J.P. (*Applicant*)

v.

Canada (Attorney General) (*Respondent*)

INDEXED AS: J.P. V. CANADA (ATTORNEY GENERAL) (F.C.)

Federal Court, Mosley J.—Ottawa, March 17 and April 24, 2009.

Parole — Judicial review of National Parole Board's calculation of applicant's eligibility for day, full parole under Corrections and Conditional Release Act (CCRA) in order that parole be calculated based solely on custodial portion of applicant's sentence — Applicant sentenced under Youth Criminal Justice Act (YCJA), s. 42(2)(q)(ii) — Sentence comprised of 22-month custodial, 36-month conditional supervision portions — Committed to provincial correctional facility for adults — CCRA, s. 2(1) defining "sentence" as sentence of imprisonment, including inter alia "youth sentence" imposed under YCJA — "Youth sentence" within meaning of CCRA, s. 2(1) can only mean custodial portion of applicant's sentence — Therefore, Board's decision inconsistent with correct contextual interpretation of "sentence" under CCRA — Applicant considered "young person" as defined in YCJA, s. 2(1) serving "youth sentence" in adult facility — Entitled to conditional release under CCRA — Since parole discretionary form of conditional release allowing offenders to serve balance of sentence outside institution, cannot attach to sanction or portion thereof already ordered to be served in community such as conditional supervision portion of sentence under YCJA, s. 42(2)(q)(ii) — Phrase "means a sentence of imprisonment" in CCRA, s. 2(1) definition of "sentence" narrowing scope of term to one of incarceration — Use of word "includes" in reference to youth sentences under YCJA encompassing carceral portions of sentences, not portion to be served in community — Thus, definition of "sentence" not referring to community supervision portion thereof — Therefore, only 22-month custodial portion of sentence to be included — Absent decision to continue custody or return offender to custody for remainder of sentence, Board having jurisdiction over offender serving youth sentence in adult facility until applicant no longer required to be detained under custodial portion of sentence — Therefore, Board's jurisdiction expiring at end of 22-month custodial portion of applicant's youth sentence — Application allowed.

This was an application for judicial review of the National Parole Board's calculation of the applicant's eligibility for day and full parole under the *Corrections and Conditional Release Act* (CCRA). The applicant requested a declaration that his parole period expire at the end of the custodial portion of his sentence. He was sentenced under subparagraph 42(2)(*q*)(ii) of the *Youth Criminal Justice Act* (YCJA) for a second degree murder he committed when he was 14 years old. He was ordered to serve a 7-year sentence comprised of a 22-month custodial portion and a 36-month conditional supervision portion. The applicant was committed to a provincial correctional facility for adults pursuant to subsection 89(1) of the YCJA. After applying for parole, the applicant was notified that he was eligible for day parole on April 17, 2009 and full parole on October 17, 2009. He appealed this result and sought a recalculation based only on the custodial portion of his sentence.

The issues were whether the term "sentence" used in the CCRA refers to the custodial term of a custody and supervision order under the YCJA or to both portions of such an order for the purpose of calculating parole eligibility; and when does the Board's authority over an offender serving a youth sentence in an adult facility expire.

Held, the application should be allowed.

When a youth sentence is served in an adult facility, the rules and regulations of the CCRA and the *Prisons and Reformatories Act* (PRA) apply, except to the extent that they conflict with Part 6 of the YCJA and subject to certain exceptions. The term "sentence" as defined under subsection 2(1) of the CCRA means a sentence of imprisonment and includes a youth sentence imposed under the YCJA, defined at subsection 2(1) thereof. Section 42 of the YCJA lists possible "youth sentences" available to a sentencing judge. The "youth sentence" that falls under subparagraph

42(2)(*q*)(ii) is a single sentence comprised of two components: a committal to custody and a placement under conditional supervision to be served in the community. Based on the modern approach to statutory interpretation, the term "youth sentence" within the meaning of subsection 2(1) of the CCRA can mean nothing other than the custodial portion of the applicant's sentence. The Board's decision was therefore inconsistent with the correct contextual interpretation of "sentence" under the provisions of the CCRA. The applicant was a "young person" as defined in subsection 2(1) of the YCJA serving a "youth sentence" in an adult provincial facility. This placement entitled him to conditional release under the CCRA. Under the terms of the YCJA, he must not be disadvantaged in the calculation of his sentence to determine his eligibility for release.

The meaning of "sentence" under sections 119 and 120 of the CCRA can be inferred from a conceptual and purposive interpretation of the parole scheme under the Act. Parole is a discretionary form of conditional release which allows offenders to serve the balance of their sentence outside of an institution under supervision and specific conditions. Parole therefore cannot attach to a sanction that is already ordered to be served in the community, such as the conditional supervision portion of a sentence under subparagraph 42(2)(*q*)(ii). It can only attach to a sentence required to be served in confinement. Moreover, the statutory definition of "sentence" in the CCRA is indicative of Parliament's intent. The use of the verbs "means" and "includes" in the same statutory definition suggests a two-step analysis. Both aspects of the definition of "sentence" must be interpreted consistently and with regard to the purpose for the inclusion of the statutory cross-references. The phrase "means a sentence of imprisonment" narrows the scope of the term "sentence" in the CCRA to one of incarceration. The use of "includes" in reference to, *inter alia*, youth sentences under the YCJA encompasses the carceral portions of those sentences but not those portions to be served in the community under supervision. The term "youth sentence" as defined under subsection 2(1) of the YCJA applies to a broad range of possible sentence dispositions that may be imposed. Youth sentences which involve custody will have a non-custodial portion. The inclusion of the term "youth sentence" in the definition of "sentence" in the CCRA is intended solely to ensure that the conditional release provisions of the CCRA are available to offenders serving the custodial portion of their youth sentences in adult facilities. Thus, the definition has to read as referring to the custodial portion and not to the community supervision portion.

Subsection 89(3) of the YCJA expressly states that the CCRA and the PRA apply to a young person serving a youth sentence in an adult facility, but it is not clear from the statutes that youth justice principles cease to apply to such an offender. An aspect of the legislative scheme that supports the position that Parliament intended that the Board would have jurisdiction until the end of the offender's sentence is that the custodial portion of the sentence could in exceptional circumstances be extended to "warrant expiry". In that situation, the offender would continue to be detained in an adult correctional facility and would remain within the scope of the CCRA and the Board's jurisdiction. Absent a decision to continue custody or to return the offender to custody for the remainder of the sentence, the Board's jurisdiction expired when the applicant was no longer required to be detained under the terms of the custodial portion of his sentence.

STATUTES AND REGULATIONS CITED

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44].

