



**SUPREME COURT OF CANADA**

**CITATION:** R. v. T.J.M., 2021  
SCC 6

**APPEAL HEARD:** November 9, 2020  
**JUDGMENT RENDERED:** January 29,  
2021  
**DOCKET:** 38944

**BETWEEN:**

**T.J.M.**  
Appellant

and

**Her Majesty The Queen**  
Respondent

**CORAM:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe,  
Martin and Kasirer JJ.

**REASONS FOR JUDGMENT:**  
(paras. 1 to 28)

Brown J. (Wagner C.J. and Abella, Moldaver, Karakatsanis,  
Côté, Rowe, Martin and Kasirer JJ. concurring)

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R. v. T.J.M.

**T.J.M.**

*Appellant*

v.

**Her Majesty The Queen**

*Respondent*

**Indexed as: R. v. T.J.M.**

**2021 SCC 6**

File No.: 38944.

2020: November 9; 2021: January 29.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin and Kasirer JJ.

ON APPEAL FROM THE COURT OF QUEEN’S BENCH OF ALBERTA

*Criminal law — Young persons — Judicial interim release — Young person charged with offence listed in s. 469 of Criminal Code and electing to be tried by judge of superior court of criminal jurisdiction — Whether judge of superior court has jurisdiction to hear and adjudicate young person’s application for judicial interim release — If so, whether jurisdiction is exclusive or is held concurrently with judges of*

*designated youth justice court for province — Youth Criminal Justice Act, S.C. 2002, c. 1, ss. 13(1), (2), (3), 33(8).*

M, a young person, was charged with second degree murder, an offence listed in s. 469 of the *Criminal Code*. The Crown gave notice of its intention to seek an adult sentence, entitling M to elect the mode of trial. He elected trial by a superior court judge sitting without a jury, requested a preliminary inquiry, and sought judicial interim release before a justice of the Court of Queen’s Bench of Alberta. The application judge held that he had no jurisdiction to grant judicial interim release to a young person, finding that the Provincial Court of Alberta, which is the designated youth court for the province, had exclusive jurisdiction. M appeals to the Court from the application judge’s decision.

*Held:* The appeal should be allowed.

A superior court justice has jurisdiction to hear and decide an application for judicial interim release brought by a young person charged with an offence listed in s. 469 of the *Criminal Code*, and that jurisdiction is held concurrently with the judges of the designated youth court for the province.

Where a superior court judge becomes a youth justice court judge by operation of the deeming provisions in s. 13(2) or s. 13(3) of the *Youth Criminal Justice Act* (“YCJA”), the superior court is so deemed for the purpose of the proceeding. As it is used in ss. 13(2) and 13(3), “the proceeding” is not confined to the trial, but rather

includes any step taken by a youth justice court judge after the young person elects to be tried at the superior court, including any pre-trial application for judicial interim release, until trial.

Section 33(8) of the *YCJA* confers exclusive jurisdiction upon “a youth justice court judge” to release a young person charged with an offence referred to in s. 522 of the *Criminal Code*, which incorporates s. 469 offences, from custody. It does not qualify the term “youth justice court judge” so as to include only those superior court justices deemed under ss. 13(2) and 13(3) to be youth justice court judges. Just as ss. 13(2) and 13(3) of the *YCJA* deem a superior court judge to be a youth justice court judge, s. 13(1) also designates as a youth justice court judge a judge sitting in the court established by the province as a youth justice court. Accordingly, the jurisdiction is concurrent, and not exclusive to either of them.

By conferring concurrent jurisdiction to decide release following the young person’s election where charged with a s. 469 offence, Parliament sought to introduce a measure of flexibility that is absent from the adult criminal justice system in order to achieve the aims of the *YCJA*. This is particularly significant for young persons in rural areas, including, in particular, Indigenous youth, for whom provincially designated youth justice courts will be more accessible than a superior court.

### **Cases Cited**

By Brown J.

