



## **A POLICE OFFICER HAS ASKED MY CHILD FOR HIS VERSION OF THE FACTS**

A youngster has been arrested and the police officer has asked him for his version of the facts. What are his rights?

### **THE FACTS**

A youngster was arrested after a police chase in August 2004. He was held in custody. Twelve hours after his arrest, he was questioned. The youngster made a statement incriminating himself.

The police officers read to him, without providing an explanation, a form informing him of his right to a lawyer and his right to consult his father or mother or an adult relative in private. The youngster stated that he had understood and signed the waiver of rights forms.

The youngster's mother had informed the police officers that her son had a learning disability. When the videotaped interview was viewed, it appeared the youngster was relying on his mother to explain the questions to him. The trial judge was not convinced that the youngster had understood his rights and his options before making his statement to the police officers.

### **THE ISSUE**

Did the Crown have to prove that when the youngster's statement was made, the explanations had been given in appropriate and understandable language? Did the Crown have to prove, beyond a reasonable doubt, that the youngster had understood his rights when the statement was made?

### **THE DECISION**

The Supreme Court of Canada concluded that a statement made by a youngster is inadmissible if the Court is not convinced beyond a reasonable doubt that the youngster's guaranteed rights have been explained to him in appropriate language. That was the case here. The trial judge who assessed the facts had not committed a palpable error. The Supreme Court therefore upheld the acquittal.

### **THE GROUNDS**

The procedural rights set out in the *Youth Criminal Justice Act* (YCJA) are supplemental measures made to protect young persons. The YCJA provides that a statement made to a person in authority (here the police officer) by a young person may be admitted as evidence against him if the statement was voluntary and the legal consequences of making the statement were clearly explained to him.

Objectively, the criteria will have been met if a personalized approach, taking into account the young person's age and understanding, was used. In practical terms, police officers must make reasonable efforts to detect the existence of significant factors that would interfere with the young offender's comprehension. In the case at hand, the youngster had a learning disability. However, it was not essential to ask the youngster to repeat or re-explain his rights. This was not a legal requirement.

At a trial, the youngster's full understanding of the implications of a statement made to persons in authority must be proven in order for the judge to admit the statement into evidence. The goal of the *Youth Criminal Justice Act* is to ensure that the young person does not relinquish the right to silence except in the exercise of free will in the context of a full understanding and appreciation of his rights.

### **References**

*L.T.H. v R*, Supreme Court of Canada 31763, November 11, 2008, Justices McLachlin (Chief Justice), Lebel, Deschamps, Fish, Abella, Charron and Rothstein, (2008) 2 S.C.R. 739 (csc.lexum.umontreal.ca)

*Youth Criminal Justice Act*, (S.C. 2002, c.1), s. 3 and 146

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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