



**CLARKE, C.J.N.S.:**

The issue in this appeal is whether a probation order can be imposed upon a youth for a violation of the **Protection of Property Act**, R.S.N.S. 1989, c. 363 (the **Act**).

M.A.B. is a young person who was given notice to stay away, for six months, from the Bayers Road Shopping Centre in Halifax. She did not. As a result she was charged with two counts of entering the premises contrary to Section 3(1)(e) of the **Act**, which provides,

3 (1) Every person who, without legal justification, whether conferred by an enactment or otherwise, or without the permission of the occupier or a person authorized by the occupier, the proof of which rests upon the person asserting justification or permission,

...

(e) enters on premises where entry is prohibited by notice;

...

is guilty of an offence and on summary conviction is liable to a fine of not more than five hundred dollars.

M.A.B. pled guilty to these counts in the youth court. In his disposition, the judge imposed a probation order of six months duration requiring M.A.B. to keep the peace and be of good behaviour and "stay away from the Bayers Road Shopping Centre".

On appeal it is argued that the judge of the youth court erred in law because he made a disposition which violates Section 11(7) of the **Young Persons' Summary Proceedings Act**, R.S.N.S. 1989, c. 509. It states,

(7) No disposition shall be made in respect of a young person that results in a punishment that is greater than the maximum punishment that would be applicable to an adult who has committed the same offence.

Relevant to the appellants' submission is Section 10 of the **Protection of Property Act** which is,

10 (1) Where a person is convicted of an offence under this Act in respect of premises generally open to the public, the court may make an order prohibiting that person from entering the premises in relation to which the conviction was entered for a period not exceeding six months.

(2) A person who is bound by an order made pursuant to subSection (1) and who fails to comply with that order is guilty of an offence and is liable on summary conviction to a fine of not more than five hundred dollars.

The appellant contends the judge erred in law by issuing a probation order for an offence founded on Section 3(1)(e) of the **Protection of Property Act** and further, that in so doing he exceeded his jurisdiction by imposing a disposition that could result, if the order is violated, in punishment "greater than the maximum punishment that would be applicable to an adult who has committed the same offence".

The Crown, as respondent, argues otherwise. The summary of its position is stated in the following paragraph in its factum:

"It is submitted therefore that ss. 787(2) of the **[Criminal] Code** applies to summary conviction proceedings thus conferring the general power of imposing custody in default of payment of the fine authorized by the offence creating statute. That being the case there lies the possibility for an adult serving a custodial period for an offence under the **Protection of Property Act.**"

The record reveals that the essential features of the submissions now advanced to this Court were made to the judge of the youth court at the time of the disposition hearing. He considered them in some detail during his discussions with counsel before he issued the disposition.

Where a young person is found guilty of an offence that violates a Provincial enactment, Section 11(1) of the **Young Persons' Summary Proceedings Act** sets forth a range of dispositions available to the youth court. It provides,

11 (1) Notwithstanding a minimum penalty in a Provincial enactment, including a municipal by-law, where a youth court finds a young person guilty of an offence, it shall consider any pre-disposition report required by the court, any representations made by the parties to the proceedings or their counsel or agents and by the parents of the young person and any other relevant information before the court, and the court shall then make any one or more of the following dispositions:

(a) adjourn the proceedings for up to six months and order referral of the young person for psychiatric, medical or other examination;

(b) by order direct that the young person be discharged absolutely, if the court considers it to be in the best interest of the young person and not contrary to the public interest;

(c) subject to Section 12, impose on the young person a fine not exceeding five hundred dollars to be paid at such time and on such terms as the court may fix;

(d) subject to Section 12, order the young person to pay to any other person at such time and on such terms as the court may fix an amount by way of compensation for loss of or damage to property, for loss of income or support or for special damages for personal injury arising from the commission of the offence where the value thereof is readily ascertainable, but no order shall be made for general damages;

(e) subject to Section 12, order the young person to make restitution within such time and in such manner as the court may fix;

(f) subject to Section 12, order the young person to compensate any person in kind or by way of personal services at such time and on such terms as the court may fix for any loss, damage or injury suffered by that person in respect of which an order may be made under clause (d) or (e);

(g) subject to Section 12, order the young

person to perform a community service at such time and on such terms as the court may fix;

(h) make any order of prohibition, seizure or forfeiture that may be imposed under a Provincial enactment, including a municipal by-law, where a person is found guilty or convicted of an offence;

(i) place the young person on probation for a specified period not exceeding one year and issue a probation order containing such conditions as the court directs;

(j) subject to Section 13, commit the young person to custody, to be served continuously for a specified period not exceeding six months from the date of the committal;

(k) impose on a young person such other reasonable and ancillary conditions as it deems advisable and in the best interest of the young person and the public,

and the penalty in the Provincial enactment, including a municipal by-law, does not apply.