**Referred to:** *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; *R. v. T.R.M.*, 2013 ABQB 571, 571 A.R. 121; *R. v. K. (T.)*, 2004 ONCJ 410, 192 C.C.C. (3d) 279; *Protection de la jeunesse — 177486*, 2017 QCCS 5165; *R. v. B.W.H.* (2005), 198 Man. R. (2d) 264; *R. v. N.M.*, 2010 MBPC 45, 257 Man. R. (2d) 207; *R. v. W. (E.E.)*, 2004 SKCA 114, 188 C.C.C. (3d) 467; *R. v. B. (J.)*, 2012 ONSC 4957, 291 C.C.C. (3d) 43; *R. v. F. (M.)*, 2006 ONCJ 161, 210 C.C.C. (3d) 146; *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031; *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26, [2005] 1 S.C.R. 533; *R. v. K.J.M.*, 2019 SCC 55.

### **Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, ss. 469, Part XVI, 522.

*Interpretation Act*, R.S.C. 1985, c. I-21, s. 33(2).

*Provincial Court Act*, R.S.A. 2000, c. P-31, s. 11.

*Youth Criminal Justice Act*, S.C. 2002, c. 1, ss. 2 “youth justice court”, “youth justice court judge”, 3(1)(b)(iii), (v), (d)(iv), 13, 20(1), 25(3)(c), (4), 26(9), (10), 28, 33(8), 67.

### **Authors Cited**

*Black’s Law Dictionary*, 11th ed., by Bryan A. Garner. St. Paul, Minn.: Thomson Reuters, 2019, “proceeding”.

Davis-Barron, Sherri. *Youth and the Criminal Law in Canada*, 2nd ed. Toronto: LexisNexis, 2015.

Lacombe, Étienne F. “Prioritizing Children’s Best Interests in Canadian Youth Justice: Article 3 of the UN *Convention on the Rights of the Child* and Child-Friendly Alternatives” (2017), 34 *Windsor Y.B. Access Just.* 209.

APPEAL from a decision of the Alberta Court of Queen's Bench (Renke J.), 190794529U1, October 9, 2019, ruling that a justice of a superior court does not have jurisdiction to hear and adjudicate an application for judicial interim release of a young person. Appeal allowed.

*Graham Johnson*, for the appellant.

*Matthew W. Griener*, for the respondent.

The judgment of the Court was delivered by

BROWN J. —

I. Overview

[1] The narrow issue before us is this: does a justice of a superior court of criminal jurisdiction have jurisdiction to hear and adjudicate an application for judicial interim release of a young person charged with an offence listed in s. 469 of the *Criminal Code*, R.S.C. 1985, c. C-46? And, if so, (1) under what circumstances? and (2) is such jurisdiction exclusive, or is it held concurrently with judges of the designated youth justice court for the province?

[2] This appeal is brought by T.J.M., a young person, who was charged with an offence listed in s. 469 of the *Criminal Code*. The Crown gave notice of its intention to seek an adult sentence for second degree murder, entitling T.J.M. to elect the mode of trial. He elected trial by a superior court judge sitting without a jury, requested a preliminary inquiry, and sought judicial interim release before the application judge, who is a justice of the Court of Queen’s Bench of Alberta. The application judge held that he had no jurisdiction to grant judicial interim release to a young person, finding that Parliament had vested exclusive jurisdiction in the designated youth court for the province — in this case, the Provincial Court of Alberta (*Provincial Court Act*, R.S.A. 2000, c. P-31, s. 11).

[3] Upon examination of the pertinent provisions of the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (“YCJA”), and of the *Criminal Code*, and for the reasons that follow, I respectfully draw the opposite conclusion: a superior court justice has jurisdiction to hear and decide an application for judicial interim release brought by a young person charged with an offence listed in s. 469 of the *Criminal Code*. Further, that jurisdiction is held concurrently with the judges of the designated youth justice court for the province. I would therefore allow the appeal, but would make no further order. Both the Crown and the appellant, T.J.M., agree that this appeal is moot, the Crown having entered a stay of proceedings, but say that it is open to this Court to exercise its discretion to hear the merits of the appeal in accordance with *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, at pp. 358-63. I agree.

