

A Guide to the *Youth Criminal Justice Act*

Legal Information for Youth Workers,
Counsellors & Volunteers

A Guide to the *Youth Criminal Justice Act*: Legal Information for Youth Workers, Counsellors & Volunteers

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Introduction

The Public Legal Education Association of Saskatchewan (PLEA) has developed this guide for professionals, volunteer groups and others who may routinely encounter young people who have come into conflict with the law, and who may have difficulty accessing traditional legal information services. It is hoped that this material will give individuals in the helping professions and others the knowledge they need to assist these youth in finding legal information to help deal with their situation.

Addressing barriers that may prevent full access to our justice system is essential. A basic understanding of the laws that impact our lives and information about how to obtain more in-depth assistance can help ensure that everyone's rights are protected.

The right information at the right time can be a powerful tool. This guide cannot prepare you to provide legal advice. Only lawyers can provide legal advice or perform any work pertaining to the law. But providing general information about the youth justice system and the processes involved can help ensure that youth understand their rights and are better-equipped to deal with their situation.

Criminal Law Backgrounder

Criminal laws are created by the federal government under such laws as the *Criminal Code* and the *Controlled Drugs and Substances Act*. Criminal behaviour is considered so reprehensible that it is viewed as harming society as a whole, along with the individual victims of crime. Criminal offences are prosecuted by lawyers, known as Crown Prosecutors, on behalf of the state. Individuals who are charged with a criminal offence may be represented by defence lawyers from the private bar or Legal Aid.

The *Youth Criminal Justice Act* is a part of our criminal law system. However, the YCJA does not say what things are illegal for young people. Young people are bound by the same laws, under the same statutes, that adults are. The YCJA does, however, set out a separate procedure and court system for dealing with young people who are suspected of breaking those laws. The youth criminal justice system will be examined in greater detail later in the guide.

Burden of Proof

Individuals charged with a criminal offence are presumed innocent until proven guilty. All criminal charges must be proven beyond a reasonable doubt.

While the phrase “beyond a reasonable doubt” is familiar to many of us, there may be questions about what it really means. Proving a criminal case beyond a reasonable doubt doesn’t mean the court must be 100% sure that the accused person is guilty. Rather, it means that there is no logical or rational reason to doubt the accused

person's guilt after considering all the evidence presented in court. Sometimes the concept is described as meaning "fully satisfied", "entirely convinced" or "satisfied to a moral certainty."

The Charter of Rights and Freedoms

The Charter recognizes fundamental rights and freedoms that all Canadians may claim as protection against laws or other forms of government action. The Charter applies to governments, not people. In essence, it limits government actions so that individuals are protected from abuses of government power. Specifically, the Charter sets out certain rights and freedoms for people. It guarantees certain legal rights such as the...

- right to a fair trial
- right to be presumed innocent until proven guilty
- right to have legal advice
- right not to be subjected to cruel or unusual treatment

The Charter has a great impact on criminal law because of the legal rights it guarantees to all persons charged with an offence. These include the right to a fair trial within a reasonable time, freedom from unreasonable search and seizure, and the right to seek legal advice when arrested. The Charter also protects against unlawful arrest, detention and imprisonment.

As well, the Charter says that the police must inform a person they arrest of their right to seek a lawyer's advice and assistance. The police must tell the arrested person of this right without delay.

If the police or other government officials do not respect a person's Charter rights, a judge can decide not to allow the use of any evidence that the police obtained while violating those rights. The judge has the power to exclude evidence if allowing it would decrease the integrity of the justice system and its ability to protect the rights and freedoms under the Charter. A decision to exclude evidence may affect the outcome of a trial.

It should be noted that not all of the rights under the Charter are absolute. The government can place reasonable limits on these rights if they can show that such limitations are justifiable and reasonable in a free and democratic society.

The Youth Criminal Justice Act (YCJA)

The Youth Criminal Justice System

Canada's youth criminal justice system does not set up a separate set of laws for our young people. Statutes such as the *Criminal Code* or the *Controlled Drugs and Substances Act* set out offences and these statutes apply to both young persons and adults alike. As discussed, the *Youth Criminal Justice Act* (YCJA) does however set up a separate system to deal with young people who are suspected of breaking those laws. In larger centres there is often a special court room set aside to hear only YCJA matters.

A separate criminal justice system for young people is based on the belief that, generally, the reduced level of maturity and development in young people requires special considerations because...

- young people are more vulnerable and need special procedural protections
- criminal behaviour may be less ingrained, and therefore a young person may be more likely to be rehabilitated

The youth criminal justice system covers everything from how young people are treated when accused of committing a criminal offence to what is done if they are found guilty of an offence.

Who is Covered by the YCJA?

When we talk about a “young person” under the YCJA we mean someone 12 years of age or older but less than 18 at the time of the offence.

Children under the age of 12 years are not covered by the YCJA. This is because children under 12 are believed to be too young to fully understand or appreciate the nature and consequences of their actions. As a result, they are not criminally responsible for their actions. This means that, in Canada, people cannot be found guilty of a criminal offence that they committed while they were less than 12 years old.

Children under 12 who commit offences are dealt with through the provincial child welfare system. In extreme cases this may involve removing children from the parents’ care, but more likely family support services can be provided to help address the issues facing the family.

Declaration of Principles

The YCJA’s principles must be considered at all times when dealing with the provisions of the YCJA. The principles can be summarized as follows...

1. The intent of the youth criminal justice system is to protect the public by...
 - holding young persons accountable by using measures that fit the seriousness of the offence and the degree of responsibility of the young person
 - promoting rehabilitation and reintegration of young persons who commit offences
 - supporting crime prevention by making referrals to community agencies to address the issues underlying offending behaviour
2. The youth justice system must be separate from the adult system and must recognize the principle of diminished moral blameworthiness of young persons. It must emphasize...
 - rehabilitation and reintegration
 - fair and proportionate accountability given the greater dependency and reduced levels of maturity of young persons
 - enhanced procedural protections
 - timely intervention that emphasizes the link between the offending behaviour and its consequences
 - promptness and speed with which officials working in the system must act

3. Measures taken must be fair and proportionate and should...
 - reinforce societal values
 - encourage the repair of the harm done to victims and the community
 - be meaningful to the young person and, where appropriate, involve parents, extended family, community and social or other agencies in the youth's rehabilitation and reintegration
 - respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal young persons and young persons with special requirements

4. Special considerations apply within the youth justice system, particularly...
 - young persons have rights and freedoms in their own right and have the right to participate in decisions that affect them and have special guarantees of their rights and freedoms
 - victims should be treated with courtesy, compassion and respect and should suffer the minimum degree of inconvenience as a result of their involvement in the youth criminal justice system
 - victims should be provided with information about the proceedings and be given an opportunity to participate and be heard
 - parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour

The working philosophy of the Act is based on these principles. That philosophy is to minimize the use of criminal law when dealing with young people. It is believed that, in many instances, the rehabilitation and reintegration of a young person can be accomplished without having to use traditional court proceedings and sentences. In other words, the most serious measures of the justice system should be used only for the most serious crimes. As a result, the use of incarceration should also be used only as a last resort when dealing with young people.

