# Court of Queen's Bench of Alberta

**Citation: R v RTJ, 2018 ABQB 451**

**Date:** 20180619
**Docket:** 160295945Q1
**Registry:** Wetaskiwin

Between:

**Her Majesty the Queen**

Crown

- and -

**R.T.J.**

Accused

## Restriction on Publication

**Identification Ban** – See the *Youth Criminal Justice Act*, sections 110(1) and 111(1).

No one may publish any information that may identify a person as having been dealt with under the *Youth Criminal Justice Act*.

No one may publish any information that may identify a child or young person as being a victim or witness in connection with an offence alleged to have been committed by a young person.

**NOTE:** This judgment is intended to comply with the identification ban.

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**Oral Sentencing Judgment**
**of the**
**Honourable Mr. Justice W.N. Renke**

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[*I reserved the right to edit for style and grammar, to add citations, to complete truncated quotations, and to add headings and a Table of Contents for ease of reading. I also advised counsel I'd add a Schedule setting out statutory provisions and another summarizing the cases relied on by counsel.*]

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[1] R.T.J. pleaded guilty to a charge of second degree murder:

> on or about the 1st day of August, 2015 at or near Leduc in the Province of Alberta, [he] did commit second degree murder on [M.H.] contrary to Section 235 of the Criminal Code.

The events are detailed in the Agreed Statement of Facts. The facts were horrific. I'll outline the basic facts and refer to other relevant details as we proceed.

## I. Background

[2] R.T.J., age 17, Kyle Scott (29), and Dylan Bakke (20), were associates of Chris Stein (38), who was believed to be operating a drug trafficking enterprise from his farm in Millet. M.H. was 21.

[3] During the evening of July 31, 2015, M.H., who had earlier been consuming drugs with R.T.J., Mr. Scott and Mr. Bakke, was at Mr. Scott's grandmother's house. M.H. was involved in several altercations and was asked to leave. When leaving she threatened to report the group to the police for drug trafficking, in the words of the Agreed Statement of Facts. Mr. Stein was advised. He - again, according to the Agreed Statement of Facts - uttered words that caused Scott, Bakke and R.T.J. to go looking for M.H. to harm her.

[4] R.T.J., Mr. Scott and Mr. Bakke found M.H. in Aileen Faller Park in Leduc, early on August 1, 2015. They beat her. They left her in the park. Mr. Stein picked up R.T.J., Mr. Scott, and Mr. Bakke and dropped them off at Mr. Scott's residence. They got Mr. Bakke's car. They returned to get M.H. A plastic bag was put over her head and they put her in the car. She died in the car. Her body was left in a wooded area near Calmar.

[5] They then returned to Mr. Stein's residence.

[6] The Agreed Statement of Facts states that R.T.J. was made to ride in the backseat with M.H. He vomited several times during this drive and once they arrived at their destination. He was too physically ill to assist the others in removing her body from the car.

[7] R.T.J. was arrested on March 4, 2016. He confessed and cooperated with the police. He was released into his father's custody under Section 31 of the *Youth Criminal Justice Act* on August 12, 2016. R.T.J. entered a guilty plea on January 23, 2018.

[8] The Crown has not applied to have R.T.J. sentenced as an adult.

[9] Exhibits filed in these proceedings included the Agreed Statement of Facts, Confidential Autopsy Report form, a pre-sentence report, a 2018 FACS report, the sentencing submissions for R.T.J. which included a 2016 FACS report and letters of support for R.T.J., a victim impact statement of K.H, M.H.'s mother, and a victim impact statement prepared by K.H. on behalf of A.B. [M.H.'s son, now 6 years old].

## II. Victim Impact Statements

[10] I'll begin with some comments relating to the victim impact statements.

[11] Under Section 51(1) of the *Youth Criminal Justice Act*, the provisions of the *Criminal Code* relating to victim impact statements apply. Subsection 722(1) of the *Criminal Code* provides that:

> When determining the sentence to be imposed on an offender or determining whether the offender should be discharged under section 730 in respect of any offence, the court shall consider any statement of a victim prepared in accordance with this section and filed with the court describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence ....

In this context, "victim" includes not only K.H. but A.B.

[12] A sentencing judge must consider a filed victim impact statement. Victim impact statements are important but must be approached with caution. Victim impact statements can't be treated as an aggravating factor in sentencing: ***R v Deer***, 2014 ABCA 88 at para 21. Sentencing should not depend on the eloquence of survivors' statements or on whether a victim impact statement was filed at all.

[13] On the use to which I may put the victim impact statements, I refer to the decision of Justice Blair ***R v Taylor***, 2004 CanLII 7199, 189 OAC 388 at para 42 (CanLII):

> What [victim impact statements] do at least … is help the judge to understand the circumstances and consequences of the crime more fully, and to apply the purposes and principles of sentencing in a more textured context ….

Justice Blair's comment is in line with Justice Watson's observation in ***R v Wharry***, 2008 ABCA 293 at para 22: "[v]ictims are entitled to expect that the Court will give due regard to the enormity of the effects of crime."

[14] I confirm that there was nothing improper in the statements provided by K.H. She described the physical, emotional, psychological harm suffered by her and by A.B. as a result of the commission of the offence. She did not stray beyond the limitations for victim impact statements set out in s. 722(1) of the *Criminal Code*. See e.g., ***R v McDonough***, 2006 CanLII 18369, 209 CCC (3d) 547 (Ont SC), Durno J at para 30.

[15] It would be wrong for me not to offer some further comments relating to the victim impact statements. I'd like to thank K.H. for the calm and dignified manner in which she presented the statements, for the respect she showed for these proceedings and I have to say, for the respect she showed for R.T.J. She truly honoured M.H.'s memory in the most appropriate way possible.

[16] K.H., through the victim impact statements, did what victim statements are supposed to do, which was to show the Court, to show the judge, the real effects of the offence. Very often justice system participants come to look at the world through the web of the law. What victim impact statements can do is remind us of the reality that stretches out beyond the courtroom into people's actual lives - in this case, into K.H.'s life and A.B.'s life. I acknowledge the devastating impact that M.H.'s death has had on K.H. and on A.B. What's worst, K.H., is the guilt that you feel.

