

*Theresa McEvoy was killed by a young offender in a car crash on October 14, 2004. Two days before his criminal acts caused her death, he was released from custody although he was facing numerous charges. The Province of Nova Scotia called a public inquiry to consider the handling of his charges and other matters relating to why he had been released.*



# **Spiralling out of Control**

LESSONS LEARNED FROM A BOY IN TROUBLE

---

REPORT OF THE **Nunn Commission of Inquiry**



**The Honourable D. Merlin Nunn**

*Retired Justice of the Supreme Court of Nova Scotia • Commissioner*



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**DECEMBER 2006**



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*Retired Justice of the Supreme Court of Nova Scotia • Commissioner*

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# Dedication

This report is dedicated to  
the family of the late Theresa McEvoy.

Despite their personal loss,  
they are keenly interested in  
improving the lives of youth at risk.



## **Nunn Commission of Inquiry**

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December 2006

To Her Honour  
The Lieutenant Governor

May It Please Your Honour:

By Order in Council dated June 29, 2005, I was appointed a Commissioner under the *Public Inquiries Act* to inquire into, report, and make recommendations respecting various matters and circumstances relating to the release from custody of a young person whose criminal actions caused the tragic death of Theresa McEvoy on October 14, 2004.

I am pleased to report that I have now completed my mandate as set out in the Order in Council, and as directed, I hereby submit my report to you and to the people of Nova Scotia.

Respectfully submitted,

A handwritten signature in black ink that reads 'D. Merlin Nunn'.

D. Merlin Nunn  
Commissioner



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# Preface

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My terms of reference required me to look into a particular chain of events and the actions of all involved as the events occurred. My task was to try to provide answers to specific questions and to consider the procedures and practices pertaining to the release of the young person as well as the actions of public officials throughout the matter.

During the inquiry, I heard testimony of 47 sworn witnesses plus 23 others at an open public forum. Almost 12,000 pages of documents were entered as exhibits.

My own judicial experience would normally cause me to approach the writing of this report by reviewing the facts in detail, making findings of fact, assessing the evidence of witnesses and their credibility, and making many determinations along the way to a judgment. However, I do not intend to proceed in such a manner. The events I am looking at are well known here in Nova Scotia and elsewhere in Canada, as they received a great deal of media attention during the inquiry. I will tell the story of what took place and how the events unfolded, but refrain from entering into the level of detail produced in evidence before me.

Throughout my report, except for matters of jurisdiction in Part 2, I have tried to tell the story of events in narrative form. I took a similar approach to discussing the evidence of the broader social issues that also became matters of interest to the inquiry. In the report, I use few footnotes and make no particular references to document numbers filed as exhibits in this inquiry. The *Youth Criminal Justice Act*<sup>1</sup> dictates that the majority of these documents cannot be made public. Some of these documents have been described in a general way in the text and in Appendix J. Further, to preserve the narrative

1. *Youth Criminal Justice Act*, S.C. 2002, c.1.



feature of this report, I have not made reference to particular question numbers from the transcript, even when I quote from testimony.

There is a further reason behind my chosen approach. This is a public inquiry and my report is public. It has to tell a story, a story about lessons learned from a boy in trouble. It should not be a “judgment” type of report, but rather one that relates to the events, the observations, and the recommendations in a manner easily understood by the public at large. This is even more important when many of the matters I am concerned with are of such broad concern to so many parents of children at every level of society.

I believe my choice of approach will make this report more accessible to any interested reader. This approach still required me to sift through the mass of evidence and select what was necessary to give a fair and complete picture. It does not mean that I have ignored the testimony of any witness or any piece of documentary evidence. Everything I heard and read formed part of the big picture from which this report resulted.

I should add that judgments most often detail findings of guilt or fault. By my mandate, I am specifically prohibited from making any findings of civil or criminal liability, and my choice of this approach should make it clear that no such findings will be made.

My approach to this report, though different from some public inquiry reports, is not unique. A similar type of report was written for the Toronto Computer Leasing Inquiry by its Commissioner, Justice Denise Bellamy.<sup>2</sup> As well, Volume 3 of her report, setting out her approach to the administration and planning for a public inquiry, was most useful for my counsel and this inquiry’s staff.

Finally, let me explain my use in this report of the initials “AB” when describing the young person at the centre of this inquiry. Before the inquiry’s hearings started, he was sentenced as an adult for his crimes relating to the death of Theresa McEvoy. Under the *Youth Criminal Justice Act*, an adult sentence removes the prohibition on the publication

2. *Report of the Toronto Computer Leasing Inquiry/ Toronto External Contracts Inquiry*, September 2005.

of the name of that young person or other identifying information. After his sentence, his name and face were published widely in the media. During the inquiry, although his name was mentioned frequently during the testimony, I nevertheless gave the direction that the transcripts or other inquiry publications would use only his initials. My reason for this was twofold. First, most of my consideration of AB's crimes was focused on offences committed before October 14, 2004, and for which he was sentenced as a young person. Second, I am conscious of the publicity that this inquiry has generated. This report will generate more. In my view, it serves little purpose to identify him now, and in my opinion, the publicity could serve to undermine his ongoing rehabilitation. I have made no ruling nor have I provided any guidelines to others who may publish his name, but for those reasons I have continued my practice of using his initials, and those of his mother, in this report.

# Acknowledgments

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This inquiry could not have proceeded as smoothly as it did without the assistance, co-operation, and contributions of the four people who worked with me throughout.

Phyllis Perry, my judicial assistant when I served on the Supreme Court, came with me to be my office manager. She came to a large, empty area in poor condition, that needed repair, painting, and cleaning, and by herself turned it into offices, boardroom, secretarial stations, reception area, and large hearing room. She obtained all the necessary furnishings, computers, fax machine and copiers, and all supplies. Under her direction, a digital recording system was set up for recording testimony, and she took the training to operate it. At all hearings she served as inquiry reporter, operating this equipment and tracking all documents submitted. Throughout, she acted as receptionist and secretary to myself and my counsel. All was accomplished without a hitch and always with a smile; I am deeply grateful to her.

Michael Messenger, my counsel, a lawyer from the Cox Hanson O'Reilly Matheson firm in Halifax, performed outstandingly in a very difficult task. I had not known him before, but quickly recognized his immense talents. His wisdom for a young man is notable. He possesses superior organizational ability, and set up the procedures the inquiry would follow, as well as selecting and interviewing prospective witnesses and obtaining and reviewing all the documentary evidence involved. His manner of dealing with all other counsel, witnesses, and the many others who contacted our offices displayed a high degree of professionalism.

Along with that, it is to him that full credit must be given to putting the inquiry into the digital age. His knowledge of the

computer and computer systems was a major asset, not only to me, but also to the other parties and to the interested public at large, who had next-day access to all testimony via our website.

I am deeply grateful for his advices to me as the inquiry progressed. They were sound, given only after reflection, reasonable, and kindly offered. He continually kept me on course.

An acknowledgement would not be complete without indicating that my one-and-a-half-year close association with Mr. Messenger has created a lasting bond of friendship and respect.

Glenn Hodge, a junior lawyer at Cox Hanson O'Reilly Matheson, was my assistant counsel. Mr. Hodge assisted in witness interviews, document reviews and organization, research, and handling much of the public contact with the inquiry. He conducted the direct examination of a number of witnesses and organized and conducted the public forum session of the inquiry. He was a great help to me. His performance exhibited the qualities one likes to see in a young lawyer at the beginning of his career.

Jennifer MacIsaac of the Bristol Group acted as our media relations advisor. My counsel and I are thankful for her assistance with ensuring that the public, through the media, received correct and up-to-date information on the processes and substance of the inquiry.

I must also acknowledge the counsel of the parties with standing. Most of my experience with counsel has been in adversarial situations. This was not such a situation. I was impressed and, more than that, proud of the professionalism each one exhibited. Their conduct throughout to each other, to the witnesses, to my counsel, and to myself was exemplary. They contributed greatly to the smooth operation of the inquiry. Each has merited my respect and gratitude.



# Part One

INTRODUCTION

---

REPORT OF THE **Nunn Commission of Inquiry**

# Introduction

---

## The Tragic Intersection of Two Strangers' Lives



October 14, 2004, was a fateful day in the lives of two Nova Scotians. Theresa McEvoy, the 52-year-old mother of three sons, was doing what she did most days in her work life as a teacher's assistant. She had driven home at noon, had lunch with one of her sons, and was driving back to school for the afternoon session. AB, a 16-year-old boy, whose life at this time was "spiralling out of control," was joyriding in a stolen car in the same area of Halifax.

Though they were unknown to each other, their lives catastrophically came together in one terrible moment when the vehicle driven by AB, at very high speed, went through a red light at the intersection of Connaught Avenue and Almon Street, then crashed into Ms. McEvoy's car. Theresa McEvoy was instantly killed. AB's life would never be the same.

It was this tragedy and the circumstances of AB's life and activities and his involvement in the justice system of this province that gave rise to the appointment of this Commission.

One must not relate these events as cold occurrences to be dissected and studied, but rather must humanize the events and address them as part of the lives of very real people to best understand not only the events, but their causes and their effects.

Some knowledge of the lives of Theresa McEvoy and AB provides a personal element to the events relevant to this inquiry for a better understanding of them and, indeed, of the submissions of the parties and of the final recommendations that I have made.

## Theresa McEvoy

The intersection of Connaught Avenue and Almon Street in Halifax is not unlike most other intersections in Halifax. However, to the McEvoy family it will always be the location of a family nightmare. This was not a typical intersection accident. It had devastating effects on the McEvoy family and upon all those who knew and loved Theresa. To her family, all her friends, and many with whom she came in contact during her lifetime, Theresa McEvoy was a very special person.

During the inquiry hearings, I invited the McEvoy family to provide me with a brief biographical sketch of Theresa. They prepared a wonderful document that gave us a glimpse into the life of this special person. The document was entered as an exhibit, and I am pleased to summarize parts of that exhibit here.

Theresa was born in Neil's Harbour, Cape Breton, on January 17, 1952. She was the middle child of seven children. Both her parents came from large families, 13 children on her mother's side and six on her father's. She grew up in the village of Ingonish Beach and attended school there up to grade 11 and at Baddeck for grade 12, as that grade was not available in Ingonish.

Following school she worked at the Highland Links Golf Course, and two years after her mother passed away in 1974, she married and moved to Halifax where her husband was studying medicine at Dalhousie. She worked at several jobs during this time. Unfortunately, the marriage did not last, and they divorced in 1980, though they remained friends through the years since.

She remarried in 1983 to Ian Fraser. Three sons, Adam, Devin, and Lukas, were born to them. She was thrilled to have these children, loved them dearly, and took part in all their activities both at home and at school. She often commented that "raising three boys is a sure 'in' to Heaven." During the children's school years Theresa was very much a part of the whole school life, serving as a parent, volunteer, and friend to students, staff, and other parents.

This marriage ended in separation in 1997. At this time, Theresa started substituting at various schools as a teacher's assistant helping children who needed one-on-one attention. She was hired as an educational program assistant at St. Agnes Junior High School and worked full time with several students over a five-year period. During that time she took courses in sign language and attended any workshops offered to learn about the latest skills to aid in their learning. When one of her students did physiotherapy several times a week, Theresa learned the student's program to assist her. The same student was taking violin lessons, and Theresa would take her to her lessons. Theresa decided she would get a violin and take the lessons with her. She was always wanting to expand her knowledge to help the kids. She spent hours of her own time researching.

She loved her work, was proud of the successes of her students, however small, and made a significant impact on all the students in the classes where she was involved. On the day she died, she was doing what she loved. She had gone on a school field trip in the morning, had lunch with her son Adam, and was returning to school. When the family arrived at her home on the day of the accident, her neighbours were standing on the sidewalk, lined up like an honour guard, hugging each as they passed by. Theresa seemed to have had a magic touch with everyone she met.

That Theresa was a very special person to her children, her extended family, her co-workers, her students, and indeed, all children was made clear to this inquiry, as was her interest in learning and helping in the education of those who particularly needed special help.

### **AB: A Boy in Trouble**

That same intersection at Connaught Avenue and Almon Street will always be the location of a tragedy, though of a different kind and with different consequences, to AB, a young boy of 16 years of age and his family. His life, in intimate detail, is revealed in Chapters 4 and 5.





# Part Two

SCOPE, JURISDICTION, AND PROCESS

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REPORT OF THE **Nunn Commission of Inquiry**

# Chapter 1

## The Establishment of This Public Inquiry



As soon as the circumstances around the tragic death of Theresa McEvoy became known, there was a great hue and cry. The car that collided with Ms. McEvoy's car, causing her instant death, had been stolen. It was being driven at an extremely high rate of speed on a city street by a 16-year-old youth who, two days earlier, had been released from custody despite 38 outstanding criminal charges against him.

Media coverage was extensive. Fingers were pointed in every direction in an attempt to place blame, and very serious criticisms were levied against the federal *Youth Criminal Justice Act*<sup>1</sup> (YCJA). A great deal of pressure was being directed towards the Minister of Justice to find out what went wrong and to take corrective measures.

An internal investigation did not ease the pressure. The McEvoy family and other interested members of the public continued to pressure the Minister for an independent inquiry.

### 1.1 Orders in Council

By Order in Council dated June 29, 2005, and given under the signature of Her Honour Myra A. Freeman, Lieutenant Governor of Nova Scotia, and the Honourable Michael Baker, Provincial Secretary, Minister of Justice, and Attorney General, I was appointed Commissioner under the *Public Inquiries Act*<sup>2</sup> of Nova Scotia. My mandate was to inquire into and make recommendations concerning the following, as set forth in part of the Order in Council:

1. *Youth Criminal Justice Act*, S.C. 2002, c.1.

2. *Public Inquiries Act*, R.S.N.S. 1989, c. 372.

Whereas Theresa McEvoy was fatally injured in a car crash on October 14, 2004, and that following an investigation a young person was charged with multiple offences arising out of the fatal car crash; and

Whereas the young person was released from custody two days previously on October 12, 2004;

(a) the Commissioner inquire into

(i) why the young person was released from custody on October 12, 2004;

(ii) the procedures and practices pertaining to the handling of the charges against the young person at the time of his release, in particular,

(A) what were the procedures and practices,

(B) whether those procedures and practices were followed, and

(C) whether those procedures and practices were appropriate;

(iii) the actions of law enforcement, the Public Prosecution Service, the courts and justice or other public officials, up to and including October 14, 2004, with respect to the handling of the charges against the young person;

(iv) the actions of law enforcement, the Public Prosecution Service, the courts and justice or other public officials after the young person's release up to and including October 14, 2004;

(v) any other matter, at the discretion of the Commissioner, that the Commissioner deems necessary to fulfill his mandate in (b) ...

Later in the inquiry process, my counsel and I determined that it would be necessary to seek an amendment to the Order in Council. The *Youth Criminal Justice Act* has particular provisions that restrict access to police and court documents relating to a young person being

dealt with under the act. Many of those documents relating to the young person at the centre of these circumstances, AB, were crucial for the required review of the facts and circumstances in this matter. While my counsel and I had been provided with the authority to request and review those documents, it became apparent that the same authority would have to be granted to the parties with standing and their counsel. This amendment was made in a second Order in Council, dated December 15, 2005. We were then able to put in place careful provisions regarding access and confidentiality of those documents subject to the YCJA restrictions, which worked well through the investigation and hearing process.

The complete text of both Orders in Council is set out in Appendix B to this report. My statements to the public and the press regarding access to the YCJA documents and the inquiry's approach to these exhibits, including in its Rules of Procedure, are also included, in Appendix O.

At the time of my appointment I was a Supernumerary Justice of the Supreme Court of Nova Scotia with my final retirement date being November 19, 2005.

As well, at the time of appointment, matters relating to the young person and fundamental to the Inquiry Commission were proceeding through the courts, a matter of some concern to the starting of the inquiry processes.

## 1.2

### **Establishment of the Inquiry**

On August 15, 2005, the Commission began the setting up of its offices and hearing room on the 7th Floor of the Centennial Building at 1660 Hollis Street, Halifax, Nova Scotia.

After considering a number of applications and making further inquiries, I appointed Michael Messenger of the Halifax law firm Cox Hanson O'Reilly Matheson as Commission Counsel on August 26.