Youth Justice Court

Each province must set up a special Youth Justice Court system to deal with cases under the YCJA. In Saskatchewan, the Provincial Court is designated to handle youth criminal justice matters. Provincial Court handles most adult criminal charges and many civil claims (Small Claims Court) as well.

However, the Youth Justice Court function is kept separate from adult or civil proceedings. Different rules apply to youth justice proceedings and, in larger centres, youth-related proceedings are usually held in a separate court room designated for Youth Justice Court proceedings.

Youth Justice Committees

The federal and provincial governments have the power to set up citizen committees, whose purpose is to assist in a number of functions under the YCJA. This can include...

- giving advice on appropriate extrajudicial (non-court) measures for dealing with young people
- victim support, including reconciliation with the young person who committed the offence
- facilitating community support for the young person who committed the offence
- advising federal and provincial governments regarding youth criminal justice policies and whether procedures under the YCJA are being followed
- other functions assigned by whoever established the committee

In Saskatchewan some communities have established Community Justice Committees (CJC). A CJC is a group of citizen volunteers who work with police and other justice professionals. If they are going to deal with young people in trouble with the law, under the YCJA, these committees must be registered as non-profit charitable corporations and appointed by the Attorney General of Saskatchewan.

Police or Crown Prosecutors can refer cases where a youth is in trouble with the law to a CJC. Whether a case will be dealt with in this way depends on the nature of the offence and the background of the youth. A CJC will only handle a case if the youth takes responsibility for the offence. They will not determine guilt or innocence.

A CJC will have a meeting with the victim, the youth and other interested parties, such as support people for both the victim and the youth. Both the victim and the youth must be willing to have a meeting. The CJC will try to have the victim and the youth agree on what actions the youth will take to right the wrong. If no agreement can be reached the matter may be dealt with in another way.

Conferences

Police officers, prosecutors, Justices of the Peace, community youth workers or Youth Justice Court Judges can call an advisory conference made up of community members and/or other interested parties at any time when dealing with young people and having to make a decision under the YCJA. The purpose of the conference can be to give advice on appropriate extrajudicial measures, conditions for release of the young person, sentencing and reintegration plans. Except for conferences called by a Youth Justice Court Judge or Justice of the Peace, each province can set its own rules for how these conferences are run. It is possible for youth justice committees to serve as a conference.

Conferences are advisory only. They do not actually make the decision about the issue they are giving advice on. For example, the police officer who decides whether a young person should be charged or not, or a judge who decides on what sentence to give a young person who has been found guilty of an offence, still has the responsibility to make the decision.

By using a conference, the decision-maker can have access to information and insights into the situation that otherwise might not be available. Conferences also can facilitate participation in the decision-making process by the young person's family, the victim or anyone else affected by the offence.

Community Youth Workers

Community youth workers may be involved at a number of different stages in dealing with youth in trouble with the law. In Saskatchewan, Corrections and Policing has the responsibility for preparing pre-sentence reports required before a court sentences a youth. This responsibility is delegated to community youth workers who prepare the reports. Community youth workers may also supervise probation orders and provide assistance and support to the youth and their family when probation is ordered. Community youth workers also work with youth who have been sentenced to custody to prepare a plan to reintegrate the youth into the community.

Parents

One of the special considerations in the YCJA is that parents should be kept informed of measures and proceedings involving their children. By being kept informed and involved in the process, it is hoped that parents will support their children in dealing with the offending behaviour and its causes.

To keep parents informed, notices and particulars must be given to the parent (or in some cases, to a responsible adult in the young person's life) in the following events...

- when a young person is dealt with by an extrajudicial sanction
- when a young person is arrested or detained
- when a young person gives a promise to appear, a recognizance or undertaking
- when a young person is given a ticket, summons or appearance notice
- if a young person is in custody and poses a risk to themselves or any other person
- if the sentence that the young person received is to be reviewed
- if the young person receives a custodial sentence (notice will include the level of custody to which the young person will be referred and why that level was chosen)
- once the young person becomes eligible for release from custody, when a recommendation or application is made by the authorities as to whether the young person should be released from custody and placed under conditional supervision, or continue to be held in custody
- if the Youth Justice Court refuses to release the young person from custody, after the matter has been brought before it for review and the authorities apply to have this decision reviewed
- any time notice needs to be given under the *Criminal Code* regarding a mental disorder of the young person

Generally, if a parent does not attend court proceedings with the young person, the court may order a parent to appear. If a parent does not appear after an order has been issued, they may be arrested or charged with contempt of court.

Lawyers

Under the YCJA a young person in trouble with the law has the right to a lawyer at every stage of any proceeding under the Act, including when they are arrested or detained and when an out-of-court sanction is being considered. Although the YCJA requires police and judges to tell young people about their right to a lawyer, a young person may not fully understand why they would want a lawyer, how to get a lawyer and how to work with a lawyer once they have one. A young person may think that asking to talk to a lawyer will make them seem guilty or that there is nothing a lawyer can do for them. A young person may not understand that legal advice is available regardless of their financial situation. A young person must understand that they have a right to a lawyer and that exercising this right will help ensure that their other rights are protected.

The Role of a Lawyer

Young people should understand that their lawyer works for them. This is true no matter who pays. Even if their parent, guardian or Legal Aid is paying, the young person is the client. A lawyer's job is to get the best legal result for the young person. It is not to do what parents or other adults may want. This means that the young person and their lawyer make the decisions about the case, not parents, social workers, community youth workers or anyone else. Parents or guardians and other trusted adults who have the youth's best interests in mind can, however, be as involved as the youth wishes but that is the youth's choice, not anyone else's.

A lawyer must keep what a young person says private. A lawyer may want to know all the facts in order to defend the young person. This means that the young person must be able to talk to their lawyer freely without worrying that the lawyer will tell others what was said. For this reason, lawyers cannot tell other people what their clients tell them. Not even the court, the police, a social worker or the young person's parents can make a lawyer tell them what a young person has said. The only time this is not true is if the young person tells a lawyer about a crime they plan to commit in the future.

A young person should also know that the rules about confidentiality do not apply to other people they may talk to. If they confide in people such as parents, friends, teachers or a counsellor they should know that the person could talk to others about the case and could even be required to testify about what was said if the matter goes to trial.

Working with a Lawyer

A lawyer must be able to get all the information they need from a young person in order to properly defend them. It is important for a young person to be open with their lawyer and answer the lawyer's questions. A young person should answer all their lawyer's questions and let the lawyer decide whether the information is useful or not. Whatever a young person tells a lawyer will remain private.

A lawyer will give the young person legal advice. In order to know whether to accept it or not, a young person must fully understand what the lawyer is saying. A lawyer will also have helpful suggestions about what to do and how to behave in court and with the police. In order to follow these suggestions successfully, a young person must really understand what the lawyer means. A young person should ask questions and tell their lawyer if there is something they do not understand. They may also want to have a parent or other adult with them whenever they meet with the lawyer.

A lawyer can give a young person legal advice but the young person must ultimately decide what to do. If a young person does not agree with what a lawyer is suggesting they should ask the lawyer about the reasons for the suggestions. If the young person understands why the lawyer is suggesting something and still does not want to take the lawyer's advice they should consider looking for another lawyer, rather than simply ignoring what the lawyer says. A young person may benefit from discussing their options with a parent, guardian or other trusted adult as well.

