2001 **00K-59**

IN THE YOUTH COURT OF NOVA SCOTIA

(Cite as: R. v. M.P.C. , 2001 NSFC 7)

THE QUEEN

VS.

M. P. C.

DECISION

(REMAND FOR PSYCHIATRIC ASSESSMENT)

BEFORE THE HONOURABLE JUDGE BOB LEVY

Editorial Notice
Identifying information has been removed from this electronic version of the judgment.

COUNSEL:

INGRID BRODIE FOR THE CROWN
DONALD C. FRASER FOR M. P. C.

HEARING DATE:

MARCH 13, 2001

ORAL DECISION DATE:

MARCH 13, 2001

WRITTEN DECISION DATE:

MARCH 26, 2001

Levy, J.Y.C.

There has been, to my mind at least, some confusion and uncertainty as to the place for a remand for a psychiatric assessment of individuals charged in Nova Scotia under the **Young Offenders Act**, (YOA). This case, involving a remand regarding the issue of criminal responsibility, (section 16 of the **Criminal Code)**, brings the issue to the fore.

THE FACTS

These are the essential facts as relayed to the court by counsel on March 13:

M.P.C., (whom I shall just call M. in this decision), is a 15 year old male youth from the Dartmouth area and who is in the temporary care and custody of the Minister of Community Services. He has been residing at the N. Center in Kentville, a residential facility operated by Family and Children's Services of Kings County. He is on probation, having been so placed by myself on December 20, 2000. He is required by the order, among other things, to reside where placed (by the Provincial Director), to obey house rules, to possess no weapon, and to neither use or possess any drugs or medication except as directed by house staff, a parent, or a physician.

On March 12, 2001, at approximately 9:30 p.m., M. had asked a staff person at N. for a sharp knife to cut a bagel. The staff person declined and went into a pantry that was kept locked to obtain a standard bread knife. M. ran ahead of the staff and grabbed a paring knife which he then put into his mouth, threatening to stab himself up through the roof of his mouth. The staff person immediately grabbed M. and attempted to keep the youth from harming himself. The staff person wound up being cut, and so too did the youth, the evidence of which was evident on his face in court. He has a history of self-mutilation.

The police were called and he was taken immediately to the local hospital where he became physically out of control once again and had to be forcibly restrained. He was saying that another identity within himself, "S.", was compelling him to do the things he did and he was asking to be detained in a facility for fear that this other identity would compel him to hurt himself or others. He was then seen by the on-call psychiatrist for "less than five minutes" who to the "amazement" of the Crown, determined that there was "no risk".

The Crown tendered a letter from Dr. K. Ahmad, a psychiatrist at the IWK Grace hospital. This letter had apparently been prepared for the December 20th disposition of M. but had arrived too late. Dr. Ahmad reported having seen M. monthly since he was an inpatient in 1999. Dr. Ahmad sketched an outline of M.'s history which included his appearing depressed, having suicide ideations and on "numerous occasions" cutting himself superficially. The history included periods of anger, belligerence and disrespectfulness, losing his temper and threats to physically harm his brother.

There are reports of him claiming to have heard voices, and further conflicting reports about his having said on the one hand that he was making up the part about hearing voices and other times that he was hearing voices but denying it so that people didn't think he was "crazy". The doctor reported that there was never any evidence that M. was psychotic while in hospital, but that, "...(i)t is, however, possible that he had brief psychotic episodes in the past". As of the date of the letter M. continued on two drugs, Prozac and Risperidone, the latter drug being a response to M. complaining of hearing voices and being "very aggressive towards himself and others...". Dr. Ahmad reported

that it has, "...helped him a lot, as he has been much calmer and has not heard voices in his head."

M. was held in custody over night and brought before myself the next morning. The Crown advised that there was no longer any placement available for M. in these "extreme circumstances" as the staff at N. were not prepared to have him return. Although M. was much calmer by court time the Crown maintained that there was a "real risk of injury to himself or others". Crown counsel argued that the detention of the youth was justified on the secondary ground (under section 515 (10) of the Criminal Code) and, given what M. had been saying, that it wanted M. assessed under "section 16 responsibility", (Criminal Code - mental disorder).

Mr. Fraser, M.'s counsel, told the court that M. agreed with the need for an assessment and would consent. He told the court that the accused would consent to a remand to the IWK Grace or appropriate mental health facility but that he would not consent to a remand to the Youth Centre.

