Supreme Court Decides to Shift Burden in Young Offenders' Cases

The Supreme Court of Canada decided today that a youth charged with a serious offence will no longer bear the burden of proving that they should be sentenced as a youth.[1] The Youth Criminal Justice Act (YCJA) provides that persons, over the age of 14, can be sentenced either as an adult or a youth if they committed a crime such as murder, aggravated sexual assault, or manslaughter.[2] The implications can be dramatic because the maximum youth sentence for first-degree murder is 10 years, while, for an adult, the sentence would be life with no possibility of parole for 25 years. Justice Rosalie Abella, on behalf of a 5-4 majority, stated that the decision is based on the principle of fundamental justice that "young people are entitled to a presumption of diminished moral blameworthiness or culpability flowing from the fact that, because of their age, they have heightened vulnerability, less maturity and a reduced capacity for moral judgment."[3] The majority suggested that the international community's support for this decision is evident in the United Nations Convention on the Rights of the Child. The dissent argued that there is no societal consensus that the presumption in question forms a principle of fundamental justice.[4]

The Court also struck down a provision that requires young offenders, who have been given adult sentences, to demonstrate that their identities should continue to be protected by a publication ban.[5] The publication ban, Justice Abella explained, is part of the sentence. To remove it adds to the severity of the sentence because the degree of psychological and social pressure on the person escalates. Since the onus is on the Crown to prove that an adult sentence is necessary, the majority argued that the Crown should have to prove this addition to the sentence. On this point, the dissent also disagreed, saying that the conclusion arrived at by Parliament was a legitimate exercise in balancing competing societal interests.[6]

A federal bill is presently being discussed that aims to increase sentences for young offenders.[7] The bill is intended to enhance the deterrence factor of the law and to send a stronger message of denunciation. Critics argue that, since the YCJA was enacted in 2003, youth-crime rates have fallen.[8]

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[1] Kirk Makin, "Crown on hook over sentencing youths" (16 May 2008) The Globe and Mail, online.
[2] Youth Criminal Justice Act, S.C., 2002, c. 1, s. 61 and 62.
[3] Supra, note 1.
[4] Ibid.

[5] Ibid.
[6] Ibid.
[7] Kirk Makin, “Leave young-offenders law alone, Ottawa urged” (16 May 2008) The Globe and Mail, online.
[8] Ibid.