We immediately started background work. The work began with the setting up of the initial operating procedures of the inquiry, including its *Rules of Procedure* and *Guidelines for Recommendations for Public Funding of Legal Costs*.

## 1.3

### **Inquiry Process and Key Dates**

Notices of Public Inquiry and a Call for Applications for Standing were published in various Nova Scotia newspapers and the *Royal Gazette* between October 6 and 13, 2005. I called a media conference on October 11, during which I gave an opening statement as to my terms of reference and the general thrust of the investigations to be carried out by the Commission. I explained the aim of making recommendations where such were found to be necessary.

Eight Applications for Standing were made to the Commission by written brief and orally at a hearing held on October 25. Four of the applicants requested a recommendation for public funding of legal costs.

On October 27, by written decision, I granted standing to all eight applicants and agreed to recommend public funding of legal costs to the four who made the request. My decisions on standing and funding are included in Appendix O.

Those granted standing were:

- Royal Canadian Mounted Police
- Halifax Regional Police
- Attorney General of Nova Scotia
- Canadian Bar Association, Nova Scotia Branch
- William Fergusson, Q.C.
- Leonard MacKay
- Theresa McEvoy Family
- The Young Person (AB)

It was the last four of these who also received a recommendation for public funding of legal costs. The hourly rates and attendance conditions were fixed by me as Commissioner and agreed upon by the counsel involved.

Mr. Messenger, Commission Counsel, then began gathering documentation from the various parties and meeting and interviewing prospective witnesses.

Between the end of October and the first week of January, more than 8,200 pages of documents were received, and over 50 prospective witnesses were interviewed and “will say” statements prepared. All the documentation, together with the names of prospective witnesses and their statements, were distributed to the parties’ counsel.

I should note here that all documents were scanned and electronically copied to disc, providing easy access via computers. As well, arrangements were made to copy all transcripts of evidence to disc, with overnight delivery of each day’s transcript of testimony. As most of the documentation received by the Commission related to young persons and was protected by the *Youth Criminal Justice Act*, only the parties granted standing and their counsel were provided access to the documentation. However, as this was a public inquiry, transcripts of each day’s testimony were posted on the Commission’s Internet site, [www.nunncommission.ca](http://www.nunncommission.ca), to give widespread public access to the evidence being presented.

Advertisements were then placed in the daily newspapers giving notice that the Commission’s public hearings were to begin on Monday, January 16, 2006.

Several days before, on January 12, the judge of the court dealing with AB, the young person whose actions gave rise to this inquiry, determined that he should be sentenced as an adult for the crimes relating to Ms. McEvoy’s death, and a sentence was imposed. With that sentencing, AB’s criminal proceeding ended. We were able to commence the inquiry hearings with no concern that they would have an effect on the criminal matters and vice versa.

Hearings continued throughout the rest of January, February, and early March, resumed again in May, and finished in June with final submissions of counsel. A list of the days the inquiry sat is shown in Appendix E, and Appendix F contains a list of the witnesses heard.

By the end of formal evidence the inquiry had heard from 47 witnesses (along with three witness statements of other individuals) and had approximately 12,000 pages of documents filed as exhibits.

After the testimony concluded, upon application I granted standing to the Halifax Regional School Board to enable them to make written and oral submissions.

# Chapter 2

## Scope and Jurisdiction of This Inquiry



### 2.1

#### The Nature of a Public Inquiry

A public inquiry like this one is appointed by an Order in Council (a document prepared by the provincial Cabinet) with a specified mandate. An inquiry is generally called in response to a public issue or event, often an event with tragic dimensions like the death of Theresa McEvoy. A provincial statute, the *Public Inquiries Act*<sup>3</sup>, provides the process. The mandate of a public inquiry is to consider facts and issues relating to the events, usually to find out what happened and determine the cause of the tragedy. An inquiry culminates in a public report to Cabinet that includes recommendations arising from the commissioner's review of the circumstances.

Sometimes when someone dies in unusual circumstances, the government appoints a fatality inquiry, under a separate statutory framework, to determine the cause of death. The government did not take that route in response to Ms. McEvoy's death. That is because a public inquiry can have a broader scope. A public inquiry is more than just fact finding; it can become an important element in the development of public policy.

During court proceedings that took place during the course of the last provincial public inquiry in Nova Scotia, Justice Cory of the Supreme Court of Canada said:

As ad hoc bodies, commissions of inquiry are free of many of the institutional impediments that at times constrain the operation of the various branches of government. They are created as needed, although it is

1. *Public Inquiries Act*, R.S.N.S. 1989, c. 372.



an unfortunate reality that their establishment is often prompted by tragedies ... or grave miscarriage of justice.

[ ... ]

One of the primary functions of public inquiries is fact-finding. They are often concerned, in the wake of public shock, horror, disillusionment, or skepticism, in order to uncover “the truth.” Inquiries are, like the judiciary, independent; unlike the judiciary, they are often endowed with wide-ranging investigative powers. In following their mandates, commissions of inquiry are, ideally, free from partisan loyalties and better able than Parliament or the legislatures to take a long-term view of the problem presented. Cynics decry public inquiries as a means used by government to postpone acting in circumstances that often call for speedy action. Yet, these inquiries can and do fulfill an important function in Canadian society. In times of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at solving the problem. Both the status and high public respect for the commissioner and the open and public nature of the hearing help to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole. They are an excellent means of informing and educating concerned members of the public.<sup>2</sup>

2. *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 at 137.

In preparing for my work in this inquiry and in writing this report, I took that broad public policy role seriously. The recommendations in this report, though directly related to the events that led to AB’s release and the actions that caused Ms. McEvoy’s death, will, I

trust, contribute to the ongoing development of policies that protect public safety, prevent crime, and support youth at risk.

The inquiry process itself plays a role in educating and informing the public. As one observer has noted, “Inquiries both contribute to the public policy environment and help fill in gaps in governmental accountability by collecting and publicizing information that has generally not been readily accessible to the public.”<sup>3</sup> That was the case during this inquiry. Through the evidence of experts like Prof. Nicholas Bala, British Columbia Assistant Deputy Minister Alan Markwart, and Robert Lutes, Q.C., the public following the hearings in the media heard balanced, informed, and current thinking about some of the central issues in youth justice.

Some of the evidence in my mandate, particularly that relating to the actions taken by various people in light of the provisions of the *Youth Criminal Justice Act*<sup>4</sup>, deals with controversial topics. Controversy arises here because people hold strong views about how our society deals with its young offenders. Some of those views—even those that differ—are based on correct information; some are not. All are deeply held. Controversy can stimulate better thinking. Sometimes it means challenging conventional wisdom or established practice. I have not shied away from doing so.

## 2.2 Limitations on Jurisdiction

In addressing the scope of this inquiry as I have interpreted my mandate in the Order in Council, I must review important considerations about jurisdiction. These considerations include questions of the constitutional limits of my jurisdiction to make findings or recommendations on matters that may be considered federal rather than provincial in nature.

Some of the following discussion, which is somewhat detailed, may make parts of this chapter less accessible to lay readers of this report. Nevertheless, this analysis is important for providing the foundation for the approach I have taken in making recommendations.

3. D. Shugarman in A. Manson and D. Mullan, eds., *Commissions of Inquiry: Praise or Reappraise?* (Toronto: Irwin Law, 2003) at 128.

4. *Youth Criminal Justice Act*, S.C. 2002, c.1.

## Questions of federal vs. provincial jurisdiction

The Province of Nova Scotia set up this Commission of Inquiry under the provisions of the provincial *Public Inquiries Act*. It goes without saying that a provincial statute such as that act cannot be effective beyond the constitutional limits of a provincial legislature's authority. The act itself notes this in section 2, which limits an inquiry "into and concerning any public matter in relation to which the Legislature may make laws."

Regarding the areas raised in the Order in Council that concern criminal law and procedure, there is no question that it is appropriate for me to consider issues relating to the "administration of justice in the Province," since that is a matter our Constitution squarely places within the scope of the authority of the province.<sup>5</sup> I am also able to investigate matters of general scope, such as youth justice generally, without concern for questions of jurisdiction.

On the other hand, the enactment and amendment of criminal laws, whether through the *Criminal Code*<sup>6</sup> or other statutes like the *Youth Criminal Justice Act*, are matters for the Parliament of Canada, not the Legislature of the Province of Nova Scotia.<sup>7</sup> Given our constitutional framework, the Governor-in-Council of Nova Scotia would not have the authority to set up a public inquiry for the purpose only of inquiring into and making recommendations for changes to the *Youth Criminal Justice Act*.

That is not to say that provincial public inquiries have not occasionally made recommendations calling for changes to federal laws. For example, in the last provincial public inquiry in Nova Scotia, the Westray Mine Public Inquiry, Commissioner K. Peter Richard in his November 1997 report called directly on the Government of Canada to study the accountability of corporate executives and directors for wrongdoing and called for necessary amendments to federal laws.<sup>8</sup> It appears from a review of some decisions of the Supreme Court of Canada that generally a provincial

5. *Constitution Act*, 1867 (U.K.), 30 & 31 Victoria, c.3, c.11, s. 19.

6. *Criminal Code*, R.S.C. 1985, c. C-46.

7. *Constitution Act*, para. 27.

8. K. P. Richard, Commissioner, *The Westray Story: A Predictable Path to Disaster*, Report of the Westray Mine Public Inquiry, November 1997, at 601 (Recommendation 73).

inquiry may inquire into some aspects of federal legislation, but it may not explicitly undertake to assess the effectiveness of federal legislation or use the inquiry process as a mere prelude to prosecution.<sup>9</sup> A provincial inquiry may submit a report in which it appears that changes in a federal law would be appropriate.<sup>10</sup> Where federal and provincial aspects of a matter are closely related, as in the area of criminal justice, some incidental consideration of relevant federal laws is appropriate. The limits will be a question of degree in each case.

The operation of the federal *Youth Criminal Justice Act*, especially its provisions regarding pre-trial detention, is at the very centre of the mandate of this inquiry. Throughout all of these aspects of the inquiry, the YCJA played a dominant role, and it was the subject of detailed review and an essential part of my inquiry. I find in this report that AB was released on October 12, 2004, because, perhaps primarily, the policies of the YCJA presumed his release in the circumstances. There is no jurisdictional concern in my considering the operation of the relevant parts of the act. This report can quite properly comment on how the YCJA was applied on the facts of this case and the role that the act had in AB's circumstances. Indeed, I have set out in some detail what I understand the legal requirements of the act include. I will consider the decisions made by the various players in the justice system in light of those requirements.

The jurisdictional difficulty comes in the question of whether I can, or should, make recommendations that may relate to proposals for change to parts of the YCJA, a federal law. Some of the evidence, questions, and submissions that have been placed before me have raised issues that are in the areas of federal jurisdiction or that could be considered as beyond the areas in which the Legislature of Nova Scotia may pass laws.

The parties with standing differed in their submissions on how far my recommendations should reach. Some argued that I should take a broad view of my mandate as Commissioner and have encouraged me to make particular recommendations calling, for

9. *Attorney General (Quebec) and Keable v. Attorney General (Canada)*, [1979] 1 S.C.R. 218.

10. *Di Iorio v. Montreal (City) Common Jail*, [1978] 1 S.C.R. 152. At 392, the Court stated: "A provincial commission of inquiry, inquiring into any subject, may submit a report in which it appeared that changes in federal law would be desirable. There is nothing novel in this. Changes to the *Criminal Code* might seem warranted in which event one would expect the Attorney General to act in liaison with the Federal Government, which is done daily ..."

example, for specific wording changes to sections of the *Youth Criminal Justice Act*.

The Government of Canada did not seek standing before this inquiry and made no submissions before me on questions of jurisdiction, evidence, or witnesses' or parties' suggested recommendations. Lawyers from the federal Department of Justice represented the RCMP, but the RCMP's grant of standing was limited to areas of their specific interest. The RCMP's final submissions raised strong cautions about the scope of my jurisdiction in this regard. However, because the RCMP takes no position on legislative change, I do not interpret those cautions as anything other than helpful suggestions and not the position of the Government of Canada. I nevertheless have considered the question carefully.

In youth criminal justice, there is no bright line between the questions of federal or provincial jurisdiction, even though the governing law is federal. The YCJA, while a federal statute, leaves the majority of its implementation to the provinces. I heard evidence from senior justice policy makers in the Province of Nova Scotia about the detailed consultative process that is continually under way between the Government of Canada and the governments of the provinces to discuss changes to the federal criminal laws. These consultations take place at the practical and policy development levels (such as law reform meetings and national inter-jurisdictional standing committees on youth justice) and at the highest levels. I learned about regular meetings the Minister of Justice of Canada has with his provincial counterparts in which legislative change is discussed. The Minister of Justice for Nova Scotia has, at those meetings, advocated changes to the YCJA, some in response to the tragic death of Ms. McEvoy. I understand that the Ministers of Justice have agreed to examine some areas of legislative change as a result of those meetings. Joint communiqués from those meetings have, in fact, made reference to the ongoing work of this inquiry.

Based on the operation of the YCJA to this situation, I have determined that it is important to comment on some areas of potential change to this federal legislation. I understand the jurisdictional concerns, but I am satisfied that I am not outside of the scope of this inquiry's mandate by considering and commenting on the evidence I heard about changes to the YCJA in this regard. As I noted, in its consultations the Province of Nova Scotia has undertaken advocacy for youth criminal justice legislative change. I have approached my recommendations by addressing them to provincial officials in their continuing advocacy efforts. In some cases, I am supportive of the positions they have already put forth. I am hopeful that the Government of Canada will find my comments and observations about the YCJA in action—both supportive and critical—to be helpful in a time of legislative reconsideration, rather than as a jurisdictional irritant.

### **Administration of the RCMP**

One of the constitutional limits of a provincial inquiry's jurisdiction is that it may not inquire into the internal operations of a federal entity, including the RCMP. While I examine the actions of individual RCMP members in some detail relating to these events, except to the extent that I have called for recommendations relating to policing generally in the province, I have not had to consider particular internal policies.

### **No conclusions on civil or criminal responsibility**

The inquiry's mandate is clear that in the hearings or my report I cannot conduct a criminal investigation, nor can I make conclusions or recommendations regarding the civil or criminal responsibility of any person or organization. To do so would clearly be beyond the scope of my jurisdiction, and I have not. In fact, while I have carefully assessed the actions of individuals in these events and have

questioned some decisions or approaches, I have not specifically criticized or found evidence of misconduct on the part of any individual. Individuals work within a system of laws, administration, and procedure. The system, as it existed at the time, did fail. I have not hesitated to note those failures or to make recommendations for change.

## 2.3

### **The Order in Council: Four Parts**

As I have noted, this Commission of Inquiry was promulgated through Order in Council 2005-259, on June 29, 2005. That document provided me with my mandate. In making a determination of the scope of that mandate, and thus the scope of the issues that I was to hear and ultimately consider in my report, the OIC was the document from which this Commission derived its authority. The document itself is set up in several paragraphs, using formal legal language. In essence, one can read the OIC as giving this Commission a four-part mandate. I will briefly discuss each part in turn, and the kinds of matters or issues that may be considered under each one. Finally, I will explain my approach in this report to what I have determined to be the three areas of recommendation: procedure, administration, and accountability; advocacy for changes to the *Youth Criminal Justice Act*; and crime prevention through programs and resources for children and youth at risk.

### **Why AB was released from custody on October 12, 2004—OIC para. (a)(i)**

As I will explain, AB, the young person at the centre of the facts giving rise to this inquiry, was released from court in Windsor on October 12, despite the fact that he was facing a host of charges relating to car theft and joyriding. Implicit in the call for me to

consider this part of my mandate is the suggestion that AB should *not* have been released and that if he had instead been kept in custody he would not have caused Ms. McEvoy's death. As I will make clear, I agree that he should not have been released. But the evidence is less clear whether that would, in fact, have resulted in his being held in custody for long enough to prevent his crimes of October 14.