Corrections and Conditional Release Act, S.C. 1992, c. 20, ss. 2(1) "sentence" (as enacted by S.C. 1995, c. 42, s. 1; 2004, c. 21, s. 39), 107 (as am. by S.C. 1995, c. 22, s. 13, c. 42, ss. 28(E), 70(E), 71(F); 2000, c. 24, s. 36; 2004, c. 21, s. 40), 119 (as am. by S.C. 1995, c. 22, ss. 13, 18; 1997, c. 17, s. 20; 2000, c. 24, s. 37), 120 (as am. by S.C. 1995, c. 22, s. 13, c. 42, s. 34; 2000, c. 24, s. 38).

Criminal Code, R.S.C., 1985, c. C-46, s. 742.1 (as enacted by S.C. 1992, c. 11, s. 16; 2007, c. 12, s. 1).

Federal Courts Act, R.S.C., 1985, c. F-7, ss. 1 (as am. by S.C. 2002, c. 8, s. 14), 18.1(4)(*c*) (as enacted by S.C. 1990, c. 8, s. 5).

International Transfer of Offenders Act, S.C. 2004, c. 21, ss. 2 "Canadian offender", 23, 24, 25, 26, 27.

Prisons and Reformatories Act, R.S.C., 1985, c. P-20, s. 6 (as am. by R.S.C., 1985 (2nd Supp.), c. 35, s. 32; S.C. 1995, c. 42, s. 82; 2002, c. 1, s. 197).

Young Offenders Act, R.S.C., 1985, c. Y-1.

Youth Criminal Justice Act, S.C. 2002, c. 1, ss. 2(1) "young person", "youth custody facility", "youth sentence",

38, 42, 56(5), 83, 89, 92, 93, 94(1), 98, 102, 104.

CASES CITED

APPLIED:

Borowski v. Canada (Attorney General), [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231, [1989] 3 W.W.R. 97; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, (1996), 105 C.C.C. (3d) 327, 46 C.R. (4th) 269.

CONSIDERED:

Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190, 329 N.B.R. (2d) 1, 291 D.L.R. (4th) 577; *Dixon v. Canada (Attorney General)*, 2008 FC 889, [2009] 2 F.C.R. 397, 331 F.T.R. 214; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, 304 D.L.R. (4th) 1, 82 Admin. L.R. (4th) 1; *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, 182 D.L.R. (4th) 1, [2000] 4 W.W.R. 21; *Sychuk v. Canada (Attorney General)*, 2009 FC 105, 91 Admin. L.R. (4th) 56, 340 F.T.R. 160; *Hrushka v. Canada (Minister of Foreign Affairs)*, 2009 FC 69, 340 F.T.R. 81; *R. v. K.(C.)* (2008), 233 C.C.C. (3d) 194 (Ont. C.J.).

REFERRED TO:

MacDonald v. Canada (Attorney General), 2008 FC 796, 330 F.T.R. 161; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, (1998), 36 O.R. (3d) 418, 154 D.L.R. (4th) 193; *R. v. C.W.W.*, 2005 ABPC 214, 388 A.R. 170, 71 W.C.B. (2d) 636; *R. v. S.J.L.*, 2005 BCSC 177; *R. v. C. (D.L.)* (2003), 13 C.R. (6th) 329 (N.L. Prov. Ct.); *Ewing v. Mission Institution* (1994), 92 C.C.C. (3d) 484 (B.C.C.A.).

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Canada. Public Safety and Emergency Preparedness. *Sentence Calculation: A Handbook for Judges, Lawyers and Correctional Officials*, 3rd ed. Ottawa: Public Works and Government Services Canada, 2005, online: <http://www.publicsafety.gc.ca/res/cor/rep/_fl/2005-sntnce-hnd bk-eng.pdf>.

Driedger, Elmer A. *The Construction of Statutes*. Toronto: Butterworths, 1974.

APPLICATION for judicial review of the National Parole Board's calculation of the applicant's eligibility for day and full parole under the *Corrections and Conditional Release Act*. Application allowed.

APPEARANCES

Garth Barriere and *Christopher P. Hardcastle* for applicant.

Liliane Y. Bantourakis and *Curtis S. Workun* for respondent.

SOLICITORS OF RECORD

Garth Barriere, Vancouver, and *Hardcastle Law Office*, Vancouver, for applicant.

Deputy Attorney General of Canada for respondent.

The following are the reasons for judgment and judgment rendered in English by

[1] MOSLEY J.: The applicant is a 24-year-old offender serving a youth sentence at the Vancouver Island Regional Correctional Centre, a provincial adult correctional facility located in Victoria, British Columbia. An order was issued permitting this application to be filed under the acronym "J.P." to protect the applicant's identity. J.P. seeks judicial review of the National Parole Board's calculation of his eligibility for day and full parole under the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (CCRA) and requests a declaration that his parole period expires at the end of the custodial portion of his sentence.

Facts

[2] On March 7, 2008, J.P. was sentenced under subparagraph 42(2)(*q*)(ii) of the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (YCJA) for a second degree murder he committed when he was 14 years old. He was ordered to serve a 7-year sentence comprised of a 22-month custodial portion and a 36-month conditional supervision portion. He was credited for time served in custody prior to sentencing. Given his age at the time the sentence was imposed, J.P. was committed to a provincial correctional facility for adults pursuant to subsection 89(1) of the YCJA.

[3] The applicant was first placed at the Fraser Regional Correctional Centre located in Maple Ridge, British Columbia. He transferred to the Vancouver Island Regional Centre in July 2008 and applied for parole shortly thereafter. By letter dated August 22, 2008, the applicant was notified that he was eligible for day parole on April 17, 2009 and full parole on October 17, 2009. He appealed this result and sought a recalculation based solely on the custodial portion of his sentence. The Board maintained its initial decision in a letter dated October 3, 2008, stating that J.P.'s parole eligibility dates were calculated in accordance with the CCRA.

[4] A letter was then sent on J.P.'s behalf by counsel again requesting the Board to recalculate his parole eligibility dates based solely on the custodial portion of the sentence. The applicant was advised by letter dated December 9, 2008, that his parole eligibility dates would remain unchanged. He filed an application for judicial review of this decision on January 7, 2009.

[5] Following the hearing of this application on March 17, 2009, J.P. appeared before the Supreme Court of British Columbia for a mandatory review of his sentence pursuant to subsection 94(1) of the YCJA. On March 27, 2009, Mr. Justice Grist, the sentencing Judge, upheld the applicant's original youth sentence and set the conditions that will apply during his term of conditional supervision.