Finding a Lawyer

Sometimes a young person wants a lawyer but does not know how to find a lawyer to represent them. A young person may not have money for a lawyer. Even when a young person has the means to hire a lawyer they may not know how to find a lawyer or what they should be looking for in a criminal lawyer.

When a Young Person Cannot Afford a Lawyer

All young persons charged under the YCJA are eligible for Legal Aid services regardless of their financial situation. Financial information may still be required but no youth will be denied legal services for financial reasons.

A young person can apply for Legal Aid by going to their local Legal Aid office. If a young person is being held in custody and it is after office hours or on a weekend the police will give them an after-hours Legal Aid number to call. The lawyer they call can give them advice on the phone to deal with their immediate situation but will not appear in court. When the Legal Aid office is open the young person will have to call them to arrange to apply for Legal Aid, if they cannot afford a lawyer.

Legal Aid offices are located across the province. Locations and contact information can be found at www.legalaid.sk.ca or in the blue pages of the phone book under Government of Saskatchewan. The young person should take some form of identification, such as a health card or driver's licence and also take any papers related to the case, like a Promise to Appear or any bail conditions. Staff will give the young person an application form. They can help the young person fill it out, and can answer any questions. The young person may have to give information about any income, property or savings that either they or their parents or guardians have.

Choosing a Lawyer

If a young person is hiring a lawyer there are a number of ways of finding a suitable lawyer. A young person can visit www.lawsociety.sk.ca and use their "Find a Lawyer" feature, look under the "Lawyers" listings in the yellow pages of their local telephone book or checkout an online directory. A lot of lawyers advertise their areas of practice. A young person can call the lawyers who indicate that they practice criminal law and ask about their experience working with youth before making an appointment. If it is after office hours, a young person can still phone because the lawyer might have an answering service or a message that could help. Some lawyers may offer free initial consultations.

A young person's parents might be able to help. They may have used a lawyer for other kinds of legal work. This lawyer may not be the best person for the young person's case, unless they do a lot of criminal work. But they might know a good criminal lawyer. It might be useful to ask other youth which lawyers they used and what they thought of them. But a young person should not expect the same result as a friend who worked with a certain lawyer, since every case is different.

What to Look for in a Lawyer

A young person needs to have a lawyer that they can work with easily and who can do the job. Not every kind of lawyer is best-suited for every kind of case. A youth who is in trouble with the law needs a criminal lawyer. Criminal lawyers know the specific laws that apply to criminal cases and the particular rules that must be followed in criminal cases. A lawyer who does a lot of criminal law work is also more likely to be familiar with the police and court personnel. This can be helpful.

Youth Justice Court has rules and procedures that are different from adult court and the law treats young people differently than it treats adults. The more experience a lawyer has with youth criminal law, the better they can defend the young person. A young person should ask a lawyer how much experience they have had representing young people in criminal cases. It is also important that the lawyer...

- respect the young person
- use language that the young person can understand
- be willing to explain matters that the young person doesn't understand
- listen to what the young person has to say, and respect what they want to do
- be someone the young person can trust and talk easily with

Things a young person should ask a lawyer...

- Will they keep what you tell them private (even from your parents) unless you tell them it is okay to share it?
- Will they do what you want done rather than what your parents or other adults want?
- What would they do if the two of you disagreed about how your case should be handled?

Dealing with the Police

The municipal police or the RCMP are often the first people to deal with a young person who may be in trouble with the law. They have the discretion to decide whether to charge the youth or use some other way of dealing with the youth.

Young people may have many questions about how the police operate. It is important for young people to have accurate information, especially about their rights. The decisions that a young person makes during the time of initial contact with the police often have lasting consequences for the young person.

Sometimes a young person may think they only need a lawyer if they are going to court for a trial, but there are ways that a lawyer can help a young person at the early stages of an investigation. Young people should consider talking to a lawyer as soon as they have contact with the police and the police want to question them. That way, a lawyer can help ensure their rights are protected. A lawyer might suggest that the young person not talk to the police at all.

Before a young person says anything to the police they should talk to a lawyer. This cannot be stressed enough. Even a young person who is innocent should talk to a lawyer before talking to the police. Innocent people often get themselves into trouble by saying things to the police that they think are harmless, but that can be used against them in court. Free summary advice is available through Legal Aid's Duty Counsel 24 hours a day, seven days a week. The police should explain this to the young person but if they do not the young person should say that they want to talk to a lawyer through the duty counsel service if they don't have a lawyer or are unable to contact their own lawyer.

If a young person decides to talk to the police their lawyer can be there when they talk to them. A lawyer's presence can help the youth avoid saying anything that might hurt their case and ensure that their other rights are protected. The young person's parent or guardian can also be present – the young person does not have to choose between a parent and a lawyer.

Being Stopped by the Police

The police may stop a young person on the street or ask a young person who is driving a car to pull over without placing them under arrest. The police must tell the young person why they are being stopped.

If a young person is driving, being charged with an offence or being arrested they must identify themselves to the police when asked. If the young person is driving a car they must also show the police their driver's licence and vehicle registration. It is an offence to provide a false name to the police and doing so could result in a criminal charge.

A young person may want to tell the police their name, even if not required to. If the young person refuses to do so, the police may be able to hold the young person to establish their identity, if they have reasonable cause to suspect that the young person has committed an offence. A young person may also want to tell the police their age so the police will know that they are not an adult. A young person does not have to tell the police anything else or answer any questions. Anything else they do say may be used against them in court.

If the police do not arrest the young person they are free to leave at any time. The young person should ask the police if they are under arrest before leaving; if a young person is under arrest it is an offence to resist arrest or obstruct the police.

Arrest by the Police

The police may decide to go further than simply stopping a young person or pulling them over. They may decide to arrest the young person.

Generally speaking the police will tell a person that they are being arrested. If they do not say anything about arrest the young person can ask if they are under arrest and the police must tell the young person. It is important for a young person to know if they are being arrested; resisting arrest can result in criminal charges. If there is any doubt, the young person should specifically ask if they are under arrest.

A young person who is under arrest must identify themselves to the police; refusing to identify themselves in these circumstances could result in criminal charges. Other than identifying themselves the young person has the right to say nothing else to the police. A young person must be told why they are being arrested and informed that they have the right to a lawyer.

If the police arrest or hold a young person they must notify the young person's parent or guardians. The notice will include information about any charges, where the young person is being held, and the time and place of any court appearances for the young person.

A young person who is arrested has the right to talk to a lawyer. A young person must be told about this right and given a chance to call a lawyer and talk to a lawyer in private. If a young person is arrested they also have the right to talk to a parent, guardian or other appropriate adult. They do not have to choose between calling a lawyer or their parents; they can call both. They must be given a chance to call and to talk to these people in private.

Charges by the Police

Whether they arrest the young person or not, the police can decide to charge the young person with a criminal offence. They can do this if they believe the young person has committed an offence. The police must tell the young person what offence they are charged with. A young person who is charged does not have to talk to the police except to give them their name.

If the police charge a young person with an offence, but do not hold the young person in custody, they will give the young person an appearance notice or a promise to appear. These are legal forms that tell the young person when and where they must go to court. If they do not go to court when they are supposed to, the young person could end up in more trouble with the law.