[17] There's nothing I can do to change the way you feel, but of course you've got nothing to be responsible for. Nothing to be guilty for. There is nothing you could have done. I suspect that you look to guilt because you're trying to find an answer, you're trying to find a reason. But I think you've actually found the key, I think you've actually found the answer, which is that, as you said in your victim impact statement, there is no answer. Sometimes there just is no answer. This is one of those situations. That reality is your reality, that reality is R.T.J.'s reality as well. There is no answer and this is just how life unfolded. So please don't try to fix this gap by putting your guilt in there. It's not that - it's not you. There is no answer, as you yourself said.

[18] I have to comment as well on the acts of reconciliation between K.H. and R.T.J., both in March of 2016 and today. It was astonishing, it was extraordinary. The compassion and understanding that K.H. has shown is truly a model for us all.

[19] I'll turn to the principles that govern the determination of sentence.

## III. Sentencing Principles

[20] The *Youth Criminal Justice Act* sets out principles governing the sentencing of young offenders. The relevant provisions are quoted in Schedule A. The statutory language is binding and I have relied on that statutory language. But the principles that I must apply may be summarized as follows.

### 1. Separate and Distinct Sentencing Regime for Young Offenders

[21] The *Youth Criminal Justice Act* establishes a sentencing regime for young offenders separate from the sentencing regime for adult offenders. Hence, save for some express exceptions, *Criminal Code* sentencing provisions that apply to adults don't apply to sentencing under the *Youth Criminal Justice Act*. Under the *Youth Criminal Justice Act*, the approach to sentencing young offenders is distinct from the approach to sentencing adult offenders. According to Justice Abella in ***R v DB***, 2008 SCC 25 at para 1,

> Young people who commit crimes have historically been treated separately and distinctly from adults. This does not mean that young people are not accountable for the offences they commit. They are decidedly but differently accountable.

[22] The foundation for different approaches to sentencing for young offenders and adults lies in fact and in the normative implications of fact. Justice Abella observed that

> …. *why* we have a separate legal and sentencing regime for young people, [is] that because of their age, young people have heightened vulnerability, less maturity and a reduced capacity for moral judgment: ***DB*** at para 41.

Justice Abella went on to quote from Professor Nick Bala, who described the *Youth Criminal Justice Act* as

> premised on a recognition that to be a youth is to be in a state of "diminished responsibility" in a moral and intellectual sense. Adolescents, and even more so children, lack a fully developed adult sense of moral judgment. Adolescents also lack the intellectual capacity to appreciate fully the consequences of their acts. In many contexts, youths will act without foresight or self-awareness, and they may lack empathy for those who may be the victims of their wrongful acts …: ***DB*** at para 62.

See YCJA, ss. 3(1)(b), 3(b)(ii); ***R v DDT***, 2010 ABCA 365 at para 48; ***R v JFR***, 2016 ABCA 340 at paras 14, 18, 25; ***R v LM***, 2017 SKQB 336 at para 114.

[23] The difference in sentencing approach for young offenders and adults has a long history in our law, stretching back into common law, pre-confederation statutes, and early Canadian legislation dealing with young offenders: ***DB*** at paras 47-50. The different approach to the sentencing of young offenders and adults is a requirement of fundamental justice under s. 7 of the *Charter*: ***DB*** at paras 68, 69.

### 2. Offender-Focused Sentencing

[24] A key difference between the approach to sentencing for young offenders and adults is that the approach to sentencing young offenders is more offender-focused, or as the cases put it, offender-centric, than sentencing for adult offenders: ***R v P (BW); R v N (BV)***, 2006 SCC 27 at para 33. Sentencing of young offenders must expressly target the young offender before the Court and not be aimed at the general public, although the sentencing of a young offender may have implications for the public.

[25] Subsection 38(1) of the *Youth Criminal Justice Act* describes the purpose of youth sentences:

> 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.

[26] The purpose of youth sentencing under s. 38(1) has three elements. First, holding a young person "accountable." Second, through the imposition of "just sanctions." Third, the just sanctions must have "meaningful consequences for the young person," promoting rehabilitation and reintegration, contributing to long-term protection of the public.

#### (a) Accountability

[27] What's meant in s. 38(1) by holding a young person accountable? This was answered authoritatively by the Ontario Court of Appeal in ***R v AO***, 2007 ONCA 144. The Court wrote at para 46 that

> in our view, accountability in this context [i.e., in the context of sentencing young offenders] is the equivalent of the adult sentencing principle of retribution as explained by Lamer C.J.C. in ***R. v. M.(C.A.)***, [1996] 1 S.C.R. 500 … at para 80 ...:
>
> > Retribution in a criminal context … represents an objective, reasoned and measured determination of an appropriate

> punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more. (emphasis in original)

[28] The Court of Appeal went on in paragraph 47 to write that:

> In our view, for a sentence to hold a young offender accountable in the sense of being meaningful it must reflect, as does a retributive sentence, "the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct" (underlining omitted). We see no other rational way for measuring accountability.

See ***R v CM***, 2014 ABQB 701, Moreau J, as she then was, at paras 15-18; ***R v CHC***, 2009 ABQB 125 Moreau J at para 78.

**(b) Just Sanctions**

[29] The next feature of 38(1) concerns just sanctions. The justice of a sanction turns on its proportionality. Proportionality itself has two faces. A just sanction must be proportionate to the seriousness of the offence. A justice sanction must also be proportionate to the degree of responsibility of the young person.

[30] Under s. 38(3) of the *Youth Criminal Justice Act*, circumstances to be taken into consideration in gauging a proportionate sanction include

> (a) the degree in participation by the young person in the commission of the offence;
>
> (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
>
> (c) any reparation made by the young person to the victim or the community;
>
> (d) time spent in detention by the young person as a result of the offence;
>
> (e) previous findings of guilt of the young person; and
>
> (f) any other aggravating or mitigating circumstances related to the young person or the offence relevant to the purpose and principles set out in [section 38].

