**YOUTH JUSTICE COURT OF NOVA SCOTIA**
**Citation:** *R. v. A.B.* , 2014 NSPC 77

**Date:** 2014-09-25
**Docket:** 2765123, 2765622, 2765623, S5285856, S5285883, S5285884
**Registry:** Pictou

**Between:**

Her Majesty the Queen

v.

A.B.

**Restriction on Publication: No person shall publish the name of the young person A.B., or any other information related to the young person, if it would identify the young person as a young person dealt with under the Youth Criminal Justice Act.**

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| Judge: | The Honourable Judge Del W. Atwood |
| Heard: | 24 September 2014, in Pictou, Nova Scotia |
| Written decision: | 25 September 2014 |
| Charge: | Para. 334(b)(ii) of the Criminal Code<br>Section 137 of the Youth Criminal Justice Act<br>Sub-s. 3(1) of the Protection of Property Act |
| Counsel: | Jody McNeill, for the Nova Scotia Public Prosecution Service<br>Bronwyn Duffy, for the Town of Stellarton<br>Stephen Robertson, Nova Scotia Legal Aid, for A.B. |

**By the Court:**

[1] A.B. pleaded guilty yesterday to three counts of entering property contrary to a protection-of-property notice, one count of theft, and one count of breach of probation. All of the charges were prosecuted summarily. The facts that were read into the record by the prosecution supported the charges, and I was able to make the required findings of guilt. Both counsel for the prosecution and the defence adopted what I considered to be a highly commendable common sentencing position that was focussed on the unique circumstances that brought A.B. before the court. I imposed reprimands for all of the charges. I advised counsel that I would be issuing written reasons in short order to address the concerns of the court that the Department of Community Services had allowed A.B. to fall through the cracks, resulting in an unacceptable delay in ensuring that justice was done in her case. These are my reasons.

[2] A.B. was sentenced by me on 6 August 2014 to a six-month custody-and-supervision order for a large array of property and breach charges. Prior to the imposition of that sentence, she had been charged with the offences that form the subject matter of this decision, and had been released on process returnable 10 September 2014. Two notices to parent had been served on a timely basis by

police upon her various caseworkers, both in [identifying information redacted] Counties, as A.B. is in the care of the Minister of Community Services. Those notices stated clearly that A.B. had a court date in Pictou on 10 September 2014 at 1:30 p.m.

[3] With this return date looming, the prosecution service diligently obtained an order under section 527 of the *Criminal Code* to ensure the safe transportation of A.B. from the youth centre to court for the 10 September arraignment date. When the case was called, A.B. was brought into court and was represented by Mr. Robertson. Counsel wished to enter guilty pleas; however, when I inquired into the presence of a parent or guardian, I was informed that none was present. I told counsel that I was not prepared to take pleas or proceed with a sentencing hearing without a representative of the Department of Community Services being present. I adjourned A.B.'s case, but for one week only, as the court has a positive obligation to ensure that young persons have their cases dealt with meaningfully, which includes necessarily being concluded promptly. I underscored the importance of this in *R. v. A.B.*, 2013 NSPC 111 at paras. 4 and 5. I directed that correspondence be sent immediately to the Truro office of the Department of Justice which provides legal services to the Department of Community Services; in it, the court requested the attendance of a representative of the department on the

resumption of A.B.'s hearing on 17 September 2014. The court issued a section 527 order, *sua sponte*, to procure A.B.'s attendance on that date.

[4] A.B. was back in court on 17 September 2014. A.B. was present. Her counsel was present. The prosecutor was present. No one from the Department of Community Services was present. There was no explanation before the court accounting for this absence. Again, I adjourned A.B.'s matter for one week, and issued a parental-attendance order in accordance with section 27 of the *YCJA*; this was directed to the person whom I understood to be A.B.'s caseworker in [identifying information redacted], as I knew from the sentencing hearing on 6 August that A.B. was ordinarily resident in that area.

[5] When A.B.'s case was called on 24 September, a staff member of the Department of Community Services in [identifying information redacted] was, in fact, present, and was able to provide the court with some useful information regarding A.B.'s permanent-care status; however, the court was not provided with any information regarding the failure of the Department of Community Services to have a representative present at A.B.'s two earlier appearances. This was not the fault of the caseworker, as she had just been handed A.B.'s case.