The forms will also tell the young person if and when they must go to the police station to be photographed and fingerprinted. It is an offence not to appear when required for fingerprinting and photographing. If the young person is held by the police they will generally take the young person's fingerprints and photograph while the young person is in custody.

Making a Statement to the Police

Before a young person makes a statement they have the right to...

- make a reasonable number of phone calls to contact a lawyer and their parents
- talk to both a lawyer and their parents in private before deciding to talk to the police
- have their lawyer and parents with them if they decide to talk to the police
- be told in words that they understand that...
 - they do not have to say anything (make a statement)
 - they should not make a statement because they have been promised something in return
 - they should not make a statement because they are afraid that someone will hurt them or someone else
 - if they do make a statement it can be used as evidence against them
 - they can contact a lawyer, talk to the lawyer in private and have the lawyer with them if they choose to talk to the police
 - they can also contact a parent, adult relative or other adult, talk to that person in private and have that person with them if they choose to talk to the police
 - they do not have to choose between a lawyer and a parent or adult – they can talk with both and have both with them

If a young person has said they want to talk to a lawyer or other adult or have the lawyer or other adult with them, the police must stop questioning the young person until that person has arrived and talked with the young person.

Options under the YCJA

Extrajudicial Measures

The YCJA emphasizes protecting the public and providing out-of-court and non-custodial options for non-violent youth who are not serious, repeat offenders. In many cases, a young person can be held accountable for their offence without having to go to court. By reserving court proceedings for the more serious offences, the Act gives authority and support to the police and prosecutors in exercising their discretion for many decisions.

Extrajudicial measures are ways of dealing with a young person without going to court. They are designed to...

- provide effective and timely responses to offences committed by young people
- encourage the repair of harm suffered by the victim in particular and the community as a whole
- encourage the victim, families and the community to become involved in the youth criminal justice process and contribute to the outcome of proceedings
- respect the rights of young people and produce outcomes that are proportionate to the severity of the offence

The YCJA establishes a fairly strong direction regarding the use of extrajudicial measures. Before starting court proceedings with regard to a young person, a police officer must first consider whether it would be sufficient to use an extrajudicial measure instead. If it would, police are encouraged to...

- take no further action
- give the young person a warning
- administer a caution under a provincially-run program

The officer may also refer the young person to a program or agency in the community, which may assist the young person in dealing with any problems in their life, such as substance abuse or anti-social behaviour. Referral to a community program is voluntary, and can be done only with the consent of the young person. The primary goal is not to punish, but to help the young person not commit offences in the future.

When a young person is involved in a non-violent offence and has not been previously found guilty of an offence, extrajudicial measures are presumed by law to be adequate to hold the young person accountable. Even if a young person already benefitted from extrajudicial measures or has a prior finding of guilt, extrajudicial measures could be used for a new offence. Extrajudicial measures should be used in all cases where they would hold a youth accountable.

Although youth are not required to admit guilt for the offence, police must keep a record of any extrajudicial measure used to deal with a young person. While a record of past warnings, cautions or referrals cannot be considered in sentencing for a further offence, the police and Crown Prosecutors can use the record to help decide whether to charge a young person or utilize further extrajudicial measures.

In some circumstances a warning, caution or referral may not be considered adequate to hold a young person accountable. The offence may be seen as too serious for a warning, caution or referral. There may be other aggravating factors, such as the young person having a number of prior offences or history of run-ins with the police. In such cases, the offender may receive an “extrajudicial sanction” under a program set up by the provincial government.

The administrator of this program must notify the young person’s parents of the sanction. Victims may also receive this information if requested.

Before an extrajudicial sanction can be used there must be...

- enough evidence to prosecute the offence
- no reason at law not to prosecute the offence

And the young person must...

- be advised of their right to legal counsel, and given the opportunity to get legal advice
- be willing to have the matter dealt with outside of court
- accept responsibility for the offence
- fully and freely agree to the extrajudicial sanction

A record of an extrajudicial sanction may be considered by a court when sentencing a young person for a further offence.

Extrajudicial measures and sanctions can be custom-made to match the consequence to the crime. For example, the sanctions may involve enrolling in rehabilitation programs, performing community service, or compensating the victim for any harm caused by the offence.

If the young person does not successfully complete an extrajudicial sanction, charges may still be brought in relation to the offence. However, if a young person admitted responsibility for the offence as a condition

for the extrajudicial sanction, the admission cannot be used against them in later court proceedings regarding that same offence.

A record of extrajudicial sanctions may be kept for up to two years. During this time, it can be used in any later criminal proceedings for new charges, to show a record of prior criminal activity. This is one of the reasons that a young person should seek legal advice before agreeing to extrajudicial sanctions.

Judicial Measures

If extrajudicial measures and sanctions are not adequate to deal with a young person, or if a young person does not finish the conditions of an extrajudicial sanction or chooses not to accept the extrajudicial sanction, a formal criminal charge may be laid against the young person.

A lawyer can explain charges and the possible consequences of charges to a young person. A lawyer can also tell a young person what to expect and what is expected of them at each stage of their case. A lawyer can go with the youth if they have to appear in court to find out if they will be released while waiting for their trial.

This can help a youth avoid making a bad situation worse. Often youth who are charged with an offence get into more trouble because they don't do what the court tells them to do. A lawyer can explain what to do and what will happen if a young person does not do what they are expected to do. A lawyer can help a young person understand what is happening. A young person should be encouraged to ask their lawyer about anything they do not understand.

Pre-Charge Screening

Provinces can set up a program of pre-charge screening. This means that in certain circumstances, permission from the Justice Minister (usually via his or her representative) must be given before a charge is laid against a young person. This offers a final opportunity for the young person to be held accountable, while still using less drastic measures than judicial proceedings.

Medical and Psychological Reports

At any stage of the proceedings, the Youth Justice Court may order the young person to be assessed for a medical, psychological or psychiatric report. The purpose of such an order is to determine if the young person is suffering from any disorder or condition. This may influence the court when deciding on such things as...

- whether to release the young person from custody
- what conditions to impose for release from custody
- whether the young person should be sentenced as an adult
- whether any information relating to the young person should be disclosed
- what sentence to impose on the young person

Detention Before Sentencing

A young person can only be held in custody before sentencing if they...

- have been charged with a serious offence, or
- have a history that shows a pattern of either outstanding charges or findings of guilt

Additionally there must be a likelihood that...

- they will not go to court as required
- their detention is necessary for the protection or safety of the public, or
- in the case of a youth charged with a serious offence, there are exceptional circumstances that warrant detention and are necessary to maintain confidence in the administration of justice, and
- there are no conditions or combination of conditions that would adequately address any of these concerns

Trial Process

A trial is conducted in much the same manner as it is in adult criminal court. Things like the presumption of innocence, the rules of evidence, the burden of proof, and available defences apply in Youth Justice Court in the same manner as with adult offenders.

For the most part young people and their parents should be referred to a lawyer, who can give opinions and advice about criminal trial proceedings and how they will affect the young person.

A lawyer can advise a young person about any possible defences to the charges. A lawyer will also tell a young person whether they have a realistic chance of being found not guilty at trial.