[31] Additional principles tempering a just sanction include the following:

- the punishment must not be greater than the punishment that would have been imposed on an adult for the same offence occurring in similar circumstances (s. 38(2)(a));
- the punishment must be similar to sentences imposed in the region on similar young persons found guilty of the same offence, committed in similar circumstances (s. 38(2)(b), the "parity" principle);
- the punishment must be the least restrictive of liberty that will achieve the purpose of the punishment (ss. 38(2)(e)(i), 39(2) and (3), the "restraint" principle);

- sanctions other than custodial dispositions should be considered and a custodial disposition should be employed only if, generally, a noncustodial disposition would be inconsistent with the purpose and principles of punishment (ss. 38(2)(d), 39(1) and (5), the "last resort" or "parsimony" principle; see ***R v Gladue***, [1999] 1 SCR 688 at paras 36, 40, 55).

**(c) Meaningful Consequences**

[32] The consequences of a just sanction must serve objectives that are "meaningful for the young person" and that promote the young person's rehabilitation and reintegration. Just sanctions must also contribute to the long-term protection of the public. The Court of Appeal wrote in ***R v AWB***, 2018 ABCA 159 at para 50 that "[c]onsideration of the protection of the public is part of the accountability analysis."

[33] However, rehabilitation and reintegration of the young offender are, expressly, crucial goals of sentencing. Rehabilitation and reintegration must be appropriate to the offender's needs and level of development: YCJA ss. 3(a)(ii), 3(b)(i), 3(c)(iii), 38(2)(e)(ii); ***R v DDT***, 2009 ABQB 384, Germain J (sentencing) at paras 24, 25. A sentence need not assure rehabilitation and reintegration but it must be adequate to promote rehabilitation and reintegration in a "meaningful and realistic fashion:" ***AO*** at paras 58, 61; see also ***R v Williams***, 2008 ABCA 317 at para 12; ***CHC*** at paras 84-85.

[34] Sanctions imposed on a young person should also promote a sense of responsibility: YCJA s. 38(2)(e)(iii). A principle that bridges individual need and social protection is that sanctions should refer young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour: YCJA s. 3(a)(iii).

[35] From the perspective of social effects, just sanctions may have as objectives the reinforcement of respect for societal values. Denunciation and specific deterrence may be legitimate objectives of sanctions imposed under the *Youth Criminal Justice Act*: ss. 3(1)(c)(i) and 38(2)(f):

> (f) subject to paragraph (c), the sentence may have the following objectives:
>
> (i) to denounce unlawful conduct, and
>
> (ii) to deter the young person from committing offences.

See ***LM*** at paras 123-124. Specific deterrence relates to deterring the young person individually from committing offences as opposed to general deterrence which is aimed at persons other than the offender before the Court.

[36] Denunciation was addressed in the ***CAM*** decision, quoted with approval in the young offender context by the Ontario Court of Appeal in ***AO***. In ***CAM*** at para 81, Chief Justice Lamer stated that:

> The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct … [A] sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law ….

[37] Just sanctions, finally, may also encourage the repair of harm done to victims and the community: YCJA s. 3(1)(c)(ii).

### 3. Statutory Refinements of Sentence

[38] In terms of the statutory scope and limitation of sanctions, I look to s. 42 of the Act. Subsection 42(2) imposes special rules concerning sanctions for second degree murder:

> 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 … 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.

It was confirmed that the paragraph (r) provisions aren't available in this case.

[39] Paragraph 42(2)(q) provides that the Court shall

> (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.

[40] I'll turn now to the sentencing submissions of Crown and Defence.

## IV. Sentencing Assessment

### 1. Crown Submissions

[41] The Crown sought the maximum penalty available under 42(2)(q) - four years custody, three years community supervision, but with credit for time served at a 1.5 to 1 ratio. The Crown emphasized the gravity of the offence and the manner in which it was committed and also submitted that R.T.J.'s rehabilitation and reintegration and the consequent public protection would be best served by a lengthy period of structured, supervised control. This would give us, in the Crown's submission, the best chance of success. And fairly, the Crown made this submission with full acknowledgement of the numerous post-offence steps that were taken by R.T.J., exhibiting and manifesting his remorse and his taking of responsibility, including his guilty plea and his cooperation with the authorities – involving, in addition to a re-enactment, testifying at two preliminary inquiries.

### 2. Defence Submissions

[42] The Defence urged a sentence of 30 months custody - 20 months secured, 10 months open custody, without objection to a period of community supervision to follow. The Defence

acknowledged the gravity of the offence and also acknowledged R.T.J.'s degree of responsibility in relation to his participation in the offence. The emphasis in the Defence submissions was on what we might regard - and which I'll elaborate on in a few minutes – as the contextual elements of R.T.J.'s degree of responsibility, in particular, his psychological condition and his personality circumstances, bearing on his place in the group that killed M.H. The Defence also looked to the significant post-offence efforts of R.T.J. and to his overwhelming grief, his remorse as well as his promise to K.H. to make things right. The Defence emphasized R.T.J.'s cooperation with the police, his reenactment and his testimony at the preliminary inquiries.

[43] The Defence pointed out that R.T.J. has been on judicial interim release and while my note indicated that he'd been on release for 16 months, I believe it's closer to 20 months – in any event, without incident. The terms of judicial interim release have been performed 100 percent, they've been diligently followed. R.T.J. has been working, he has been in fact reintegrating with his family, with his girlfriend. The Defence submitted that we're dealing not with the possibility of rehabilitation and reintegration but with its actuality.

[44] And I might comment on the letters of support and on R.T.J.'s reintegration. All of the individuals who provided letters of support knew exactly what R.T.J. had done yet they were still willing to stand up and be counted on his behalf. To a person they provided their opinion that what was done was out of character, was done by somebody other than the R.T.J. that they know.

[45] By way of encapsulating the Defence submissions, Mr. Millsap urged that these considerations can't be given zero credit. To impose the maximum custodial plus community supervision period under the legislation would in effect deny any mitigating value to all of these steps, all of these measures, all of this work, all of this grief felt by R.T.J. There can't be zero credit for all of that.

[46] Added to the Defence submissions was R.T.J.'s statement to the Court. He expressed his remorse and I find it was completely authentic. I acknowledge the deep grief that he feels.

