Court File Number: 40868

IN THE SUPREME COURT OF CANADA

(ON APPLICATION FOR LEAVE TO APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

I.M.

Applicant
(Appellant)

- and –

HIS MAJESTY THE KING

Respondent
(Respondent)

RESPONSE TO APPLICATION FOR LEAVE TO APPEAL
(Pursuant to Rule 27 of the Rules of the Supreme Court of Canada)

Publication Ban re witness pursuant to *YCJA* s. 123(6)

ATTORNEY GENERAL OF ONTARIO
Crown Law Office - Criminal
720 Bay Street, 10th Floor
Toronto, Ontario M7A 2S9

Phone: (416) 326-4600
Fax: (416) 326-4656
Benita.Wassenaar@ontario.ca
Caitlin.Sharawy@ontario.ca

Benita Wassenaar / Caitlin Sharawy
Counsel for the Respondent

STOCKWOODS LLP
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1

Nader R. Hasan
Direct: 416-593-1668
Email: NaderH@stockwoods.ca

JURISTES POWER LAW
50 O'Connor Street, Suite 1313
Ottawa, ON K1P 6L2

Maxine Vincelette
Tel: 613-702-5573
Fax: 613-702-5573
Email: mvincelette@powerlaw.ca

Ottawa Agent for the Applicant

Stephen Aylward
Tel: 416-593-2496
Email: StephenA@stockwoods.ca

Alexandra Heine (83514R)
Direct: 416-593-1669
Email: AlexandraH@stockwoods.ca
Tel: 416-593-7200
Fax: 416-593-9345

Counsel for Applicant

Table of Contents

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RESPONDENT'S MEMORANDUM OF ARGUMENT

PART I: STATEMENT OF FACTS

A. OVERVIEW

1. The applicant seeks leave to appeal the imposition of an adult sentence by raising two issues, neither of which were argued at trial or in the Court of Appeal for Ontario. The respondent Crown takes the position that the applicant should not be permitted to raise these issues for the first time on appeal to this Honourable Court, and that the concerns raised by the applicant are not engaged by the circumstances of this case.

2. The applicant was seven months shy of his eighteenth birthday when he, along with four others, unlawfully confined and stabbed S[redacted] T[redacted] to death. In the days leading up to the murder, the applicant planned the robbery that took place on the night of the killing. The applicant actively participated in the murder, as one of the stabbers. Afterwards, he entered S[redacted]'s home to complete the robbery as planned. At the time of the offence, the applicant had a criminal record, and was bound by two probation orders and a firearm prohibition order. During his murder trial, the applicant – then 25 – committed a drug offence in the courthouse holding cells. The applicant was diagnosed with adolescent-onset conduct disorder and was deemed to have a negative prognosis.

Although not definitively diagnosed with antisocial personality disorder, his offending during trial was consistent with such a diagnosis. Such a disorder is not amenable to treatment, especially in light of the applicant's age. The applicant did not accept responsibility for his role in S[redacted]'s murder and repeatedly downplayed his involvement.

3. The applicant asserts that "[n]either the sentencing judge nor the Court of Appeal followed the two-pronged approach required by s. 72(1)". In the Court of Appeal, the applicant did not squarely attack the sentencing judge's legal framework. His arguments focused on the proper approach to factual findings after a jury trial, relying on *R. v. Gardiner* and *R. v. Ferguson*. In any event, the sentence in this case was not the product of a "watered down" or "diluted" s. 72(1) test, as the applicant asserts. There was ample evidence to rebut the presumption of diminished moral blameworthiness and justify the imposition of an adult sentence.

4. The applicant also argues that the courts below erred in holding that the determination of whether a youth sentence was sufficient was not assessed on the standard of proof beyond a reasonable doubt nor proof on a balance of probabilities. This was not the argument in the courts below. Moreover, such a determination is an "evaluative decision", the making of an informed judgment, that does not lend itself to proof beyond a reasonable doubt (*R. v. O.(A.)*, 2007 ONCA 144 at para. 34). The sentencing judge and the Court of Appeal applied the proof beyond a reasonable doubt standard to the determination of the underlying facts. Those facts strongly supported the determination that an adult sentence was appropriate.

