

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Nova Scotia (Community Services) (Re), 2008 NSSC 286

**Date:** 20080925

**Docket:** SFHCFSA-060765

**Registry:** Halifax

**IN THE MATTER OF:**        *The Children and Family Services Act, Section 29(1)*

- and -

**IN THE MATTER OF:**        The Application of the Minister of Community Services for an Order to Locate and Detain the child, A. B., born July \*, 1991 (*\*editorial note-removed to protect identity*)

**Editorial Note**

Identifying information has been removed from this unofficial electronic version of the judgment to observe the publication ban.

Restriction on publication:

Publishers of this case please take note that s. 94(1) of the Children and Family Services Act applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

"No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or relative of the child."

**Judge:**                        The Honourable Justice Deborah Gass

**Heard:**                         September 25, 2008, in Halifax, Nova Scotia

**Oral Decision:** September 25, 2008

**Written Release of  
Oral Decision:** September 30, 2008

**Counsel:** Pamela MacKeigan, counsel for the Minister of  
Community Services

**By the Court:**

[1] This is an Application to locate and detain a 17 year old person who is in the permanent care and custody of the Minister of Community Services.

[2] I am dismissing this Application as the *Children and Family Services Act* governs proceedings relating to children. A “child” is defined in s. 3(e) as “...a person under 16 years of age unless the context otherwise requires.”

[3] It would seem to me that this Application asks the court to treat children who are in care differently than children who are not in care, because a parent who would come in here seeking a Locate and Detain Order for a child in their care who was 17 would not get an Order. There is no ongoing proceeding with regard to this child, the child is in the permanent care of the Agency, so the status of this child vis-a-vis its guardian, being the Agency, is no different, in my view, than the

status of a child who is in the care of a parent and who has left their care without permission. To treat them differently, it seems to me, discriminates against children who are in care in a sense that it may discriminate negatively, or it may discriminate positively; either negatively in that the court would be more liberal in granting Orders to Locate and Detain which are very intrusive Orders because a child is in care; or, the protective arm of the court is longer for children in care than for children who are not in care. You can interpret it negatively or positively, but it seems to me that it certainly does treat children differently if the court were to grant an Order in this circumstance, where it would not grant such an Order to a parent who walks in and seeks an Order for a 17 year old child in his or her care.

J.