Recent Amendments to Canada's *Youth Criminal Justice Act*

On March 29, 2018, the Government introduced Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*. Former Bill C-75 received Royal Assent on June 21, 2019. On December 18, 2019, the amendments to the *Youth Criminal Justice Act* (YJCA) came into force.

The aim of the amendments is to strengthen aspects of the current approach and to reduce charges and custody for Administration of Justice Offences (AOJOs). The following is a brief synopsis of the key amendments to the YCJA. This information is of a general nature and is not intended as legal advice. For more information, see the full text of the YCJA.

Overview of the YCJA Amendments

1 New alternatives to charging provisions for Administration of Justice Offences (AOJOs)

Despite the current direction in the YCJA to consider the use of alternatives to charging for less serious offences, in 2018, approximately 21% of youth were charged with AOJOs and 35% of these cases resulted in custody.

New dispositions in the law are meant to encourage the use of alternatives to charging for AOJOs. They specify that extrajudicial measures are presumed to be adequate in relation to such breaches unless the young person has a history of repetitive breaches, or unless the breach caused harm, or risk of harm, to the safety of the public.

Despite a history of such breaches, or a public safety component to the breach, extra judicial measures could still be used if adequate. If extra judicial measures are not adequate, then other review mechanisms have been put in place as an alternative to charging.

Police officers are now also bound by these new guiding principles, thus further encouraging the use of diversion in the context of AOJOs.

Charging the young person in response to an AOJO should always be considered a last resort.

2 Amended sentencing and release conditions

A significant issue in relation to AOJOs is the number and the nature of conditions being imposed on young persons in the context of bail, other forms of release, and in sentencing. Often times conditions that are not related to the offence, that are too restrictive, or sometimes impossible to comply with, and that can be improperly focussed on social welfare objectives, are routinely imposed on young persons.

(A) Conditions

New provisions were put in place to ensure that conditions are only used for proper criminal law purposes, and not for purposes of child protection or mental health services or other more appropriate social measures.

Provisions pertaining to release conditions were amended in order to restrict the use of conditions to only those that are necessary in the circumstances to address the offending behaviour, and for criminal law purpose. Release conditions may now only be imposed by a youth court judge if: the condition is necessary to ensure attendance/protect public safety, reasonable in the circumstances of the offending behaviours and if the young person will reasonably be able to comply with this condition.

(B) Sentencing

The purpose of sentencing is to hold the young person accountable for the offence committed by imposing just sanctions that have meaningful consequences with positive prospects for rehabilitation and reintegration, thereby contributing to the long-term protection of the public.

New sentencing principles have been added to ensure that conditions may only be imposed as a part of the sentence if they are necessary to achieve the purpose of sentencing, if the young person is reasonably able to comply, and if the conditions are not a substitute for appropriate child protection, mental health, or other social measures. The wording in order conditions, which were too generic in a youth context, were also removed.

3 Limiting the use of custody for AOJOs

Over the past five years, AOJOs have continued to result in custody in 20-25% of cases. Amendments were designed to narrow the circumstances in which a young person could receive a custodial sentence for an AOJO.

Whereas previously, custody could be imposed if there was evidence that the young person had failed to comply with non-custodial sentences, the law now requires the young person to have previously been found guilty of failing to comply in relation to more than one sentence.

Furthermore, where the court is imposing a sentence for an AOJO, custody would only be an option if the failure involved harm or risk of harm to public safety.

4 Increased Youth Justice Court efficiencies

(A) Attorney General review of AOJOs

Charges for breach of conditions or failure to appear at bail stage often proceed even when charges related to the original substantive offence do not. In such instances, a young person can end up before the court on nothing more than a minor breach.

The addition of a new section now creates an obligation for the Attorney General to review certain pending charges for an AOJO, when the original substantive charges are withdrawn, stayed or dismissed, or if the young person was acquitted of that original offence.

(B) Review of youth sentence not involving custody

When a young person fails to comply with a community-based youth sentence, the YCJA provides for a review process whereby a Youth Justice Court can modify the sentence or the conditions. Previously, such reviews could not lead to a more onerous sentence without the young persons consent.

The YCJA now allows a Youth Justice Court to impose additional or more onerous conditions that would provide better protection against risks to the safety of the public or that would assist the young person in complying with the conditions already imposed as part of his sentence, when the sentence is reviewed on the grounds that the young person has not complied, without reasonable excuse, with a probation order or an Intensive Support and supervision program.

These changes are designed to encourage the use of the review provision of the YCJA as an alternative to charging for AOJOs.

Further, the previously specified six-month waiting period has been repealed and such that an application can now be made at any point after the community sentence is imposed.

(C) Application for adult sentencing

The legislative obligation for the Attorney General to consider applying for adult sentences in certain circumstances and to advise the court if they decided not to, has been repealed. The Attorney General now has full discretion in the decision to make such an application.

(D) Lifting of the publication ban

A cornerstone of youth justice in Canada is that, as a general rule, the identity of young persons involved in criminal proceedings should be protected.

The requirement for a Youth Justice Court to decide if they should lift a publication ban in any case where a young person receives a youth sentence for a violent offence has been repealed. Certain exceptions exist, such as when the youth receives an adult sentence.

(E) Placement reports

The law provides placement options for a young person who receives an adult custodial sentence.

Previously, the law required that the Youth Justice Court order and consider a report on the placement options before deciding where the young person would serve an adult sentence.

Amendments were made to provide the Court with discretion to dispense with the requirement to order such a report before making a placement order for an adult sentence.

This amendment is intended to relieve unnecessary delays as the Youth Justice Court awaits the placement report, despite agreements as to the best facility in which to place the young person.

(F) Review of detention

The Supreme Court of Canada underlined that the right not to be deprived of reasonable bail is fundamental, that pre-trial detention must remain the exception and that all accused persons are still presumed innocent at this stage.

If a judge orders pre-trial detention, the law provides for review mechanisms to ensure that the rights of the accused are not unduly restricted for an extended period.

The law was amended to reduce the 90-day time limit, as set in the *Criminal Code*, to 30 days where a young person is being prosecuted in proceedings by means of summary conviction.