As I have determined and set out in detail later in this report, there were several factors that contributed to his release. These included processes of court administration, the exercise of discretion of lawyers in light of the YCJA, problematic communication, incomplete information, and related matters. I will consider all of those factors. They are, with the exception of some aspects of the internal operations of the RCMP, within the control of the Province of Nova Scotia. However, I have also found it is impossible to answer the question as to why he was released without considering the operation of the governing law, particularly the *Youth Criminal Justice Act* and its provisions relating to pre-trial detention for young persons.

### **Review of procedures and practices relating to the handling of the charges that were pending against AB on the date of his release, October 12—OIC para. (a)(ii)**

The wording of this part of my mandate leads me to look carefully at specific aspects of the administration of the youth criminal justice system, some of which may have contributed to the first part of my mandate regarding why AB was released from custody. As I will explain, AB was facing numerous charges at the time of his release. The first charge was laid in January 2004. I will consider the procedures and practices relating to those charges as they moved slowly through the youth criminal justice courts. The OIC indicates that I am to identify and evaluate the procedures and consider if they were followed or not. I have done this in the course of my findings.



**The actions of public officials “with respect to the handling of the charges” against AB and after his release up to and including October 14—OIC paras. (a)(iii) and (a)(iv)**

I am to look not only at practices and procedures, but also at the actions of public officials relating to the handling of the charges until the collision that caused the tragic death of Ms. McEvoy. These public officials include law enforcement officers, prosecutors, and staff with court administration and the Department of Justice; but the category is clearly not limited in the OIC to those involved in the criminal justice system. Intimately involved in AB’s life as the charges accrued were, for example, employees of the Department of Community Services, its partner agencies, educators, and others. I have found that, given the nature of some public officials’ involvement with AB during the time the charges accrued, I could not understand their actions or involvement by only starting my examination in January 2004, when AB received his first charge. To fully consider the actions of public officials, Community Services, and educators, for example, in some cases I needed to look farther back in time to understand the context.

**“Any other matter, at the discretion of the Commissioner” deemed necessary to fulfill my mandate—OIC para. (a)(v)**

This is certainly the broadest clause in the OIC and potentially widens my mandate beyond the otherwise fairly narrow procedural matters. Some have described it as a “basket clause.” It is limited, in that “any other matter” must be necessary, in my sole discretion, to make findings, conclusions, and recommendations. I have considered whether there were other matters to consider in the course of the hearings, as well as in the preparation of this report. The issues that were raised in the submissions of the parties, as well as in some of the evidence led in testimony before me, included areas that were

broader in focus. These include, for example, the approach the Province of Nova Scotia takes in providing supports or resources for children and youth at risk of coming into conflict with the law. I have considered this basket clause and set out my approach and reasons in the next section.

## 2.4

### **Scope of My Discretion to Consider “Other Matters”**

I have decided to take a practical approach to the question of the extent to which I should exercise my discretion to consider “other matters.” The questions raised before me include broad themes: How do we as Nova Scotians approach those of our youth at risk of being in conflict with the law? How can our approach to youth criminal justice be improved, given the lessons we can learn from the specific facts of AB’s circumstances? To adequately consider these themes, through my counsel I needed to conduct a thorough and fair investigation of all the factors in issue. This is consistent with the broad public policy goals of a public inquiry.

Unquestionably, the response to why AB was released from custody on October 12 required a full inquiry into who AB was, what he had done and why he was in difficulty with the law, and what path led him to be before the courts in 2004 and eventually at the intersection of Connaught and Almon on October 14. The detail in Chapters 4 and 5 demonstrates the extent to which these matters were looked into. The response also required an examination of what happened and who did what relating to the charges against AB. This included the procedures and practices in effect, as well as the actions of law enforcement, the Public Prosecution Service, the courts and justice, and other public officials. As this report indicates, all these areas of concern were inquired into in great detail.

At first glance, the wording of the Order in Council appears to be

quite restricted to those certain events referred to, with a similarly restricted discretion on my part. This was not the position of the McEvoy family who led the public pressure on the Minister of Justice to appoint this inquiry. They wanted an inquiry not only to look into matters concerning AB that led to October 12 and 14, but to inquire into and make recommendations about youth crime, its causes, and adequate responses by all our social and justice agencies to aid in its prevention.

During the hearings, as detailed evidence regarding social services, mental health, education, community organizations, and real-life experiences of members of the public was being presented, not one of the parties with standing, including the Province of Nova Scotia, raised any public objection or made any suggestion that the Commission was inquiring into matters beyond its mandate. All parties co-operated with my counsel in identifying appropriate individuals within government or the school system, for example, who could speak to broader themes.

However, the final submission of the Province at the end of the hearings expressed its position as follows:

The Province's long term initiatives to support children and families, including those aimed at protective and risk factors associated with youth offending behaviour, do not relate to the handling of the charges, actions of justice officials or the Province's administration of criminal justice and would not be captured by the mandate of the Commission in the Order-in-Council. Notwithstanding this apparent barrier, the Province would invite comments and recommendations aimed at further enhancing the Province's long-term initiatives to support children and families. Because the totality of the evidence before the Commission is not sufficient to enable a thorough evaluation of the Province's long term initiatives, the comments and recommendations should be general in nature.

Before continuing, I must indicate my appreciation of the invitation to make general comments and recommendations in areas arguably, though not necessarily, beyond my scope. I am prepared to say that I consider aspects of these initiatives to be in fact within my mandate, broadly considered, as I have explained. But the Province's comments are valid, and I recognize that I have not heard enough evidence to be able to provide detailed recommendations on most aspects of areas outside those concerning youth criminal justice. My approach reflects this perspective.

In this regard, I am mindful of the cautions raised by commentators on the role of public inquiries when commissions purport to engage in the development of public policy and not only fact finding relating to a specific set of events:

Under various legislative schemes, the objective of commissions of inquiry is to respond to the needs of the executive branch of government by investigating and advising independently and impartially on assigned issues ...

The inquiry process is characterized as much by investigation and research as by a contest between versions of truth. **It may point the way to a solution without identifying how it is to be implemented.** There is the intermediate though important purpose of undertaking research and analysis that other institutions for one reason or another may not appropriately undertake. **Commissions of inquiry frequently have fulfilled their task when they identify issues for consideration or resolution by the other institutions of government ...**

Since a commission of inquiry does not have the power to implement its own recommendations, then one of the key tests of its efficacy is the degree to which it meshes with other instruments of government. **A commission must**

**make intelligent and informed decisions about the extent to which it should leave certain issues and choices to other institutions.**<sup>11</sup>[emphasis added]

Some observers have also raised concerns about public inquiries that mix fact finding with broader areas of public policy formation. There is the risk that when an inquiry mixes investigation with policy assessment, recommendations relating to public policy may acquire what one writer has called “an unwarranted aura of ‘judiciousness’ and objectivity.”<sup>12</sup> The risk is described this way:

The public may be misled into thinking that the policy proposals are entitled to the same level of respect as the investigative findings of the inquiry. **The fact that an inquiry has done a thorough and impartial job of investigating the past may, in the public mind, create an exaggerated sense of the credibility of its policy proposals ...**

[A]djudication is one thing, and policy-making quite another. Adjudication looks at a heavily documented past; policy-making involves making projections about an uncertain future.<sup>13</sup> [emphasis added]

These cautions are relevant to the evidence before me about broader public policy relating to the Province’s approach generally to children and youth at risk of coming into conflict with the law. I heard considerable evidence concerning social services, mental health, education, and youth-oriented organizations. Most of this arose out of the involvement of each in AB’s life and provided necessary insight into his behaviour leading up to and during his rapid “spiral out of control.” His life experience was, in my opinion, absolutely essential as the basis for the inquiry into the practices and procedure relating to the handling of the charges against him and the actions of public officials regarding the handling of those charges.

11. Pross, Christie, and Yogis, eds., *Commissions of Inquiry* (Toronto: Carswell, 1990) at 23 and 27.

12. B. Schwartz, “Public Inquiries” in A. Manson and D. Mullan, eds., *Commissions of Inquiry: Praise or Reappraise?* (Toronto: Irwin Law, 2003) at 451.

13. Schwartz at 451–2.

During the presentation of this evidence, some shortcomings and areas of concern were identified in public policy areas relating more broadly to education, social services, mental health, or justice. All related to AB, at least indirectly. However, they also gave rise to critical comment and suggestions for change that are more general in nature.

The message to me, based on these cautions, is this. In my approach to these broad areas, I should identify the issue, consider the perspectives and evidence available, but recognize that I may not have all the information I need to make fully informed recommendations. I should then make general recommendations, but, in some cases, leave the specifics or details to other organs of government. That is generally the approach I have taken, particularly to those areas that are less directly related to circumstances in which AB found himself.

My broader approach also is linked to the context of how youth criminal laws have changed and the resulting stronger connections between youth criminal justice and social services. The evidence relating to AB that was expanded upon in a general sense has an additional and significant basis for relevance to the inquiry, and that is regarding the YCJA itself. Certainly the “practices and procedures” and their appropriateness cannot be considered without reference to the YCJA in much more than cursory fashion. Its role in the AB story was probed in great detail.

Prior to the *Youth Criminal Justice Act*, youth crime in all its aspects—from arrest and charge, through the courts, to sentence and custody—was primarily, and in almost all respects, a function of justice, that is, under the umbrella of the Department of Justice. The YCJA, however, has changed the former system drastically. Of course, justice is still the significant player, but the act has created an entirely separate system for youth. The penal powers of the *Criminal Code* are entirely removed for the majority of youth, and custody is only narrowly available in specific circumstances. I am sure that most people in Nova Scotia do not appreciate the extent of the shift in thought and approach to youth matters.

In fact, the YCJA is equally a piece of social legislation as justice legislation. Its aim is prevention of crime by addressing the circumstances underlying a young person's offending behaviour and his or her rehabilitation and reintegration into society. To this end, the act contemplates the involvement of the community and its agencies. It assumes the creation of systems and other means all directed to encouraging offending youth to take responsibility for their acts, to changing their behaviour patterns, and to helping them to improve their lives to mature as responsible citizens fully able to participate in society. This involves all the components of our social agencies.

What are the "circumstances underlying a young person's offending behaviour" that the act aims to address to prevent crime? Undoubtedly, they refer to the "risk factors" outlined in the testimony presented to the inquiry, all of which formed part of the complete AB story and relate directly to the issues being inquired into, including the approaches Nova Scotia takes to children at risk. To determine the appropriateness of the practices and procedures in place regarding AB, one must take into consideration the adequacy of these practices and procedures to conform to and meet the requirements of the YCJA.

## 2.5

### **Approach to Analysis and Recommendations**

Based on my considerations of jurisdiction and scope, set out in detail above, I have adopted the following approach to the analysis and recommendations arising from my review of the facts in this case and the evidence that was presented to me during the public hearings. As a necessary background, I have set out in detail in Part 3 the factual background, starting (as we did during the hearing) with facts relating to Ms. McEvoy's tragic death. It is that event that prompted the establishment of this inquiry.

In my section on analysis and recommendations, after a brief review of the context of youth crime in Nova Scotia, I have considered

recommendations under three main headings. The first, set out in Chapter 9, is “Administration of Justice and Accountability.” The second, set out in Chapter 10, “Advocacy for Changes to the *Youth Criminal Justice Act*,” includes my comments on the operation of the relevant statutes, including the YCJA, and my calls for the government of Nova Scotia to continue advocacy for legislative change. Finally, set out in Chapter 11, “Addressing the Causes of Youth Crime: Targetting Resources and Prevention,” I have made some broad recommendations relating to the Province of Nova Scotia’s approach to youth and children at risk and being in conflict with the law.

The order in which these three chapters appear is no accident. I consider the topics in Chapter 9 to be at the “core” of my mandate. These include some of the specific questions that I have been called upon to answer relating to court administration, procedures, and similar matters. I have also in that chapter discussed issues of accountability in the criminal justice system relating to new or proposed facilities for young people, like the proposed attendance centre in Halifax. These topics relate not only to specific terms in the Order in Council, but also directly to the facts of this case, including AB’s involvement with the youth criminal justice system. I have pointed to specific factors and procedures that had an effect on his progress through the courts and have also considered programs (like bail supervision and the attendance centre) that could have made a significant difference in his particular case.

As I have noted, the provisions of the *Youth Criminal Justice Act* are also a key factor in understanding what happened. However, I am mindful that the assessment of the operation of the provisions of the act is perhaps one step beyond the core of my mandate. Therefore, while I have analysed these issues in Chapter 10 and have made recommendations relating to them, my recommendations are slightly less detailed in nature.

Finally, on what perhaps be considered the “fringe” of my mandate is my analysis and recommendations relating to responses in Nova Scotia to the causes of youth crime. Earlier in this



chapter, I set out the cautions I have received and heard from the Province of Nova Scotia. I have also explained my view on the importance for public policy in this province of my commenting on existing and new programs for children and youth at risk. In this fringe area, in Chapter 11 I have tried to make comments and recommendations of a more general nature only. This is consistent with the invitation of the Province. I hope that my recommendations will point Nova Scotia toward a further, more robust consideration of the issues to ensure that we can take the necessary steps to reduce the number of young criminals like AB who pose such a danger to our society. Readers should not interpret the general nature of my comments as suggesting that there is not urgency in dealing with these matters. On the contrary, many studies have been done on these issues. According to the reports of the Province, most of the factors that affect the likelihood of children becoming into conflict with the law are known. There is considerable scope for quick and effective action on these matters.



# Part Three

## BACKGROUND FACTS

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REPORT OF THE **Nunn Commission of Inquiry**

# Chapter 3

## The Tragic Death of Theresa McEvoy, October 14, 2004



### 3.1

#### First Signs of Trouble

On October 14, 2004, at about 12:50 p.m., Cst. Jonathan Jefferies and his partner, Cst. Chris Thomas, both members of the Halifax Regional Police, were driving north on Kline Street in a marked police van. As they came to the intersection of Kline and Oak Streets, a white car travelling west on Oak Street “rolled” through the stop sign. Constable Thomas, who was driving the police van, was forced to apply the brakes to avoid a collision. Both vehicles came to a stop in the intersection. Constable Jefferies testified that he could see into the vehicle; there were at least four individuals in it, and he felt there was eye contact between the driver and himself. The white car immediately continued west on Oak Street.

Because the car had gone through the stop sign without stopping and there was a near collision, the police constables smelled trouble. They decided to pull in behind the car and follow it, intending to do a traffic stop. They were unable to read the licence plate because of the distance between them. The next stop sign on Oak Street was at the intersection at Beech Street. Once again, the white car went through without stopping. By this time the distance between the vehicle and the police van was growing, and as the police van went through the Beech Street intersection, the white car started to pick up speed. Constable Jefferies activated the emergency lighting on the police van as a signal for the car to stop and to alert any other vehicles or pedestrians that they were picking up speed.

## 3.2

### **The Police Pursuit**

By now the errant vehicle had reached the intersection of Oak Street and Connaught Avenue. It sped through another stop sign without stopping and entered the lunch-hour traffic on Connaught, a major Halifax street. As the police van entered that intersection moments later, Constable Jefferies turned on the siren. The car increased its speed. As it approached the intersection of Connaught and Chebucto Road, the traffic light changed from amber to red. However, the white car did not stop and drove right through the intersection.

Constable Jefferies was in contact with the police station by radio, telling them that the vehicle had gone through two stop signs and that he and Constable Thomas intended to stop the vehicle. Then, as the car went through the third stop sign onto Connaught Avenue and the driver was clearly ignoring the police lights and siren, he advised the dispatch centre that the vehicle had gone through a red light at Chebucto Road. Police dispatch could hear the sound of the siren through the radio system. Because the Chebucto intersection is a busy traffic area, the police van stopped before entering the intersection. The officers received a radio message from Sgt. Brenda Zima, their senior officer, directing that they not pursue the vehicle. Once safely through the intersection they turned off the siren and emergency lights. The pursuit was shut down.