[6] The applicant applied for and was prospectively granted day parole on January 8, 2009. As noted above, pursuant to the Board's calculation, his eligibility date for day parole was April 17, 2009. This case is, therefore, at least partially moot. As described in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, the mootness principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. Where there is no longer a live controversy between the parties, the court's decision on the issues may be purely academic. The general policy is that a court should decline to decide a case which raises merely a hypothetical or abstract question; however the court may exercise its discretion to depart from this policy: *Borowski*, at page 353. Here, the parties have asked me to deal with the issues whether they are moot or partially moot. In the result, I will exercise my discretion to decide the merits of the case.

Issues

[7] The issues to be decided in these proceedings can be described as follows:

a. Whether the term "sentence" used in the CCRA refers to the custodial term of a custody and supervision order under the YCJA or to both portions of such an order for the purpose of calculating parole eligibility.

b. When does the Board's authority over an offender serving a youth sentence in an adult facility expire?

Relevant Legislation

[8] A number of provisions of the YCJA and the CCRA, as well as certain provisions of the *Criminal Code*, R.S.C., 1985, c. C-46, are relevant to these proceedings. They are set out in the Annex to this judgment.

Argument and Analysis

Standard of Review

[9] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court established that where jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded to a particular category of question, there is no need to engage in a standard of review analysis: *MacDonald v. Canada (Attorney General)*, 2008 FC 796, 330 F.T.R. 261, at paragraph 14.

[10] Here, the decision under review relates to the Board's interpretation of the parole eligibility provisions of the CCRA. The prior jurisprudence has held consistently that questions of statutory interpretation are questions of law that must be reviewed on a standard of correctness. Justice Russell Zinn aptly expressed this view at paragraph 10 of his reasons in *Dixon v. Canada (Attorney General)*, 2008 FC 889, [2009] 2 F.C.R. 397:

> A question of statutory interpretation is a question of law. The applicable standard of review when reviewing impugned decisions relating to an interpretation of a statute is correctness. The Board has no greater or special expertise in this regard than this Court. Justice Snider in *Latham v. Canada* (2006), 288 F.T.R. 37 (F.C.), held that the proper standard of review of a decision of the Appeal Division of the National Parole Board that involves statutory interpretation is correctness. In my view, decisions of the Board that involve statutory interpretation are also subject to the standard of correctness. In this instance the Board's decision relies entirely on the proper interpretation of the relevant sections of the Act and Regulations. The interpretation given these legislative provisions by the Board must be correct.

[11] Recently in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, the Supreme Court of Canada had occasion to revisit the question in considering the effect of *Dunsmuir* on the interpretation of paragraph 18.1(4)(*c*) [as enacted by S.C. 1990, c. 8, s. 5] of the *Federal Courts Act*, R.S.C., 1985, c. F-7 [s. 1 (as am. by S.C. 2002, c. 8, s. 14)]. Paragraph 18.1(4)(*c*) provides that the Federal Court may grant relief on an application for judicial review if it is satisfied that the board, commission or tribunal "erred in law in making a decision or an order, whether or not the error appears on the face of the record."

[12] The Supreme Court held, at paragraph 44 of its decision in *Khosa*, that notwithstanding the general view that errors of law are governed by a correctness standard, "*Dunsmuir* (at para. 54), says that if the interpretation of the home statute or a closely related statute by an expert decision-maker is reasonable, there is no error of law justifying intervention."

[13] Paragraph 54 of the majority opinion in *Dunsmuir*, reads as follows:

> Guidance with regard to the questions that will be reviewed on a reasonableness standard can be found in the existing case law. Deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity: *Canadian Broadcasting Corp. v. Canada (Labour Relations Board)*, [1995] 1 S.C.R. 157, at para. 48; *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487, at para. 39. Deference may also be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context: *Toronto (City) v. C.U.P.E.*, at para. 72. Adjudication in labour law remains a good example of the relevance of this approach. The case law has moved away considerably from the strict position evidenced in *McLeod v. Egan*, [1975] 1 S.C.R. 517, where it was held that an administrative decision maker will always risk having its interpretation of an external statute set aside upon judicial review.

[14] The Supreme Court considered that the effect of this rethinking of the approach to be taken to judicial review is, quoting again from paragraph 44 of its opinion [in *Khosa*], that while the statute provides a ground of intervention,

> . . . the common law will stay the hand of the judge(s) in certain cases if the interpretation is by an expert adjudicator interpreting his or her home statute or a closely related statute. This nuance does not appear on the face of para. (*c*), but it is the common law principle on which the discretion provided in s. 18.1(4) is to be exercised. Once again, the open textured language of the *Federal Courts Act* is supplemented by the common law.

[15] Here, the Board interpreted its "home statute" (the CCRA) and a related statute (the YCJA) but the questions at issue in these proceedings have not arisen in the context of the Board's usual administrative

regime respecting the grant of parole to adult offenders. In the particular circumstances in which this application has been brought, I have no reason to believe that the Board has any greater degree of expertise than the Court in construing the interplay between the two statutes. The questions of law that arise may be considered to be of significant importance to the youth justice system and outside the Board's expertise. Accordingly, I am satisfied that the Board's decision does not require deference and that I must be concerned with whether the Board correctly interpreted the applicable legislation in its calculation of J.P.'s parole eligibility.

Issue 1: Whether the term "sentence" used in the CCRA refers to the custodial term of a custody and supervision order under the YCJA or to both portions of such an order for the purpose of calculating parole eligibility.

Applicant's Submissions

[16] The applicant submits that the Board's calculation is inconsistent with Parliament's intent and objectives with regard to the youth criminal justice system in that it increases reliance on custody and disadvantages offenders serving youth sentences in adult facilities. Paragraph 83(2)(*e*) of the YCJA expressly states that young persons placed in adult facilities are not to be disadvantaged with respect to their eligibility for and conditions of release. It is submitted that J.P.'s youth sentence is conceptually indistinguishable from an adult sentence comprised of a custodial portion followed by a non-custodial portion, such as probation or long-term supervision. For adult offenders, such terms of supervision within the community are not included in the calculation of parole eligibility under the CCRA. Therefore, the applicant contends, the Board erred by choosing a different scheme when it calculated the applicant's parole eligibility.

[17] The applicant also submits that including the non-custodial portion of an offender's sentence in the calculation for parole eligibility is inconsistent with the general parole scheme under the CCRA. Parole is a conditional release which allows some offenders to serve the balance of their sentence outside of an institution. Thus, the applicant contends, parole can only attach to a custodial portion of an offender's sentence.