5. The respondent respectfully asks that leave to appeal be denied.

B. THE MURDER OF S[redacted] T[redacted]

6. On January 24, 2011, S[redacted] T[redacted]'s father and brother arrived home at around 10:30 pm to discover S[redacted], aged 17, bleeding on the ground outside the family home. He had been shoveling snow at his mother's request. S[redacted] was dead before 11:00 pm.

> Applicant's Record, Tab B(3), pdf 45-46: Reasons for Sentence of Andre J. at paras. 10-11
> Applicant's Record, Tab B(4), pdf 74, 93: *R. v. I.M.*, 2023 ONCA 378 at paras. 4, 56
> Respondent's Record, Tab 2, pdf 64, 70-71: Respondent's Factum at paras. 8, 23-24

7. In the days leading up to S[redacted]'s death, the applicant was planning a robbery in the hopes of obtaining a firearm. On the day of the murder, the applicant told one of the adult participants not to "flop" on him, because this was his "cum up".

Applicant's Record, Tab B(3), pdf 44-45: Reasons for Sentence of Andre J. at paras. 7-9
Respondent's Record, Tab 2, pdf 66-67: Respondent's Factum at paras. 13-15

8. On the night of the murder, the applicant and four others drove from Scarborough to S[redacted]'s home in Mississauga for the robbery. They attacked S[redacted], while his mother was inside watching television. Mrs. T[redacted] went outside when she heard noises. She tried to run back inside when she saw people beside her house, but she was hit in the head with a gun and punched. The males entered the home.

Respondent's Record, Tab 2, pdf 67-68: Respondent's Factum at paras. 16-17

9. S[redacted] was stabbed 12 times, and received 10 blunt force injuries. He had three significant wounds on his body: (1) a deep stab wound on the side of his nose; (2) another to his back penetrating his right lung; and (3) a third to the middle of his lower back entering his right kidney. There were no defensive-type injuries on his forearms or hands. Dr. Rose, a forensic pathologist, conducted an autopsy and concluded that "several possibilities could be derived from the lack of defensive-type injuries". S[redacted] may have been "restrained when he was stabbed", "unconscious because of blood loss when he was stabbed", or may have been "stabbed from behind".

Applicant's Record, Tab B(4), pdf 74-75: *R. v. I.M.*, 2023 ONCA 378 at para. 4
Respondent's Record, Tab 2, pdf 64, 70-73: Respondent's Factum at paras. 8, 24, 27-29

10. The trial judge found that the applicant was "the stabber" or "one of the stabbers". He was involved in the murder as a "principal". This finding was strongly supported by the record, which included evidence that the applicant injured his hand that night, and the testimony of his schoolmate, G.C., that the applicant said he and the others "all took turns stabbing" S[redacted] in the "head, in the neck, and the upper body".

Applicant's Record, Tab B(4), pdf 74-75, 92-93: *R. v. I.M.*, 2023 ONCA 378 at paras. 4, 51-56
Applicant's Record, Tab B(3), pdf 45-46, 61-62: Reasons for Sentence of Andre J. at paras. 10-11, 53
Respondent's Record, Tab 2, pdf 74-76, 99-101: Respondent's Factum at paras. 33-37, 91-93

C. THE DRUG OFFENCE COMMITTED DURING THE TRIAL

11. The applicant was charged with first degree murder. Because he was seventeen years old at the time of the offence, he was tried separately from his co-accuseds. He was tried before a judge and jury. During his trial, the then 25 year old applicant was captured on video in the courtroom holding cells "throwing two packets containing cocaine and marijuana from his cell to

another inmate in the opposite cell". The applicant was charged with trafficking in a controlled substance; he pleaded guilty to simple possession of cocaine based on wilful blindness.