## II. Analysis

### A. *The Youth Justice Court Judge*

[4] Section 33(8) of the *YCJA* provides that “a youth justice court judge, but no other court, judge or justice” may order the release of a young person charged with an offence referred to in s. 522 of the *Criminal Code*. Section 522 incorporates s. 469 offences by reference. Central to deciding this appeal, then, is identifying who is “a youth justice court judge”. This appeal therefore rests on the proper interpretation of certain provisions of the *YCJA* touching on this question.

[5] Section 2 of the *YCJA* defines a “youth justice court” and a “youth justice court judge” as “a youth justice court referred to in section 13” and “a youth justice court judge referred to in section 13”, respectively.

[6] Section 13 provides, in relevant part:

#### **Designation of the youth justice court**

**13 (1)** A youth justice court is any court that may be established or designated by or under an Act of the legislature of a province, or designated by the Governor in Council or the lieutenant governor in council of a province, as a youth justice court for the purposes of this Act, and a youth justice court judge is a person who may be appointed or designated as a judge of the youth justice court or a judge sitting in a court established or designated as a youth justice court.

#### **Deemed youth justice court**

**(2)** When a young person elects to be tried by a judge without a jury, the judge shall be a judge as defined in section 552 of the *Criminal Code*, or if it is an offence set out in section 469 of that Act, the judge shall be a judge



of the superior court of criminal jurisdiction in the province in which the election is made. In either case, the judge is deemed to be a youth justice court judge and the court is deemed to be a youth justice court for the purpose of the proceeding.

**Deemed youth justice court**

(3) When a young person elects or is deemed to have elected to be tried by a court composed of a judge and jury, the superior court of criminal jurisdiction in the province in which the election is made or deemed to have been made is deemed to be a youth justice court for the purpose of the proceeding, and the superior court judge is deemed to be a youth justice court judge.

[7] Section 13(1), therefore, designates as a youth justice court “any court . . . established or designated by . . . [the province] as a youth justice court”, and designates as a youth justice court judge “a judge sitting in [the] court established . . . as [the] youth justice court”. Sections 13(2) and 13(3) apply where any of the three circumstances described in s. 67 of the *YCJA* as triggering a right to election<sup>1</sup> apply, and the young person elects to be tried by a judge with or without a jury. In the case of a young person charged with a s. 469 offence, a judge of the superior court will have jurisdiction when the young person elects a trial in the superior court of criminal jurisdiction sitting without (in the case of s. 13(2)) or with (in the case of s. 13(3)) a jury. This is because, when a young person charged with a s. 469 offence is put to an election, s. 67(2) of the *YCJA* gives the young person three options: (1) a trial before a s. 13(1) judge of the court designated by the province as a youth justice court; (2) a trial

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<sup>1</sup> (1) where the Attorney General has given notice under s. 64(2) of the intention to seek an adult sentence (s. 67(1)(b)); (2) where the young person is charged with first or second degree murder (s. 67(1)(c)); and (3) where s. 16 of the *YCJA* (status of accused uncertain) applies and the young person, after attaining the age of fourteen, is charged with an offence for which an adult would be entitled to an election under s. 536 of the *Criminal Code*, or over which a superior court of criminal jurisdiction would have exclusive jurisdiction under s. 469 of the *Criminal Code* (s. 67(1)(d)).

before a judge of the superior court of criminal jurisdiction, who is *deemed* by s. 13(2) to be a youth justice court judge, sitting alone; and (3) a trial before a judge of the superior court of criminal jurisdiction, who is *deemed* by s. 13(3) to be a youth justice court judge, sitting with a jury.