## 3.3

### **The Collision**

The white car was still dramatically increasing its speed as it continued further on Connaught Avenue. Constable Jefferies estimated its speed as reaching close to 110 km/h. As the car approached the intersection of Almon Street, it was facing a red light. Constable Jefferies testified that though the pursuit was called off, the police van

was continuing in the same direction as the car. He could see the colour of the traffic light as the car approached it at high speed, and he could see that the vehicle was going through the intersection without regard to the traffic signal. He also saw another vehicle travelling west on Almon Street entering the intersection with a green light. Then, the inevitable happened. The two cars collided. Constable Jefferies described the high-impact collision:

[T]he [white car] hit it on the driver's side. I observed that vehicle, the white Chrysler, actually do a nose-dive. The front of the vehicle went down, the rear of the vehicle went up in the air, and Ms. McEvoy's vehicle actually went airborne.

Constable Jefferies testified that the force of the collision lifted the McEvoy car into the air. Her car made a half turn in the air over the grass median and landed in the southbound lane of Connaught Avenue.

Immediately after the accident, Constable Jefferies again activated the van's emergency lights and siren and proceeded to the scene of the tragic collision. He advised dispatch by radio that there was an accident with injury or a fatality.

As they were arriving at the scene, Constable Jefferies saw the driver of the white car get out, walk to the rear of the car, and stand there. When the police van stopped, he fled. Constable Thomas ran after him.

Two other young men got out of the car on the passenger side of the white vehicle, and Constable Jefferies, believing they were also going to flee, drew his revolver and ordered them to place their hands on the car. The two complied, and he placed them under arrest, handcuffing one. The other was handcuffed by a uniformed RCMP officer who had happened on the scene on his way into the city.

Two girls had also been in the car. One got out of the car and collapsed on the ground. She indicated that she had been hurt. The other girl remained in the back seat.

Once he had secured the situation with the help of the RCMP officer, Constable Jefferies directed his attention to the other vehicle. Several passers-by, one a nurse, were attending to Ms. McEvoy as they awaited the ambulance.

Theresa McEvoy, the only person in her car, had been killed.

The police soon caught the boy who had been driving the white car and had fled the scene. He was soon identified as AB.

### 3.4

#### **Police Accident Investigation**

The Halifax Regional Police accident scene investigators arrived within 20 minutes of the accident. Their officers performed a thorough investigation of the scene itself and later of the actual damage to the vehicles.

Connaught Avenue is a four-lane commuter route, divided by a grass median, running north to south. It is residential, with a posted speed limit of 50 km/h. Almon Street is a two-lane road running east-west crossing Connaught Avenue. It is also residential with a 50 km/h speed limit. The intersection itself is controlled by traffic signals.

Because of a lack of any physical indications, such as skid marks or other signs of speed, the pre-accident speed of Ms. McEvoy's vehicle, a small Toyota station wagon, could not be determined. The investigators concluded, however, that since it appeared that Ms. McEvoy had taken no evasive action (such as emergency braking or swerving), she must not have seen the white car before the collision. It was also indicated that because of an obstruction to her view south on Connaught Avenue, she would not have been able to see in that direction until she was actually in the intersection. The police investigators determined that she was moving into the intersection with a green signal and that she was only into the intersection a short distance, a little more than the width of one lane, before she was struck by AB's oncoming car.

The pre-accident speed of AB's car also could not be definitely determined, because it collided with a lamppost after the collision with Ms. McEvoy. The conclusion of the investigators was that the white car was travelling into the intersection against a red signal and that the substantial damage resulting to the cars indicated a high-speed collision. Other police evidence indicated that AB's car was increasing its speed, and just prior to the accident its speed was approaching or exceeding 100 km/h on the residential street.

From the evidence presented to the inquiry, I conclude that Ms. McEvoy was proceeding into the Almon Street–Connaught Avenue intersection, with the signal light green in her favour. She never saw the oncoming car, travelling toward her at high speed. The white car struck Ms. McEvoy's Toyota directly at the driver's door. The severe impact caused her death, if not instantly, then within mere moments of the collision.

### 3.5

#### **Internal Police Review**

As I have set out, when AB's white car rolled through the Beech Street stop sign, one block beyond Oak Street, Constable Jefferies made radio contact with dispatch indicating their intent to pull over the car. Nine seconds later, Constable Jefferies reported that they were on Connaught Avenue and the siren was on. Dispatch and other police could hear the siren through the radio. Four seconds later, Constable Jefferies reported that the white vehicle was going through the Chebucto Road intersection, against a red light, which had just changed from amber. Four seconds later, he received the transmission from Sergeant Zima, the constables' watch supervisor, to cease the pursuit. The officers followed her order as the police van passed through the Chebucto Road intersection.

It was eight seconds later, though at some distance away at the Almon Street intersection, that the accident occurred.

This time scenario and pursuit were investigated thoroughly by an internal investigation led by Sgt. Richard Shaw of the RCMP. An event of this nature is always followed by an internal investigation. No fault was found against Constables Jefferies and Thomas for their actions. In fact, the events and behaviour of the constables were described as a textbook example of appropriate application of the police pursuit policies of the Halifax Regional Police.

The police have a duty to enforce the various laws, and when they observe a breach of the law, they are expected to act. Here, AB's first breach that day might be described as minor, yet it was proper for the police to react, especially since the offending vehicle was being driven by a young person. As the breaches continued in rapid succession, the need to intervene grew more serious as the dangerous circumstances escalated.

The first measure, of employing the flashing lights on a police vehicle, is customary as the signal for a vehicle to stop. The addition of the siren makes it very clear the vehicle is to stop. But also it serves as a warning to other vehicles and pedestrians to take notice that a dangerous situation is occurring. All these measures are directed towards stopping the pursued vehicle.

However, there is another aspect to be considered when a pursued vehicle does not stop, but rather increases speed to avoid the police. Such a situation puts other people in other vehicles and pedestrians at substantial risk, especially on busy city streets. The Halifax Regional Police, like other police forces, have policies to ensure the safety of the officers and the public.

Part 10 of the Halifax Regional Police *Standard Operational Policy and Procedure Manual*, in part, provides in Section 1:

#### **B. DEFINITIONS**

1. **Pursuit** – is defined for the purposes of this policy to occur when an attempt is made to apprehend the driver of a motor vehicle, provided the driver is aware of the attempt and is resisting apprehension



by maintaining or increasing his/her speed or otherwise ignoring the officer's attempt to stop him/her.

2. **High Speed Pursuit** – transpires when the operator of a pursued vehicle refuses to stop, the speed of the police vehicle exceeds the speed limit by 20 kilometers per hour with its flashing emergency lights and the siren is in full operation.

Among other provisions of the policy are:

#### **D. POLICY**

[ ... ]

3. All pursuits should be subject to the overriding principle they are to cease when the degree of danger to the public and participants exceeds the need to immediately apprehend the fugitive.
4. The instructions in this policy are meant primarily for high speed pursuits. It is possible that at greatly reduced speeds, good judgement will allow for some minor deviations. **Therefore, due to the complexity of factors which may be encountered, fixed rules are impractical and reliance must be placed on the effective and proper exercise of discretion by individual police officers.**
7. **Pursuits should not be continued when any of the following conditions exist:**
  - a. The pursuit:
    - i. is entered into for minor violations or for reasons of suspicion only;
    - ii. enters a residential area during such time that one might reasonably expect the public to be in that vicinity.
  - b. Hazardous road conditions are encountered.

- c. Speeds exceed 50 kilometers over the posted speed limit.
- d. The driver can be identified or a licence number obtained by other means.
- e. The distance between the violator's vehicle and the pursuing vehicle becomes too great.
- f. Injury occurs during the pursuit.

During the inquiry, particularly during questioning of the police witnesses involved in the events of October 14, there was some suggestion that Constable Jefferies and Constable Thomas may have breached the Halifax Regional Police policy on pursuits. The suggestion appeared to be that their actions may have contributed to the cause of the accident. I reject this.

This was not a high-speed pursuit, as the police van did not reach the defined speed of 20 km/h above the speed limit set as the minimum threshold in the definitions section of the policy.

At whatever speed, the pursuit was so short lived as to give some doubt as to whether it fell within the definition of a pursuit under the policy at all. It was terminated within eight seconds on Sergeant Zima's order. No fault could be found for activating the lights after two infractions. Similarly, adding the siren as they entered Connaught Avenue was absolutely necessary in the circumstances to warn other traffic and pedestrians. Then, within eight seconds the siren and flashing lights were shut down. This was wise because, by this time, it was apparent that AB's white car was greatly increasing its speed, and he showed no intention to stop. The intent was to flee, which is the very reason to stop a pursuit.

Not only was the shutdown wise and appropriate, but it was in harmony with the Halifax Regional Police pursuit policy. The evidence presented to this inquiry on this incident clearly indicates that the pursuit episode was textbook. No fault for the accident can be found against these two constables. Their behaviour was praiseworthy and not deserving of criticism.

The sole cause of this accident was the behaviour of AB, driving a stolen vehicle, who obviously intended to get away from the police at all costs. As I review his police record and involvement with the justice system, it will be quite apparent why his intention was so.

I have considered this aspect of the events, because considerable time was spent at the inquiry in both direct and cross-examination on this matter of pursuit. There was also some rather negative media publicity ensuing, and it should not be left as a loose end, with any implication that these two police officers, Constables Jefferies and Thomas, were in any way negligent in the performance of their duties on October 14 in this matter. On the evidence before me, they were not.

## 3.6

### **Turning Back the Clock**

I have started my review of the facts in this matter with the tragic events at October 14. I did so on purpose, to put the appropriate focus on the seminal event that prompted this inquiry, Theresa McEvoy's death. We took the same approach in the presentation of the evidence during the inquiry.

I now turn back the clock and consider the life and background of the other central character in this story, AB. His story starts in coastal Newfoundland in 1988.

# Chapter 4

## Patterns of Behaviour and Intervention: AB's Background



Theresa McEvoy's tragic death prompted the establishment of this Commission of Inquiry. But my terms of reference, in fact, require a focus more on another person—AB, the boy who was at the wheel of the car that struck and killed Ms. McEvoy. I am to consider the circumstances of the numerous charges he was facing on October 14, 2004, and the actions of public officials who were involved in the handling of those charges at various times.

I have been provided with submissions on the scope of this inquiry and issues around my jurisdiction. I have discussed those issues in detail in Part 2 of this report. Let me repeat that it has become clear that for me to understand the events and actions around the charges faced by this young person, I needed to understand the path that led him on that fateful day to be high on drugs and speeding through the intersection of Connaught Avenue and Almon Street in a stolen car. It is important context and background for an evaluation and consideration of public officials' actions and responses.

Before evidence at the inquiry began, there were reports that the situation of AB was such that he had somehow “slipped through the cracks” of the services and supports available to children at risk in Nova Scotia. The opposite is true. From a young age, AB and his family had substantial involvement with government social service agencies and personnel, education supports, and health facilities. Whether it was enough is another question. Setting out those services and their effects on his life choices is instructive for us in understanding the ways our Province seeks to support youth at risk of coming into conflict with the law. It also helps us understand how we as a society deal with young persons who have committed crimes.

AB's own path into crime was swift. Before January 2004, he had no criminal record. From that time to October 12, 2004, he committed crimes that resulted in 38 separate charges. He was arrested six times and appeared in court 11 times. All of this took place by the time he was only 16 years old. What is the social and family background of this young person whose actions caused so much tragedy? How did public officials interact with AB and his family? What contributed to his spiral into conflict with the law? And how did the youth criminal justice system deal with him once he had committed his crimes?

## 4.1 **AB's Early Life**

AB was born in a coastal village in southwestern Newfoundland in 1988. When he was three years old, his mother, TL, and his father separated. Around the same time, there were economic stresses in that fishing community, which had felt the effects of the cod moratorium.

TL started a relationship with the man who would become AB's stepfather. Because of the economic downturn, TL, her new partner, and AB left Newfoundland. The next few years were times of dislocation for AB. He and his family lived in Canso for three years, Prince Edward Island for four months during that time, and later Bridgewater for three years. From there, they moved to Halifax for less than a year and finally to Dartmouth, where TL and her husband were living at the time of the inquiry hearings. While both TL and her husband had fairly steady educational opportunities or employment throughout these years, all the moves meant significant disruption for AB during his childhood.

As he grew, AB maintained contact with his father and other family members in Newfoundland. He spent time there during most summers between 1991 and 2004. He had cousins and family in Bridgewater with whom he spent time, but no other family in Halifax

or Dartmouth where he and his mother and stepfather lived from the time he was 10 years old.

Unfortunately, AB's relationship with his father in Newfoundland was often strained. Except for summer visits, AB had little contact with his father after he and his mother and stepfather left that province. As he grew, he spoke on the phone with him at scattered times throughout the year. Throughout his childhood and youth, his parents often raised the possibility of AB returning to Newfoundland to live with his father. This never happened for longer than a month or two, and the visits did not always go smoothly. At least once, AB was sent back to his mother early from a visit with his father because of conflict between them. The uncertainty of this relationship coloured AB's family life and childhood stability.

Even as a young boy, AB's behaviour was a concern for his mother. As TL herself described it, AB often did not listen to her or his stepfather and did not respect them. At later times, she believed that he lied and stole from them. TL gave evidence during the inquiry. She spoke honestly about her life with AB and her family's difficulties. I believe that TL loves her son and had his best interests in mind. From the evidence, there were clearly patterns of conflict and dysfunction in AB's family. As he grew, he was often in conflict with his mother and particularly his stepfather. They both experienced frustration over behaviour they considered defiant. TL and her husband could have benefitted from additional parenting skills at different stages during AB's development.

TL did seek some assistance in parenting AB. In 1994, while in Canso, she contacted the Department of Community Services (DCS). She explained that AB, then six years old, was "disobedient, inattentive and unwilling to accept any parental influence or control." I heard no evidence from witnesses about this involvement with DCS, but the records from the time were disclosed and entered as exhibits.

A social worker investigated TL's self-referral and determined that AB was not a child in need of protection under section 22(2) of the

*Children and Family Services Act*<sup>1</sup>. The DCS social worker was able to refer AB for a medical and psychological assessment. In December 1994, the social worker suggested counselling by the Family Service Association and participation in a parenting program. Unfortunately, AB's family moved from the area soon after, and it appears that the family never participated in the recommended programs.

After the family moved to Dartmouth, TL again contacted DCS for assistance with AB. I will discuss this more-extensive involvement later in his story.

## 4.2

### **AB's Schooling**

AB's educational experience was difficult. Because of his family's frequent moves, he attended several elementary and junior high schools. His school records indicate that he displayed poor behaviour, which worsened over time, and he struggled with many of his subjects throughout his school years.

He started school in Prince Edward Island for part of grade primary and then finished grades primary and 1 in Canso. After his family's move to Bridgewater, AB was asked to repeat grade 1 at Hebbville Elementary School when an assessment determined that he was working below the expected grade level.

### **AB's school behavioural difficulties and diagnosis of ADHD**

It was not long after he entered school that he began to show trouble with the disruptive behaviour that would influence his ability to learn.

While he and his family lived in Canso, in July 1994, a local pediatrician diagnosed attention deficit hyperactivity disorder (ADHD) following a referral from his family doctor and a representative of DCS. The doctor provided reading material about the disorder

1. *Children and Family Services Act*, S.N.S. 1990, c. 5.

to TL, but it was decided to wait before attempting any medication. The family moved to Bridgewater soon thereafter.

During grade 1 at Hebbville Elementary in Bridgewater, AB's teacher reported that he was experiencing "great difficulty focusing and attending to his work." It appears that school staff were concerned that his disruptive behaviour was preventing him from learning and also suspected that he suffered from ADHD. He was again assessed, and the diagnosis of ADHD was confirmed. His family doctor prescribed the medication Ritalin. I understand that drug has a calming effect on many children who have ADHD, reducing impulsive behaviour and the tendency to "act out" and helping them concentrate on schoolwork and other tasks.

From his school reports at that time, AB's teachers noticed an "immediate" and "dramatic" improvement in AB's behaviour in class. His classroom teacher stated that since he started on his medication, "[h]is self-confidence level increases daily as does his concentration and desire to do better."

Despite these comments, TL, on her own initiative, soon stopped giving AB the prescribed medication. She thought the drug was causing AB to have a loss of appetite and severe temper tantrums. During the tantrums, she could not control him. It was severe enough to have her contact the local Department of Community Services for assistance.