Applicant's Record, Tab B(4), pdf 97: *R. v. I.M.*, 2023 ONCA 378 at para. 65
Respondent's Record, Tab 2, pdf 102-103: Respondent's Factum at paras. 98-99

D. THE CONVICTION AND SENTENCE

12. The jury convicted the applicant of first degree murder. The Crown brought an application under s. 64(1) of the *YCJA* to sentence the appellant as an adult. The trial judge allowed the Crown's application. The applicant was sentenced to life imprisonment with a 10-year period of parole ineligibility pursuant to s. 745.1(b) of the *Criminal Code*.

Applicant's Record, Tab B(4), pdf 87: *R. v. I.M.*, 2023 ONCA 378 at para. 40

The Evidence at Sentencing

13. The defence called a number of witnesses at the sentencing hearing, including Dr. Pearce, a forensic psychiatrist, and Cara Evernden, a probation officer.

14. Dr. Pearce was uncertain whether the applicant would be eligible for an Intensive Rehabilitative Custody Sentence (IRCS) order. A young person may qualify for such an order where conditions under s. 42(7) of the *YCJA* are satisfied, including where the young person suffers from a mental illness, a psychological disorder, or an emotional disturbance, and where the provincial director determines that an IRCS program is available and that the young person's participation in the program is appropriate.

Applicant's Record, Tab B(4), pdf 99: *R. v. I.M.*, 2023 ONCA 378 at para. 70
Applicant's Record, Tab D(5), pdf 151: Dr. Pearce Report at p. 21

15. During his testimony, Dr. Pearce admitted the following:

- The applicant had trouble accepting responsibility for his role in the offence.
- The applicant was not forthcoming with Dr. Pearce about his role in the offence.
- The applicant was being manipulative and deceitful in his discussions with Dr. Pearce, and his self-report needed to be verified by external sources.
- The applicant did not tell Dr. Pearce that he had committed a drug offence during his trial. Being able to get drugs in custody speaks to the applicant's resourcefulness.

- The drug offence during the trial caused Dr. Pearce serious concern about the applicant's prognosis. It was unclear whether the applicant would be able to overcome his ingrained maladaptive personality traits.

- The applicant suffered from moderate to severe adolescent-onset conduct disorder. The drug offence committed during trial suggests a negative prognosis. It was consistent with antisocial personality disorder. Although Dr. Pearce could not make that diagnosis definitively, antisocial personality disorder is not amenable to treatment, especially given the appellant's age.

Applicant's Record, Tab D(5), pdf 149, 151: Dr. Pearce Report at pp. 19, 21
Applicant's Record, Tab D(7), pdf 168-170, 174-175, 178-179, 187-188, 210: Evidence of Dr. Pearce, Volume V-A at pp. 68-70, 74-75, 78-79, 87-88, 110
Respondent's Record, Tab 2, pdf 103-105: Respondent's Factum at para. 101
Respondent's Record, Tab 3, pdf 112-114: Evidence of Dr. Pearce, Volume V-A at pp. 60-62

16. Cara Evernden recommended that the applicant be sentenced as a youth with an IRCS order. However, during cross-examination, she admitted the following:

- She did not have a great deal of experience with IRCS orders.

- She was not aware that the applicant had been on two probation orders when he murdered S[redacted]. Nor did she know why he was on probation.

- She was not very familiar with adolescent onset conduct disorder. She only had an informal understanding of that diagnosis.

- She had difficulty finding programs that would be suitable for the applicant because there was not a lot of programming that was responsive to conduct disorder. She agreed it was like fitting a round peg in a square hole.

- It was unclear whether the doctor she recommended for the applicant would be a good fit, but it was the best one she could find.

- Her recommended anger management programming was not responsive to the issues in this case, as the applicant denied having anger problems. Her recommended mood disorder and anxiety disorder programming was not responsive to the issues in this case, as the applicant denied having any kind of mood disorder or anxiety disorder.