## V. Sentencing Assessment

[47] So now, with this background in mind, I turn to my assessment of the factors bearing on an appropriate sentence. What I'll look to are factors grouped under the seriousness of the offence and R.T.J.'s degree of responsibility for the offence, before I address the issue of meaningful consequences - the sentence itself.

### 1. Seriousness of the Offence

#### (a) Nature of the Offence

[48] To begin with the seriousness of the offence or the gravity of the offence: We're dealing, obviously, with an extraordinarily serious offence, a homicide. And not merely a homicide, the killing of a person, but the intentional killing of a person. The harm that's been caused is irreversible, there can't be any compensation. If any judicial reflection on the seriousness of the offence is required, and it may not be, I look to, for example, Chief Justice Lamer's comments in ***R v Martineau***, [1990] 2 SCR 633 at 645-646: "A conviction for murder carries with it the most severe stigma and punishment of any crime in our society …. Murder has long been recognized as the 'worst' and most heinous of peace time crimes."

[49] And we ask ourselves, why is that? The reason is the value that each individual has in our legal system, in our political system, in our Canadian way of life. The value that each individual has, the dignity and worth that each individual has. In this case, M.H.'s light was put out.

**(b) Circumstances of the Offence**

[50] In terms of the manner of commission of the offence, consider the perspective of M.H. On this point, I look to the Agreed Statement of Facts at paragraph 9:

> Prior to being beaten, [M.H.] sent her mom two text messages at 11:32 and 11:33 p.m. on July 31, 2015 saying, "Mom, they're trying to kill me" and "They're trying to set me up." Between 1:08 and 1:25 a.m. on the morning of August 1st, [M.H.] made four phone calls and left voice mails on her mother's phone pleading for her to come to Leduc to come pick her up. She also phoned her friend Tara Hrynk, several times during the night of July 31st to the early morning of August 1st asking for help and saying on at least one occasion "they're trying to kill me." During one of the calls it sounds like [M.H.] was running. At 11:40 p.m. on the 31st, [Hrynk] received a Facebook message from [M.H.] with a screenshot of her phone which displayed a map of Leduc with a PIN indicating the GPS location of her call and the caption, "[M.H.'s] location".

[51] Imagine M.H.'s circumstances: literally running for her life, trying to reach out to people that didn't know, didn't get the message, people who couldn't help her. Imagine her fear. Then she's set upon by three males. They beat her. They beat her with fists, they kicked her. A heavy object, possibly a log, possibly some other wooden item, was used as a weapon. She was left there. She was alive when they left. She didn't move or she didn't move much. They came back and they got her, put a plastic bag over her face, put her in the car and she died. Death must have been a release.

[52] The harm that was caused was not only to M.H., but as we've heard, to her mother and A.B. They are going to bear this burden forever.

**(c) Further Aggravating and Mitigating Circumstances**

[53] In terms of further aggravating and mitigating circumstances relating to the manner and commission of the offence, I look to the ***DDT*** sentencing decision. Justice Germain referred to the following factors to gauge the nature of the manner of commission of the offence:

- was there was unnecessary violence? In this case, there certainly was.
- was there degradation of the victim? M.H. was beaten and left before she was finally dumped.
- was a weapon used? As I indicated earlier during submissions, the evidence did not disclose that R.T.J. used a weapon, so that factor does not count against him.
- were the actions protecting a criminal enterprise? Again, we referred to this issue during submissions. In my view, on the evidence we have, the acts were motivated to protect the group from being subjected to police scrutiny. I won't go any further on that point.

[54] An aggravating factor mentioned in ***R v Ervin***, 2003 ABCA 179 at para 30 was the failure to seek assistance when it was apparent that serious injuries had been inflicted on the victim.

[55] Another aggravating factor was the group participation. We had a substantial amount of discussion around this factor during submissions so I won't elaborate, save to point out that this factor has received attention and has been characterized as an aggravating factor not only in ***Ervin*** at para 28 and ***R v Gagliardi***, 2000 ABCA 137 at paras 15 and 16, but in ***R v JL***, 2016 ABPC 299, one of the Defence cases at para 21, where there's a reference to ***R v MacIntyre***, [1992] AJ No 1088 (CA) and to this particular line - "the blow of one is the blow of all of them:" ***R v Pickton***, 2010 SCC 32 at paras 62-63 and ***R v P(MC)***, 2013 ABCA 366 at para 24. I'll refer as well to a case that I had mentioned in the course of submissions, ***CM*** at para 49. Paragraph 100 of ***CM*** refers to the ***DDT*** sentencing appeal (2010 ABCA 365), the decision of Justice Bielby at para 24. I'm not over emphasizing this factor. I'm simply saying it is a factor and this factor is engaged in the circumstances.

[56] So, there were multiple aggravating factors relating to the gravity of the offence. Not only was there an intentional homicide, but there were factors that added to the moral culpability attached to the act.

**2. Degree of Responsibility**

**(a) Proximate Factors**

[57] I'll look to R.T.J.'s degree of responsibility. A factor that could aggravate R.T.J.'s degree of responsibility is his age. He was and has been treated as a young offender, but he was only a little over 60 days short of his 18th birthday when these events occurred.

[58] In terms of planning, R.T.J. has pleaded guilty to second degree murder so this is not a planned and deliberate act and I don't consider it that. Nonetheless, as the Crown submitted, the act was not an impulsive act, it wasn't a spontaneous act. I take into account that it wasn't worked out over a long period of time, but again, there was a period of time over which these events evolved. The circumstances were not like, for example, a stabbing that occurred in the course of a street fight.

[59] In terms of degree of responsibility for the act itself, as I heard the Defence, there wasn't much in the way of mitigation relating to the offence itself, to participation in the offence itself, that the Defence could offer. By his plea, R.T.J. took responsibility for his role in this offence.

[60] However, it's necessary to consider responsibility in a deeper sense. We have to keep in mind that particularly when dealing with sentencing under the *Youth Criminal Justice Act* sentencing must be offender-centric. We have to delve into factors that relate to R.T.J. and his particular circumstances as an offender.

**(b) Personal Socio-Psychological Contextual Factors**

[61] By looking to these factors, I'm not denying that R.T.J. made a choice, I'm not denying that he committed an offence, I'm not denying that he is responsible. I'm not suggesting that these factors justify or excuse anything that occurred. But these factors can help to explain what occurred and can help to evaluate the degree to which R.T.J. is truly responsible and what form of sentence, what form of sanction would be appropriate in all the circumstances.

