



I am being held in custody at my parent's house

Your youngster has been arrested following serious charges and the court is of the opinion that, for the public's protection, he should be held in custody in a reception centre. Can he be placed in the care of a responsible person?

THE FACTS

On March 5, 2005, in the waiting area of the bus terminal of the Société de transport de Laval, a young teenager, together with five friends, speaks with an adult about a possible marijuana transaction. The group moves outside. A few minutes later, the adult goes back into the terminal area. He has a head wound and has been stabbed in the chest.

Unfortunately, the victim dies an hour after the incident. When the group is arrested, a knife is found on one of the youths. He is charged with murder.

During the hearing on the release from custody, the court concludes that custody is necessary. The court takes into account the protection of the public and the need not to undermine the public's confidence in the administration of justice. The adolescent is to remain in custody while awaiting trial.

Thereafter, the court checks whether the adolescent can be placed in the care of a responsible person, in this case, his parents. This procedure is designed to avoid having youths held in custody in a reception centre.

After having heard several witnesses, the court concludes that it will be impossible for the youth's parents to control his comings and goings, notwithstanding their desire to do so. The adolescent has not always abided by the curfews imposed by his parents and his parents really don't know much about his comings and goings. Furthermore, during the hearing, the court learns that the adolescent sometimes uses marijuana.

THE ISSUE

What is the interpretation of section 31 of the

Youth Criminal Justice Act (YCJA)?

THE DECISION

The Court of Appeal upholds the judgment at first instance and the adolescent remains in custody in a reception centre while awaiting trial.

THE GROUNDS

If a judge, once he has completed the hearing on the release from custody, concludes that the adolescent must be placed in custody, the court **MUST** analyze the possibility of placing the adolescent in the care of a responsible person.

The court confirmed that, following this analysis, the selection of the person is at the discretion of the court which must consider the nature and circumstances of the offence. Furthermore, the court must examine the accused person's profile, occupation, life style and family environment or equivalent. The court emphasized the ability of the responsible persons to control the adolescent's actions.

When the court allows an adolescent to be placed in the care of a responsible person, the latter undertakes to have the adolescent comply with all the conditions imposed by the court. The person signing the undertaking must notify the authorities of any breach of the conditions imposed. The adolescent must also sign the undertaking which sets out each of the conditions. Only in such a situation, where the adolescent has been placed in the care of a responsible person, such as his parents, will he be held in custody... at home.

References

M.J. v. R., Court of Appeal (C.A.) Montréal 500-08-000247-058, July 19, 2005, judges Morissette, Hilton and Côté (www.jugements.qc.ca)

Youth Criminal Justice Act, (S.C. 2002, c.1), s. 31

The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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*The information set out in this document is not a legal interpretation.