[18] The applicant points to the Supreme Court of Canada's decision in *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61 which stands for the proposition that an offender serving a conditional sentence is not eligible for parole while serving his/her sentence in the community. The applicant reasons that if parole cannot attach to an adult conditional sentence, which is defined as a "sentence of imprisonment" under section 742.1 [as enacted by S.C. 1992, c. 11, s. 16; 2007, c. 12, s. 1] of the *Criminal Code*, then the conditional supervision portion of a youth sentence, which is by definition not a sentence of imprisonment, cannot be included in the parole calculation.

[19] Moreover, the applicant argues, the Board's calculation is based on an incorrect interpretation of the term "sentence" under the CCRA. The Board incorrectly reads the definition of "sentence" to include both the custodial portion and the non-custodial portion of a "youth sentence" under the YCJA, and specifically under subparagraph 42(2)(*q*)(ii) of the Act. The modern approach to statutory interpretation as described in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 requires a contextual approach, the applicant contends. He points to subsections 89(1) and 89(3) of the YCJA to support his argument. Respectively, both provisions use the expressions "serve the youth sentence" [emphasis added] and "serving a youth sentence in a provincial correctional facility for adults" [emphasis added]. The applicant submits that a young offender cannot be "serving" anything other than the custodial portion of the sentence in an adult facility.

[20] Lastly, the applicant suggests that if the Court identifies two equally plausible interpretations, the one which accords most with the Charter [*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]] must be adopted. Here, it is submitted, the Board's interpretation discriminates against and disadvantages the applicant and runs against the purposes and principles of the youth criminal justice system.

Respondent's Submissions

[21] The respondent submits that the legislation is clear and unambiguous in defining what constitutes a "sentence" for the purpose of calculating parole eligibility and does not support the applicant's interpretation.

[22] The inclusion of "youth sentence imposed under the *Youth Criminal Justice Act*" in the definition of "sentence" [in subsection 2(1) (as enacted by S.C. 1995, c. 42, s. 1; 2004, c. 21, s. 39)] under the CCRA was a consequential amendment stemming from Parliament's adoption of the YCJA. The YCJA provides for the committal or transfer of a young person to an adult correctional facility under certain circumstances. Absent these provisions, namely sections 89, 92 and 93 of the YCJA, a reference to "youth sentence" in the CCRA would be unnecessary, the respondent contends.

[23] In the respondent's submission, the applicant has misconstrued the clear and unambiguous definition of "sentence" in the CCRA and is asking the Court to "read out" a part of the definition. "Youth sentence" under the YCJA includes a sentence imposed under section 42 of that Act. The applicant was sentenced under subparagraph 42(2)(*q*)(ii), which is a 7-year sentence comprised of a committal to custody and a placement under conditional supervision to be served in the community. The respondent maintains that both the period of custody and the period of community supervision ordered under the YCJA constitute a single sentence pursuant to the definition of "sentence" under the CCRA and cites cases which stand for the proposition that "sentence" under the YCJA means the custodial portion and the portion to be served under community supervision: *R. v. C.W.W.*, 2005 ABPC 214, 388 A.R. 170; *R. v. S.J.L.*, 2005 BCSC 177; *R. v. C. (D.L.)* (2003), 13 C.R. (6th) 329 (N.L. Prov. Ct.).

[24] Moreover, the respondent argues, a young offender serving a youth sentence in an adult facility is not disadvantaged in comparison to an offender serving an adult sentence for the same offence in an adult facility. It is artificial to compare both sentences given that an adult sentence for second degree murder is imprisonment for life with a possibility of parole after 10 years. The youth sentence for second degree murder under subparagraph 42(2)(*q*)(ii) is a 7-year sentence comprised of a custodial portion and a conditional supervision portion to be served in the community. An offender required to serve a 58-month "adult sentence" would not be treated more favourably than the applicant for the purposes of calculating parole eligibility under sections 119 [as am. by S.C. 1995, c. 22, ss. 13, 18; 1997, c. 17, s. 20; 2000, c. 24, s. 37] and 120 [as am. by S.C. 1995, c. 22, s. 13, c. 42, s. 34; 2000, c. 24, s. 38] of the CCRA. These provisions apply equally to both types of sentences and parole eligibility is calculated based on the total sentence in both scenarios, 58 months.

[25] The respondent further submits that the applicant has conflated the separate and distinct concepts of entitlement to release (i.e. based on earned remission) and discretionary release (i.e. conditional release, including day parole and full parole). Offenders subject to a determinate sentence are required to serve at least 2/3 of their sentence before they are entitled to release from custody. This entitlement can take several forms. Under the CCRA, an offender serving a determinate sentence is entitled to release after serving a period of custody of no less than 2/3 of his/her sentence. In the provincial correctional system, the same principle takes the form of early release based on remission (section 6 [as am. by S.C. 1995, c. 42, s. 82; 2002, c. 1, s. 197] of the *Prisons and Reformatories Act* [R.S.C., 1985, c. P-20]). An adult offender serving less than a two-year sentence can earn a reduction of his/her sentence of 15 days per month served in custody. The period of remission cannot exceed 1/3 of the sentence, therefore entitlement to release can only occur once the offender has served 2/3 of his/her sentence. The respondent argues that the balance of an offender's sentence that remains beyond the point of his/her entitlement to release is not excluded for the purpose of calculating parole eligibility.

[26] Lastly, the respondent challenges the applicant's argument that his youth sentence is conceptually indistinguishable from an adult sentence that has a custodial portion and a non-custodial portion, such as probation or long-term supervision. The respondent contends that neither a probation order nor a long-term supervision order is included in the definition of "sentence" for the purpose of calculating parole eligibility. Probation and long-term supervision orders are additional sanctions that *may* be added to a sentence of imprisonment. Subparagraph 42(2)(*q*)(ii), however, is a mandatory sentence for second degree murder. It is

a single sentence comprised of a custody order in conjunction with a supervision order. There is no discretion to impose custody without supervision or supervision without custody. Moreover, the respondent submits, subsection 56(5) of the YCJA specifies that probation is a distinct sanction that comes into force at the end of the period of supervision if a young person receives a sentence that includes a period of continuous custody and supervision. As such, probation does not form part of a "youth sentence" for the purpose of calculating parole eligibility; however, the period of supervision following the period of custody does.

Analysis

[27] The YCJA replaced the *Young Offenders Act*, R.S.C., 1985, c. Y-1 (YOA) on April 1, 2003, and made consequential amendments to the CCRA and the *Prisons and Reformatories Act*, R.S.C., 1985, c. P-20 (PRA). The YCJA was a policy response by Parliament to concerns about charging, prosecution and sentencing practices and, in particular, to the over-reliance on custodial dispositions that had arisen under the YOA. Part 4 [ss. 38–82] of the YCJA now defines the purpose of youth sentencing, provides factors and principles to be considered when a youth sentence is imposed, creates new youth sentences, sets out conditions that must exist before a custodial sentence is imposed and includes a supervision portion as part of all custodial sentences.