[62] The basic condition that we're dealing with is that while we all make choices, the way in which we are able to make choices and the practical options that may be available to us can vary depending on our personal realities.

[63] So, I'll examine the deeper level of degree of responsibility for R.T.J. To begin, just some objective and clear matters.

**(i) Criminal Record and Past Conduct**

[64] R.T.J. has no criminal record on the evidence we have. He has committed no other offences. It follows that he did not commit this offence while under sentence for some prior offence or under conditions for some prior offence.

[65] As a more general point, given the absence of anything like this sort of violence in his past, what occurred was truly out of character for R.T.J. I look here to the letters of support in that regard. The out-of-character nature of these acts can also be inferred from the lack of record, the lack of prior difficulties with the law.

[66] I concede that R.T.J. was involved with the drug subculture, that's referred to as I recall in the Agreed Statement of Facts, but being involved in drug subculture is one thing, being involved in violent acts is quite a different thing.

**(ii) Pre-Sentence Report**

[67] Those objective matters aside, I look to R.T.J.'s history as detailed in the pre-sentence report. The pre-sentence report discloses that R.T.J.'s life and his world began to be shaped before he was born. His mother was young and abused alcohol. He was conceived in a one-night encounter between his mother and father. They didn't marry. His mother didn't realize she was pregnant until she was about three months along. She had been drinking over this period. His father didn't know he had a son until R.T.J. was between 6 to 9 months old. His father had little involvement in his young life.

[68] R.T.J. lived with his mother. R.T.J. and his mother moved frequently between Leduc and Edmonton. A partner of his mother, who had become a father figure for R.T.J., died when R.T.J. was 5.

[69] When living with his mother, R.T.J. did not recall living by any rules.

[70] R.T.J.'s maternal and paternal grandparents and his paternal great-grandparents were involved with his young life and tried to help.

[71] His mother entered into an abusive relationship. R.T.J. witnessed the physical abuse of his mother when he was 14 or 15 years old.

[72] At about this time, when R.T.J. was about 14, he moved in with his father and his father's family. They lived in Rocky Mountain House then Whitecourt. R.T.J. began staying away from home, living on the street and doing drugs. His father had R.T.J. detained on an order under the *Protection of Children Abusing Drugs Act*. R.T.J. was held for some nine days. Following release, he began using drugs again.

[73] His father returned R.T.J. to his mother. R.T.J. began living between Wetaskiwin, Leduc and Edmonton. He lived in a drug subculture. R.T.J. reported that beginning when he was about 14, he used cocaine and crystal MDMA. He also used methamphetamine. He progressed to heroin use. To pay for drugs he borrowed then stole from his mother. He reported that he became more involved in the drug subculture that supplied him regularly with his preferred drugs.

[74] R.T.J.'s last year of completed education was grade 9.

**(iii) FACS Reports**

[75] R.T.J. was diagnosed with attention deficit hyperactivity disorder in grade 3 and was on medications for this condition until grade 6. In 2016 he was diagnosed with fetal alcohol syndrome disorder, or more precisely as the 2016 FACS report indicated, his final diagnosis was partial FAS, alcohol exposed. By "partial" what isn't meant is some kind of mitigation. It's stated on page 5 of the 2016 report that the severity of central nervous system damage is comparable between fetal alcohol syndrome and partial fetal alcohol syndrome.

[76] There was evidence that R.T.J. suffered from central nervous system impairment. His cognitive abilities, as estimated on the Weschler Adult Intelligence Scale, were on the borderline range. At page 11 of tab 2 of the Defence submissions (the 2016 FACS Report), we read that

> [R.T.J.] is performing within the Below Average range across most domains and his performance is consistently within borderline intellectual ability as measured by WAIS-IV [Weschler Adult Intelligence Scale, 4th Edition].

The report writer indicated at page 9 of tab 2 of the Defence submissions, that "[R.T.J.'s] condition is difficult to summarize because his nonverbal reasoning abilities are much better developed than his verbal reasoning abilities." On page 4 of tab 2 is a summary. We read that

> [R.T.J.] presents with moderate to severe deficits over multiple domains. He has significant deficits in social communication, social adaptive behaviour, and impulse control. There is evidence that his brain is significantly impaired over multiple domains. He has moderate to severe deficits in his verbal and perceptual comprehension, memory and learning, as well as severe deficits in executive function.

[77] The 2018 FACS report confirmed these sorts of conclusions relating to R.T.J.'s cognitive circumstances. Dr. Neumann wrote at page 6 of the 2018 report that

> a checkered pattern of skills emerge from the client's present data - normal verbal learning, stable memory traces and spatial reasoning, but with difficulty in mental recoding of cues, intrusion errors in learning, Borderline processing speed and mental efficiency. Maternal alcohol consumption is reported and the client's ADHD pattern is consistent with what is often found in the FASD population.

Dr. Neumann stated that

> The neuropsychological evidence suggests that [R.T.J.] can reasonably manage interactions between lower, more impulse-driven brain regions and higher, more thought-driven behaviours, but these are fragile skills, subject to the effects of unstable emotions.

[78] In terms of personality, Dr. Neumann indicated that testing showed that R.T.J. had marked assertiveness difficulties. He was vulnerable to exploitation by others, exacerbated by an exaggerated striving to be liked. On page 6 of the 2018 report, Dr. Neumann wrote that

> [R.T.J.] has good abilities to perceive events conventionally. However, personality measures of two years ago indicated a high need for approval (weak assertiveness). These functional deficiencies are likely to have impaired his otherwise normal ability to form accurate impressions about himself and others, to interpret the others and intentions of others without distortion; at such times, he

> may not anticipate adequately, the consequences of his own actions, or to construe correctly what constitutes appropriate behaviour in various kinds of situations …. [W]hile the client displays adaptive capacity to think logically and coherently, at times of anxiety or stress, the client is likely to make decisions based on intuitive thinking, rather than resting on evidence ….