TL does not recall discussing the temper tantrums or concerns she had about AB's reactions to Ritalin with her family doctor. To be fair, TL received conflicting messages about her son's disorder. During three months in the latter part of his grade 3 year, AB returned early to Newfoundland during an attempt to live with his father. His classroom teacher there dismissed the diagnosis of ADHD. She told AB's parents that he simply needed a stricter environment. According to TL, AB did well during that short time in the Newfoundland school.

But despite the medical diagnosis and the fact that his teachers had ongoing behavioural issues with him, TL sought no further



specific treatment for AB's condition. His poor school behaviour returned, but the tantrums disappeared. In Bridgewater, although she had discontinued AB's medication, TL did participate for a short time in a parent support group for children with ADHD.

I wish to comment on AB's struggles with attention deficit. Throughout AB's education records over the years he was in school, there are repeated mentions of "unmedicated ADHD," often cited as a significant factor in AB's school difficulties. I learned during this inquiry the crucial role that ADHD played in his life. I cannot underestimate the effect of attention deficit on his behaviour and the decisions he made nor its contribution to his lack of educational success. How different his life would have been if his ADHD had been better managed.

### **Continued elementary schooling**

AB stayed at Hebbville Elementary for grade 1 and part of grade 2, when he transferred schools to Newcombville Elementary for the remainder of the year. The first part of grade 3 continued at Newcombville, with the rest of that year spent in Newfoundland.

AB's family moved to Halifax in 1998 to be closer to his stepfather's work. TL also secured full-time employment there. AB entered the Halifax Regional School Board in 1998. He started grade 4 at Fairview Heights School but stayed there only until May 1999.

Through these years, teachers modified AB's program of studies to help address his behaviour and learning problems, but he continued to show difficulty in organization, attention, and language arts.

At Fairview, AB received resource assistance from a teacher specially trained in working with students with exceptional needs. He was reported again to have "difficulty focusing and staying on task" in the classroom. A school board psychologist conducted a psycho-educational assessment when AB was 10 years old (grade 4). His cognitive abilities were well within the average range. He

presented with a reading disability and again displayed characteristics associated with ADHD, which were “contributing to learning struggles in school.” The school recommended education and support for AB’s ADHD after his parents refused to consider medication.

The psychologist made recommendations about how his teachers could best assist him, including opportunities for movement in the classroom and hands-on or visual learning, modification of the language arts program, ongoing resource support, and additional supports for students with learning disabilities.

AB’s family moved again, this time to Dartmouth, and he transferred to Mary Lawson School in May 1999, near the end of his grade 4 school year.

We do not know which of the recommendations from the psycho-educational assessment were implemented at Fairview or Mary Lawson, but that report was available to his teachers and the administration of the school.

At Mary Lawson, AB completed the last weeks of grade 4 and grades 5 and 6. The reports from these years echo the concerns from other years: “[AB]’s progress this term has not been consistent due to behavioural challenges”; “He fiddles and wastes too much time”; “When on task he can perform well, but is often engaged in distractive behaviour.” Even with adaptations, he had difficulty in meeting many of the learning outcomes.

He received resource assistance several times a week. It seems that with one-on-one assistance AB made some progress, and teachers could engage him as a student. At the end of grade 5, for example, his resource teacher noted:

[AB] has considerable potential as a student and in the quiet setting of the Resource room he is able to explore this potential. It is unfortunate that his attentional and social adjustment difficulties do not allow him to show in the regular classroom setting what he is capable of achieving.

## Junior high school

It was when AB started junior high school in September 2001 that his school performance declined even further. Undoubtedly, the major cause related to his underlying problem with attention deficit. Also, it would seem that upon reaching the age for junior high school he would have become much more conscious of his level of education, being several years behind his peers, with its corresponding effect upon his social status as a member of a school population.

From the time as he started grade 7 at Caledonia Junior High School, with its multiple teachers, subjects, and class settings, AB seemed unable to adapt to the higher expectations in junior high for individual responsibility in his schoolwork. His behaviour worsened, he became chronically late or absent, and he appeared disengaged from much of his learning. He began to get further behind many of his classmates. Despite extra resource assistance, the tone of his teachers' comments in his report cards changed from concerned but encouraging to stern and critical—certainly much less forgiving.

Only in subjects in which he showed an interest (technology education or physical education, for example) would he participate and demonstrate some level of success.

During the second term of his grade 7 year at Caledonia, AB was again referred for a psycho-educational assessment. At the time, he was receiving resource support and was being monitored by the school's program planning team. He had been noted as perhaps having a visual difficulty known as scotopic sensitivity syndrome, a difficulty in decoding black text on white background.

Teachers and AB's mother gave input to the psychologist who prepared the report. The assessment noted that AB had been "described as a good-natured student who often excels when interested in a subject area." However, he was found to have below-average academic ability. The psychologist considered whether attentional or behavioural difficulties were making an impact on

his ability to succeed in school. The answer was yes. Further, his behaviour was similar in both the home and school settings.

Recommendations from the assessment included ongoing learning centre support (especially in math and literacy), additional strategies to increase his attention on tasks in the classroom (as well as the requirement for medical intervention), and informal program adaptations. The psychologist also recommended a positive reinforcement program to address behaviour and attention issues.

Teachers continued the various strategies and adaptations for AB recommended in the assessment. They provided him with text on coloured paper, he attended three half-hour periods at the school's learning centre each week, he received extra time to complete work, and he was seated in the front and centre of the classroom. There is little evidence of any new program specifically addressing his problem behaviour. On the basis of his school reports, these strategies did not seem to make any difference. Despite the various interventions, his educational performance did not improve as a result.

AB was presenting challenges to his family as well. During this time of transition to junior high school, AB was becoming difficult to handle at home. As I will discuss shortly, between 2002 and 2003, on her own initiative, TL contacted the Department of Community Services three times for assistance in dealing with AB's difficult and defiant behaviour.

To add another issue, AB was having social difficulties. TL testified that as AB started at Caledonia he was badly bullied by other children in their neighbourhood. She gave the example that during the winter his coat and boots were taken from him, and he was forced to walk home in the cold. She became so concerned that the police were contacted. While the bullying stopped, TL decided that AB should transfer to another junior high school for the following academic year—yet another new school for AB. He transferred a short time later to Sir Robert Borden Junior High School for the fall of 2002.

## **Transfer to Sir Robert Borden Junior High School**

Sir Robert Borden has about 250 students from a diverse community in Dartmouth. Lachie MacIntosh, vice-principal of the school at the time, and now the principal, has 30 years' experience in the school system. Mr. MacIntosh gave evidence before the inquiry. He explained that students and parents hope that a school transfer might provide a fresh start in some troubling circumstances.

This transfer to a new junior high school meant yet another change for AB. Sir Robert Borden was the ninth school AB had attended, in six different communities, since he started school. I understand there were good reasons for the moves and do not criticize AB's parents. But by any standard, this pattern of frequent transfers meant a great deal of disruption during crucial years of childhood development. Although his mother testified that AB seemed to adapt easily to changes in schools and made friends quickly, I nevertheless conclude that this lack of stability must have had a negative effect on a young boy like AB, with his difficulties in learning, behaviour, and attention. While I recognize from the records that information was shared from school to school, it must have been difficult to establish a consistent approach to supporting AB's special needs with constantly changing teachers, supports, and school environments. The ability of teachers and support staff may have been compromised. Based on his own experience, Mr. MacIntosh agreed:

Most of the troubled students that I've come across have been transient students, moving from one school to another. You know, I refer to them as our "come-from-aways." If we are able to start with a student in grade 7 from one of our feeder elementaries and introduce that student to the culture of our school from a young age, we're much more likely to have success with them, I think, than someone who's been to several schools, is

mature beyond his peers, chronologically speaking, as [AB] was. So he walks in with a set of circumstances that already put him a little bit behind the eight ball.

Plans were made upon AB's arrival at Sir Robert Borden and throughout his time at the school to fulfill the recommendations flowing from the psycho-educational assessment. Because of his past poor performance, particularly his math and literacy skills, it was decided that he would enter Sir Robert Borden as a grade 7 student. AB had already repeated grade 1 and now was set to repeat grade 7. He was at least two years senior to the other students.

While AB's file may not have been transferred in its entirety to Sir Robert Borden until the school year was under way, Mr. MacIntosh and the staff were aware of AB's background and his experience at Caledonia. Mr. MacIntosh met with AB and his mother to facilitate the transition.

AB's special learning needs would be met primarily through the school's resource teacher. He would attempt to follow the regular grade 7 program with resource support. At Sir Robert Borden the resource teacher had a typical caseload of 60 to 70 students, according to Mr. MacIntosh. At Caledonia Junior High AB had also received more-intensive support through that school's learning centre, which might have a caseload of only 8 to 12 students. Unfortunately, at the time there was no learning centre at AB's new school.

According to both AB's mother and Mr. MacIntosh, the first few weeks at Sir Robert Borden seemed to be providing AB with the fresh start they were looking for. The bullying stopped, AB made some friends, and he appeared to make a smooth transition to the new school. Mr. MacIntosh described his first days as "uneventful." Unfortunately, this honeymoon period was short. AB's interest soon waned, and he started a spiral into disruptive behaviour, poor attendance, and lack of engagement.

## **Worsening behaviour and school responses**

As vice-principal at Sir Robert Borden, Mr. MacIntosh was responsible for dealing with student discipline. Classroom teachers were responsible for managing their own classrooms, but for some students who presented particular behavioural challenges, teachers would have sought assistance from him. Students were sent to the office to meet with him. His top priority in this role was to maintain a “safe learning environment” for all students.

Mr. MacIntosh testified that there was small group of students, representing, he estimated, no more than 3 to 4 per cent of the student population, who nevertheless took up more than half of his time with student discipline. Unfortunately, not long after he started at Sir Robert Borden, AB became one of this small group. Mr. MacIntosh went even further and included AB in the two or three students who commanded much of Mr. MacIntosh’s attention during a typical school day.

AB exhibited a deep lack of interest in his schooling. Even in September, he started missing classes—his lack of attendance soon became chronic. The vast majority of these absences were without excuse. The classes he did make it to he was often asked to leave. He rarely directed his behaviour toward other students but usually toward school authority figures. AB’s defiant behaviour was intentional. Mr. MacIntosh noted that he had “very little interest in being in class and would manipulate situations to get removed from class.” He considered AB’s actions to be deliberate: “[AB] made conscious decisions just to unplug his capacity to learn.” AB knew what would be a catalyst to engage with the teacher in a negative way, to suspend the progress of the class. It appears that he had the ability to escalate a confrontation with teachers over simple things. For example, he would purposely arrive for class unprepared and without the tools he needed and would act in such a way as to ensure that he would be sent from class

to the office. The records show that he did behave in more serious ways, including severe disrespect and verbal abuse of his teachers.

According to the school records, between September 2002 and April 2003 teachers referred AB to the office 27 times. Those were only the visits actually recorded. Mr. MacIntosh estimated that, given the demands of the day, as many more again were not recorded.

At school, Mr. MacIntosh tried to take a collective approach to dealing with AB, including regular contact with the resource teacher. Mr. MacIntosh also had contact with other public officials working with AB and his family, including his social workers or representatives from the Department of Community Services.

The options for the school response to AB's behaviour were limited. Frankly, if AB was looking to leave class and leave school, it appears that the steps the school administration took for his discipline—primarily removal from class and suspension from school—played into his hands.

Shortly after he was enrolled at Sir Robert Borden, AB was suspended for the first of many times for behaviour that could be classified as disruptive. Out-of-school suspension was permitted for that kind of behaviour and was within the discretion of the principal or delegate, in this case, the vice-principal, Mr. MacIntosh.

Short of suspension, discipline for AB would include a detention at lunchtime or after school. He would often not show up for those times, so, as Mr. MacIntosh frankly admitted, it “became a bit of a redundant exercise.” There were no means to physically keep AB in class or in school.

The approach to AB's discipline was consistent with the policy in place at the time in Halifax Regional School Board. The *Student Behaviour and Discipline Policy*, approved in 1997, permitted out-of-school suspension as one discipline option for students who exhibited what was defined as “disruptive behaviour.” If even minor offences, like off-task behaviour, tardiness, or creating minor disturbances, became chronic, then they met the definition of “disruptive



behaviour.” A school administrator like Mr. MacIntosh was able to use his professional judgment to balance the individual needs of a particular student with the school community as a whole. There is no question that AB’s misconduct was chronic and disruptive. The approach to discipline Mr. MacIntosh used with AB was consistent with this policy, and as AB’s behaviour worsened he had few other options.

AB’s home situation made out-of-school suspensions even more difficult. The school was in regular contact with TL, AB’s mother, about the ongoing school problems. She remembers hearing from the school nearly every day. Mr. MacIntosh noted that TL was obviously very frustrated with AB and was quite candid in conversations with him in the many telephone calls he made to her.

He also knew that AB was not permitted to go into his home, even when suspended from school. Mr. MacIntosh would not send a student home unless he knew someone was there to receive the student or the parent had given him permission to send the student on his or her way. Unfortunately, with his mother’s permission, AB was released from school and left to his own devices, with no one to supervise him during the day.

Sir Robert Borden lacked the facilities and staffing that may have permitted a student like AB to serve a suspension in school.

Mr. MacIntosh knew that for a number of reasons, out-of-school suspension might not have been in the best interests of AB alone. As he explained, “suspensions are more to maintain a healthy learning environment for the rest of [the] students, as opposed to being rehabilitative for the student in question.”

While that is a valid concern, I have heard from a number of witnesses, including our experts, who indicated the importance of educational attachment for youth at risk of being in conflict with the law. As I make clear later in my recommendations, it is important that educators take an approach that balances a healthy learning environment for the whole school with the particular needs of individual students. Youth like AB need more connection to school, not less.

## “Withdrawal” from school

AB returned to Sir Robert Borden in the fall of 2003. Not much learning took place. He made at least 12 formal office visits. He was suspended five times. He was frequently absent or late. In frustration, TL says she “withdrew” AB from school in December 2003 with the intention that she would home school him, using material sent from the school. TL thought that AB would work at home during the day, and she would help in the evening after work. He was left alone at home for the day. Not surprisingly, with no supervision or real accountability, this plan was never successful. AB refused to do any schoolwork at home, while TL did not take any steps to change her full-time employment or take time off; she and her family needed her income.

I have some concern with evidence that suggested that Mr. MacIntosh and TL somehow agreed to “withdraw” AB from Sir Robert Borden because of his ongoing behavioural issues. That is what TL understood. I cannot see how withdrawal complied with the mandate in the *Education Act*.<sup>2</sup> It is clear it does not. The act provides that all children between the ages of 5 and 16 in Nova Scotia are required to attend school. That covered AB. There is no legislative or policy-based foundation for such a “withdrawal.” If withdrawal was the intention, the effect of this approach would be to bypass the process in the *Education Act* for a lengthier suspension. Even a lengthier suspension would have provided a date for return to school. This informal withdrawal would instead appear to have been indefinite.

Looking back now, when I consider the various events going on in AB’s life in late 2003 and early 2004, it is difficult to determine what actually took place. A lot was going on. AB was becoming out of control at home as well as at school. Despite these circumstances, it does not appear that “withdrawal” was actually contemplated. I understand that, in fact, Mr. MacIntosh was working behind the scenes to look for alternative education programs for AB, which required that

<sup>2</sup> *Education Act*,  
S.N.S. 1995-96, c. 1.

he was still enrolled in school. TL may not have understood what was being proposed, and Mr. MacIntosh may perhaps have been unclear in his explanation. While the circumstances do raise questions, I do not believe that Mr. MacIntosh was proposing a solution that was outside the law. He had AB's best interests in mind. Those best interests, at that time, were most difficult to ascertain.

AB certainly did not find much success at Sir Robert Borden. As we will explore further, he was facing serious problems at the time in his personal life, at home and in the community, as well as at school. It is important to clarify my comments about AB's experience in junior high school, especially regarding the approach to his behaviour and discipline.

AB's circumstances were complex, and while he took much of the school administrators' time, he was only one student. Social circumstances are rapidly evolving. The issues teenagers and their families face today are much changed from the past. Teachers today are having to attend to more-significant behaviour issues than in the past, which translates into what appears to be a huge increase in the number of suspensions and behaviour issues within the schools.