[28] The purpose of sentencing under the YCJA 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 into society, thereby contributing to the long-term protection of the public: section 38 of the YCJA. A *just* sanction under the YCJA is one imposed in accordance with the sentencing principles under subsection 38(2) of the Act.

[29] When a youth justice court finds a young person guilty of second degree murder, it shall order the young person to serve a maximum 7-year sentence comprised of a committal to custody for a period not to exceed four years (subject to subsection 104(1)) and a placement under conditional supervision to be served in the community: subparagraph 42(2)(*q*)(ii) of the YCJA. While the 7-year term is fixed, and a supervision term is a mandatory component of the sentence, the ways in which the custodial portion and the non-custodial portion are served can vary. For instance, if satisfied that there are reasonable grounds to believe that a young person is likely to commit an offence causing the death of or serious harm to another person before the expiry of the youth sentence the young person is serving, the youth justice court can order that the young person remain in custody for a period not exceeding the remainder of the total youth sentence (section 104 of the YCJA).

[30] In the case at bar, the applicant was charged with second degree murder and ordered to serve a 7-year sentence under subparagraph 42(2)(*q*)(ii) of the YCJA comprised of a 22-month custodial portion and a 36-month conditional supervision portion. As the applicant was over the age of 20 at the time of sentencing, he was required to serve the custodial portion of his youth sentence in a provincial correctional facility for adults (subsection 89(1) of the YCJA).

[31] When a youth sentence is served in an adult facility, the rules and regulations of the CCRA and the PRA apply, except to the extent that they conflict with Part 6 [ss. 110–129] of the YCJA (subsection 89(3) of the YCJA), and subject to certain exceptions. These exceptions are explained in a manual issued by the Department of Public Safety and Emergency Preparedness entitled *Sentence Calculation: A Handbook for Judges, Lawyers and Correctional Officials* (at pages 55–56):

> The rules applicable to adult sentences govern the administration and calculation of the sentence subject to the exceptions set out below. Consequently, the rules with respect to youth justice court reviews do not apply to these sentences since the parole reviews are available under the adult system. However, the provisions of the YCJA which require the young person to be released to the community under supervision and the continuance of custody applications under sections 98 and 104 continue to apply to young persons who have been transferred to a provincial correctional facility for adults pursuant to section 89, 92 or 93. (See section 197 of the YCJA, which adds subsection 6(7.3) to the PRA). This allows for the enforcement of the community portion of a custody and supervision order after the release of the young person as result of remission. It also allows for the continuation of custody past the release date

established pursuant to subsection 6(7.1) and (7.2) of the PRA – remission release date or release date established pursuant to paragraphs 42(2)(o), (q), or (r). [Footnote omitted.]

This manual does not form part of the tribunal record before me; however it is a public document that serves as a helpful guideline. Recently in *Sychuk v. Canada (Attorney General)*, 2009 FC 105, 91 Admin. L.R. (4th) 56, Justice François Lemieux was guided in his analysis by a National Parole Board policy manual. He observed the following at paragraph 11:

It is also settled law that policy manuals, like guidelines, are not law and, as such are not binding on the decision-maker. However, it has been recognized by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (*Baker*), at paragraph 72, guidelines are useful indicators and the fact the decision reached contrary to the guidelines "is of great help in assessing whether the decision was an unreasonable exercise of the power".

[32] Part II [ss. 99–156] of the CCRA governs the conditional release, supervision and long-term supervision of offenders serving their sentence in an adult facility. The parole provisions fall under sections 119 and 120 of the Act. The operative portions of these sections for our purposes read as follows:

119. (1) Subject to section 746.1 of the *Criminal Code*, subsection 140.3(1) of the *National Defence Act* and subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, the portion of a sentence that must be served before an offender may be released on day parole is

…

(*c*) where the offender is serving a sentence of two years or more, other than a sentence referred to in paragraph (*a*) or (*b*), the greater of

(i) the portion ending six months before the date on which full parole may be granted, and

(ii) six months; or

…

120. (1) Subject to sections 746.1 and 761 of the *Criminal Code* and to any order made under section 743.6 of that Act, to subsection 140.3(2) of the *National Defence Act* and to any order made under section 140.4 of that Act, and to subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, an offender is not eligible for full parole until the day on which the offender has served a period of ineligibility of the lesser of one third of the sentence and seven years. [Emphasis added.]

[33] To be eligible for full parole, an offender must serve the lesser of 1/3 of his/her sentence or seven years. The portion of an offender's sentence that must be served before he/she may be released on day parole is the greater of six months before the date on which full parole may be granted and six months. Eligibility for day parole will necessarily depend upon eligibility for full parole.

[34] The issue at bar turns on the correct interpretation of "sentence" within the meaning of these provisions. The applicant's position is that only the 22-month custodial portion of his sentence can be considered "the sentence" for the purpose of calculating parole eligibility. The respondent argues that parole eligibility is based on an offender's total sentence, which in the applicant's case is 58 months.

[35] At first impression, this issue can be resolved on a plain and ordinary reading of the relevant legislation. The term "sentence" is defined under subsection 2(1) of the CCRA as follows:

2. (1) …

"sentence" means a sentence of imprisonment and includes a sentence imposed by a foreign entity on a Canadian offender who has been transferred to Canada under the *International Transfer of Offenders Act* and a youth sentence imposed under the *Youth Criminal Justice Act*;

[36] Thus, a "youth sentence imposed under the *Youth Criminal Justice Act*" is included within the meaning of "sentence" for the purposes of the CCRA. A "youth sentence" under the YCJA is "a sentence imposed under sections 42, 51 or 59 or any of sections 94 to 96 and includes a confirmation or a variation of that sentence" (subsection 2(1) of the YCJA).

[37] Section 42 of the YCJA lists a number of possible sanctions or "youth sentences" available to a sentencing judge. The "youth sentence" that falls under subparagraph 42(2)(*q*)(ii) of the YCJA is a single sentence comprised of two components:

> **42.** (2) …
>
> (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. [Emphasis added.]

[38] Based on a literal reading of these provisions, the custodial portion and the placement under conditional supervision portion form the total "youth sentence" included in the definition under subsection 2(1) of the YCJA, which, in turn, is included within the meaning of "sentence" under the CCRA.