[79] I take this information relating to the testing of R.T.J. to show two main matters relevant at this point. First, R.T.J., through no fault of his own, has been dealing with cognitive impairments. In particular, he has difficulty thinking clearly in times of stress. Second, in terms of his personality, he has - as Dr. Neumann says - marked assertiveness difficulties. He is vulnerable to exploitation by others. I take that latter finding to be consistent with counsel's submission that in the vernacular, R.T.J. was the "dog" of the crew on that early morning.

[80] Next, and I'll refer to this again in a moment, in terms of R.T.J.'s personality, Dr. Neumann found that the data revealed little antisocial reasoning. An antisocial personality is not likely, an actuarial measure of psychopathy was negative. Dr. Neumann said that when compared with persons seen in treatment, R.T.J.'s data were consistent with those of persons who have a positive motivation for change. They see the need for making significant changes in their lives.

[81] So, in terms of degree of responsibility, not only are we dealing with a young person - and remember Professor Bala's observation that because of their age, because of their developmental state, young people are statutorily treated as having diminished responsibility - but in addition we're dealing with a young person who suffered from cognitive impairments and personality impairments that in my view, clearly contributed to what occurred on the evening and early morning in question. These impairments are mitigating factors.

**(c) Post-Offence Factors**

[82] In addition to these psychological mitigating factors, I look to R.T.J.'s conduct and attitude, his performance, after the offence took place. We have a guilty plea. We have a confession. We have him testifying at two preliminary inquiries. We have him assisting the police with a reenactment. And I note that in ***Ervin*** there was also reference to another factor bearing on the appropriateness of sentence. The Court of Appeal wrote at para 22 that "[c]ooperating with the authorities has long been recognized as a mitigating factor in sentencing and with good reason."

[83] Factors that strongly mitigate R.T.J.'s degree of responsibility, or that ought to be taken into account in assessing his degree of responsibility concern in particular his plea, his confession, his cooperation with the police, his cooperation with the authorities.

[84] Now one question that you might have is this: what difference does it make what's done after the fact? Isn't the question of responsibility one that bears on responsibility at the time of the act? Certainly it's true that degree of responsibility must be assessed in relation to the gravity of the offence at the time the act took place. We've gone through those factors.

[85] But we know from our everyday lives that also relevant to assessing the moral blameworthiness of another's acts is what a person does after the act. We always take into account people's apologies, people's remorse. We do that in ordinary life. In this circumstance, common sense is really at work. It's important to look not only at what was done and the degree of responsibility at the time; what occurred afterwards is important in assessing moral blameworthiness as well.

[86] Another post-offence factor relating to personal responsibility is the taking of responsibility for the offence and connected with that, remorse. The pre-sentence report stated that R.T.J. has expressed his sincere remorse, he said he wished he could take everything back, he's expressed concern for the victim's family, indicated a desire to say personally that he was sorry. The 2018 FACS report referred at page 7 to R.T.J. taking full responsibility for his actions. He expressed remorse and as Dr. Neumann noted, is testifying for the Crown regarding his co-accused.

[87] We saw today in court and heard today in court R.T.J.'s expressions of remorse which again, I found to have been absolutely sincere. His remorse is indeed manifest. I might add that his remorse didn't just begin when he was arrested. Recall that the Agreed Statement of Facts stated that in the car with M.H., R.T.J. became physically ill. He was vomiting. His body itself was expressing its remorse, his body itself was expressing the enormity of what he had done. Again, K.H. and A.B. will carry the weight of this offence for the rest of their lives. R.T.J. will as well.

[88] In terms of further post-offence matters, R.T.J. was in custody for a period. This factor needs to be mentioned but it doesn't provide much assistance one way or the other save for me to mention that there was no evidence that R.T.J. - unlike some individuals in some of the cases to which we were referred – did not engage in any disruptive behaviour or behaviour warranting disciplinary sanction while he was in custody.

[89] And I've mentioned respecting Defence submissions that R.T.J. was on judicial interim release for some 20 months. He's followed the terms of release to the letter. There's been 100 percent compliance. In terms of his post-offence conduct, I didn't notice any evidence of program completion but he has been working, he has been practically reintegrating with his family.

**(d) Risk to Reoffend**

[90] Finally in terms of post-offence factors, I'll refer to risk that R.T.J. poses, and again, I refer to page 5 of the 2018 FACS report. The data revealed little antisocial reasoning and an antisocial personality is not likely, an actuarial measure of psychopathy was negative. On page 7, Dr. Neumann indicated that an actuarial assessment of this client's risk to recidivate placed him in an average risk category in which 35 percent of his cohort is considered more likely than not to reoffend within an average of seven years. Dr. Neumann stated that in the absence of psychopathic or antisocial personality characteristics (and Dr. Neumann found that there was an absence of psychopathic and antisocial personality characteristics), and especially with carefully structured peer vocational, academic, and social interactions, R.T.J.'s risk to recidivate will decline markedly. That is to say, from average to low. I do note that Dr. Neumann highlighted that a main concern was R.T.J.'s uncritical desire for acceptance and marked lack of assertiveness. Thus he was and continues to be at risk for falling under the sway of miscreant peers.

**(e) Parity and Sentences in Other Cases**

[91] Before I turn to the sentence for R.T.J., I will raise the issue of the principle of parity and sentences in similar cases. The Court of Appeal commented in ***JFR*** at para 30 that

> We were referred to several cases in which young persons were sentenced for second degree murder. Some were sentenced as adults; some as young persons.

> The cases vary largely because of the different circumstances of the offender, and not because of the circumstances of the offence ….

All I would add is that the cases may vary not only because of the different circumstances of the offender but also because of the circumstances of the offence. There is enough disparity in the circumstances of the offenders and the offences in the proffered sentencing precedents that none can be taken as demonstrating an appropriate sentence for this offender in his particular circumstances. I take into account ***R v Lacasse***, 2015 SCC 64, the decision of now Chief Justice Wagner, and his comment that proportionality (dealing with adult sentences) turns on an individualized assessment of gravity of offence and degree of responsibility. It's not that precedent cases aren't helpful, don't provide some guidance, but our job must be to focus on the particular offender in the particular circumstances of the particular offence.

[92] As I indicated to counsel, I have provided summaries of the cases relied on as providing sentencing guidance. These are set out at Schedule B.

