

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

**Citation:** Nova Scotia (Community Services) v. A.B., 2011 NSSC 114

**Date:** 20110317

**Docket:** SFHCFSA-074508

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

A.B.

Respondent

**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 Mona M. Lynch

**Heard:** March 17, 2011, in Halifax, Nova Scotia

**Written Decision:** March 21, 2011

**Counsel:** Sarah Gordon - counsel for the Applicant

**By the Court:**

**Background:**

[1] The child in this case will turn the age of 18 very soon. She was placed in foster care until her age of majority by an order of the Court of Quebec on August 9, 2005.

[2] The child has resided in the Province of Nova Scotia since 1997. She has been supported and provided services by the Nova Scotia Department of Community Services since that time. The Nova Scotia Department of Community Services has taken full responsibility for the child and her foster home. The child has been treated as if she had been placed in the permanent care and custody of the Agency pursuant to the **Children and Family Services Act**, S.N.S. 1990, c. 5 (CFSA).

[3] The age of majority in the Province of Quebec is eighteen years of age and the order from Quebec will have no further effect after the child becomes eighteen.

[4] The Minister of Community Services in Nova Scotia would like to continue to support the child to finish high school in 2011 and commence a course at Community College. The Minister of Community Services has made an application which seeks to have the care and custody of the child continue until she reaches the age of twenty-one years.

**Issues:**

[5] Does the court have jurisdiction to make an order extending the care and custody of the child until she reaches the age of twenty-one years under the **CFSA** or by exercise of *parens patriae* jurisdiction?

**Analysis:**

**CFSA:**

[6] The relevant provisions of the **CFSA** include:

Section 42(1)(f):

42(1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

Section 48(1)(a):

48 (1) An order for permanent care and custody terminates when

(a) the child reaches nineteen years of age, unless, because the child is pursuing an education program or because the child is under a disability, the court orders that the agency's permanent care and custody be extended until the child reaches twenty-one years of age;

Section 97:

97 Where an order has been made by a court of competent jurisdiction in another province of Canada pursuant to provisions similar in effect to this **Act**, the order has the same force and effect in the Province as an order made pursuant to this Act unless the court otherwise orders.

It is clear from the above provisions that I would have the power to extend the permanent care and custody of a child if the order had been made under the **CFSA**. However, none of the above provisions provide me with the jurisdiction to extend the care of a child where the child was placed in care under another statute in another province of Canada. Section 97 does not give me that jurisdiction; it simply provides that the order made in Quebec has that same force and effect as an order made in Nova Scotia. It does not allow me to change the provisions of the Quebec order. It only allows for enforcement of the Quebec order.

[7] There is provision in section 19 of the **CFSA** for a child more than sixteen years of age and less than nineteen years of age to enter into an agreement with an agency or the Minister of Community Services for the provision of services. This agreement cannot exceed two years.

***Parens Patriae:***

[8] In the recent Nova Scotia Court of Appeal case of **A.B. v. Bragg Communications Inc.**, 2011 NSCA 26 the court reiterated that *parens patriae* jurisdiction ought to be limited to filling in legislative gaps, or situations requiring judicial review (para. 60). The court also endorses the Supreme Court of Canada finding in **Re Eve**, [1986] 2 S.C.R. 388 that *parens patriae* “must at all times be exercised with great caution and only for the benefit and protection of persons under disability” (para. 58).

[9] In **Re T.(D.)** (1992), 113 N.S.R. (2d) 74 the Nova Scotia Court of Appeal found that there is no room for *parens patriae* jurisdiction where the Legislature has exercised its discretion (para. 26); that the adoption legislation is a complete

code (para. 30) and that the prerequisite to the exercise of *parens patriae* is the best interests of the child.

[10] In **Beson v. Director of Child Welfare (NFLD.)**, [1982] 2 S.C.R. 716, the Supreme Court of Canada considered *parens patriae* jurisdiction and used it in the context of child protection legislation. Wilson J., at page 724 of **Beson** quoted the House of Lords decision in **A. v. Liverpool City Council**, [1981] 2 All E.R. 385 at pp.388-89:

But in some instances there may be an area of concern to which the powers of the local authority, limited as they are by statute, do not extend. Sometimes the local authority itself may invite the supplementary assistance of the court. Then the wardship may be continued with a view to action by the court. *The court's general inherent power is always available to fill gaps or to supplement the powers of the local authority; what it will not do (except by way of judicial review where appropriate) is to supervise the exercise of discretion within the field committed by statute to the local authority.* [Emphasis added.]

Wilson J. went on to say at page 724:

It would seem then that in England the ward-ship jurisdiction of the court (*parens patriae*) has not been ousted by the existence of legislation entrusting the care and custody of children to local authorities. It is, however, confined to "gaps" in the legislation and to judicial review. Is there room for the Court's *parens patriae* jurisdiction in this case?

[11] In the present case I find that there is a legislative gap in the **CFSA** as there is not a provision which would allow the court to extend a child's care past the age of majority where the order placing the child in care was made in another province.

While the Nova Scotia Court of Appeal found that the adoption provisions in the **CFSA** were a complete code, they did not turn their mind to the situation in this case.

[12] The only way to allow the child to continue in the care of the agency until the age of twenty-one is through the use of *parens patriae* jurisdiction. A new proceeding could not be started as the child is over the age of sixteen. An agreement under section 19 of the **CFSA** could only be in place for two years.

[13] It is clearly in the child's best interests to continue to receive the assistance of the Minister of Community Services along with services to support her placement and the continuation of her education. It would not be in the best interests of the child for the support of the Minister of Community Services to terminate in the middle of her final year of high school or for support to be unavailable to allow her to continue her education beyond high school. I will exercise *parens patriae* jurisdiction for the benefit and protection of the child.

**Conclusion:**

[14] The application of the Minister of Community Services is granted. The child shall be placed in and continue in the care and custody of the Halifax District Office of the Department of Community Services until she reaches the age of twenty-one years.

J.