- There was no programming that addressed antisocial personality disorder.

Respondent's Record, Tab 4, pdf 116-117, 121-122, 124-125, 130, 134-136: Evidence of Ms. Evernden, Volume VI, at pp. 66, 67, 71-72, 74-75, 80, 84-86

Sentencing Submissions

17. During the sentencing proceedings, the Crown followed the two-step approach mandated

by s. 72(1) of the *YCJA*. He began by highlighting the various factors that showed that the applicant had a level of maturity, moral sophistication, and capacity for independent judgment of an adult. He noted that the seriousness of the offence and the circumstances in which it was committed were key considerations for both prongs of the s. 72(1) test. The Crown submitted that the applicant had committed the first degree murder as a principal, and emphasized his role as one of the stabbers. He also highlighted the applicant's involvement in planning the robbery. The Crown noted that after they left S[redacted] to bleed out beside the house, the offenders went inside to continue with their robbery plan. They assaulted S[redacted]'s mother. After the murder, the applicant fled the country and remained at large for three years while he was on two probation orders.

> Respondent's Record, Tab 2, pdf 76-77: Respondent's Factum at para. 40
> Respondent's Record, Tab 5, pdf 138, 149-153, 156, 159-167, 172, 174, 179, 182, 189-191: Sentencing Submissions, Volume VI, at pp. 103, 114-118, 121, 124-132, 137, 139, 144, 147, 154-156

18. Other factors the Crown relied on in rebutting the presumption of diminished moral blameworthiness included: the applicant's age (17 years and 5 months); the fact that the applicant has no obvious mental disorders that interfere with his intellectual capacities; his entrenched criminality and his involvement with sophisticated criminal acts (*e.g.* trafficking cocaine); his criminal record and the fact that he murdered S[redacted] while bound by three court orders; and his lengthy record of misconduct while in custody, including the drug offence in the holding cells.

> Respondent's Record, Tab 5, pdf 192, 194, 199, 201-208: Sentencing Submissions, Volume VI, at pp. 157, 159, 164, 166-173

19. On the second prong of the test, the Crown submitted that a youth sentence would not be sufficient to hold the applicant accountable. The Crown relied on the following factors: the seriousness of the offence; the applicant's principal role in committing the offence; the applicant's failure to take responsibility for his actions; Dr. Pearce's uncertainty regarding whether an IRCS type sentence should be opposed; the fact that the applicant's disorders are treatment resistant; the lack of compatible programming to address the applicant's diagnoses; the devastating impact on S[redacted]'s family; and the demonstrated lack of rehabilitative potential.

> Respondent's Record, Tab 5, pdf 214, 215, 218, 220, 222-225, 228, 230, 231: Sentencing Submissions, Volume VI, at pp. 179, 180, 183, 185, 187-190, 193, 195, 196

20. Defence counsel agreed that the two issues were: (1) "is the presumption [of diminished moral blameworthiness] rebutted" and (2) "is the youth sentence insufficient in order to protect

the public". Counsel stated that although those were two independent inquiries, "both questions overlap in terms of the evidence on the issue, especially of accountability". The defence reminded the judge that the presumption in s. 72(1) meant that the applicant did not have to prove anything. It was the Crown's burden. Counsel submitted that a youth sentence with an IRCS order was sufficient to hold him accountable, arguing that there was insufficient evidence that the applicant was a "significant threat" to public safety and at risk of re-offence.