[8] The critical point is this: irrespective of the mode of trial elected, the *YCJA* requires that a young person be tried before *a youth justice court judge*. This is so, whether the trial is before a judge of the provincially designated youth justice court under s. 13(1), or before a superior court justice who is *deemed* a youth justice court judge under s. 13(2) (where sitting alone) or under s. 13(3) (where sitting with a jury). And in the latter two instances — that is, where a superior court judge becomes a youth justice court judge by operation of the deeming provisions in s. 13(2) or s. 13(3) — the superior court is so deemed “for the purpose of the proceeding”. It is to the meaning of that statutory text that I now turn.

B. *The Meaning of “Proceeding” as Stated in Sections 13(2) and 13(3)*

[9] If a superior court justice is deemed, by s. 13(2), a youth justice court judge “for the purpose of the proceeding”, what procedural steps fall within “the proceeding”? The application judge concluded “the proceeding” refers only to the trial. T.J.M. argues that it has broader application, and that it governs his application for judicial interim release. I agree; the scope of the term “the proceeding”, as it is used in these two sections, is not confined to the trial. Rather, and as I will now explain, it includes any step taken by a youth justice court judge after the young person elects to

be tried at the superior court, including any pre-trial application for judicial interim release.

[10] The term “the proceeding” is not defined in the *YCJA*. The resolution to this issue therefore lies in the principles of statutory interpretation, by which the statutory text is to be read in its grammatical and ordinary sense, and understood in the context of the entire statute and in harmony with the statute’s schemes and objects.

[11] The caselaw reveals three different approaches having variously prevailed. The first — which the application judge adopted — proceeds narrowly, equating “the proceeding” with the trial. This understands ss. 13(2) and 13(3) as deeming a superior court judge to be a youth justice court judge *only* for the purpose of *the trial*, leaving a s. 13(1) youth justice court judge (meaning, in the circumstances of this appeal, a judge of the Provincial Court of Alberta) with *exclusive* jurisdiction over the judicial interim release of young persons charged with s. 469 offences, irrespective of the mode of trial elected (see *R. v. T.R.M.*, 2013 ABQB 571, 571 A.R. 121, at paras. 63-64; *R. v. K. (T.)*, 2004 ONCJ 410, 192 C.C.C. (3d) 279, at pp. 282-83).

[12] A second approach which emerges from the caselaw understands “the proceeding” as including every step taken after the young person is committed to stand trial or arraigned before the superior court of criminal jurisdiction. This reads “the proceeding”, as it appears in ss. 13(2) and 13(3), together with the direction in s. 67(7) of the *YCJA* that, after the young person is committed to stand trial upon conclusion of a preliminary hearing, “the proceedings shall be conducted” in the trial court.

Therefore, the argument goes, “the proceeding”, seen in the light of the reference to “the proceedings” in s. 67(7), refers only to the trial, and a justice of the superior court is not deemed a youth justice court judge under s. 13(2) or s. 13(3) until the young person is committed to stand trial, which step triggers the transfer of jurisdiction to the superior court (see *Protection de la jeunesse — 177486*, 2017 QCCS 5165, at paras. 34-35 (CanLII); *R. v. B.W.H.* (2005), 198 Man. R. (2d) 264 (Prov. Ct.), at paras. 37-38; *R. v. N.M.*, 2010 MBPC 45, 257 Man. R. (2d) 207, at paras. 45-55). Further, under this view of the matter, once the jurisdiction transfers to the superior court, the jurisdiction is exclusive.

[13] Finally, a third approach views “the proceeding” as referring broadly to any step in the prosecution. Where, therefore, a young person elects a trial before a justice of the superior court, ss. 13(2) and 13(3) of the *YCJA* deem that justice a youth justice court judge for *any procedural step* from the time the young person charged with a s. 469 offence elects to be tried in the superior court, and right up to trial. This approach has been coupled with the view that the jurisdiction granted to that judge is *exclusive*. To be clear, this would mean that s. 13(1) youth justice court judges (such as judges of the Provincial Court of Alberta) do *not* have jurisdiction to hear judicial interim release applications brought by young persons charged with s. 469 offences who have elected to be tried before a superior court judge, sitting with or without a jury (see *R. v. W. (E.E.)*, 2004 SKCA 114, 188 C.C.C. (3d) 467, at paras. 14 and 21; *R. v. B. (J.)*, 2012 ONSC 4957, 291 C.C.C. (3d) 43, at paras. 1-20 and 32; *R. v. F. (M.)*, 2006 ONCJ 161, 210 C.C.C. (3d) 146, at paras. 46 and 49-52).

