R. v. D.B.

Reverse onus provisions and section 7 of the Charter

On May 16, 2008 the Supreme Court of Canada (S.C.C.) gave its decision in *R. v. D.B.*[1] The decision determined who should carry the burden of proving that a young person should be sentenced as an adult after a *Charter of Rights and Freedoms* review of the provisions of the federal *Youth Criminal Justice Act*(*YCJA*).[2] The S.C.C. ruled that the government should prove that young persons' sentence should carry adult sentencing consequences after they had been found guilty of criminal acts. At the time section 72(2) of the *YCJA* required young persons to prove that they should *not* be sentenced as adults.[3]

D.B. had been in a fight with another youth. D.B. punched him to the ground and then continued to punch him into unconsciousness. The other youth died as a result. D.B. turned himself in and pled guilty to manslaughter. At sentencing, the judge noted that a large number of other reverse onus provisions had been rejected by multiple levels of court across Canada, stating:

There is no logical reason why it should not be the responsibility of the prosecutor who wants the court to impose an adult sentence, to bear the burden of convincing the court of his or her contentions in light of the elements provided for in subsection 72(1).[4]

The government appealed.

The Ontario Court of Appeal (O.C.A.) unanimously agreed with the trial judge, but expressed its own reasons for doing so, focusing on the constitutional principle of fundamental justice. The court noted that all of the parties to the appeal agreed that:

It is a principle of fundamental justice that young offenders should be dealt with separately and not as adults in recognition of their reduced maturity. Put another way, the system of criminal justice for young persons must be premised on treating them separately, and not as adults, because they are not yet adults.[5]

Canada has treated young persons separately in its criminal justice system for over a century, and governments have signed international treaty obligations to that effect. In this light, the court noted: "the principle is sufficiently precise to yield a manageable standard against which to measure deprivations of life, liberty or security of the person."[6] All three factors combine to show that the presumption underlying sentencing for youths in the *YCJA* treats them as adults, which does not account for their reduced maturity. Accordingly, the O.C.A. determined that section 71(2) of the *YCJA* offended a principle of fundamental justice, being the right to liberty under section 7 of the *Charter*.

The O.C.A. found a second reason for agreeing with the trial judge. It pointed out that previous case law required the prosecution to prove that there were aggravating circumstances in crimes requiring the courts to hand down more severe sentences. The net

effect of the *YCJA* was that automatic adult sentences for youths were built into the act. Those sentences were much harsher than young people would face under other sections of the *YCJA*. The court concluded that the legislation offended the *Charter* on this basis too, as there was unequal treatment for individuals (youths) within the same identifiable group (Canadians).[7] The government appealed again.

The S.C.C. issued a 5-4 split decision. The majority agreed with the appeal court's decision and reasons.[8]

A minority of the S.C.C. disagreed for two reasons. First it admitted that while Canadian youths have been treated differently from adults for over one hundred years, the previous legislation governing young people's behaviour had not always treated youth sentencing as different from adults.[9] The concept that sentencing for youths should be different than adults had only recently appeared in the *YCJA*. Second, the minority noted that youth sentences and adult sentences could overlap, thus there was no requirement in law that youths receive a sentence shorter than that of an adult.[10] Finally, the dissent acknowledged that a majority of Canadians disagree with the notion that youths should receive different sentences than adults.[11] Thus, while recognizing that two fundamental principle of justice are at stake in this case, the dissenters came to the conclusion that neither offended the *Charter*.

[1]*R. v. D.B.*, 2008 SCC 25 (CanLII), http://www.canlii.ca/en/ca/scc/doc/2008/2008scc25/2008scc25.html.
[2]*The Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, http://www.canlii.ca/en/ca/const/const1982.html.
[3]*Youth Criminal Justice Act*, Consolidated Statutes of Canada, S.C. 2002, c. 1, s72(2). (The Court also dealt with the issue of the ban on publication of youths' names. That part of the decision is not dealt with here.)
[4]*R. v. D.B.*, 2004 CanLII 34941 (ON S.C.), (2004), 72 O.R. (3d) 605, (2004), 190 C.C.C. (3d) 383, (2004), 123 C.R.R. (2d) 182, http://www.canlii.org/en/on/onsc/doc/2004/2004canlii34941/2004canlii34941.htmlat para. 12.
[5]*R. v. D. B.*, 2006 CanLII 8871 (ON C.A.), (2006), 79 O.R. (3d) 698, (2006), 206 C.C.C. (3d) 289, (2006), 140 C.R.R. (2d) 168, (2006), 37 C.R. (6th) 265, (2006), 208 O.A.C. 225, http://www.canlii.org/en/on/onca/doc/2006/2006canlii8871/2006canlii8871.htmlat para. 55.
[6] *Ibid*. at para. 59.
[7]*Ibid*. at para. 65.
[8]*R. v. D.B.*, 2008 SCC 25 (CanLII), http://www.canlii.ca/en/ca/scc/doc/2008/2008scc25/2008scc25.html, at paras 1-94.
[9]*Ibid*. at para. 134.

[10]*Ibid*. at para. 130.
[11]*Ibid*. at para. 131.