# PROVINCIAL COURT OF NOVA SCOTIA

**Citation:** *New Glasgow (Town) v. Jardine*, 2018 NSPC 53

**Date:** 2018-12-20
**Docket:** 8197420
**Registry:** Pictou

**Between:**

Town of New Glasgow

v.

Matthew Taylor Jardine

***CORRECTED SENTENCING DECISION***

Corrected decision:
Paragraph [4] corrects a typographical error referring to c 450 of RSNS 1989;
Paragraph [12] adds the clause: "another case, one better suited to Charter-grounds litigation."

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| **Judge:** | The Honourable Judge Del W. Atwood |
| **Heard:** | 2018: 20 December in Pictou, Nova Scotia |
| **Charge:** | Subsection 83(2) of the Motor Vehicle Act |
| **Counsel:** | Bronwyn Duffy for the Town of New Glasgow<br>Matthew Taylor Jardine not appearing |

**By the Court:**

[1] Matthew Taylor Jardine is charged in a summary-offence ticket with failing to obey a stop sign, contrary to sub-s. 83(2) of the Motor Vehicle Act, RSNS 1989, c 293 (MVA) (case 8197420); he filed a notice of intention to plead not guilty in accordance with the Summary Offence Ticket Regulations, NS Reg 190/2018 (the regulations). A trial was scheduled for today.

[2] Prior to the trial date, the prosecutor was contacted by Mr. Jardine; they entered into an agreement that Mr. Jardine would not appear to contest the ticket, the case would get concluded by way of an automatic conviction under para. 8(15)(a) of the Summary Proceedings Act, RSNS 1989, c 450 (SPA), the prosecution would seek the out-of-court settlement amount and then withdraw a ticket for a related s. 100 MVA offence.

[3] Relying on that agreement, Mr. Jardine has not appeared in court this morning, the prosecution has applied for an automatic conviction and has sought the out-of-court settlement amount as prescribed in Schedule 4 of the regulations (the schedule). I have entered the automatic conviction, and the prosecution has withdrawn the second ticket.

[4] The schedule designates a violation of sub-s. 83(2) of the MVA as a Category B offence, as in s. 293 of the MVA; the regulation fixes the out-of-court settlement amount as $180, made up of a fine of $50, a prescribed costs amount of $122.50 (as set out in s. 7 of the regulation and s. 4A of the Summary Proceedings Act, RSNS 1989, c 450), and a victim-surcharge amount of $7.50 (as prescribed in s. 7 of the regulations, s. 7 of the Victims Rights and Services Act, SNS 1989, c 14 (VRA), and s. 2 of the Victim Fine Surcharge Rate Regulations, NS Reg 243/89).

[5] Last week, the Supreme Court of Canada ruled in *R. v. Boudreault*, 2018 SCC 57 that the victim-surcharge provisions in s. 737 of the *Criminal Code* are of no force or effect, having been found in violation of the no-cruel-and-unusual-punishment protection in s. 12 of the *Canadian Charter of Rights and Freedoms,* and not saved by the reasonable-limits exemption in s. 1 of the *Charter*.

[6] There is every good reason to think that the victim-surcharge provisions of the VRA are just as vulnerable to a s. 12 *Charter*-grounds challenge:

- The VRA surcharge is a punishment;
- The imposition of a surcharge is mandatory;

- A provincial surcharge would be grossly disproportionate and have disproportionate financial consequences for the reasonable-hypothetical ticketed person experiencing income, housing, or health insecurity;
- Enforcement actions for non-payment give rise to the risk of detention, as the committal-to-custody provisions of para. 734.7(1)(b) of the *Code* are incorporated into summary proceedings for provincial offences in virtue of sub-s. 7(1) of the SPA; s. 13 of the SPA, itself, comprehends imprisonment for non-payment of a monetary punishment;
- There is an additional enforcement risk for non-payment of fines and surcharges arising from MVA offences: driving licenses may be subject to not being renewed, pursuant to sub-s. 269(2) of the MVA. Loss of licence works a great hardship on struggling households, as driving one's own car will often be the only way to minimum-wage work in rural and suburban areas not serviced by economical transit.

[7] I raised this *Charter* issue of the court's own motion in accordance with *R. v. Tavers*, 2001 NSCA 71 at para. 40, as Mr. Jardine was not present and in an even more disadvantaged position than a self-represented party. The prosecution, with typical fairness, did not seek to contest the issue.

[8] However, this is not a *Charter* controversy that calls into question state action; rather, what is to be decided is statute validity.

[9] This is a statutory court, with no received jurisdiction to make declaratory judgments; however, the court can rule on the s. 12 *Charter* compliance of a penal statute in a particular case: *R. v. Lloyd*, 2016 SCC 13 at paras. 14-20.

[10] Before the court can do so in relation to a provincial statute, notice must go to the attorney general under sub-s. 10(2) of the Constitutional Questions Act, R.S.N.S. 1989, c. 89. Notice has not been sent, given the way the matter was raised.

[11] Going through that whole process would prolong the outcome here, whereas I am sure Mr. Jardine would like to get this wrapped up quickly so that he can start the countdown on his demerit points.

[12] Rather than dragging things out, what I have decided to do is this: in accordance with the Remission of Penalties Act, RSNS 1989, c 397 I will remit from the fine an amount equivalent to the prescribed victim-surcharge; the costs

amount must still be imposed; the surcharge will be calculated based on the remitted amount. This carries into effect the clear implication of *Boudreault*, but will leave the constitutional issue to be settled later with a full hearing in another case, one better suited to Charter-grounds litigation.

**JPC**