[39] A statutory interpretation analysis is not complete, however, if it is founded on the wording of the legislation alone. As per Professor Driedger's often quoted principle, "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament": Elmer A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974), at page 67.

[40] The applicant submits that, based on the modern approach to statutory interpretation as described in *Rizzo & Rizzo Shoes Ltd. (Re)*, above, the term "youth sentence" within the meaning of subsection 2(1) of the CCRA can mean nothing other than the custodial portion of the applicant's sentence. I agree. The Board's decision is therefore inconsistent with the correct contextual interpretation of "sentence" under the provisions of the CCRA.

[41] The YCJA expressly states that placements of young persons where they are treated as adults must not disadvantage them with respect to their eligibility for and conditions of release (paragraph 83(2)(*e*) of the YCJA). "Young person" as defined in subsection 2(1) of the YCJA includes a person who is charged under the Act with having committed an offence while he was between 12 and 18 years of age. Here, the applicant is a "young person" serving a "youth sentence" in an adult provincial facility. This placement entitles him to conditional release under the CCRA. Under the terms of the YCJA, he must not be disadvantaged in the calculation of his sentence to determine his eligibility for release.

[42] The meaning of "sentence" under sections 119 and 120 of the CCRA can be inferred from a conceptual and purposive interpretation of the parole scheme under the Act. Parole is a discretionary form of conditional release which allows offenders to serve the balance of their sentence outside of an institution under supervision and specific conditions. At its Web site, the Board describes parole as a "carefully constructed bridge between incarceration and return to the community": http://www.npb-cnlc.gc.ca/parle/parle-eng.shtml. Since parole is a discretionary decision allowing offenders to serve the balance of their sentences of imprisonment outside an institution, it cannot attach to a sanction or a portion thereof that is already ordered to be served in the community, such as the conditional supervision portion of a sentence under subparagraph 42(2)(*q*)(ii) of the YCJA.

[43] In his submissions, the applicant cites the Supreme Court of Canada's decision in *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, an excerpt of which is particularly instructive for this analysis (at paragraph 62):

In short, the history, structure and existing practice of the conditional release system collectively indicate that a grant of parole represents a change in the conditions [underlining in the original] under which a judicial sentence must be served, rather than a reduction [underlining in the original] of the judicial sentence itself. Needless to say, an offender enjoys a greater measure of freedom and liberty when the conditions of his or her imprisonment are changed from physical confinement to full parole. [Emphasis added.]

This excerpt highlights the bridging aspect of parole. This "bridge" links physical confinement to a greater measure of liberty in the community. As such, it can only attach to a sentence, or a portion thereof, required to be served in confinement.

[44] Moreover, the statutory definition of "sentence" in the CCRA is indicative of Parliament's intent:

2. (1) …

"sentence" means a sentence of imprisonment and includes a sentence imposed by a foreign entity on a Canadian offender who has been transferred to Canada under the *International Transfer of Offenders Act* and a youth sentence imposed under the *Youth Criminal Justice Act.* [Emphasis added.]

[45] The use of the verbs "means" and "includes" in the same statutory definition suggests a two-step analysis. Justice Dolores Hansen's comments in *Hrushka v. Canada (Minister of Foreign Affairs)*, 2009 FC 69, 340 F.T.R. 81 are helpful in this regard (at paragraph 16):

As stated in *Sullivan and Driedger on the Construction of Statutes*, there are two kinds of statutory definitions, exhaustive and non-exhaustive. Exhaustive definitions are normally introduced with the term "means" and serve the following purposes: "to clarify a vague or ambiguous term; to narrow the scope of a word or expression; to ensure that the scope of a word or expression is not narrowed; and to create an abbreviation or other concise form of reference to a lengthy expression." Non-exhaustive definitions are normally introduced by the word "includes" and serve "to expand the ordinary meaning of a word or expression; to deal with borderline applications; and to illustrate the application of a word or expression by setting examples." Thus, it can be seen that a statutory definition does not typically have substantive content. Indeed, the inclusion of substantive content in a definition is viewed as a drafting error.

[46] In my view, both aspects of the definition of "sentence" under the CCRA must be interpreted consistently and with regard to the purpose for the inclusion of the statutory cross-references. The phrase "means a sentence of imprisonment" narrows the scope of the term "sentence" to one of incarceration. The use of "includes" in reference to sentences imposed by foreign jurisdictions on offenders transferred to Canada under the *International Transfer of Offenders Act* and to youth sentences under the YCJA encompasses the carceral portions of those sentences but not those portions to be served in the community under supervision.

[47] The *International Transfer of Offenders Act*, S.C. 2004, c. 21 applies to Canadian offenders who are "detained, subject to supervision by reason of conditional release or probation or subject to any other form of supervision in a foreign entity" as per the definition in section 2 of that Act. Pursuant to sections 23 to 27 of that Act, offenders serving sentences of imprisonment in the foreign jurisdiction are eligible for statutory remission and parole in Canada. Under section 107 [as am. by S.C. 1995, c. 22, s. 13, c. 42, ss. 28(E), 70(E), 71(E); 2000, c. 24, s. 36; 2004, c. 21, s. 40] of the CCRA, the Board has the jurisdiction and discretion to grant parole or to revoke or suspend the release of such offenders. The object of including the reference to the sentences of transferred offenders in the CCRA definition of "sentence" is intended to ensure that the custodial release provisions of that statute apply to Canadian offenders serving sentences of imprisonment who are transferred to this country under an arrangement with a foreign entity.

[48] The term "youth sentence" as defined under subsection 2(1) of the YCJA applies to a broad range of possible sentence dispositions that may be imposed. Youth sentences which involve custody will have a non-custodial portion. The inclusion of the term "youth sentence" in the definition of "sentence" in the CCRA is intended solely to ensure that the conditional release provisions of the CCRA are available to offenders serving the custodial portion of their youth sentences in adult facilities. Thus the definition has to read as referring to the custodial portion and not to the community supervision portion.

[49] I note that a "conditional sentence of imprisonment" pursuant to section 742.1 of the *Criminal Code* is a "sentence of imprisonment" that is served in the community instead of in an institution. As per the Supreme Court's decision in *R. v. Proulx*, above, parole cannot attach to a conditional sentence of imprisonment because the offender is not actually incarcerated and he or she does not need to be reintegrated into society (at paragraph 43). Similarly, parole cannot be granted to a transferred offender or a young offender who has already been conditionally released.

[50] The conditional supervision portion in sentences under the YCJA is an alternative to detention and is intended to be served in the community. While an application may be made under section 98 for a continuation of the custody portion and a remand into custody is possible under section 102 for breach of the conditions, these are exceptional procedures which do not derogate from the principle that reintegration into the community is a fundamental part of any custodial sentence under the YCJA.