I raised with counsel my belief that the Province was taking the position, and in one way or another had issued a directive, that any assessment remand could no longer be to the IWK Grace, but, rather, that it had to be to a youth centre, in fact, on my being reminded, now the Youth Centre at Waterville. There, I was told, a psychiatrist would come by to assess him when one was available to do so. There then followed a discussion with counsel wherein I was assured that adults sent for assessments are never, or almost never, held in a correctional centre, at least not any more, that they are always held at the Nova Scotia hospital until the assessment is completed. This begged the question: why should youth be treated differently, and to my mind in a manner manifestly inferior, to adults?

After some discussion counsel sought the opportunity to call the IWK Grace to explore where this option might stand. We adjourned for that purpose. On reconvening the court was advised by Crown counsel that she was told that the IWK Grace remained a "designated facility" for the receipt of such remands, but that it was seldom or rarely done anymore, and that "the practise" had become that youth would be remanded to a youth centre there to be seen by a local psychiatrist, or, if necessary, Dr. Ahmad would travel to the youth centre and make the assessment. The court was further advised, (this being Tuesday of March break), that if M. were sent to Waterville that Dr. Evans normally would do the assessment but that he was away and couldn't see M. until next week.

There followed further exchanges between counsel and the court which culminated in agreement by counsel that the remand should, in fact must, be to the IWK Grace as it remained a "designated facility", and indeed that by virtue of section 672.17 of the Criminal Code the court lacked the jurisdiction to remand M. to the Youth Centre.

ANALYSIS

The Young Offenders Act provides for two different types of remands for assessments. Section 13. provides a procedure and considerations for assessments, and remands if necessary, for certain purposes set forth in subsection (2) of that section. Section 13.2 however is the section that governs in cases where remands are sought to determine criminal responsibility or fitness to stand trial. In fact it simply incorporates Part XX.1 of the Criminal Code, except for two enumerated subsections of section 672. The relevant text of section 13.2 for our purposes is:

> ***13.2*** *(1) Except to the extent that they are inconsistent with or excluded by this Act, section 16 and Part XX.1 of the Criminal Code,*

except sections 672.65 and 672.66, apply, with such modifications as the circumstances require, in respect of proceedings under this Act in relation to offences alleged to have been committed by young persons.

(11) A reference in Part XX.1 of the Criminal Code to a hospital in a province shall be construed as a reference to a hospital designated by the Minister of Health of the province for the custody, treatment or assessment of young persons.

The applicable procedural provisions of the Criminal Code are to be found in section 672, which reads in part:

PART XX.1
MENTAL DISORDER
Interpretation
672.1 Definitions
672.1 In this Part,

"hospital" « hôpital »
"hospital" means a place in a province that is designated by the Minister of Health for the province for the custody, treatment or assessment of an accused in respect of whom an assessment order, a disposition or a placement decision is made;

Contents of assessment order
672.13 (1) An assessment order must specify
(a) the service that or the person who is to make the assessment, or the hospital where it is to be made;
(b) whether the accused is to be detained in custody while the order is in force; and
(c) the period that the order is to be in force, including the time required for the assessment and for the accused to travel to and from the place where the assessment is to be made.
672.13(2) Form
(2) An assessment order may be in Form 48.
1991, c. 43, s. 4.

General rule for period
672.14 (1) An assessment order shall not be in force for more than thirty days.

Presumption against custody
672.16 (1) Subject to subsection (3), an accused shall not be detained in custody pursuant to an assessment order unless

(a) the court is satisfied that on the evidence custody is necessary to assess the accused, or that on the evidence of a medical practitioner custody is desirable to assess the accused and the accused consents to custody;
(b) custody of the accused is required in respect of any other matter or by virtue of any other provision of this Act; or
(c) the prosecutor, having been given a reasonable opportunity to do so, shows that detention of the accused in custody is justified on either of the grounds set out in subsection 515(10).

Assessment order takes precedence over bail hearing
672.17 During the period that an assessment order of an accused charged with an offence is in force, no order for the interim release or detention of the accused may be made by virtue of Part XVI or section 679 in respect of that offence or an included offence.1991, c. 43, s. 4.