> Respondent's Record, Tab 5, pdf 234-244, 253-255, 258, 260: Sentencing Submissions, Volume VI, at pp. 199-209, 218-220, 223, 225

21. Regarding the standard of proof for the Crown seeking to rebut the presumption of diminished moral blameworthiness, defence counsel assured the court during the Crown's reply submissions that he was not taking the position that the Crown needed to rebut the presumption beyond a reasonable doubt. He stated:

> "…I didn't say that – I did never once said, that the Crown had – I never once today said the Crown had to prove anything beyond a reasonable doubt…my point was that – that's what *Winko* says, the court has to be satisfied, but somebody has the burden to present the evidence…"

> Respondent's Record, Tab 5, pdf 271-272: Sentencing Submissions, Volume VI, at pp. 236-237

E. THE APPLICANT'S APPEAL TO THE COURT OF APPEAL FOR ONTARIO

22. The applicant appealed his conviction and sentence. The applicant raised the following grounds in his sentence appeal:

i. The trial judge violated the rules from *Gardiner* and *Ferguson* by relying on aggravating factors on sentence that were not properly proven.

ii. The trial judge improperly relied on the drug offence committed during the trial.

iii. The adult sentence was unfit, and an upper range youth sentence was the appropriate sentence on the facts of this case.

A unanimous Court of Appeal dismissed both the conviction and sentence appeals.

> Respondent's Record, Tab 1, pdf 43-54: Appellant's Factum at paras. 134-170

PART II: POINTS IN ISSUE AND RESPONDENT'S POSITION

23. The applicant now seeks to raise the following two issues:

i. What factors are relevant to whether the presumption of diminished moral blameworthiness has been rebutted under s. 72(1) of the *YCJA*?

ii. What is the standard of proof on the Crown in rebutting this presumption?

24. The respondent takes the position that this is not an appropriate case for this Court to consider these questions. Neither of these issues were litigated in the courts below. Moreover, contrary to the applicant's assertion, the adult sentence imposed in this case was not a result of a "watered down" or "diluted" s. 72(1) analysis. Both the trial judge and the Court of Appeal followed the two-pronged test in s. 72(1), and the adult sentence was amply justified.

PART III: BRIEF OF ARGUMENT

A. ISSUES RAISED FOR THE FIRST TIME ON APPEAL

25. As this Honourable Court has stated, "[r]aising new arguments on appeal is generally discouraged in criminal matters, because the best interests of justice require finality in the adjudication of such matters at trial". At trial, defence counsel did not question what factors must be considered under the first prong of the s. 72(1) test. He did not allege that the seriousness of the offence was irrelevant to the question of whether the Crown rebutted the presumption of diminished moral blameworthiness. Nor did he argue that the s. 72(1) test had been "watered down" by the jurisprudence and needed to be brought back in line with the Supreme Court of Canada's decision in *R. v. D.B*. Regarding the standard of proof for rebutting the presumption, defence counsel took the position that the Crown did *not* need to rebut the presumption beyond a reasonable doubt – in contradiction to the applicant's position in this leave application.

R. v. J.F., 2022 SCC 17 at para. 38
R. v. D.B., 2008 SCC 25
R. v. O.(A.), 2007 ONCA 144 at para. 34
Respondent's Record, Tab 5, pdf 271-272: Sentencing Submissions, Volume VI, at pp. 236-237

26. On appeal to the Court of Appeal, the grounds advanced with respect to sentence concerned whether the trial judge improperly relied on aggravating factors, and whether a youth sentence was

sufficient to hold the applicant accountable. The applicant relied on cases he now seeks to impugn. The respondent is unaware of a request that the Court of Appeal convene a five member panel. Absent a proper record, argument and analysis in the lower courts, this Court should deny leave.

> Applicant's Record, Tab B(4), pdf 118-125: *R. v. I.M.*, 2023 ONCA 378 at para. 43
> Applicant's Record, Tab C, pdf 118-125: Memorandum or Argument at paras. 40-55, 58-63
> Respondent's Record, Tab 1, pdf 43, 49-50: Appellant's Factum at paras. 134, 155-158, 161
> *R. v. O.(A.)*, 2007 ONCA 144 at para. 34
> *R. v. W.(M.)*, 2017 ONCA 22

B. AN ADULT SENTENCE WAS APPROPRIATE

27. The decision to sentence the applicant as an adult was not "seriously flawed", nor was it the product of a "watered down" or "diluted" s. 72(1) test. The Court of Appeal engaged in a robust analysis, and the adult sentence was properly upheld.