If a young person decides to plead not guilty and go to trial, a lawyer can prepare their defence. A lawyer will gather defence witnesses and prepare questions to ask these witnesses. A lawyer will also prepare to cross-examine witnesses who are going to testify against the young person. A lawyer will put together a legal argument telling the court why the young person should be found not guilty.

At a trial the lawyer will present the young person's case to the judge. The lawyer will question the witnesses and talk to the judge and make sure all the rules are followed. A lawyer knows how to question witnesses and how to tell the young person's side of the story in a well-organized way that makes it easy for the judge to understand how it all fits together. They know how to talk to the judge and the other lawyers. They know the law and how the facts of the case fit into it.

Even if a case doesn't go to trial, there will be a number of times a young person will have to go to court. A lawyer can speak for the young person at these court appearances and help them know what to do in court. There may even be some times when a lawyer can go to court instead of the young person.

Sentencing Principles

The purpose of sentencing under the YCJA is to hold the young person accountable for an offence by using fair sanctions with meaningful consequences. The sentencing provisions of the Act aim to contribute to the long-term protection of the public through the rehabilitation and reintegration of young people as productive members of society.

The Youth Justice Court is directed by a number of principles and guidelines in the Act when deciding on a sentence for the young person such as...

- the young person should not receive a sentence that is greater than an adult would receive in similar circumstances
- sentences should be consistent (the sentence for a young person should be similar to those given to other young people in that region for offences with similar circumstances)
- the sentence must be proportionate to the seriousness of the offence and the degree of involvement by the young person
- sentencing a young person to custody is a last resort
- the sentence must be the least restrictive one available that still promotes accountability, rehabilitation and reintegration
- particular attention must be paid to the circumstances of Aboriginal young people

Youth sentences may also have the objectives of denouncing unlawful conduct and deterring the young person from committing further offences.

When determining a sentence, the Youth Justice Court will consider such things as...

- how involved the young person was in committing the crime
- harm to the victim, and whether the young person intended harm or should have seen that harm as a likely outcome of his or her actions
- whether the young person has compensated or otherwise made amends to the victim or the community at large
- whether the young person has spent time in custody awaiting trial
- whether the young person has prior findings of guilt
- whether there are any circumstances that support a sentence that is either more severe or more lenient than average

The outcome of a young person's case will depend on many things, not just what they are accused of or their age. There is always a range of sentences that can be given for any particular crime. A lawyer can help a young person get the best result and may be able to negotiate a lesser sentence with the prosecutor.

Before deciding on what sentence to give the young person, a judge may ask for a pre-sentence report. Under some circumstances, such as the possibility of a sentence involving custody, a written pre-sentence report must

be ordered. However, a pre-sentence report may be dispensed with if the young person, the Crown Prosecutor and the Judge agree not to have one.

A pre-sentence report is prepared by a community youth worker, who gathers information on relevant circumstances in the young person's life. The person who writes the report will interview the young person, their parents and members of their extended family, where possible. The victim may be interviewed as well. The youth and their lawyer will receive copies of the report.

The pre-sentence report looks at things such as the age, maturity, character, behaviour and attitude of the young person. It will also examine the young person's past experience with extrajudicial measures and sanctions. In addition, the court will consider the presence of positive influences in the young person's family, the young person's school or employment record, any plans for personal development proposed by the young person, and the availability of appropriate services and programs in the community. A judge may call a conference to hear recommendations on an appropriate sentence for the young person.

There are a broad range of sentencing options available to the Youth Justice Court. The options can be used alone, or often in conjunction with other options. It is important to remember that all reasonable alternatives to custody must be considered. Options include...

- reprimand of the young person
- a conditional or absolute discharge (a "discharge" means there are no further consequences for the young person once the terms of the discharge are met)
- a fine of up to \$ 1,000
- paying a victim a sum of money, compensating them "in-kind" or performing personal service, as compensation for property loss, personal injuries or loss of income
- community service
- probation for up to two years
- referral to a provincially-run support and supervision program
- deferred custody and supervision (not an option if the young person was sentenced for an offence that caused or attempted to cause serious bodily harm)
- in some cases, a prohibition from owning certain weapons or explosive devices
- a custody and supervision order

The maximum length of a custody and supervision order depends on the offence...

- for first degree murder, the maximum youth sentence is ten years
- for second degree murder, the maximum youth sentence is seven years
- for all *Criminal Code* offences that carry a possible life sentence for an adult, the maximum youth sentence is three years
- for all other offences, the maximum youth sentence is two years

If the court decides that custody is necessary, a youth will generally serve the first 2/3 of their sentence in custody and the last 1/3 in the community under supervision. Applications can be made to have a youth spend a greater portion of their sentence in custody.

As with sentences in adult court, if a custody sentence is for less than 90 days, it could be served intermittently (that is, part-time, such as weekends only). This would depend on the circumstances of the offence and the availability of youth detention facilities that could accommodate an intermittent sentence.

Adult Sentences

The Crown Prosecutor can apply to the court for an adult sentence for a youth who is at least 14 years of age and has been found guilty of an indictable offence that an adult could receive a sentence of two or more years in prison for. If the youth has been found guilty of a serious violent offence – murder, attempted murder, manslaughter or aggravated sexual assault – the prosecutor must consider applying for an adult sentence. If they decide not to seek an adult sentence in these circumstances they must advise the court.

The court can impose an adult sentence only if the prosecution has shown that the presumption of reduced moral blameworthiness should not apply to the case before the court. This presumption essentially means that the starting point is that youth are less at fault for committing crimes simply because they are not yet adults. The court must also find that a youth sentence would not be long enough to hold the youth accountable before giving a youth an adult sentence.

Even if a young person receives an adult sentence they must serve their sentence in a youth facility until they reach 18.

Publication and Information Sharing

In most cases dealt with under the YCJA, the identity of a young person cannot be publicized. This is because it is believed that publicity would interfere with the rehabilitation of the young person and their reintegration into society. The name and other identifying information of a young person being dealt with under the YCJA can only be published in very limited circumstances, including where...

- the young person receives an adult sentence
- publication is necessary to protect the public because the young person has received a sentence for a violent offence and poses a significant risk of committing another violent offence

Other situations where a young person's identity can be published include where...

- a young person asks the Court for an order permitting publication of their involvement under the YCJA and the court is satisfied that publication would not be contrary to the young person's best interests or the public interest
- a police officer requests, and a Youth Justice Court permits, the publication of information that could identify a young person who has committed an indictable (serious) offence if:
 - there is reason to believe that the young person is a danger to others, and
 - publication is necessary to assist in apprehending the young person

(Note: These orders only last for five days.)

Records

Youth records include information about a young person's involvement with the criminal justice system. In addition to things like the young person's name and date of birth, a youth record may contain details about an arrest, criminal charge or sentence for an offence, as well as information gathered from family, school authorities and victims. These records may be maintained by the police, the government, courts and others involved in the youth criminal justice system.

Access

Under the YCJA, access to a youth record is restricted to certain people for specified purposes. Individuals directly involved with the young person's case may have access to a youth record. Typically these individuals include...