I am satisfied that there are reasonable grounds to believe that M. may be suffering from a mental disorder and that there should be an assessment done and a report prepared by a psychiatrist to assist the court with a determination under section 16 of the Criminal Code. The young person consents. It is so ordered.

The next question is whether M. should be remanded into custody while the assessment and report are undertaken. Remand was sought under section 672.16 (1) (c) which applies the same test as does section 515 (10) in order to determine whether custody is warranted. M., through his counsel does not object to a remand into custody *per se,* just a remand to a youth centre, (Waterville). I am satisfied that a remand into custody is warranted because of the likelihood that the accused may, through a repeat of his actions commit another offence to the endangerment of others as well as himself, (s. 515 (10) (b)). I am also satisfied, per section 672 .16 (1) (a), that a remand is necessary to better conduct an assessment. Given what Dr. Ahmad had written and what happened on the evening of the 12th, it may be that M. suffers from "brief psychotic episodes" which may manifest themselves during the period of assessment yet not be detectable as such by anyone unless M. is in a place where his behaviour can be constantly and competently observed.

Section 672.17 of the Criminal Code provides that no order for release or detention may be made under Part XVI (section 515), "...(d)uring the period that an assessment order...is in place...". There is no basis that I can think of upon which to conclude that that section is "inconsistent" with or "excluded" by the Young Offenders Act or why it should apply to adults and not to young persons. I find, by virtue of section 13.2 (1) of the Young Offenders Act, that it applies to this proceeding.

I have been advised by Crown counsel, who of course would have a much greater familiarity with the practice of the criminal courts than I have, that in some courts at least there was a practice with these remands for assessments: that Provincial Court judges would issue "dual remands"...to both the Nova Scotia Hospital and to the correctional centre. I am further advised that this is no

longer done, or, if so, done much less frequently, as the prevailing view of the law now is that a "dual remand" is precluded by section 672.17. Thus, adults on assessment remand now do not go to a correctional centre; they go to the hospital, undergo the assessment, and are returned to court when the assessment is completed.

In an effort to understand the basis upon which, ostensibly, youth were being treated in a manner fundamentally different from adults and fundamentally at odds with section 672.17 of the Criminal Code I enlisted help in tracking down whatever documentation could be found designating assessment remand facilities for adults and for youth.

By designation dated April 30, 1992 then Health Minister the Honourable George Moody designated the Nova Scotia Hospital per YOA section 13.2 (11). On the 31st day of October, 1997 then Health Minister the Honourable James Smith revoked that designation citing a designation dated April 4th, 1997 of the Izaak Walton Killam-Grace Health Centre, Four South Unit, as the facility pursuant to section 13.2 (11) of the YOA. (In point of fact the document refers to ss. (ii) of 13.2, which is an error carried forward from the earlier, 1992, document). (I couldn't locate the actual April 4th, 1997 designation, only the October document referencing it). That designation of the IWK Grace has not been revoked.

Among the documents that I have been given are two documents, one regarding adult matters and the other as to youth. The adult document, dated February 20, 1997, is styled:

DUAL REMAND PROTOCOL
PROVINCIAL FORENSIC PSYCHIATRY SERVICE
AND
HALIFAX CORRECTIONAL CENTRE

It begins by stating it's parameters:

> "***Dual Remands***
> *Cases referred from the courts for determination of fitness to stand trial and/or criminal responsibility where the individual may be housed at the Provincial Forensic Psychiatry Service (PFPS) or the Halifax Correctional Centre (HCC). This can occur only in those cases ordered by the judge."*

The document then sets forth over two pages what it's name implies, namely a protocol for the housing and dealing with persons who have been remanded to both the hospital and the Halifax Correctional Centre by means of a "dual remand". Essentially, the person would go back and forth between the facilities as required.

There is another document, this one undated, but 'believed' to date from August of 1997, (although my copy has a fax mark on it 06/25/97 - which I'm told would have dated from the time it was only in draft form). This document reads in it's entirety:

PARTNERSHIP PROTOCOL
FOR
DUAL REMAND PROTOCOL
IWK GRACE HEALTH CENTRE MENTAL HEALTH PROGRAM

AND
YOUNG OFFENDER INSTITUTIONS

Preamble:

It is recognized that young offenders are a high priority client population for Mental Health Services and deserve to be served in a clinical appropriate setting which addresses the safe custody requirements of the community and youth. Further it is recognized that upon release, the young offender may require expeditious access to mental health services within the community in close proximity to his residence to allow for a successful transition of the youth from the institution to the community.

