th Parl., 1st Sess., Vol. 137, No. 36 (March 26, 2001), at p. 2215 (Mr. John Maloney); Canada, Parliament, Senate, Standing Committee on Legal and Constitutional Affairs, Proceedings, 37th Parl., 1st Sess., No. 12 (October 16, 2001), at p. 36 (Ms. Catherine Latimer).
- [7] Canada, Parliament, House of Commons Debates, 37th Parl., 1st Sess., Vol. 137, No. 13 (February 14, 2001), at p. 705 (Hon. Anne McLellan); Canada, Parliament, Debates of the Senate, 37th Parl., 1st Sess., Vol. 139, No. 2 (June 5, 2001), at p. 1011 (Hon. Landon Pearson).
- [8] The Young Offenders Act jurisprudence affirmed sentences of probation and/or other non-custodial alternatives in appropriate cases for dangerous driving causing death (*R. v. T.(J.D.)*, 2002 BCCA 77, 163 C.C.C. (3d) 123; *R. v. M. (M.)*, 1996 CarswellOnt 6051 (Ct. J. (Prov. Div.); *R. v. L. (W.)*, 1993 CarswellOnt 5522 (Ct. J. (Prov. Div.)); dangerous driving causing bodily harm (*R. v. G.(A.)* (1996), 108 C.C.C. (3d) 90 (B.C.C.A.); *R. v. W. (R.J.)*, 1989 CarswellBC 1106 (C.A.)); aggravated assault (*R. v. M.A.C.*, 1997 ABCA 106, 196 A.R. 230; *R. v. C.D.* (1994), 49 B.C.A.C. 298 (C.A.)); assault causing bodily harm (*R. v. J.D.M.* (1997), 123 Man. R. (2d) 170 (C.A.); *R. v. R.H.C.S.* (1997), 118 Man. R. (2d) 310 (C.A.); *R. v. W.B.D.* (1991), 104 N.S.R. (2d) 270 (C.A.)); and, sexual assault (*R. v. D.C.S. & D.F.S.* (1989), 90 N.S.R. (2d) 234 (C.A.); *R. v. C.J.M.* (1986), 77

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N.S.R. (2d) 1 (C.A.)).

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