[93] So, with all of these factors in mind, I turn to "meaningful consequences," to the sanction, to the sentence that's appropriate for R.T.J.

## VI. Sentence

### 1. Period of Custody and Community Supervision

[94] R.T.J. is responsible for participation in a horrific crime. This offence does call for denunciation. A significant period of custody is required and custody itself is mandated by the *Youth Criminal Justice Act*. It's also necessary of course, that we look to factors or objectives other than simply denunciation and look to R.T.J.'s rehabilitation and reintegration which would serve the long-term protection of the public.

[95] So, R.T.J. is responsible for a particularly horrific crime, but not only was R.T.J. a youth at the time of the offence and thereby falling within the diminished responsibility contemplated by legislation, but, as identified through testing, R.T.J. suffers from relevant cognitive and psychological difficulties which contributed to his conduct on the early morning in question.

[96] Further, since his arrest, R.T.J. has taken responsibility for what occurred, he's expressed his remorse, he's taken steps towards reintegration. According to Dr. Neumann, he is not at a high risk to reoffend.

[97] I recall that the Crown had sought four years custody plus three years community supervision, so four years custody or 48 months. The defence looked to 30 months custody.

[98] In my opinion, to reflect all the factors that I have reviewed, the period of custody that's appropriate for R.T.J., is three years custody or 36 months. That's 24 months, two years of secure custody, and one year, 12 months of open custody. Three years to be followed by two years of community supervision.

[99] And in this regard, and keeping in mind my comments about the lack of utility of precedent cases, I do refer counsel to ***R v TWT***, 2008 ABCA 306, a case mentioned in cases relied on by counsel. What the Court of Appeal wrote at paragraph 8 of ***TWT*** was this:

> This murder was an impulsive act by an immature person, followed by a guilty plea, genuine remorse and meaningful steps towards rehabilitation. Neither the

> crime nor the appellant rise to the level of gravity or culpability that would justify the maximum sentence ….

At para 9, the offender was sentenced to three years in custody followed by two years of community supervision. The facts of ***TWT*** are not identical to ours but the disposition in that case, in my view, is also an appropriate disposition in this case. So, three years custody, 24 months secure, 12 months open, and two years community supervision.

**2. Credit for Pre-Trial Custody**

[100] Against the period of custody there will be credited pretrial custody. As I understand the facts, the period of pretrial custody was 162 days. Counsel are agreed that the 1.5 to 1 ratio should be used, particularly because R.T.J. was improperly housed for a period of time at the Edmonton Remand Centre. The total credit against the custodial period of the sentence is 243 days or just shortly over eight months - 8.1 months taking a month as 30 days. I leave the precise amount of time to be determined by the correctional authorities given my finding that the number of days to be credited is 243.

**3. Terms of Community Supervision and Recommendations**

[101] As for community supervision, as I understand s. 105 of the *Youth Criminal Justice Act*, it's not necessary for me to specify at this time the terms of the community supervision and that will be done at a later time …. The community supervision will be in accordance with s. 105 of the *Youth Criminal Justice Act*. I recommend that the correctional authorities provide programming for R.T.J. of the type identified by Dr. Neumann in the 2018 FACS report … and that Dr. Neumann's report accompany the warrant of committal.

**4. Ancillary Orders**

[102] In terms of ancillary orders, under s. 487.051 of the *Criminal Code*, R.T.J. is required to give a bodily sample suitable for DNA analysis. Under s. 51 of the *Youth Criminal Justice Act*, there will be a firearms prohibition. The order shall prohibit R.T.J. from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, and that will be for a period of five years. Exhibits are forfeited to the Crown.

* * * *

**Heard and Delivered** at the City of Wetaskiwin on the 11th day of May, 2018.
**Dated** at the City of Edmonton, Alberta this 19th day of June, 2018.

**W.N. Renke**
**J.C.Q.B.A.**

**Appearances:**

Sheila Joyce
Crown Counsel
Crown Prosecutor's Office - Wetaskiwin
for the Crown

Chris Millsap
Aloneissi O'Neill Hurley O'Keeffe Millsap
for the Accused

**Schedule A**

***Youth Criminal Justice Act Provisions***

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

(a) the youth criminal justice system is intended to protect the public by

(i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,

(ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and

(iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;

(b) the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:

(i) rehabilitation and reintegration,

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

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

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

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

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

(i) reinforce respect for societal values,

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

(iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended

family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) subject to paragraph (c), the sentence may have the following objectives:

(i) to denounce unlawful conduct, and

(ii) to deter the young person from committing offences.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the alternatives to custody that are available;

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

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

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

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

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

*Length of custody*
(8) In determining the length of a youth sentence that includes a custodial portion, a youth justice court shall be guided by the purpose and principles set out in section 38, and shall not take into consideration the fact that the supervision portion of the sentence may not be served in custody and that the sentence may be reviewed by the court under section 94.

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

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

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

(a) reprimand the young person;

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) in the case of an offence set out in section 239 (attempt to commit murder), 232, 234 or 236 (manslaughter) or 273 (aggravated sexual assault) of the Criminal Code, make a custody and supervision order in respect of the young person for a specified period not exceeding three years from the date of committal that orders the young person to be committed into a continuous period of custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder of the sentence under conditional supervision in the community in accordance with section 105;

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

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

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

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

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

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

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

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

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

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

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

(B) if the young person is found guilty of an offence for which the punishment provided by the Criminal Code or any other Act of Parliament is imprisonment for life, three years from the date of committal,

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

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

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

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

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

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

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

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

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

….

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

(a) either

(i) the young person has been found guilty of a serious violent offence, or

(ii) the young person has been found guilty of an offence, in the commission of which the young person caused or attempted to cause serious bodily harm and for

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

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

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

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

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

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

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

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

*Warrant of committal*
49 (1) When a young person is committed to custody, the youth justice court shall issue or cause to be issued a warrant of committal.

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

*Application by Attorney General*
64 (1) The Attorney General may, before evidence is called as to sentence or, if no evidence is called, before submissions are made as to sentence, make an application to the youth justice

court for an order that a young person is liable to an adult sentence if the young person is or has been found guilty of an offence for which an adult is liable to imprisonment for a term of more than two years and that was committed after the young person attained the age of 14 years.