Dual Remands:

This agreement pertains to provisions of psychiatric and psychological assessments for youth on remand under the Young Offenders Act. It is recognized that closed confinement of a youth in these circumstances is often necessary for the safety of the public and at times a mentally disordered young offender may require treatment services available only in the highly intensive treatment setting of the psychiatric inpatient unit.

Protocol:

It is agreed that male young offenders remanded to a facility for assessment will be admitted to the Nova Scotia Youth Centre. It is also agreed that female young offenders remanded for assessment will be admitted to the Shelburne Youth Centre.

The youth centres will arrange for the assessment to be conducted within the time frame indicated in the order/remand by providing "in-house mental health personnel" or by arrangement with the IWK Grace Health Centre Mental Health Program.

The option of sending a young offender directed from the youth facility to the IWK Mental Health 4 South Inpatient Unit can occur only in those cases ordered by the Judge.

The IWK Grace Health Centre Mental Health Program will provide the mental health personnel to conduct an assessment at the request of the Youth Centre and will arrange for immediate admission of the

> *young offender to an inpatient psychiatric bed if this is indicated on clinical grounds.*
>
> *The IWK Grace Health Centre Mental Health Program will provide timely support to the Nova Scotia Youth Centre and Shelburne Youth Centre in arranging community based outpatient follow up to youth being discharged from the Centres where this is viable geographically and indicated clinically.*

While this document makes specific reference to "Dual Remands" in a heading, in fact there is no mention of dual remands, or to anything resembling a dual remand, in the body of the document. Admittedly this is conjecture on my part, but it seems that officials were simply trying to duplicate for young persons the protocol that was being put in place that same year for adults, but they didn't fully understand the concept or what might be involved legally. It seems that the officials were either taking it as a given that any remand for assessment would be a dual remand or that it would be up to the hospital and not to the court whether or not to hold the youth.

Whether or not that speculation is accurate, I adopt what I understand to be the prevailing view of the law today that dual remands cannot be granted, (section 672.17 of the Code). Thus, although far be it from me to say, I would venture that the *Dual Remand Protocol* for adults may no longer be seen as operational. For the same reasons the *Partnership Protocol for Dual Remand Protocol* for youth would seem to be invalid.

Section 672.13 (1) (a) of the Criminal Code provides that the assessment order must specify, if not the person or service to do the remand then the hospital where it is to be done and whether the accused is to be detained in custody while the order is in force. "Hospital" as defined in section 672, and by section 13.2 (11) of the Y.O.A., means a place designated for custody as well as assessment or treatment.

I'm not sure why a Youth Court judge might prefer to send a youth to a youth centre rather than to a hospital on this kind of remand. It seems counter-intuitive. The practise of sending possibly severely mentally ill young people to youth centres, youth who may never be convicted of or possibly not even tried for an offence, there to be housed amongst the general remand population miles from qualified psychiatric professionals, has little to commend it. This is especially so since, it will be remembered, it is expressly not open to the court to remand a youth into custody under section 515 (10) of the Code while an assessment order is in place. Thus, it seems to me that a remand to a youth centre for the purposes of an assessment is doing exactly what section 672.17 of the Code says cannot be done. That is not a "system" so much as it is a patch sewn on a system, or perhaps more to the point, a finger stuck in the eye of the system.

Re-directing remand warrants from youth centre to the IWK Grace Health Centre would not be without it's implications on resources and resource allocation. No one would want to prejudice the capacity of that hospital to meet it's mandate to all young people. That said, the mandate of and obligations of the courts are no less real, in legal and in human terms.

DECISION

M. has been remanded into custody, to the IWK Grace, Four South Unit, for a period not

exceeding thirty days for an assessment to determine the matter of criminal responsibility in relation to the charge before the court.

Because, after the proceeding in court I accessed and referred to documents not before the court, I have sent copies to counsel, along with a draft of this decision, for additional input should they so desire. While the documents to my mind don't affect the result, I wanted to give counsel the opportunity to comment. I'm glad that I did, as the advice I received back from Ms. Brodie was very helpful.

Bob Levy, J. Y. C.