[6] Approximately a year and a half ago, the Department of Community Services brought a judicial-review application of a decision that I made in *R. v. J.J.C.*, 2012 NSPC 110. It was right to have done so, as my decision was manifestly in error. I said so in *R. v. T.D.N.*, 2013 NSPC 15 at para. 11. The judicial review of *J.J.C.* underscores the importance of the court fostering parental engagement at all stages of a proceeding involving a young person in conflict with the law. On this point, I can do no better than quote from the brief submitted by counsel for the Minister of Community Services in the judicial-review application; it is the very model of legal accuracy and succinctness:

> 169. Before passing sentence, the Court **must** consider any representations from the young person's parent. (*Youth Criminal Justice Act*, S.C. 2002, c. 1, s. 42(1))
>
> 170. **The parent of a young person has a right to be present at all hearings and may not be excluded from any hearing** except on very limited and specified grounds. (*Youth Criminal Justice Act*, SC 2002, c. 1, s. 132(2)(b))
>
> [Emphasis in original]

[7] Counsel's brief also set out the legitimate expectations of the Minister, with which I agree entirely:

> 195. The Minister has the right to receive **every** summons, appearance notice, promise to appear, undertaking or recognizance in relation to [identifying information redacted] . . . .
>
> 196. Failure to give the Minister notice of steps in the proceeding may render the proceeding **invalid**, unless specific exceptions apply . . . .
>
> 197. Before passing any sentence on [identifying information redacted], the Court **must** consider any representations of the Minister . . . .

> 198. The Minister has the right to be present at **all hearings** concerning [identifying information redacted] any may not be excluded from any hearing except on very limited and specified grounds . . . .
>
> [Emphasis in original]

[8] Mr. McVey's brief outlined further the fact that the Minister will in all likelihood be the custodian of important information about young persons in care, which might not be accessible to counsel or youth court workers; this reinforces the need for having the meaningful input of the Minister at all stages of youth-justice proceedings.

[9] I have every confidence that these declarations of principle by counsel for the Minister were not meant as superficial sloganism, but represented an authentic recognition by the Department of Community Services that the duty of the Court to hear from the Minister carried a correlative duty borne by the Minister—or the Minister's delegate—to be meaningfully present in order to be heard.

[10] And, yet, I know that even good intentions can give way be old, bad practises when not reinforced with solid policies and procedures. This lapse into the *status quo ante* is precisely what has happened. It is once again extremely difficult to obtain from the Department of Community Services meaningful information about young persons in care who find themselves before the Court. A.B.'s case is exemplary of this. When A.B. was sentenced by me on 6 August

2014, the Departmental representative who was present advised me that there were concerns about A.B.'s mental health and that "something needed to be done"; and yet, I knew from the submissions of A.B.'s defence counsel that this young person's legal, mental-health, and familial history encompassed a substantial biography.

[11] Nor is A.B.'s an isolated case; also before me on 24 September was the case of another young person in care, but who was not before the court in spite of being subject to process requiring the young person's attendance. A representative of the Department of Community Services who appeared on that matter could tell me only that the young person was the subject of an secure-treatment order at the Wood Street Centre; however, this representative was unable to tell me whether the young person was the subject of any other orders, and had to search her file for the name of the young person's caseworker. I was not advised of the duration of the secure-treatment order, and there was no explanation offered why the young person could not have been brought to court. I wound up issuing a parental-attendance order in that case. If it is the policy of the Department of Community Services—as it seems to be, based on other, similar cases that have wound up in a holding pattern before me— that secure-treatment orders place proceedings in Youth Justice Court into suspended animation, might I suggest respectfully that it

be reconsidered. I say so based on the well founded principles in the *Nunn Inquiry Report* that justice for young persons delayed is justice denied. Secure treatment ought not oust the timely adjudication of cases involving young persons allegedly in conflict with the law; indeed, the two should work conjointly.

[12] Yes, this court is a statutory or "inferior" court. However, I am confident that no one would suggest that this would justify an inferior level of engagement by a department of the executive branch of government charged with the care of vulnerable young persons.

[13] This court will continue to actively seek the timely and meaningful participation of the Minister of Community Services in proceedings involving youth in the minister's care, and I have every confidence that the present difficulties will be overcome.

[14] In relation to A.B.'s case, I concluded that the issuance of reprimands would constitute a meaningful outcome based on the information before me.

**JPC**