[14] In my respectful view, the first two approaches cannot be correct. The ordinary and grammatical meaning of the term “the proceeding” is not so narrow. *Black’s Law Dictionary* (11th ed. 2019), by B. A. Garner, at p. 1457, defines “proceeding” as “[a]n act or step that is part of a larger action” or “[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment”. And no text in s. 13 remotely suggests that “proceeding”, as it appears in ss. 13(2) and 13(3), refers to anything other than the entire process of a criminal prosecution after the young person elects to be tried at the superior court. We must accept that Parliament legislates deliberately, and that the specific words it chooses have meaning (*Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031, at para. 11); had Parliament intended to confine the operation of the deeming provisions in ss. 13(2) and 13(3) to the trial, it would have used the term “trial”, as it did in several other provisions of the *YCJA* (see, for example, ss. 25(3)(c) (“at trial”) and 25(4) (“the . . . trial”)).

[15] The better view, then, in light of the ordinary and grammatical sense of the term “the proceeding”, is that Parliament intended superior court justices who are deemed youth justice court judges by operation of ss. 13(2) and 13(3) of the *YCJA* to be so deemed for the purpose of *all* steps taken after the young person charged with a s. 469 offence elects a trial in the superior court, until trial.

[16] I am not moved from this view by the argument that relies on reading ss. 13(2) and 13(3) together with s. 67(7). This is so, irrespective of whether the English

or French version of the *YCJA* is examined. To recount, s. 67(7) directs that, where a young person charged with a s. 469 offence is committed to stand trial at the conclusion of a preliminary inquiry, “the proceedings shall be conducted” (or, in the French version, “*le procès*” (“the trial”)) in the superior court.

[17] I note, first, that nothing of significance turns on the use of the plural “proceedings” in s. 67(7) and the singular “proceeding” in ss. 13(2) and 13(3). Indeed, the *Interpretation Act*, R.S.C. 1985, c. I-21, directs that words expressed in their singular form in an Act are to be read as including the word’s plural form, and vice versa (s. 33(2)). Further, and more to the point, Parliament cannot, in my view, reasonably be taken as having intended its reference to “the proceedings” (or “*le procès*”) in s. 67(7) to define the scope of “the proceeding” in ss. 13(2) and 13(3) or in the *YCJA* generally. The *YCJA* contains 35 *other* references to “the proceedings”, while the French version also variously and frequently refers to “*les procédures*” and “*les procédures en cause*”. Ascribing significance to its use in s. 67(7) to limit the scope of the term “the proceeding” in ss. 13(2) and 13(3) would render at least some of those other references to “the proceedings” in the *YCJA* nonsensical.

[18] By way of example, s. 20(1) of the *YCJA* states that “[a]ny proceeding that may be carried out before a justice under the *Criminal Code*, other than a plea, a trial or an adjudication, may be carried out . . .”. Here, “proceeding” clearly contemplates procedural steps *other than* a trial. Similarly, s. 26(9) of the *YCJA* states that “failure to give a notice [to the young person’s parents] . . . does not affect the validity of

proceedings under this Act”. This is subject to s. 26(10), which provides that failure to give such notice *does* invalidate “subsequent proceedings” unless, *inter alia*, “a youth justice court judge or a justice before whom proceedings are held against the young person adjourns the proceedings and orders that the notice be given in the manner and to the persons that the judge or justice directs”. Interpreting “proceedings” (or “the proceedings”) here to mean *only* the trial would be absurd in light of the reference to “subsequent proceedings”, and would undermine the purpose of this provision, which is to preserve the validity of procedural steps already taken, while ensuring that the young person’s parents have notice of all further procedural steps to be taken in the prosecution of their child so that they may be encouraged to support the child in addressing the offending behaviour (s. 3(1)(d)(iv) *YCJA*).