28. Regarding the first part of the s. 72(1) test, the Court of Appeal highlighted key pieces of evidence that demonstrated that the Crown had rebutted the presumption of diminished moral blameworthiness. First, the Court considered the seriousness of the offence. The Court recognized that this factor was not determinative of whether the presumption had been rebutted, however, it was still a factor to consider. This was a "brutal murder of a seventeen-year-old youth outside of his own home that had a devastating impact on the victim's family".

> Applicant's Record, Tab B(4), pdf 101: *R. v. I.M.*, 2023 ONCA 378 at paras. 75, 76

29. Second, the Court focused on whether there was a "level of moral judgment or sophistication" demonstrated in the "planning and implementation of the offence", and "the young person's role in carrying out the offence". It concluded that there was. The offence "did not occur in the spur of the moment", and the applicant initiated the text conversation in which he sought to obtain a firearm. He was a "willing and active participant in the plan to rob the victim", and his "intention to do so never wavered". He was a principal and not merely a party. After stabbing S[redacted] and leaving him to bleed out in the alleyway by his home, the applicant "proceeded into the victim's home in pursuit of the original plan to commit a robbery for guns". The applicant also attempted to "conceal evidence" following the murder.

> Applicant's Record, Tab B(4), pdf 101-102: *R. v. I.M.*, 2023 ONCA 378 at paras. 76-78

30. Third, the Court noted that the applicant was on the "cusp of adulthood", only seven months

shy of his eighteenth birthday. It recognized that "the closer the offender is to the age of eighteen, the more the age factor [will] tip the balance towards an adult sentence over a youth sentence". Fourth, the Court pointed out that the applicant had a prior criminal record. He murdered S[redacted] while on two probation orders and subject to a weapons prohibition order.

Applicant's Record, Tab B(4), pdf 101-103: *R. v. I.M.*, 2023 ONCA 378 at paras. 77, 79

31. Finally, the Court highlighted the applicant's conduct in pre-trial custody, and that he committed a "drug offence while awaiting trial". The Court determined that this behavior did "not bode well for his prospects of rehabilitation". The Court concluded:

> Taken as a whole, the seriousness and circumstances of the offence, along with the age, character, background, previous record, and post-offence conduct of the [applicant] show a "level of maturity, moral sophistication, and capacity for independent judgment of an adult such that an adult sentence and adult principles of sentencing should apply".

Applicant's Record, Tab B(4), pdf 103: *R. v. I.M.*, 2023 ONCA 378 at paras. 80-81

32. The Court then turned to the second prong of the s. 72(1) test. It determined that a youth sentence combined with an IRCS order was "insufficient to hold the appellant accountable". The Court relied on the fact that there were "weaknesses" in the proposed IRCS treatment plan. The Court noted that "not many programs would be responsive to the adolescent-onset conduct disorder that the appellant suffers from", and that the proposed treatment plan was somewhat like "fitting a round peg in a square hole". The Court also highlighted the applicant's "negative prognosis" on account of his "continued offending and antisocial personality traits".

Applicant's Record, Tab B(4), pdf 104: *R. v. I.M.*, 2023 ONCA 378 at para. 84

33. The Court recognized that "deference is owed to the trial judge's assessment of the [applicant's] rehabilitative potential and the adequacy of the proposed treatment plan". It determined that there was "no basis" to interfere with the trial judge's conclusion that an adult sentence "is necessary to hold the appellant accountable for his actions and to protect the public".