- the young person, their parents and lawyer
- prosecutors
- judges and courts
- individuals involved in a youth conference
- victims
- directors of facilities where the young person serves their sentence

Government employers carrying out a criminal record check may also have access to a youth record.

Access Period

Unlike adult criminal records, youth records are generally destroyed or sealed after a certain period of time. The period of time that a record remains open is often referred to as the access period. The access period, or how long a youth record will remain open, depends on...

- seriousness of the offence
- the sentence, and
- whether the young person commits another offence while the initial record is open

Accordingly, a youth record doesn't simply disappear when a youth turns 18.

If the young person is acquitted, there will be a record until the appeal period ends or until after all appeals have been heard and decided. The record will show that the young person was charged but found not guilty.

If a young person is dealt with through an extrajudicial sanction (a more formal type of extrajudicial measure) the record is closed two years after the young person agreed to be dealt with by an extrajudicial sanction.

If the young person goes to court and receives an absolute discharge, the record will last for one year after the young person has been found guilty. If the discharge is conditional, the record will last for three years.

If the young person is found guilty of a summary conviction offence (less serious offence), the record will last for three years after the young person finishes their sentence, including probation. If the young person is found guilty of an indictable offence (more serious offence), the record will last for at least five years after the young person finishes their sentence, including probation. For certain serious, violent offences (e.g. murder, manslaughter and aggravated sexual assault) the record may be maintained indefinitely.

If a youth is sentenced as an adult their record will be treated like an adult record. Unless a pardon is granted, adult records remain open for life. This means that it will not be closed unless the young person receives a record suspension.

In many cases, if a youth commits another offence while their youth record is still open, the record for the first offence will stay open until the record for the later offence is closed. For example, if a young person is found guilty of a serious crime two years after they have finished serving a sentence for a minor offence, their record on the minor charge won't be closed at the end of three years. It will remain open until five years after the end of their sentence for the second, more serious charge. This means that if the sentence for the second offence is six months, the record on the minor charge will last for eight years instead of three.

Also, in many cases where a young person is convicted of another crime committed after they turn 18, but while their youth record is still open, the youth record will become part of their permanent adult record. Because it's part of their adult record, it will remain an open record for life unless the youth applies for and receives a record suspension.

While a youth record is open it can be used in a number of situations. For example, schools may be entitled to receive information about a young person but only if the information is necessary to ensure that...

- the young person complies with any court order
- the staff and students of the school, and anyone else, are protected
- the young person is rehabilitated

Implications for Employment

A young person may have questions about getting a job after they have been in trouble with the law. While employers cannot get information about a young person's record directly from the police they could ask a youth if they have a record or request that the youth provide them with a copy of a criminal record check. An employer that is governed by federal law cannot ask a potential employee about being charged or found guilty of an offence dealt with under the YCJA. Other employers can ask this question. Although a youth can refuse to answer this question or provide a criminal record check, this could hurt their chances of getting the job.

Once a young person's sentence is complete the YCJA states that the youth is "deemed" not to have been found guilty or convicted of an offence. This means that a young person, who has completed their sentence, can honestly answer "no" if asked whether they have ever been convicted or found guilty of an offence.

Implications for Travel

There are also things that a youth who has a record should consider if they want to travel to another country. Youth records are not generally accessible to border officials in other countries, but it is possible that another country could find out about a young person's record, especially if it is an open record. Unlike Canada, these other countries do not have to delete the youth record once it is closed here in Canada. They could decide to maintain it on their files indefinitely.

Once a youth's record is closed they should check to make sure it has been sealed or destroyed by the RCMP and removed from the active files of the police. They can do this by going to the police and the RCMP with photo identification and asking them to verify that the record has been closed.

A Word about Victims

The YCJA recognizes a need to account for the interests of victims in proceedings involving young people. The YCJA provides that victims...

- should be treated with courtesy, compassion and respect for their dignity and privacy
- can request information about the identity of the young person and how the offence was dealt with, if the young person is dealt with by extrajudicial sanctions or through the courts
- may have a voice in what happens by contributing to pre-sentence reports and can make a victim impact statement
- may participate in conferences that are called in relation to the young person
- may have their harm repaired whenever possible, through restitution, compensation or work in-kind by the young person
- may have access to youth court records
- can have access to victim's services

Young People Who Are Victims

The identity of a young person who is a victim or a witness of a crime committed by a youth is protected by the YCJA. The name or any information that would identify a young person who is a victim or a witness cannot be published. In very limited circumstances, a young victim or a witness can choose to identify themselves once they are 18 years old or before that with the consent of their parents or a Youth Justice Court. A victim or a witness can only publish their own identity, not that of the offender.

Key Considerations for Intermediaries

Legal Information vs Legal Advice

The line between legal advice and legal information can be difficult to determine. The following example may be helpful.

A 15 year old boy comes to you and says that the police are looking for him. They believe that he was involved in causing some minor damage to a teacher's car in the school parking lot. It seems that a long scratch was left along one side of the car, and a number of youths, including this particular youth, were seen in the area shortly before the damage was discovered.

Legal Information That May Be Helpful

- The young person has the right to remain silent.
- The young person has the right to a lawyer at every stage of the proceedings under the YCJA, and the right to talk to a parent or other adult.
- Young people have a right to be told what they are charged with, and why, in words they understand.
- Police must stop questioning a young person until after they have had an opportunity to talk to a lawyer, as well as a parent or other adult.
- A young person can have a parent and a lawyer present when giving a statement to the police. In our example, you can explore whether the young person wants to consider getting a lawyer before the police make contact with him. Is there a parent or other adult who can go with the boy to talk to the police? If the police happen to apprehend him before he can make these decisions, he still has the right to choose to speak to a lawyer, as well as his parents, before deciding to talk to the police.
- Young people suspected of committing a crime may be eligible for extrajudicial measures, which will hold them accountable for their actions without having to go to court. Lawyers do more than simply go to court. They can provide the young person and their family with legal advice that may enable them to make important decisions, and negotiate fair and just settlements of the issues facing the young person.
- All young people charged under the YCJA are entitled to have a lawyer represent them in court and will not be denied legal services for financial reasons.

Legal Advice that a Lawyer May Provide

A lawyer can...

- take a very close look at each factor and give an opinion on how the law applies to a young person's particular situation
- assess the facts, in light of the law, and advise whether there is a defence to any charge that might be laid against the young person
- advise of the consequences of various courses of action that may be available to a young person
- suggest a particular course of action and discuss the associated legal ramifications
- represent the young person in negotiations with the police and prosecutors, as well as in court proceedings, to ensure a fair outcome for the young person

Confidentiality

Any information a client gives to a lawyer is protected. A lawyer is required by the ethics of the profession to keep that information to themselves. The lawyer cannot be required by law to reveal that information. For example, a lawyer cannot be required to testify in court about something their client told them. Other individuals do not have the same protection that a lawyer and client have. They could be required, by law, to reveal what they have been told.

Generally, individuals are not required to report anything about a crime that has been committed. One notable exception to that rule is dealing with abuse or neglect of children. Anyone who has reason to believe that a child is abused or neglected has a legal duty to report it. Failure to report such occurrences is an offence. But if, for example, a youth informs you that they stole something, you are not obliged to report that fact to the police. In certain circumstances you may decide to come forward with that information. That is your decision. In some cases you may be called upon to testify about what the youth has said to you.