[19] Further yet, s. 67(7) vests exclusive jurisdiction in “the youth justice court [judge] referred to in subsection 13(1)” to conduct a preliminary inquiry. If, however, a superior court judge who is deemed to be a youth justice court judge could never acquire jurisdiction until the trial, it would not have been necessary for Parliament to make specific reference to s. 13(1) in s. 67(7). This is so because, on that view, a s. 13(1) youth justice court judge would be the *only* youth justice court judge who could possibly have jurisdiction over a pre-trial procedure such as a preliminary inquiry. Parliament is presumed to avoid “superfluous or meaningless words, phrases and larger units such as paragraphs, sections and parts of a legislative scheme” (*Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26, [2005] 1 S.C.R. 533, at para. 178).

[20] As a final point, I observe that there is a subtle, but important, difference between the text of s. 13(2) and of s. 13(3) that supports the correctness of interpreting “the proceeding” more broadly. Section 13(2) deems a superior court to be a youth justice court *and* deems a superior court justice to be a youth justice court judge *for the purpose of the proceeding*. But while s. 13(3) also deems a superior court to be a youth justice court *for the purpose of the proceeding*, it deems a superior court *judge* to be a youth justice court judge *without qualification*. That is to say, s. 13(3) does not, on its face, confine the jurisdiction of a superior court judge who is deemed to be a youth justice court judge to the purpose of the proceeding. Interpreting “the proceeding” to mean only the trial proper would, therefore, create an anomalous situation whereby a superior court justice who is deemed by s. 13(3) to be a youth justice court judge would have jurisdiction to hear T.J.M.’s application, while a superior court judge deemed by s. 13(2) to be a youth justice court judge would not. Yet, the only distinction between the two is that at trial the former sits with a jury, and the latter sits alone. Parliament could not have intended such a result.

### C. *Exclusive Versus Concurrent Jurisdiction*

[21] It being clear that a superior court judge has jurisdiction to hear and adjudicate an application for judicial interim release of a young person charged with an offence listed in s. 469 of the *Criminal Code* following their election, it remains to decide whether that jurisdiction is exclusive, or whether it also continues to vest in the courts designated by the province as a youth justice court. On this point, the caselaw is



divided (see, for example, *Protection de la jeunesse*, at paras. 34-35; *B.W.H.*, at paras. 37-38; *N.M.*, at paras. 45-55; *W. (E.E.)*, at paras. 14 and 21; *B. (J.)*, at paras. 1-20 and 32; *F. (M.)*, at paras. 46 and 49-51).

[22] The argument that a young person’s election to be tried before a superior court judge triggers the superior court’s *exclusive* jurisdiction over young persons charged with s. 469 offences is grounded in s. 522(1) of the *Criminal Code*, which is found in Part XVI — “Compelling Appearance of Accused Before a Justice and Interim Release”. It states that “no court, judge or justice, other than a judge of or a judge presiding in a superior court of criminal jurisdiction . . . may release the accused before or after the accused has been ordered to stand trial”. Standing alone, this would appear to oust the jurisdiction of a s. 13(1) judge of the provincially designated youth justice court to hear and decide the application for judicial interim release (*B. (J.)*, at paras. 17-20; *F. (M.)*, at paras. 49-51).

[23] But s. 522 is subject to the caveat in s. 28 of the *YCJA*, which states that the provisions of Part XVI of the *Criminal Code* apply to the detention and release of young persons under the *YCJA* “[e]xcept to the extent that they are inconsistent with or excluded by [the *YCJA*]”. Meaning, Part XVI of the *Criminal Code* governs matters of detention and release of young persons unless the *YCJA* provides otherwise, in which case the *YCJA* prevails. And significantly, as already recounted, where a young person is charged with an offence referred to in s. 522 (which describes “an offence listed in section 469”), s. 33(8) of the *YCJA* confers exclusive jurisdiction (“no other court,

judge or justice”) upon “a youth justice court judge” to release a young person from custody.