With the benefit of hindsight, some aspects of how the school system responded to AB's situation appear regrettable, notably the cycle of suspensions. Those suspensions did nothing to engage AB in his education. There appeared to be a frustratingly limited range of response to students like AB. With some of the programs and new supports I heard about that are now available to schools like Sir Robert Borden, the opportunities for a student in AB's situation today may be somewhat different. For example, there is now a dedicated half-time junior high support teacher available to work one-on-one with students as behaviourally challenging as AB. According to Mr. MacIntosh, that teacher has become an indispensable part of the staff of his school. There are also limited spaces available in a program with the Halifax Regional School Board called Youth Pathways and Transitions, for those very few students

who may need to be removed from a mainstream classroom and dealt with in a special environment.

But some of the decisions about AB made at the time, even in the context of the resources then available, can be looked at with a critical eye.

Mr. MacIntosh acknowledged this. He knew that his testimony about the actions of school administrators relating to AB would open his decisions and approach to close public scrutiny. He was subject to difficult questions by counsel and by me. He admitted that, as in AB's situation, "I'm never happy when I don't see the result that I think all students deserve." Nevertheless, Mr. MacIntosh was forthright and open in his testimony before the inquiry. He made a number of comments that helped me to understand AB's situation. He provided suggestions for how students at risk can be better dealt with within schools like his. I believe that he acted within his discretion and did have AB's interests in mind, balanced with the needs of the student population. The fact that AB was not successful in school, and that in my view his negative school experiences probably speeded his path into conflict with the law, is not the fault of the teachers or administrators of Sir Robert Borden Junior High School.

## 4.3

### **Involvement with the Department of Community Services**

AB's school situation, as I have explained, was difficult. His family and home life were also in increased turmoil during the time he was in junior high school. In fact, between November 2003 and June 2004, AB did not live with his parents; instead, he lived almost exclusively in public residential facilities. This was not the first time AB's family had turned to the Department of Community Services or its partner organizations for assistance with AB.

TL sought and received support from her community in each area in Nova Scotia in which she and AB lived, particularly from DCS. As I mentioned previously, while in Canso in 1994, DCS became involved with this family. The same was the case in Bridgewater.

In both Canso and Bridgewater, TL herself had contacted DCS, requesting services for AB because of behavioural issues. Investigations in each place by social workers assigned to reply to the contact (known as an intake) determined that at neither time did the *Children and Family Services Act* compel the department to intervene. This determination is the first step toward mandated involvement by the department in the life of a child, with the view of protection.

The *Children and Family Services Act* provides in section 22(2) that a child is considered in need of protective services where, among a number of other reasons, the child has suffered or is at “substantial risk” (meaning there is “a real chance of danger that is apparent on the evidence”) of suffering physical abuse or emotional harm from a parent or guardian. When DCS receives a complaint, its staff’s first step is to assess whether the child at the centre of the complaint is in need of protective services.

### **The process of investigating referrals to child protection**

Leonard Doiron, the DCS Acting Director of Child Welfare and Residential Services, provided the inquiry with helpful testimony on the role and scope of the department, along with an explanation of the process of referral and investigations of matters relating to services to children in need of protection in the province.

Sometimes the perception of DCS is negative. The public may see it as an agency trying to interfere with parents and families. On the contrary, Mr. Doiron emphasized that DCS believes that the best place to raise a child is in the family and that the child is always better off with their family unless they are not safe in that context. Parents have a right to raise their children in a way they believe is

appropriate, as long as it is also considered to be in the best interests of the children. He testified that DCS always tries to take the least intrusive approach possible.

Referrals may be made to DCS by social workers, doctors, teachers, or other professionals, or even by family members. The threshold for reporting a potential child protection situation is very low. When a referral is made, DCS must take steps to consider the situation and evaluate whether there is a basis for the claim: that is, whether the claim can be “substantiated.” This process is done through an intake process, with social workers specifically assigned to screen and investigate the referral. According to Mr. Doiron, the vast majority of referrals are screened out at the referral stage. For those that proceed to investigation—in which the intake worker assesses that there are reasonable and probable grounds to believe that a child may be at substantial risk of physical or emotional harm—the worker may interview relevant individuals, review records, and contact others. The worker may visit the family or child.

If a child is determined not to be in need of protection, section 13 of the *Children and Family Services Act* requires the Minister or an agency to “take reasonable measures to provide services to families and children that promote the integrity of the family.” In this preventative role, the department may refer a family to services available within the community to address the family’s concerns. This was the case with AB until mid-2003. For example, at different times, social workers referred AB for medical and psychological assessments. In December 1994, the social worker suggested counselling by the Family Service Association and participation in a parenting program.

If the intake investigation substantiates the referral, DCS is required by law to intervene. The response may vary. In some very serious cases, DCS may act to remove the child from the home. In other situations, as with AB, a DCS file may be opened for other forms of intervention, including, for example, the involvement of a long-term social worker to work with the family and child. DCS workers develop a case plan tailored to the individual situation.

I should note that by far the majority of resources in DCS are directed to child protection, and not to preventative services. We heard testimony from senior public officials that the levels of funding for prevention have increased. I discuss my views on this approach in my recommendations in Chapter 11 of this report.

### **DCS services to AB and his family**

AB and his family received some voluntary services from DCS in both Canso and Bridgewater. They received counselling and training in “family skills,” along with the ongoing support of a caseworker. For example, in Bridgewater, a social worker attended TL’s home numerous times over several months to provide parenting support and education to her.

TL also received the referral to the ADHD support group and to the Family Support Centre from DCS. By September 1996, the Bridgewater file was closed because it appeared that TL had developed some improved parenting strategies to manage AB’s behaviour.

Unfortunately, as we have seen from the review of his schooling, AB’s behaviour worsened when the family moved to Halifax. By 2000, TL called the Dartmouth DCS seeking help with AB. She described him as non-compliant and not attending school. The intake social worker referred TL to community-based resources that might be able to address some of her concerns with managing AB’s behavioural issues. The social worker provided TL with the contact numbers for the community mental health association, a family support organization, and the Attention Deficit Association. She also recommended that TL contact the school social worker and her family doctor.

There were three other referrals to DCS between 2002 and 2003. There appeared to be a pattern in AB’s family of periods of high stress requiring acute voluntary intervention followed by more stable behaviours. Nevertheless, each time it appears that DCS workers offered AB and his family some referrals and voluntary services. Until the last time, AB was found not to be a child “in need of protection.”

In October 2002, shortly after AB started at Sir Robert Borden Junior High School, a school liaison police officer working there made a DCS referral with a report of an apparent physical altercation between AB and his stepfather. At that time, TL confirmed to the intake social worker her repeated refrain that she was continuing to have problems managing AB's behaviour. Both TL and her husband were extremely frustrated. TL characterized the home environment by saying that "tensions are beyond high." A social worker met with the family several times and provided parenting advice. She also met with AB's principal, vice-principal, and guidance counsellor. The situation appeared to stabilize by the end of November.

Unfortunately, it was only a matter of days until TL contacted DCS in December 2002 with a self-referral, reporting ongoing conflict with AB. The intake worker recommended that AB see a doctor and attend the IWK Mental Health Services for a psychiatric assessment and treatment. She also suggested that TL speak to the school regarding AB's special learning needs. TL followed through with making an appointment, and in February 2003 AB began therapy with Nancy Rogers-Currie, a social worker and counsellor in the Mental Health Services department of the IWK Health Centre. AB attended once a week for 12 weeks. At the conclusion of therapy, TL reported that she did not see any difference in AB's behaviour, although it appears that she did not follow up with Ms. Rogers-Currie about his lack of progress. The intake file was closed by February 2003, as TL reported that the situation had appeared to stabilize once again, particularly over the school break.

### **The substantiated referral in December 2003**

The last referral to DCS was in June 2003 from Ms. Rogers-Currie. The records show that AB disclosed to her that he had apparently been involved in another physical altercation of some kind with his stepfather.

Erika Wilson was the intake social worker assigned to investigate this referral. Ms. Wilson appeared as a witness before the inquiry.



While Ms. Wilson had several years' experience with child protection, she was new to DCS, which meant that she temporarily had a lighter caseload. The usual goal for responding to a new referral is 21 days, but in this case, Ms. Wilson was able to attend to this referral within a shorter period.

According to Ms. Wilson, this referral had a complex set of issues to be investigated, including AB's emotional health, difficulties with school attendance, and behaviour. The most concerning information for Ms. Wilson was that there was a report of violence in the home. Her investigations included discussions with Ms. Rogers-Currie, AB's family doctor, Vice-principal Lachie MacIntosh, and other DCS personnel who had previously had contact with this family.

Ms. Wilson met personally with AB, TL, and her husband, who were co-operative with her, despite presenting as frustrated and upset about the circumstances that led to this interview. TL, in particular, was open in describing the difficulties with AB. Ms. Wilson testified that during those discussions with AB and his family, she understood from TL that despite the challenges with AB, neither she nor her husband was willing to take any further steps to deal with the problems in the family. Further, they did not feel that the services that had been offered to them were helpful. In her file note following the meeting, Ms. Wilson stated:

[They] present with little insight into the evolution of the presenting problems. The pattern of behaviour/consequence has become circular. They advise that they are unwilling to take any further steps to make a change.

TL raised the possibility of a break from their home for AB. Unfortunately, they had no family in Nova Scotia willing or able to have AB stay for even a short time.

During the home visit, Ms. Wilson met directly with AB in his room. He was compliant with her, but exhibited signs of distractibility. She perceived him as a young, small boy. He described his difficult home environment to her.

At the conclusion of her intake investigation, Ms. Wilson concluded that AB was now at risk of physical and emotional harm due to “the stress in the family, unwillingness of parents to accept responsibility to effect change, poor support network and poor attachment of parents” to AB. Because the investigation revealed these risk concerns for AB, the referral was “substantiated,” and the matter was transferred to a long-term social worker. Ms. Wilson also recommended that in-home support services be considered by TL as soon as possible to address issues of child management, violence, and anger.

## **Public perception of DCS**

Our society has changed dramatically in recent years. So have our families, their stability, and the source of supports available to parents and children. During Ms. Wilson’s testimony, I questioned her about my perception of how families are looking increasingly to professional resources or public caregivers. She agreed that reliance upon professional services has increased significantly, as have society’s expectations of professionals to meet needs that historically have been met by families and by extended support networks of family or friends. In many cases, those family networks may have provided a more-effective, tailored approach to the needs of the family of a particular child who may have been at risk or in need. Of course, many families still rely on those traditional supports.

But for those families who do—or must—rely on public services, it is troubling that in some cases the only access to those services may be through allegations or concerns about child abuse. We need to have a situation created whereby the public at large is confident that a social institution like DCS is going to be helpful, rather than put the family unit itself at risk. The effectiveness of the department’s intervention may be lessened by its inability, through policy or resources, to engage more effectively in activities that are geared to *prevention* of troubled families and children.

## **DCS assignment of a long-term social worker**

DCS assigned a long-term social worker, Cheryl Osmond, to be actively involved with the family. She worked with them regularly throughout much of the next troubled year, until June 2004. Ms. Osmond described her role trying “to put services into place so that the family would be able to maintain its integrity and basically try to work with them so that we didn’t need to be in their life.”

AB went to Newfoundland that summer to visit his father. Upon his return to Dartmouth in August, Ms. Osmond suggested that a family support worker (a person with particular expertise in teaching parenting skills) could get involved; the family refused. A tutor was offered, but AB refused because he told Ms. Osmond he would not do homework. Ms. Osmond made other suggestions for support. In October 2003, AB started to see Lou Costanzo, a family therapist at the IWK, for therapy. TL attended counselling with AB, at least for a time.

It was during some of these months that AB went from a young boy with a challenging home and school life to a repeat young criminal offender.

### **4.4**

#### **Leaving Home: Placement in Group Homes**

By November 2003, the home situation had become so tense that TL advised Ms. Osmond that the family was not prepared to have AB at home and could no longer assume responsibility for him. There was a concern about possible drug use by AB and safety issues in the home. He was seldom attending school and was staying out late. The social worker inquired if there was another family member who would be willing and able to take AB in, but TL could not consider this option. She asked that AB be placed in a residential facility.

Ms. Osmond explained the risk associated with residential facilities, including the negative associations AB could make. But the family decided to take the risk. TL was hopeful that the structure and programs in a group home could help AB's situation. Ms. Osmond agreed to seek a voluntary placement for AB if a facility was available.

### **Availability and purpose of group homes for youth at risk**

Residential services for troubled youth in the Halifax Regional Municipality are provided in partnership with a local non-profit agency, HomeBridge Youth Society, known at the time of AB's involvement with their services as the Association for the Development of Children's Residential Facilities. HomeBridge was established in 1977 by front-line social workers who identified a need for residential care in the child welfare system. The organization has grown to six residential youth facilities, which provide emergency, stabilization, and longer-term care. More than 40 youth between the ages of 12 and 18 years can be served in community settings at one time. HomeBridge's work is funded by DCS, and the society is required to follow certain standards set out by DCS. The programs are provided by highly trained staff from a variety of backgrounds, all with specialized degrees or training.

The inquiry heard from three HomeBridge staff. I was favourably impressed with their level of expertise, their openness, and their commitment to the youth they serve. They work with young people who have experienced some of the worst our society has to offer, and they do so with care and compassion.

From this testimony and from a review of the organization's materials, I understand that most youth in their programs are dealing with disruptive behaviour and emotional issues. Many of the young people have issues that include running away from home, self-harm,

verbal and physical aggression, criminal charges pending or in place, involvement in the sex trade, drug use, and family neglect. All the young people are in the temporary or permanent care of the Minister of Community Services under the provisions of the *Children and Family Services Act*.

One of HomeBridge's primary programs is its crisis centre, the Reigh Allen Centre. Reigh Allen provides a crisis stabilization unit. Usually, youth stay at Reigh Allen for less than eight weeks. Youth who are to be placed in longer-term care are subject to review by a placement committee of staff from the HomeBridge organization. One of these longer-term facilities is Hawthorne House, a facility in Dartmouth that serves young males from 14 to 16 years of age.

AB was in care at both the Reigh Allen Centre and in Hawthorne House, and I will discuss his experience in those settings below.

In their testimony, HomeBridge staff emphasized that for a placement or treatment at one of its facilities, a young person is not only a recipient of passive care; rather, the youth must be willing to engage with the programs and opportunities offered. The programs are meant to offer skills to a young person in making positive choices, but it is left to the young person to *choose*. The HomeBridge mission statement makes this approach clear:

To assist Youth and Families while they journey to understand the connection between choice and change, [s]etting in motion opportunities to experience themselves and their relationships differently, within their culture and community.

There is little that the staff of these residential facilities can do to force the residents to engage. With the exception of systems of privileges and consequences, staff have no ability to confine their residents. For a very small number of young people—AB among them, as we will see—this means that the facilities may become no more

than a place to get a meal, have a shower, or sleep, more like a hotel than a treatment facility. This may be a worthy goal in and of itself for some young people. After all, the facility is a *safe* place to eat and sleep. But the goal of rehabilitation is not furthered for these disengaged young people, and it seems that there is a lack of programs available in the province for them. It means keeping teams of professionals, at great public expense, to look after a young person who does not want to be looked after. The inquiry heard broader testimony about Nova Scotia's more general approach to youth residential care.

From evidence of Leonard Doiron, I learned that the Province of Nova Scotia has recently undertaken a significant review and "redesign" of its system of residential placement facilities for youth. The Province published a report shortly before the inquiry's hearings started. It explains that in Nova Scotia placement services are provided by appropriately 600 foster homes, six parent counsellor programs, 30 licensed general residential programs, and 18 programs specially designated for children with disabilities. The services are delivered by 32 separate partner organizations. I understand that HomeBridge is one of those partners. As part of its review, key stakeholders considered questions that included whether the current system was meeting the identified needs of youth and children in the province who had to be placed in care. The findings of that aspect of the report showed that placement planning for children required significant improvements. It appeared that DCS programs dealing with children in care had not received the same level of attention as the department's programs for child protection.