It is important to be aware that while it is generally not an offence to fail to report a crime that has already been committed, it is an offence to in any way assist the perpetrator in committing an offence or evading justice. Doing so may make you an accessory to the original crime. Accessories to a crime are liable to exactly the same consequences as the main perpetrator. This means that if someone tells you that they are planning a crime you may have to report it. It also means you cannot help someone cover up a crime by doing things like hiding evidence or making false statements.

The Changing State of the Law

This guide contains a number of references to the law and the law can change frequently. For the most up-to-date information, visit www.justice.gc.ca/eng/cj-jp/yj-jj/ or contact PLEA. If an individual wants an opinion on a legal matter, they should seek the advice of a lawyer.

Exploring Options

When an individual starts listening to other people's legal problems, their first impulse may be to "take care of" that person. They may decide on a course of behaviour that seems best for the young person, without trying to find out what the young person really wants to do. This may seem like a natural reaction and the easiest approach. However, it is important to not cross the line and go beyond merely providing legal information. Providing a legal opinion on the facts facing the young person, or advice on what the young person should do amounts to giving legal advice – and only a lawyer can provide legal advice.

Even though there may be an effective course of legal action open to the young person, they may not want to take that action and may understand, better than others, the repercussions that could follow. There may be legal implications that affect what options a young person faces, and what decisions ought to be made. Providing young people and their families with information about available options can allow them to make informed decisions and determine their next steps and whether they should seek legal advice.

Consider the previous example of the young person who was accused of damaging a teacher's car. If the youths' guilt is predetermined, they may only receive information about pleading guilty in court and possible sentences that may arise. This severely limits the ability of the young person and his family to make an informed decision.

For example, suggesting this option ignores the possibility that extrajudicial measures may be available. Participation in a community conference may be an option. There may even be factors in the evidence or the applicable law that raise a possible defence to the charge.

Instead of advising a particular course of action, set out all the alternatives as clearly as possible, without actually advising the young person about what choices they should make. For example, the young person may choose to contact a lawyer, talk to a parent or other adult person or, if required, consider counselling to address any personal problems that were a factor in whatever may have happened.

Only a person living in the youth's situation can really understand the consequences of their decisions. There may be factors at home or school that bring pressure to bear on them. Since it may be difficult for others to know what it feels like to be in their situation, decision-making is best left up to the young person and their family, who must live with the results.

Other Laws Dealing with Young People

It is important to note that the YCJA applies only to federal offences such as those set out in the *Criminal Code* or the *Controlled Drugs and Substances Act*. Provincial offences, such as those dealing with speeding, wildlife conservation or environmental protection, do not fall under the YCJA. Both the penalties and the court procedures for these provincial offences are the same for youth and adults.

There is, however, other legislation that recognizes that young people hold a unique place in law. While individuals under the age of 18 are not legally considered adults, as they approach adulthood they may be developing many of the same skills and abilities we find in adults. Until they do, however, there are several age-restrictive laws that impact young people. For instance you must be at least 19 years of age to buy or drink alcohol in Saskatchewan; you must be at least 16 years of age to get a driver's license; and you must have parental consent to get married before you are 18 years of age. These are just a few examples.

Some age restrictions are imposed when it is believed that it is for the benefit of young people. Many of these laws set out to guide and protect young people. This is the rationale behind movie ratings and sale of tobacco regulations.

Other restrictions may be imposed because it is believed that young people do not have sufficient knowledge and experience to participate in an activity, such as driving. Until children reach the age of majority, parents or guardians are responsible for many aspects of their children's lives and have the right to make many decisions on their behalf.

If we ask psychologists and sociologists or medical experts, they will tell us that there is no magical age at which a young person leaves adolescence and enters adulthood. The law recognizes that movement into adulthood does not occur overnight. Accordingly, the law gradually bestows some adult rights and responsibilities on individuals under the age of 18. The extent of these rights and responsibilities is determined by a number of factors, such as the type of activity, the maturity, knowledge and understanding required, and the benefits and hazards to the young person.

Generally, when young people are considered mature enough – by law – to engage in “adult” activities, they will be subject to the same rights and responsibilities as adults. However, these rights and responsibilities may be modified by the underlying principle of law which states that young people require special guidance and protection.

In this section we’ll look at some of the legal rights and responsibilities young people gain as they move from adolescence to adulthood.

Areas of the Law as They Apply to Young People

Age of Majority

We often hear phrases such as the “age of majority”, “legal age” or “age of consent.” Before we continue, it is important to understand these critical concepts.

In Saskatchewan, the “age of majority” – the age at which people become adults in the eyes of the law – is 18. Each province determines its own age of majority and can restrict the rights and responsibilities that go along with it. In Saskatchewan, upon reaching the age of majority, a person generally has the right to vote, get married, enter into contracts and otherwise participate fully in society, with one exception. In Saskatchewan, the legal drinking age is actually one year beyond the age of majority. Youth under the age of majority are called “minors.”

In general terms “legal age” usually refers to the age at which a person can legally do something, like purchase alcohol or drive a car. The “age of consent” usually refers to the age at which a person is said to have the capacity to make certain decisions, like consenting to medical treatment or sexual activity. Unlike the age of majority, the legal age or the age of consent for a particular matter varies and may not coincide with the age of majority.

Employment

The minimum age of employment in Saskatchewan is 16. However, 14 and 15 year olds can work if they have the written permission of a parent and have completed the required young worker course. Some restrictions apply to 14 and 15 year olds regarding things like the maximum amount of hours that can be worked in a week and acceptable shifts on school days. Occupational Health and Safety may also impose further restrictions. Minors have the benefit of the same laws regarding minimum wages and hours of work as adults. Further information is available on the Government of Saskatchewan *Youth in the Workplace* pages.

Education

Anyone between the ages of 6 and 22 has a right to attend a designated educational institution and receive appropriate, age-level instruction. Enrollment in an educational program is mandatory for young people between the ages of 6 and 16 years of age.

Any right to education is subject to a requirement on students to be diligent in their studies and conform to school regulations. As well, students may be subject to suspension from school as a form of correction or discipline.

Making a Contract

Contract law provides special protection to minors. A contract can be defined as an agreement that the law will enforce. Generally, individuals under the age of 18 cannot be held liable for contracts that they enter into, unless the contract is for the “necessaries of life” or the minor has derived a real advantage from services such as an employment or apprenticeship contract. Contracts that take unfair advantage of minors or are not in their best interests have no legal effect.

Necessaries usually include things such as food, shelter, education and medical services, but can include a host of other things, depending on the circumstances. Saskatchewan law defines “necessaries” as goods suitable to the condition in life of the minor and to his or her actual requirements at the time of the sale and delivery.

Minors have the option of cancelling contracts for non-necessaries. This affords minors some protection against reckless or imprudent acts. But the law balances this special protection for minors against legitimate business interests. For example, a minor may be tempted by a rent-to-own offer for an entertainment system. The minor may come up with the required down payment and take the equipment home after entering into a contract

that requires payments, plus interest, over time. After using the equipment for a week, the minor might regret the purchase for any number of reasons. While the minor cannot be held to the contract, they must return the merchandise to get out of it. The seller may have a right to keep some or all of the down payment to compensate for the benefit the minor obtained during the time they had possession of the merchandise.