Applicant's Record, Tab B(4), pdf 104: *R. v. I.M.*, 2023 ONCA 378 at para. 85

34. There was no watering down of the s. 72(1) test. Both prongs were considered by the trial judge and the Court of Appeal. All the relevant factors were taken into account. The applicant's eagerness and willingness to partake in a violent robbery for firearms, his active role as one of the stabbers, and the significant body of evidence that demonstrated his entrenched criminality and

lack of rehabilitative potential, are all valid justifications for the imposition of an adult sentence in this case. There is no basis for this Court to interfere with the sentence imposed.

Respondent's Record, Tab 2, pdf 103-106: Respondent's Factum at paras. 100-103

PART IV: SUBMISSIONS ON COSTS

35. Costs are not sought by either party and should not be awarded.

PART V: ORDER REQUESTED

36. The respondent respectfully requests that this application for leave to appeal be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of September, 2023.

Benita Wassenaar
Counsel for the Respondent

Caitlin Sharawy
Counsel for the Respondent

PART VI: AUTHORITIES CITED

Cases:	**Paragraphs:**
R. v. D.B., 2008 SCC 25	25
R. v. J.F., 2022 SCC 17	25
R. v. I.M., 2023 ONCA 378	6, 9, 10-12, 14, 26, 28-33
R. v. O.(A.), 2007 ONCA 144	4, 25, 26
R. v. W.(M.), 2017 ONCA 22	26

PART VII: STATUTES AND REGULATIONS

***Youth Criminal Justice Act*, s. 42(7)**

Intensive rehabilitative custody and supervision order

42(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.

Éléments à prendre en compte

42 (7) Le tribunal pour adolescents ne peut rendre l'ordonnance visée à l'alinéa (2)r) que si les conditions suivantes sont réunies :

a) l'adolescent a été déclaré coupable :

(i) soit d'une infraction grave avec violence,

(ii) soit d'une infraction, commise par un adolescent et au cours de la perpétration de laquelle celui-ci cause des lésions corporelles graves ou tente d'en causer, pour laquelle un adulte serait passible d'une peine d'emprisonnement de plus de deux ans, dans le cas où l'adolescent a déjà été déclaré coupable, au moins deux fois, d'une telle infraction;

b) il souffre d'une maladie ou de troubles d'ordre mental, d'un dérèglement d'ordre psychologique ou de troubles émotionnels;

c) un projet de traitement et d'étroite surveillance a été élaboré pour répondre à ses besoins et il existe des motifs raisonnables de croire que la mise en oeuvre de ce projet pourrait permettre de réduire les risques qu'il commette une infraction grave avec violence;

d) le directeur provincial conclut qu'un tel projet est disponible et que la participation de l'adolescent au projet est indiquée.

***Youth Criminal Justice Act*, s. 64(1)**

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.

Demande du procureur général

64 (1) Le procureur général peut, avant la présentation d'éléments de preuve ou, à défaut de présentation de tels éléments, avant la présentation d'observations dans le cadre de l'audience pour la détermination de la peine, demander au tribunal pour adolescents l'assujettissement de l'adolescent à la peine applicable aux adultes si celui-ci est ou a été déclaré coupable d'une infraction commise après avoir atteint l'âge de quatorze ans et pour laquelle un adulte serait passible d'une peine d'emprisonnement de plus de deux ans.

***Youth Criminal Justice Act*, s. 72(1)**

Order of adult sentence

72 (1) The youth justice court shall order that an adult sentence be imposed if it is satisfied that
(a) the presumption of diminished moral blameworthiness or culpability of the young person is rebutted; and
(b) a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not be of sufficient length to hold the young person accountable for his or her offending behaviour.

Ordonnance d'assujettissement à une peine applicable aux adultes

72 (1) Le tribunal pour adolescents ordonne l'assujettissement à la peine applicable aux adultes s'il est convaincu que :
a) la présomption de culpabilité morale moins élevée dont bénéficie l'adolescent est réfutée;
b) une peine spécifique conforme aux principes et objectif énoncés au sous-alinéa 3(1)b)(ii) et à l'article 38 ne serait pas d'une durée suffisante pour obliger l'adolescent à répondre de ses actes délictueux.