There is no difference between what the judge did in his probation order and that which he was authorized to do under Section 10(1) of the **Protection of Property Act**, except in the one case it is called probation and in the other prohibition. Under the **Young Persons' Summary Proceedings Act**, to which young persons are subject in the context of the youth court, he imposed probation which by Section 11(1)(i) is permitted for a specified period not exceeding one year "containing such conditions as the court directs". When the probation order is measured against the prohibition order provided by Section 10(1) of the **Protection of Property Act**, the judge prohibited M.A.B. - his words were "stay away from the Bayers Road Shopping Centre" - for six months being the period for which a prohibition order under Section 10(1) is not to exceed.

The record reveals that in his reasons at the disposition hearing, the judge of the youth court spoke at some length to M.A.B. in an effort to counsel her

to mend her ways so that these and other circumstances arising from another matter, also before him, would not be repeated. He talked to her with considerable understanding of her present situation and how it would be possible for her to improve her status in life which he predicted could be bright and promising. He patiently attempted to counsel M.A.B. in keeping with the laudable objectives of the manner youth courts are encouraged to treat and deal with young offenders. In the course of his remarks he said,

"Under the **Protection of Property Act** matter, that's the Bayers Road thing, I am going to order that you be placed on probation for six months. That you are to keep the peace and be of good behaviour -- and that's also a term in the other one: 'keep the peace and be of good behaviour.' That's a term in every probation order. And that you stay away from Bayers Road Shopping Centre, and that includes the parking lot and the building."

Counsel for M.A.B. submits that even if the order were under Section 10(1) of the **Act**, it is invalid because the judge added the terms of keeping the peace and being of good behaviour which are absent from the statutory language of Section 10(1). These, it is argued, create an extra burden on M.A.B. which Section 10(1) does not impose.

Keeping the peace and being of good behaviour is not a greater burden or obligation than is the lot of every citizen, whether twelve or seventy, and whether or not such citizen is under a probation or prohibition order. In either case, a citizen must do some act which breaks the peace or is sufficiently bad behaviour that it gives rise to an offence.

We must be mindful of the setting in which this matter came before the youth court. The charges were laid under the **Protection of Property Act**: M.A.B. pled guilty to them. What was the judge to do in these circumstances? Judges of youth courts are urged to be creative in the fashioning of dispositions for young

offenders. In so doing they are expected to devise dispositions that will heal and not unduly hinder a youth from the opportunity to live within the law. In such circumstances as exist here, the resort this judge made to Section 11(1) of the **Young Persons' Summary Proceedings Act** cannot be faulted as being erroneous in law or in excess of his jurisdiction.

Section 11(1), set forth above, begins with the phrase, "Notwithstanding a minimum penalty in a Provincial enactment ...". Counsel of M.A.B. urges that since there is no minimum penalty provided for a violation of Section 10(1) of the **Protection of Property Act**, the judge was precluded from imposing a disposition pursuant to Section 11(1) of the **Young Persons' Summary Proceedings Act**.

The plain meaning of the opening words of Section 11(1) is to say that even if there is a minimum penalty in a Provincial enactment, the judge of the youth court may nonetheless have resort to one or more of the dispositions provided in the series that follow. Again, the **Act** has left the judge of the youth court with the opportunity to formulate a disposition that best serves the need of a young person convicted of a summary offence. In such circumstances, "the penalty in the Provincial enactment ... does not apply". In this instance the judge imposed a disposition on M.A.B. that was no greater than that which by Section 10(1) of the **Protection of Property Act** could be imposed upon an adult. In doing so, he did not err.

This Court is being urged to rule on the validity of the disposition in the event M.A.B. fails to comply. Emphasis is placed by the appellant on Section 10(2) of the **Act** which, as noted above, provides for the imposition of a fine not exceeding \$500.00. There being no indication before the Court that M.A.B. has failed to comply, resulting in a summary charge against her, it is a moot issue which the Court should not pre-judge.

It is appropriate to observe that in the case of such an unlikely event, the **Young Persons' Summary Proceedings Act** by Section 11(1) appears to permit the youth court to impose a fine not exceeding \$500.00, subject to Section 12 which obliges the Court before doing so to "have regard to the present and future means of the young person to pay". In the event such present and future means are deemed lacking, the **Young Persons' Summary Proceedings Act** provides other alternatives, including a fine-option program, for the judge of the youth court to consider, bearing in mind the operative provisions of Section 11(7) that the punishment shall not be greater than that which "would be applicable to an adult who has committed the same offence".

For the reasons given, I would dismiss the appeal.

C.J.N.S.

Concurred in:

Matthews, J.A.

Chipman, J.A.