Consenting to Medical Treatment

Until a child gains legal capacity, parents generally have the right and the responsibility to make decisions in the best interests of their children. Sometimes our laws are very clear about the age at which a child will have the legal capacity to do certain things. Our laws clearly state the legal age for matters such as driving, consuming alcohol, getting married, voting, and working in particular industries. When it comes to capacity to make health care decisions, however, the law is not so straightforward.

Generally, determining whether a child has the legal capacity to consent to medical treatment must be dealt with on a case-by-case basis. There are a few statutory exceptions. For example, no one under the age of 16 can make a valid health care directive. Health care directives allow individuals to tell a health care provider how they would like to be treated in the event they become unable to make or communicate health care decisions.

From a medical professional's point of view, obtaining proper consent prior to treatment is essential. Without proper consent, most medical care would be considered an interference with the person of another. In turn, such interference could be viewed as a civil, or even criminal, assault. While our law does not set out a particular age for medical consent, it does offer some guidelines.

All medical consent must be informed. This means that a person must fully appreciate the nature and consequences of treatment before deciding whether to accept or refuse the treatment. Medical personnel must consider the young person's level of intelligence and maturity. The person must understand both the risks of going ahead with the treatment and the risk of not going ahead with treatment, as well as alternatives to treatment. A competent person can refuse treatment. Without consent, medical personnel can provide treatment only in emergency situations.

If a young person has capacity to make medical decisions, a parent or guardian cannot force their decision on the young person. If the young person does not have capacity, parental consent will be required. On the other hand, Saskatchewan's child welfare legislation deals with parents' refusal to consent to essential medical treatment as determined by a duly qualified medical practitioner. The legislation indicates that this situation places the

child “in need of protection” and authorizes the child to be placed in care, if required, so that necessary medical treatment can be provided.

Young people may be particularly concerned about doctor-patient confidentiality. If a young person has the capacity to consent to medical treatment, the rules of confidentiality that apply are the same as they are for an adult. Information about treatment received should be treated as confidential and not released unless required by law. For example, health care professionals have a legal duty to report certain communicable diseases, such as tuberculosis, hepatitis and sexually transmitted diseases. Testing for HIV, however, can be done at a specifically designated anonymous testing clinic. In this case, the results will still be reported but the person’s name will not be.

Sex

Non-consensual sex is a crime. In order for a person’s consent to be valid, the person must have the legal capacity to freely agree to sexual activity. In Canada the age of consent for sexual activity is generally said to be 16, but there are some exceptions.

To start with, a person under the age of 12 is never considered able to consent to sexual activity. However, our laws recognize that adolescents may engage in some sexual exploration as part of their normal development. For this reason there are exceptions to deal with teenagers who are close in age. Having sex with someone who is 12 or 13 is an offence, however, consent can be used as a defence if the accused is...

- less than 2 years older than the child AND
- not in a position of trust or authority over the child AND
- not in a dependency relationship with the child AND
- not in a relationship that is exploitative of the child

Having sex with someone who is 14 or 15 is also an offence, however, consent can be used as a defence if the accused is...

- less than 5 years older than the child AND
- not in a position of trust or authority over the child AND
- not in a dependency relationship with the child AND
- not in a relationship that is exploitative of the child

In the case of sex with a 14 or 15 year old, being married to the child is also a defence.

Marriage

The Marriage Act says that anyone under 18 must either have parental consent or a court order to get married. If the person is under 16, they need a court order to approve the marriage, even if they have parental consent. Official witnesses to a marriage ceremony must be at least 18 years of age.

Alcohol

Usually a person must be 19 years of age or older to buy, drink or possess alcohol. The only exception is that a parent or spouse may give an under-aged person an alcoholic drink at home. In all other cases, anyone who gives alcohol to someone under the age of 19 commits an offence.

A person under the legal drinking age is not permitted to buy alcohol or to have someone else purchase liquor for them. It is also an offence to present false identification when attempting to purchase alcohol.

Child Protection

Saskatchewan has laws to protect unmarried children under the age of 16 years against abuse or neglect. These laws are also designed to help families stay together, if possible, by providing counselling and support services to families in need.

The law says that a child is in need of protection if they are abused or neglected. Anyone who has reason to believe that a child is being abused or neglected has a legal duty to report it.

Resources

Aboriginal Court Workers

www.justice.gov.sk.ca/aboriginalcourtworkerprogram

provide assistance and support to accused Aboriginal persons going through the criminal justice system

Aboriginal Justice Strategy Programs

www.justice.gc.ca/eng/fund-fina/acf-fca/ajs-sja/cf-pc/location-emplac/sask.html

provide alternatives to mainstream justice processes in appropriate circumstances

Association des juristes d'expression française de la Saskatchewan

www.saskinfojustice.ca

provides French legal resources and information, including translated versions of many PLEA publications

Children's Advocate

www.saskadvocate.ca

promotes the interests of, and acts as a voice for, children who have a concern about provincial government services

Commission for Public Complaints against the RCMP

www.cpc-cpp.gc.ca

independent body that receives and reviews complaints concerning the conduct of RCMP officers

Kids Help Line

1-800-668-6868

www.kidshelpphone.ca

provides immediate, anonymous and confidential support, information and referrals for kids who are dealing with any troublesome issue – 24 hours a day, seven days a week, 365 days of the year, in both English and French

Legal Aid

www.legalaid.sk.ca

provides legal services to eligible individuals including services for youth for criminal law matters or matters relating to the *Youth Criminal Justice Act*

Public Complaints Commission

www.publiccomplaintscommission.ca

responsible for ensuring that both the public and police receive a fair and thorough investigation of a complaint against the police or an investigation of a possible criminal offence by a police officer

(Complaints about municipal police may also be made, in person or by writing, to a police service, Board of Police Commissioners, Saskatchewan Justice, Federation of Saskatchewan Indian Nations – Special Investigations Unit, and any RCMP detachment.)

RCMP National Youth Strategy

www.rcmp-grc.gc.ca/nys-snj/index-eng.htm

works in partnership with the community to prevent youth crime and victimization and provide tools and resources for youth engagement

Saskatchewan Law Courts

www.sasklawcourts.ca

offers information about Saskatchewan courts, including the Youth Justice Court, including locations and contact information

Youth Justice, Department of Justice Canada

www.justice.gc.ca/eng/cj-jp/yj-jj/

information about the YCJA, including links to legislation and teaching tools

Victims Services

www.saskatchewan.ca

provides information and programs to assist victims of crime

Public Legal Education Association of Saskatchewan

The Public Legal Education Association of Saskatchewan (PLEA) is a non-profit, non-government organization that provides free services to the people of Saskatchewan. PLEA's goal is to assist the public in becoming more informed about the law and the legal system.

organize a **speaker** for your
group or organization

request **free publications** on various areas of the law

search our website at **plea.org**

For more information on these and other PLEA services contact:



Public Legal Education Association of Saskatchewan
Saskatoon, Saskatchewan

Tel: 306-653-1868 Fax: 306-653-1869 E-mail: plea@plea.org

PLEA 
Legal Information for Everyone