*Obligation*
(1.1) The Attorney General must consider whether it would be appropriate to make an application under subsection (1) if the offence is a serious violent offence and was committed after the young person attained the age of 14 years. If, in those circumstances, the Attorney General decides not to make an application, the Attorney General shall advise the youth justice court before the young person enters a plea or with leave of the court before the commencement of the trial.

*Order fixing age*
(1.2) The lieutenant governor in council of a province may by order fix an age greater than 14 years but not greater than 16 years for the purpose of subsection (1.1).

*Notice of intention to seek adult sentence*
(2) If the Attorney General intends to seek an adult sentence for an offence by making an application under subsection (1), the Attorney General shall, before the young person enters a plea or with leave of the youth justice court before the commencement of the trial, give notice to the young person and the youth justice court of the intention to seek an adult sentence.

*Transfer to adult facility*
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.

*When young person reaches twenty years of age*
93 (1) When a young person who is committed to custody under paragraph 42(2)(n), (o), (q) or (r) is in a youth custody facility when the young person attains the age of twenty years, the young person shall be transferred to a provincial correctional facility for adults to serve the remainder of the youth sentence, unless the provincial director orders that the young person continue to serve the youth sentence in a youth custody facility.

**Schedule B**

**Sentencing Case Summaries**

**1. Crown Cases**

***R v AWB*, 2018 ABCA 159**

conviction by jury of first degree murder – adult life sentence, no eligibility for parole for 10 years - appeal dismissed - offender age 17 and 3 months at time of offence – victim was long-time friend of offender – offender shot victim when victim was in driver's seat of stolen vehicle: offender used a concealed semi-automatic handgun, fired 8 shots, fled scene, was on probation at time of offence; criminal record, but "not aggravating;" offender had denied involvement at trial; *Gladue* factors; limited motivation to engage in rehabilitation.

***R v JFR*, 2016 ABCA 340**

conviction for second degree murder – sentence imposed by Court of Appeal: four years custody, three years supervision, no credit for presentence custody – offender age 17 at time of offence – attended house party as part of group of uninvited people – after leaving, offender organized return of group – she was armed with a steak knife – stabbed victim once in the back (victim had already been stabbed 6 times by another person) – offender deleted text messages that organized return – post-sentence: genuine progress while in custody at Calgary Young Offenders Center, genuine remorse; at time of offence, offender functioned at a low cognitive level; suffered from symptoms compatible with conduct disorder, ADHD, major depressive disorder, post-traumatic distress disorder, substance abuse; had suffered physical and mental abuse by mother; was dependent, immature adolescent; subject to extrinsic influences given her heightened vulnerability – offender should not have been sentenced as an adult; Crown had not rebutted presumption of diminished moral blameworthiness.

***R v DDT*, 2010 ABCA 365**

conviction for second degree murder and aggravated sexual assault – sentenced as youth – Crown appeal (should be sentenced as adult) dismissed – offender had more limited involvement in offences than co-accused; was a party to aggravated sexual assault rather than a key perpetrator; positive efforts while in pre-sentence custody, including conduct, educational achievements, remorse; no credit for pre-disposition custody. (NOTE: sentence for second degree murder - four years imprisonment, followed by three years of close supervision: ***R v DDT***, 2009 ABQB 384 at para 32)

***R v CM*, 2015 ABQB 134**

conviction by jury for first degree murder – adult sentence imposed – life imprisonment with no eligibility for parole for 10 years - offence occurred 12 days before offender's 18th birthday – significant criminal record including violent offending – presents with features suggestive of antisocial personality disorder – history of aggressive behaviour, little regard for authority – provided little information about childhood, refused to cooperate in assessment or counselling,

no willingness to undergo psychological or risk-assessment testing – directing and central role in a callous and brutal killing – offender strangled victim with assistance of others – continuing post-offence violent behaviour - disruptive conduct while in pre-trial detention.

***R v LM*, 2017 SKQB 336**

guilty plea to second degree murder – youth sentence, not adult sentence - seven year sentence, first four years in custody, no reduction for pre-trial custody - offender was 16 at time of offence - not key perpetrator; did not assist in actual murder; co-accused stabbed victim to death – no criminal record – immaturity and vulnerability, emotional weakness; submissive personality ("a pleaser and a follower": para 191) – expressed remorse; some insight - IRCS sentence recommended for offender and offender was accepted into program – low risk to reoffend if offender's issues are addressed and receives treatment.

**2. Defence Cases**

***R v CHC*, 2009 ABQB 125**

convicted of second degree murder following trial – youth sentence imposed – four years custody followed by three years conditional supervision – no credit for pre-sentence custody – brutal offence, shot defenceless victim with gun; offender had consumed cocaine and alcohol; fatal attack was preceded by violent conduct, "very high level of moral culpability" (para 18) - offender was age 17 and 9 months at time of offence – difficult family background: significant CFS contact with family; father had conflicts with law died from alcoholism complications; two brothers involved in criminal activity – offender displayed patterns of anti-social behaviour commencing prior to puberty – mixed treatment motivation: progress while in custody; participated in all available educational and virtually all psycho-educational and counselling programs at EYOC but numerous infractions - record: some convictions for violent offences.

***R v JL*, 2016 ABPC 299**

JL and TP convicted of manslaughter following trial: context – fight between two groups; TP and JL were members of one group, victim was member of other – TP struck victim with fists – JL struck victim with an expandable baton – a third party stabbed victim – assaults took place over a period of about 1 minute – on *Laberge* analysis, acts, viewed objectively, were likely to subject victim to risk of serious bodily harm.

TP – 9 months secure custody, 3 months open custody, one year conditional supervision – age 17 at time of offence – no record – sincere remorse – completed High School, maintains full employment – willing to participate in counselling - low risk for violent recidivism

JL – one year secure custody, 6 months open custody, one year conditional supervision – age 16 at time of offence – no record – at time of offence, was living on his own – diagnosed with ADHD, alcohol use disorder, cannabis use disorder, conduct and adjustment disorders – genuine expressions of remorse – higher degree of participation in killing than TP