[51] The fact that warrants of committal for youth sentences in British Columbia include the total length of the sentence, including the custodial and conditional supervision components, does not alter this analysis. A warrant of committal is not the sentence of the Court, but merely "the machinery" which provides proof of a legal authority to hold the prisoner in custody for the specified period: *Ewing v. Mission Institution* (1994), 92 C.C.C. (3d) 484 (B.C.C.A.), at paragraphs 33 and 34. In the context of youth sentences, the outside limit of such authority must be observed as section 104 of the YCJA allows a youth justice court to order the continuation of an offender's custody for a period not to exceed the remainder of his/her youth sentence. A warrant of committal may, therefore, remain in force until the date on which the full term of a youth offender's sentence expires.

Issue 2: When does the Board's authority over an offender serving a youth sentence in an adult facility expire?

Applicant's Submissions

[52] The applicant argues that the Board's jurisdiction expires at the end of his 22-month custodial sentence. The Board's jurisdiction is to grant, terminate or revoke parole. This power can only exist where an offender continues to be subject to a "sentence of imprisonment" from which parole may be granted.

[53] Including the conditional supervision portion of the applicant's youth sentence in the calculation of parole eligibility has the effect of extending the Board's jurisdiction over the applicant during his 36-month conditional supervision term. Extending the Board's authority beyond the custodial term, the applicant contends, is inconsistent with Parliament's chosen scheme for conditional supervision. Parliament has empowered the provincial director and the youth justice court with the authority to impose conditions and to monitor young offenders subject to conditional supervision. It is submitted that the exclusive purpose of the CCRA is to manage sentences of imprisonment. The CCRA is silent with respect to a number of non-custodial components of a sentence, including the conditional supervision portion of a youth sentence.

[54] The applicant further submits that there is a real danger of inconsistent conditions being imposed by the Board and the youth justice court or the provincial director. It is submitted that Parliament could not have intended such an unnecessary burden on both the parole and conditional supervision schemes.

[55] The applicant seeks a declaration that the Board's authority over the applicant expires at the end of the 22-month custodial portion of his youth sentence.

Respondent's Submissions

[56] The respondent submits that if the Board grants the applicant full parole, and the applicant remains on full parole at the time his period of custody expires (after 22 months), then the Board will continue to exercise its jurisdiction for the remainder of the applicant's youth sentence (for the balance of the 58-month sentence). This is the only conclusion that can be reached, the respondent submits, considering that subsection 89(3) of the YCJA, which provides for transfers of young offenders to adult facilities and for the

application of the provisions of the CCRA in such cases, supports that finding.

[57] Nothing in the legislative scheme prevents the parole and youth justice authorities from taking a cooperative approach in the management of the offender's sentence, in the respondent's view. If the jurisdiction of the authorities overlap, the respondent adds, the systems will adapt.

Analysis

[58] Subsection 89(3) of the YCJA expressly states that the CCRA and the PRA apply to a young person serving a youth sentence in an adult facility. However, it is not clear from the statutes that youth justice principles cease to apply to such an offender. Recently in *R. v. K.(C.)* (2008), 233 C.C.C. (3d) 194 (Ont. C.J.), a case dealing with whether the review provisions of the YCJA apply to a young person serving his sentence in an adult facility, Justice B. W. Duncan of the Ontario Court of Justice criticised the legislation for this uncertainty (at paragraph 18):

> An offender serving a youth sentence who enters or is transferred to an adult facility enters a legal no man's land. The *YOA* provided for discretionary transfer at the age of 18 but made it clear that "the provisions of this Act shall continue to apply in respect of that person" (s. 24.5 *YOA*). The *YCJA* contains no such provision. Nor does it specifically state the opposite — that the youth statute or any parts of the sections of it cease to apply. As a consequence it is not clear whether the Act or principles of youth justice apply or whether a transferred youth is even entitled to a review.

[59] Justice Duncan noted that youth serving their sentences in an adult facility continue to fall within the definitions and language used in the YCJA. Such an offender is within the definition of a "young person" (subsection 2(1)) and is serving a "youth sentence". Even though not in a "youth custody facility" (subsection 2(1)), the youth is still within the "youth custody and supervision system" because the statement of purpose and principles in relation to that system includes youth who have been placed "where they are treated as adults" (section 83).

[60] Justice Duncan resolved the ambiguity in favour of the youth and held, at paragraphs 24 and 25 of his reasons, that the principles of the YCJA continue to apply to offenders who have entered an adult facility to serve part or all of a youth sentence. One of the implications of this, he found, is that the adult facility must accommodate the person in a way that conforms to the principles of youth criminal justice.

[61] In the case at bar, the Board's initial reasons for refusing day parole to the applicant state that "if released on his eligibility date, he would be subject to the terms and conditions of his Full Parole through to his warrant expiry date 2013/09/06". Such a statement has significant implications. Most importantly, it means that the terms and conditions of parole set by the Board would apply for the remainder of the applicant's youth sentence. It is not clear how this would be reconciled with the supervision principles under the YCJA and the conditions imposed by the sentencing Judge. It is also unclear how the Board, which is accustomed to dealing with adult offenders, would accommodate YCJA principles in supervising this offender.

[62] An aspect of the legislative scheme that supports the respondent's position that Parliament intended that the Board would have jurisdiction until the end of the offender's sentence, is that, as discussed above, the custodial portion of the sentence could in exceptional circumstances be extended to "warrant expiry". In that situation, the offender would continue to be detained (or returned to custody following a review in the case of a breach of his conditions), in an adult correctional facility and would remain within the scope of the CCRA and the Board's jurisdiction.

[63] Absent a decision to continue custody or to return the offender to custody for the remainder of the sentence, the Board's jurisdiction expires, in my view, when the applicant is no longer required to be detained under the terms of the custodial portion of his sentence. This conclusion does not lead to a jurisdictional void as he will remain under the supervision of the provincial director and the sentencing court.