Mr. Doiron explained that the residential program redesign is attempting to address a perception that residential programs were drifting, with unclear mandates, and that too many young people at risk and their families were not getting the services they needed or deserved. Areas noted for improvement included ensuring that youth

in care received adequate learning and increasing collaboration among various departments that work with the youth. Further, the Province identified the need for a greater variety of options along the continuum of levels of care (from least to most intrusive) than was currently available. Among the levels of care could be programs that more effectively target particularly troubled, hard-to-engage youth, just like AB, who may not respond well to programs in the existing placement system, despite the staff's best efforts. This residential program redesign, if fully implemented, may make the residential system more effective for youth like AB. Unfortunately, this redesign came too late for him.

### **Placement at the Reigh Allen Centre**

As AB's home life became more difficult, and as it appeared that a temporary solution might be to provide AB and his parents with a break from each other, Ms. Osmond made arrangements for him to be placed at the Reigh Allen Centre. On November 17, 2003, TL and DCS entered into a voluntary temporary care agreement so that AB could be placed at the Reigh Allen Centre in a short-term stabilization and treatment program. This was considered an "emergency" stay by the Reigh Allen staff.

AB's placement had conditions. AB had to attend school and see his therapist, Lou Costanzo. Ms. Osmond arranged for AB to take a taxi to school in the mornings. He was also subject to the resident guidelines and expectations at Reigh Allen.

AB stayed at the Reigh Allen Centre only a week, when he was discharged back to his mother after his emergency placement expired. Reigh Allen's beds were scheduled to be full with other youth.

No other placement options were available at that time, but Ms. Osmond continued to pursue group home options. In January and later in February 2004, placements became available at Hawthorne House, and these were offered to AB. However, AB's

mother did not feel placement was necessary at those times, since things with AB at home seemed temporarily to be improving—another example of the volatile nature of AB’s home life.

On February 16, AB was again placed at Reigh Allen under a voluntary care agreement. This time he was in a non-emergency “care planning” bed and stayed until March 8. The plan was that he was to stay at Reigh Allen until a long-term placement became available in another facility.

AB’s behaviour did not improve during his second stay at Reigh Allen. He flouted the centre’s expectations. In fact, during his stays he made contact with a new set of peers who eventually proved to be a negative influence on him. I understand that this is a risk of placement in a home like this. Group homes have a reputation as being “schools for criminals.” While this characterization is not always true, Ms. Osmond and AB’s mother knew this risk for some residents, and it was true for AB. The evidence shows that it was only after AB started living primarily in residential facilities that his poor behaviour crossed the line into criminal activities, and he started his downward spiral into chronic offending.

By the time of this second stay at Reigh Allen, he was engaged in criminal behaviour as well, further complicating plans for his programming. AB did not follow the rules or expectations at the Reigh Allen Centre during this or any of his stays. He was considered a “runner”—he was gone frequently without permission, including overnight. He largely ignored the programs offered to him, including anger management, addiction counselling, and education.

### **Placement at Hawthorne House**

On March 8, when a bed finally became available at a longer-term facility, AB moved from Reigh Allen to Hawthorne House.

Trish O’Brien, the program supervisor at Hawthorne House, testified. Like her colleagues, she is well qualified and clearly deeply committed to the youth with whom she works. Ms. O’Brien described



her staff's role as that of "therapeutic intervenors" in the residents' lives. At what she called an "age of transition," her staff, by building stable relationships with the youth in their care, provide consistency, structure, and support that is desperately lacking in their lives. Youth care workers develop individual plans for each of the six residents and provide intensive one-on-one relationship building. Staff keep daily logs to monitor each youth's progress. When possible, they maintain connections with the families of the residents and keep them informed of the status of the children.

In return for providing a safe environment and these relationships, they ask the troubled teenagers to help to "create these changes for themselves" and move into the future. While the residents often start by being somewhat resistant, most youth at Hawthorne House do become engaged and take advantage of the services offered to them.

At the time of his placement at Hawthorne, the individual plan for AB was to stabilize his behaviour and have him return to school, with the goal of ultimately having him return home with his mother and stepfather. Ms. O'Brien testified that, despite his difficult time at Reigh Allen, AB was nevertheless a good candidate for the services that Hawthorne House offered. The social workers hoped that when he was in a more homelike setting he might settle in and engage. They had regular contact with AB's mother as part of this process and throughout his stay at Hawthorne.

Unfortunately, despite a few sporadic glimmers of hope (which were perhaps all that contributed to his being permitted to remain at Hawthorne for as long as he did), AB failed to make the necessary changes in his life. Hawthorne made little difference. In Ms. O'Brien's words, AB's level of resistance was "extreme." He refused to attend "mandatory" programs and refused schooling, even when a tutor was offered to him instead of the regular school program. He was running nearly every day: the records show that he was gone without permission 53 times during his eight-week stay. The staff suspected he was using drugs.

Why would a young person squander this opportunity for positive change? In an observation probably typical of this small group of disengaged youth, Ms. O'Brien said of AB:

I've experienced and observed him to have a real lack of cause-and-effect thinking. He was not one who appeared to learn from consequences. He certainly didn't seem to have significant insight, and appeared to really lack good judgment.

This attitude was also evident as the youth care workers became aware of his involvement with criminal activity when he was running, although AB denied involvement. Ms. O'Brien expressed some frustration with the youth criminal justice system for her resident. The criminal justice system did not help in making him recognize the consequences of his actions: "He didn't appear to have concern that he would be incarcerated at some point, nor did he appear to be concerned that his behaviour would hurt somebody, or himself."

By April 2004, AB's placement at Hawthorne House was in jeopardy. Even Ms. O'Brien's patient staff had had enough. He was given a "time out" back at Reigh Allen Centre, but it seemed to be of no effect in curbing his acting out.

During the first two weeks of May 2004, AB was at risk of being discharged from Hawthorne House because he was frequently on the run, not abiding by the rules of the facility, and refusing to participate in the mandatory programs. He had been there only two months. Ms. Osmond tried to find another, more appropriate placement, but it appears the options were limited. AB was never officially discharged, because AB's mother, perhaps recognizing the futility of keeping him at Hawthorne House, told the staff that she was taking AB home. On May 19, TL advised the child welfare agency of her willingness to accept AB back into their home.

While AB was living at Hawthorne House, Ms. Osmond, the DCS social worker, had continued to have regular contact with AB and

TL. She attended the Restorative Justice meetings with AB after he was charged with his first crime in January, because his mother could not take time off work to attend; arranged for a tutor for AB (although AB did not make use of this); visited AB's school periodically; and picked up schoolwork packages for him.

Throughout the spring of 2004, AB had essentially refused all services offered to him by DCS and its partner agencies. He continued his spiral into more and more criminal activities. Short of being a support person for AB and his mother, Ms. Osmond was not providing any effective service to AB. For all of these reasons, DCS decided to close his active file by June 2004.

## 4.5

### **Setting the Stage for Criminal Activity**

I have set out the history of AB's life and schooling in detail. I have tried to include the context for AB's later actions. Some readers may perhaps consider the level of detail in the preceding paragraphs unnecessary, or they may wonder about the connection to his crimes that led to Ms. McEvoy's death. But as I have learned throughout this inquiry, there is no such thing as a "typical" youth. AB certainly fit no standard mould. He was an individual, with his own concerns, feelings, challenges, and background. The justice system's responses to him when he committed his crimes in 2004 can be understood only by looking beyond his charges to the person behind the charges. What led him to be joyriding in a stolen car, high on drugs, at the intersection of Connaught Avenue and Almon Street in October? His journey to that intersection did not begin on the morning of October 14, or even with his release from custody on October 12. His journey went through his difficult schooling and aborted education, past his strained interactions with his family and peers, and appeared to bypass the myriad supports offered to him by agencies and services of our province. He lacked any map to his journey. And all of this led to his wrong turn into crime.

# Chapter 5

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## **Spiralling out of Control: AB's Conflict with the Law**



At only 15 years old, in January 2004, AB became formally involved in the youth criminal justice system. He was arrested after stealing a car with a friend from outside a Halifax convenience store and driving it to Dartmouth. This was probably not the first car he had stolen, but this was the first time he was caught.

It was the start of an astonishing spree of criminal activities that escalated so quickly that the youth criminal justice system could not keep up with him. By May, while most young people his age were in school or other activities, AB had become known to the local police as one of the Halifax area's top-two car thieves and to the youth court Crown attorney as a courtroom "frequent flyer." By his 16th birthday in July, he was facing 30 separate charges, mostly related to stealing and driving cars, and he had also committed his first break and enter. Despite all this, by the end of September, he had no criminal record; he had no findings of guilt; he had faced no trial; and he had received no sentence for any of his crimes.

### 5.1

#### **January 2004: AB's Introduction to the Youth Criminal Justice System**

When AB was first apprehended in January, he was charged with possessing stolen property and a break-in instrument. The investigating officer prepared a file, which was then forwarded to Cst. Richard MacDonald, the Halifax Regional Police's youth court liaison officer.

Constable MacDonald, whose office is at the Spring Garden Road courthouse, reviews all incoming files destined for the youth criminal

justice system in Halifax. His position recognizes that youth criminal files are different from those in the adult courts. There are particular challenges in dealing with young persons between the ages of 12 and 17. The system has to deal not only with the offender, but with the many others who are involved with him or her. These people include parents and also social workers, counsellors, educators, and others who are involved in the care of the child. Constable MacDonald has contact with many of these people.

Nearly all youth criminal files in Halifax are seen and vetted by Constable MacDonald. After the investigating police officer conducts a criminal investigation on the street, he or she prepares a file, which may include a Crown sheet (also called a Prosecutor Information Sheet or “Confidential Instructions to the Crown”), which includes the charges and all police investigating material and supporting information. That file, along with recommendations for how the matter should be handled, is forwarded to Constable MacDonald for careful review. He considers if the suggested charge is correct, or if the file is missing necessary information. As all files are possibly subject to diversion from the courts to the Restorative Justice program, Constable MacDonald decides whether to make such a referral on a pre-charge basis. He may also assist with extrajudicial measures under the *Youth Criminal Justice Act*<sup>1</sup> and is usually the author of a formal caution if one issued. If he determines the matter should go to court, he prepares and swears the charge documents (the “Informations”) and then may send the matters for prosecution. He interacts daily with Crown attorneys and supports them in their roles.

Before we return to chronicling AB’s journey through the criminal courts, I want to make some comments about Constable MacDonald’s role. Constable MacDonald is a highly valued liaison between the Halifax Regional Police and the other agencies and individuals involved in the youth criminal justice system. Because of his interaction with young people and their families, Constable MacDonald has perhaps the most comprehensive knowledge of these

1. *Youth Criminal Justice Act*, S.C. 2002, c. 1.

young people of all the professionals who are involved in the youth criminal justice system in Halifax. In many cases, he may have dealt with a youth two or three times before he or she ever makes an appearance in any court. Besides the value of the position itself, Constable MacDonald's own personal level of commitment to the troubled youth in Halifax is commendable and apparent. His testimony was helpful, and I valued his comments. Our community is fortunate to have someone like him in this role.

## **Restorative Justice**

The *Youth Criminal Justice Act* includes the possibility of "extrajudicial measures" and "extrajudicial sanctions" that provide alternatives to the usual, formal court process. For extrajudicial measures, the legislation provides that decision makers (police and Crown) are to consider a range of options before filing a charge. The goal is to consider how a matter can be managed in the least formal, most effective way possible, in keeping with the facts of the case, the needs of the offender, and the needs of the community. A police officer has to consider if the matter can be managed by taking no further action, with a warning, or through the administration of a formal caution.

If such measures are not deemed appropriate in the circumstances of the offence, a referral may be made to Restorative Justice. It is the final step a police officer can take before laying a charge.

Patricia Gorham, coordinator of Restorative Justice programs for the Province, appeared before me to explain the program, its approach, and its goals. Restorative Justice is more than simply diversion of a young person away from the usual court process. Instead, it sees that there are three key "participants" in an offence: the offender, the victim, and the community where the harm took place. Each feels an impact from the event of the crime. All three participants are addressed in the Restorative Justice model, and the

offender is placed in a position where there is an opportunity to be accountable and also to seek to right the harm caused. Because of this, all three need to be involved. The program provides the opportunity for the offender, victim, and community of harm to meet face-to-face to accomplish this. Through a conferencing model, those affected by the crime encounter each other, to support the offender in standing accountable for the harm that he or she has caused and to create an opportunity, together, for the offender to grasp responsibility for reparation and do something about it.

Not every victim wishes to engage in this process, although (unlike in the formal court process) they are invited to do so. The community's role is also important. As Ms. Gorham stated, "By directly engaging the community in this justice process, you strengthen the community bonds and allow the community to participate in taking responsibility for harm that happens around them, rather than leaving it at arm's length." It also helps young offenders understand the bigger picture of how their crimes affect their community and have a negative impact on others. This is a significant aspect of the Restorative Justice model, which I am sure has a positive effect. In fact, I would suggest even greater community representation, which might include other community members including clergy, business people, community leaders, parents of other children, and others representing the diversity of the community. This would engage the youth more directly and provide a greater opportunity for his or her rehabilitation.

Restorative Justice is implemented across the province through a network of partner agencies. These agencies provide a challenging kind of support where they encourage young persons to understand those whom they have hurt, how they have hurt them, and what they owe those people who were hurt. These understandings form the basis of an agreement the youth subsequently enters into.

Nova Scotia's Restorative Justice program is admired across Canada. The program has been operational since 1999, with other forms of youth diversion programs dating back another decade. The

program is not restricted to larger geographic areas, but is an option for all youth crime matters across the province. When the *Youth Criminal Justice Act* was implemented in 2003, and more explicitly included extrajudicial sanctions in the statute, Nova Scotia was well prepared to adopt these new options.

Various justice system officials can refer a matter to Restorative Justice through one of several “entry points”: pre-charge by the police, post-charge by the Crown, pre-sentence by a judge, and post-sentence by Corrections. The majority of referrals come from the police before a charge is laid (in Halifax by Constable MacDonald) or by the Crown.

### **AB’s experience with Restorative Justice**

After reviewing AB’s file in January, Constable MacDonald referred him to Restorative Justice on a pre-charge basis on February 17.

On February 23, the Restorative Justice partner agency, the Community Justice Society, acknowledged the referral relating to this incident and, following its process, invited AB to make an appointment. Hope Bowden was the caseworker who handled AB’s file. Ms. Bowden testified at the inquiry.

AB attended information intake sessions on March 10. To prepare for a mediation session, Ms. Bowden met with AB and Ms. Osmond, AB’s social worker. They discussed his education and other needs. The mediation meeting was finally held on May 26. In attendance were AB, his mother, Ms. Osmond, and two facilitators. The victim chose not to participate. The mediation resulted in a written Restorative Justice agreement. AB agreed to perform 60 hours of community service work and to attend the Community Justice Society’s Options to Anger sessions.

For many youth, Restorative Justice is an effective sanction. I understand that it can make a difference in the lives of victims and offenders. The evidence shows that youth in Restorative Justice may be less likely to re-offend than youth who go through the usual court process.



For AB, the process failed. He managed to attend only two of the seven scheduled anger management sessions. He did not perform any community service work. Ms. Bowden referred the file back to Constable MacDonald on June 25 because of AB's failure to complete the terms of the agreement. Certainly being in Restorative Justice did nothing to deter AB's offending. By the time of his failure to complete the program, he was facing numerous other charges. Constable MacDonald laid three charges arising from the January 23 offence. They were to be dealt with along with the host of other charges already pending before the court in June and were included in those considered at the bail hearing in early July.

During the testimony of those involved with Restorative Justice, I detected some frustration about how the current model handles repeat offenders like AB. It seems an opportune time to suggest to those coordinating the system that they look at how best to adapt the current model to better respond to the special circumstances of the small group of repeat offenders. It may mean providing that a repeat young offender is returned to the formal court process more quickly if the youth is not co-operating.

## 5.2

### **Escalation of AB's Criminal Involvement**

AB's conflict with the law escalated over the next few short months. Despite his January arrest and referral to Restorative Justice, he continued to steal cars, joyride, and commit other crimes. In the words of Constable MacDonald, who observed each of his continued brushes with the law and laid the resulting charges, he was "spiralling out of control."