[24] It is critical here to recall that, just as ss. 13(2) and 13(3) of the *YCJA* deem a superior court judge to be a youth justice court judge, s. 13(1) *also* designates as a youth justice court judge a judge sitting in the court established by the province as the youth justice court. While, therefore, s. 522 of the *Criminal Code*, as I say, appears to deprive a s. 13(1) court and judge of jurisdiction to hear and decide a judicial interim release application, s. 33(8) of the *YCJA* is categorical in providing otherwise. It does not qualify the term “youth justice court judge” so as to include only those superior court justices deemed under ss. 13(2) and 13(3) to be youth justice court judges. Rather, “a youth justice court judge” may release a young person. Inasmuch as s. 522 would remove that power from a s. 13(1) youth justice court judge by conferring exclusive jurisdiction upon “a judge of or a judge presiding in a superior court of criminal jurisdiction” to hear and decide judicial interim release applications where a young person is charged with an offence listed in s. 469 of the *Criminal Code*, it is inconsistent with s. 33(8) and does not apply.

[25] It follows from the foregoing that while, as I have explained, a superior court justice deemed under s. 13(2) or s. 13(3) of the *YCJA* to be a youth justice court judge has jurisdiction to hear and adjudicate an application for judicial interim release of a young person charged with an offence listed in s. 469 of the *Criminal Code* and who has elected to be tried in the superior court, so does a judge of a court that has been

designated by the province as a youth justice court. In other words, the jurisdiction is *concurrent*, and not exclusive to either of them.

[26] While this result is compelled by the clear direction of Parliament regarding the relationship between the *YCJA* and Part XVI of the *Criminal Code*, I add that it is not surprising that Parliament would so direct. As this Court has recognized, Parliament's intention when enacting the *YCJA* was to provide young persons with enhanced procedural protections throughout the criminal process in recognition of their age, and to create less formal and more expeditious proceedings (ss. 3(1)(b)(iii) and (v); *R. v. K.J.M.*, 2019 SCC 55, at paras. 51-52 (per Moldaver J.) and 136 (per Abella and Brown JJ., dissenting, but not on this point); S. Davis-Barron, *Youth and the Criminal Law in Canada* (2nd ed. 2015), at p. 177). By conferring concurrent jurisdiction to decide release following the young person's election where charged with a s. 469 offence, Parliament would have sought to introduce a measure of flexibility that is absent from the adult criminal justice system in order to achieve the aims of the *YCJA* (É. F. Lacombe, "Prioritizing Children's Best Interests in Canadian Youth Justice: Article 3 of the UN *Convention on the Rights of the Child* and Child-Friendly Alternatives" (2017), 34 *Windsor Y.B. Access Just.* 209, at p. 217). This is particularly significant for young persons in rural areas, including, in particular, Indigenous youth, for whom provincially designated youth justice courts will be more accessible than a superior court.

[27] A final word of caution. This appeal concerned only the question of jurisdiction over judicial interim release before the start of trial. Of course, once the trial has started, it will typically be the case that a judicial interim release application would be brought before the trial judge. Whether it *must* be brought before the trial judge, however — for example, where the trial has adjourned — is a question that I need not decide here, and I am content to leave it open for another day when it is properly before the Court.

### III. Conclusion

[28] I would allow the appeal. The application judge had jurisdiction to hear T.J.M.'s application for judicial interim release — a jurisdiction he shared concurrently with the designated youth justice court for the province. As the appeal is moot, no further order is necessary.

*Appeal allowed.*

*Solicitors for the appellant: Dawson Duckett Garcia & Johnson,  
Edmonton.*

*Solicitor for the respondent: Attorney General of Alberta, Edmonton.*