IT IS THE JUDGMENT OF THIS COURT that

1. For the purpose of calculating the applicant's eligibility for day and full parole, only the 22-month custodial portion of the applicant's sentence is to be included by the National Parole Board and the calculation shall not include the conditional supervision portion of the sentence;

2. The National Parole Board's jurisdiction to grant, terminate or revoke parole and to supervise the applicant expires at the end of the 22-month custodial portion of the applicant's youth sentence subject to the following provision;

3. Should custody be continued until the end of the conditional supervision portion of the sentence or the applicant is returned to custody for the remainder of the sentence by order of the youth justice court, the Board will retain jurisdiction;

4. The applicant is awarded costs for this application according to the normal scale.

ANNEX

Corrections and Conditional Release Act

2. (1) …

"sentence" means a sentence of imprisonment and includes a sentence imposed by a foreign entity on a Canadian offender who has been transferred to Canada under the *International Transfer of Offenders Act* and a youth sentence imposed under the *Youth Criminal Justice Act*;

…

119. (1) Subject to section 746.1 of the *Criminal Code*, subsection 140.3(2) of the *National Defence Act* and subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, the portion of a sentence that must be served before an offender may be released on day parole is

…

(*c*) where the offender is serving a sentence of two years or more, other than a sentence referred to in paragraph (*a*) or (*b*), the greater of

(i) the portion ending six months before the date on which full parole may be granted, and

(ii) six months; or

…

120. (1) Subject to sections 746.1 and 761 of the *Criminal Code* and to any order made under section 743.6 of that Act, to subsection 140.3(2) of the *National Defence Act* and to any order made under section 140.4 of that Act, and to subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, an offender is not eligible for full parole until the day on which the offender has served a period of ineligibility of the lesser of one third of the sentence and seven years.

Youth Criminal Justice Act

2. (1) …

"youth sentence" means a sentence imposed under section 42, 51 or 59 or any of sections 94 to 96 and includes a confirmation or a variation of that sentence.

…

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.

…

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.

(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:

…

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

…

(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;

…

83. (1) The purpose of the youth custody and supervision system is to contribute to the protection of society by

(*a*) carrying out sentences imposed by courts through the safe, fair and humane custody and supervision of young persons; and

(*b*) assisting young persons to be rehabilitated and reintegrated into the community as law-abiding citizens, by providing effective programs to young persons in custody and while under supervision in the community.

(2) In addition to the principles set out in section 3, the following principles are to be used in achieving that purpose:

(*a*) that the least restrictive measures consistent with the protection of the public, of personnel working with young persons and of young persons be used;

(*b*) that young persons sentenced to custody retain the rights of other young persons, except the rights that are necessarily removed or restricted as a consequence of a sentence under this Act or another Act of Parliament;

(*c*) that the youth custody and supervision system facilitate the involvement of the families of young persons and members of the public;

(*d*) that custody and supervision decisions be made in a forthright, fair and timely manner, and that young persons have access to an effective review procedure; and

(*e*) that placements of young persons where they are treated as adults not disadvantage them with respect to their eligibility for and conditions of release.

…

89. (1) When a young person is twenty years old or older at the time the youth sentence is imposed on him or her under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*), the young person shall, despite section 85, be committed to a provincial correctional facility for adults to serve the youth sentence.

(2) If a young person is serving a youth sentence in a provincial correctional facility for adults pursuant to subsection (1), the youth justice court may, on application of the provincial director at any time after the young person begins to serve a portion of the youth sentence in a provincial correctional facility for adults, after giving the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard, authorize the provincial director to direct that the young person serve the remainder of the youth sentence in a penitentiary if the court considers it to be in the best interests of the young person or in the public interest and if, at the time of the application, that remainder is two years or more.

(3) If a young person is serving a youth sentence in a provincial correctional facility for adults or a penitentiary under subsection (1) or (2), the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners or offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

…

92. (1) When a young person is committed to custody under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*), the youth justice court may, on application of the provincial director made at any time after the young person attains the age of eighteen years, after giving the young person, the provincial director and representatives of the provincial correctional system an opportunity to be heard, authorize the provincial director to direct that the young person, subject to subsection (3), serve the remainder of the youth sentence in a provincial correctional facility for adults, if the court considers it to be in the best interests of the young person or in the public interest.

(2) The youth justice court may authorize the provincial director to direct that a young person, subject to subsection (3), serve the remainder of a youth sentence in a penitentiary

(*a*) if the youth justice court considers it to be in the best interests of the young person or in the public interest;

(*b*) if the provincial director applies for the authorization at any time after the young person begins to serve a portion of a youth sentence in a provincial correctional facility for adults further to a direction made under subsection (1);

(*c*) if, at the time of the application, that remainder is two years or more; and

(*d*) so long as the youth justice court gives the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard.

(3) If the provincial director makes a direction under subsection (1) or (2), the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners and offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

…

98. (1) Within a reasonable time before the expiry of the custodial portion of a young person's youth sentence, the Attorney General or the provincial director may apply to the youth justice court for an order that the young person remain in custody for a period not exceeding the remainder of the youth sentence.

(2) If the hearing for an application under subsection (1) cannot be completed before the expiry of the custodial portion of the youth sentence, the court may order that the young person remain in custody pending the determination of the application if the court is satisfied that the application was made in a reasonable time, having regard to all the circumstances, and that there are compelling reasons for keeping the young person in custody.

(3) The youth justice court may, after giving both parties and a parent of the young person an opportunity to be heard, order that a young person remain in custody for a period not exceeding the remainder of the youth sentence, if it is satisfied that there are reasonable grounds to believe that

(*a*) the young person is likely to commit a serious violent offence before the expiry of the youth sentence he or she is then serving; and

(*b*) the conditions that would be imposed on the young person if he or she were to serve a portion of the youth sentence in the community would not be adequate to prevent the commission of the offence.

…

102. (1) If the provincial director has reasonable grounds to believe that a young person has breached or is about to breach a condition to which he or she is subject under section 97 (conditions to be included in custody and supervision orders), the provincial director may, in writing,

(*a*) permit the young person to continue to serve a portion of his or her youth sentence in the community, on the same or different conditions; or

(*b*) if satisfied that the breach is a serious one that increases the risk to public safety, order that the young person be remanded to any youth custody facility that the provincial director considers appropriate until a review is conducted.

…

104. (1) When a young person on whom a youth sentence under paragraph 42(2)(*o*), (*q*) or (*r*) has been imposed is held in custody and an application is made to the youth justice court by the Attorney General, within a reasonable time before the expiry of the custodial portion of the youth sentence, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court and the youth justice court may, after giving both parties and a parent of the young person an opportunity to be heard and if it is satisfied that there are reasonable grounds to believe that the young person is likely to commit an offence causing the death of or serious harm to another person before the expiry of the youth sentence the young person is then serving, order that the young person remain in custody for a period not exceeding the remainder of the youth sentence.

(2) If the hearing of an application under subsection (1) cannot be completed before the expiry of the custodial portion of the youth sentence, the court may order that the young person remain in custody until the determination of the application if the court is satisfied that the application was made in a reasonable time, having regard to all the circumstances, and that there are compelling reasons for keeping the young person in custody.