It was three months before AB was charged with another crime. We do not know if he was stealing cars or committing other offences in the meantime, although, from his behaviour pattern, it appears

likely. His actions were worsening: he was in and out of group homes, he was associating with other known young offenders, and he was known to be involved in drug use. It is likely that he was offending but just not getting caught.

In April, he and a friend were found in a parking lot in Dartmouth. AB had a modified coat hanger in his pocket—his tool of choice for breaking into cars. Police charged him with possessing a break-in instrument. On May 10, police officers pursued a stolen vehicle that had sideswiped another car during a chase. AB fled the vehicle, along with four others. On May 22, he stole another car. On May 25, police received a report of dangerous driving and found a stolen vehicle, with AB at the wheel. During the pursuit, AB struck a telephone pole; a passenger fled the car. AB managed to drive the car away from the scene of the accident, but the police found the stolen vehicle parked on his street.

He was involved in stealing a car late on May 30 and into the early hours of June 1. Another theft took place on June 3, and still another on June 9. On that day, police investigators found AB and another person in the stolen car with break-in instruments.

AB's increasing number of auto theft crimes did not go unnoticed by the region's police automobile theft investigators. I heard from Sgt. John Langille, a Halifax-based RCMP officer who leads the officers in the special auto theft unit of the integrated RCMP-Halifax Regional Police General Investigation Section (GIS). AB's name hit the radar screen of the auto unit in May. Sergeant Langille testified that he first learned AB's name at that time and that AB was also known to associate with other car-theft suspects. By June 8, not only his name but his dubious reputation as an active criminal had become well known to police: in Sergeant Langille's notes, he described AB as one of the two most active individuals on the police auto investigation unit's "hit list" at that time for the entire Halifax Regional Municipality. There were other crimes to which AB was

connected or suspected but not charged. As Sergeant Langille learned more about AB, he and the officers in his unit were able to determine that he may have been involved in other thefts earlier that year.

Sergeant Langille provided the inquiry with useful background on the context of motor vehicle theft in Halifax. According to him, in 2004 in all of the municipality, there were over 1,800 thefts and attempted thefts of vehicles (from ATVs to cars to transport trucks). From his experience, he testified that there are about six reasons that vehicles are stolen. The first reason, making up the majority of all these thefts (70 percent or more) is joyriding. Thieves steal a car, drive it, and abandon it a short time later. Stealing cars for joyriding is predominantly done by young people, rather than adults. I understand that it is particularly difficult for police to catch and charge joyriders.

Criminals also steal vehicles to use in committing another crime; to sell for parts; to change the vehicle identification number for resale or for private use; to commit insurance fraud; or to sell and ship to overseas markets.

Young joyriders are a particular kind of criminal who get a thrill from the theft and the chase. Sergeant Langille shared some interesting insights from his experience. Teenagers who steal cars for joyriding—the primary reason for which AB did so, although he also used stolen vehicles to commit other crimes—also relish their reputations among their associates. Many take pride in the fact that they can steal certain types of vehicles. They learn to do it effectively, and they know that usually their chances of getting caught are slim. Further, Sergeant Langille stated that they think that “if they do get caught, not a lot’s going to happen to them.”

AB appeared to be cultivating such a reputation: he was proficient at stealing Chrysler Neons. And he did it again and again.

## 5.3

### **AB's Arrest and First Appearance in Court**

The police caught up with AB on June 9 and arrested him. This time, the various charges against him were not referred to Restorative Justice. He stood charged with eight offences alleged to have occurred on or about April 23, May 25, May 30, and June 9. (Since police did not link him to the events of June 3 until later, he was not yet charged for offences he committed on that date.)

On June 10, AB made his first appearance in the Youth Justice Court in Halifax. While young persons' court proceedings are heard in Halifax at the Provincial Courthouse on Spring Garden Road, the same historic facility that handles adult matters, there is a separate youth courtroom. At that location, the entrances and public spaces are shared with adults, and "adult" courtrooms may be used if numbers warrant.

Gary Holt, Q.C., was the Crown attorney that day. Mr. Holt is one of two dedicated youth court Crown attorneys in Halifax. He worked (and continues to do so) nearly exclusively on criminal matters dealing with young people. The other youth court Crown at the time was Leonard MacKay, who appears later in this report. Mr. Holt is extremely knowledgeable about youth court criminal procedure and is familiar with the particular challenges of dealing with young persons in the criminal justice system.

I certainly benefitted from Mr. Holt's vast experience in youth criminal justice. His testimony was most helpful to me in understanding youth court processes and procedure and the Crown's approach to youth criminal matters. He also gave factual evidence because of his ongoing significant role in prosecuting AB at various times.

Mr. Holt explained AB's brief hearing of June 10. As often occurs at an initial appearance, AB's charges were adjourned for plea. The judge expected an application would be made to Legal Aid. The

Crown did not seek to keep AB in custody until his trial. Mr. Holt explained that remand was unlikely, given that it was AB's first court appearance and the operation of certain provisions of the *Youth Criminal Justice Act*, along with other considerations. I will discuss in some detail the pre-trial detention provisions of the YCJA later in this chapter.

The judge released AB on an undertaking (a formal promise, this time in writing) with strict conditions. AB was required to return to court on July 8, the scheduled plea date, but he was subject to various restrictions. Among other requirements, AB was to "keep the peace and be of good behaviour," live at his mother's home, keep out of any vehicle without the registered owner, have no contact with certain individuals, and stay away from two group homes (including Hawthorne House, which he had only recently left). Further, the undertaking required him to stay at home at all times except in certain emergencies. Mr. Holt described these conditions as being "virtually a house arrest." AB signed the undertaking and agreed to the conditions.

## 5.4

### **Breach of Undertaking and Return to Court**

AB's signature was not worth the paper it was written on. His undertaking meant nothing to him, and his appearance in court did not seem to change his behaviour. In fact, on June 11, only one day after returning home subject to the conditions, AB's mother and stepfather reported him to the police as missing from home in breach of the restrictions. AB left his parents' home, returning only a "couple of times" until he was arrested on June 23. AB quickly picked up his crime spree where he had left off. On June 12 he stole a car in Dartmouth; early the next morning he stole another in Bedford and led police on a late-night high-speed chase through the community.

On June 14, AB was implicated in a car theft in Lower Sackville. And on June 22, he stole a vehicle, this time allegedly using it to commit a break and enter at an electronics store in Elmsdale.

By this time, the police were actively looking for AB, as were his parents. The few brief times he returned to their home, his parents called the police, but AB had left again before the police arrived.

On June 23, AB's parents tipped off the police that they had learned from a neighbour that AB was reportedly at their home in Dartmouth. Police were dispatched to arrest him. After a struggle, police apprehended him and charged him with several matters.

So, on June 24, only two weeks after his first court appearance (but several crimes later), he was brought back to Youth Justice Court. This time he faced 14 new charges after being arrested the day before. These offences occurred on or about May 10 and June 3, 12, 13, and 14. It was late in the afternoon when the court called AB's cases. Because of the number and seriousness of his crimes, Mr. Holt sought to detain AB in custody pending his trial. The police had also at this point recommended pre-trial detention (sometimes referred to as "denying bail") on the Crown sheet, a reflection from their perspective of the increasing seriousness of AB's crimes.

But neither the Crown nor defence counsel was prepared to conduct a bail hearing on that date. The judge adjourned the matters for plea and a bail hearing on June 28. By the consent of his lawyer, AB was remanded into custody at the Nova Scotia Youth Centre in Waterville until then. (I note that the June 28 date was still before the date—July 8—that had been scheduled for his initial plea arising from his first court appearance back on June 10. This certainly raises some concerns about delay in the youth justice system, about which I make a number of comments in the recommendations section of this report.)

On June 28, Mr. Holt asked the judge to revoke the June 10 release undertakings and conditions and combine those charges with the new ones that the police had laid after his June 23 arrest. Mr. Holt

intended to seek pre-trial detention on all of the outstanding charges against AB, partly in an effort to bolster the argument to have the judge deny bail. AB's lawyer was not prepared to proceed with a bail hearing that day, so the matter was again adjourned for hearing to July 6. By consent, AB returned to Waterville until then.

## 5.5

### **AB's First Bail Hearing: July 6, 2004**

On July 6, Mr. Holt actually had two matters for presiding Youth Justice Court Judge Tufts to consider. First, he would argue that the bail release conditions (the restrictive undertaking) from June 10 should be revoked. Second, he would argue that AB should not be granted bail this time, but rather be held in custody until all of the pending charges against him were heard.

Rickola Slawter of Legal Aid was AB's lawyer. She argued against Mr. Holt's position on both issues.

Before I explain the arguments these lawyers made about AB before Judge Tufts on July 6, I need to set out a summary of the complex laws regarding the second of Mr. Holt's arguments, pre-trial detention for young persons charged with a crime.

### **Pre-trial detention for accused young persons**

A "judicial interim release" hearing, also known as a bail hearing or "show cause" hearing (because it is usually up to the Crown to show why the accused should be detained), is held if the Crown determines that a youth should be held while awaiting trial. This decision is made in consultation with the police through a review of the materials provided by investigating officers to the prosecuting Crown attorney. The pre-trial detention process for young offenders is controlled by Youth Justice Court judges, following Part XVI of the *Criminal Code*<sup>2</sup> and several relevant portions of the *Youth Criminal Justice Act*, including sections 28, 29, 30, 31, and 33.

<sup>2</sup> *Criminal Code*, R.S.C. 1985, c. C-46.

The inquiry heard from a number of witnesses who participate in or carefully observe the youth criminal justice system in Canada, including lawyers (defence and Crown), police, court administrators, social workers, and academics. We benefitted from all of their varied perspectives, including differing views on the overall framework of statutes concerned with youth criminal justice. It is clear from their testimony that the web of related bail provisions for young people is among the most complex areas of these laws.

The inquiry was privileged to hear over two days from Prof. Nicholas Bala, a highly regarded law professor at Queen's University and a leading academic expert in youth criminal law, policy, and procedure. Professor Bala provided significant context and history for Canada's approach to youth criminal justice. As part of his presentation, he discussed judicial interim release for youth. He noted that these provisions are complex:

partly because they're interacting between the YCJA and the *Criminal Code*, partly because there's an interaction between the sentencing provisions and the pre-trial detention provisions, and there have been a number of different [judicial] interpretations. In some areas, we have some clarity provided by the Supreme Court of Canada, but there are some areas where there is conflicting case law, there are issues about how this interacts with the child welfare system ...

From a practical perspective, as Professor Bala also noted, bail hearings for young persons are challenging for those involved. He explained that because a bail hearing often happens early in the court process, this is the hearing that lawyers may have the least time to prepare for, although the relevant sections are the "most difficult part of the act to apply." Further, because judges have taken different approaches to this section, there is not clarity on how a particular judge may apply the laws. As with any statute dealing with



preliminary matters, these sections are less likely to be subject to jurisprudential clarification (that is, interpretation by other judges or an appeal court) because they are seldom appealed.

Is this complexity necessary? Not at all. As Professor Bala indicated, it is the interaction of some sections of the YCJA with the *Criminal Code* and the interaction between the provisions relating to pre-trial detention with sentencing provisions that have created the complexity. This amount of interaction between statutes and between sections of the same statute reflects hasty legislative drafting more than a careful and precise attempt to provide a readily understood and workable provision.

Section 29 of the *Youth Criminal Justice Act* should be redrafted. It should be complete in itself without referring to or incorporating any part of the *Criminal Code*. The section should provide all of the considerations and factors a judge needs to decide whether to impose pre-trial custody on a young person. Moreover, the YCJA pre-trial custody and post-conviction sentencing provisions should be separate and distinct, since they are two very different matters. That section 29 is so complex is most unfortunate. In AB's case, as I will explain, its complexity resulted in different lawyers taking different views at different bail hearings on the effect of these pre-trial detention provisions. Lack of clarity and undue complexity in such an important area does not lead to justice being served nor does it lead to public acceptance. I have made some recommendations on the YCJA's pre-trial detention provisions in Chapter 10.

### **Relevant statutory provisions**

Let me try to explain how the provisions work. The *Criminal Code* lays out the grounds for arrest, release, and pre-trial detention for all those criminally accused, including adults and young persons. The YCJA notes where the Code applies, but it also indicates circumstances where the Code provisions do not apply. For example, they do not apply if they are inconsistent with specific sections in the YCJA that apply only to

young persons. Therefore, it is necessary to look back and forth from the Code to the YCJA in what is a complicated web of statutory cross-references. This web is further complicated because of the lack of jurisprudential certainty on some of the provisions.

Section 515(10) in the *Criminal Code* sets down the grounds upon which detention may be justified. In summary, detention is acceptable if it is necessary to ensure a young person's attendance in court (section 515(10)(a)—the so-called "primary ground"); for the "protection or safety of the public" including any substantial likelihood that the young person will commit a criminal offence or interfere with the administration of justice (section 515(10)(b)—the "secondary ground"); or to maintain "confidence in the administration of justice" (section 515(10)(c)—the "tertiary ground").

The primary ground is not problematic for young persons: any accused may be detained if there is evidence that the person has a history of not showing up for court dates. But for the secondary ground, the YCJA adds important limitations on pre-trial detention for youth.

The starting point for pre-trial detention of young persons—indeed, for all detention or custody—is in the Preamble of the YCJA. The policy behind the YCJA's custody provisions is clear: the YCJA is meant to reduce the "over-reliance on incarceration for non-violent young persons" in Canada. I understand from Professor Bala and others that, at least in part, this policy is a response to the disproportionately large number of young people being held in custody in Canada under the previous legislation for reasons other than criminal justice purposes, including social purposes or to punish the young person. Section 29(1) of the YCJA also makes it clear that a court may not detain a young person in custody as a "substitute for appropriate child protection, mental health, or other social measures." Custody is not to be a replacement for dealing with a difficult youth in the child protection system, for example.

Pre-trial detention is highly intrusive in the life of a young person and, as such, should be used with restraint. As Professor Bala

noted, pre-trial detention is also problematic, since it can be seen as inconsistent with the presumption of innocence. Given these concerns, the YCJA's explicit emphasis on reducing youth custody rates, before and after trial, is a worthy policy goal, which I support.

With that general guidance in place, the YCJA further discourages overuse of pre-trial detention by carefully limiting the situations in which a youth court judge can put a young person in custody until sentencing. Section 29(2) provides that detention is presumed unnecessary except if specific grounds are met. The section reads:

In considering whether the detention of a young person is necessary for the protection or safety of the public under paragraph 515(10)(b) of the *Criminal Code*, a youth justice court judge ... shall presume that detention is not necessary under that paragraph if the young person could not, on being found guilty, be committed to custody on the grounds set out in paragraphs 39(1)(a)–(c) [of the YCJA].

To continue the analysis of these relevant provisions, one must then refer to section 39(1) of the YCJA, which restricts the circumstances in which a sentence of custody can be imposed on a young person who is found guilty of an offence. There are minimum criteria that must be met for a court to consider imposing a custody sentence. Custodial sentences are usually available only if the young person has committed a “violent offence” (section 39(1)(a)); has failed to comply with two or more non-custodial sentences (section 39(1)(b)); or has committed an indictable offence for which an adult would be liable to imprisonment for more than two years *and* the young person has a history that indicates a “pattern of findings of guilt” (section 39(1)(c)).

Section 29(2) therefore creates a presumption that the young person should not be held in custody before trial if he or she would not receive a custodial sentence if later convicted.

Professor Bala noted that Canadian courts have taken different approaches as to how strong this presumption is. Some courts have held that the presumption is very high, and therefore, if the strict requirements in section 39(1) are not met, a young person would almost always be released. Other courts have indicated that this is a rebuttable presumption at a lower threshold. This means that in appropriate circumstances, even though the statute says otherwise, a court will consider the particular circumstances and order pre-trial detention. In those courts that apply this lower presumption, it may be relatively easier for a Crown attorney to successfully argue that a youth who might otherwise not be held in custody after sentencing should nevertheless be kept in custody before trial, because, for example, there is evidence from ongoing criminal behaviour that the youth is “spiralling out of control.” (This disparity of interpretation points to one of the problems inherent in the application of bail provisions.)

A bail hearing will result in the Court ordering either the detention or release of the young person. There is also broad authority under section 515 of the *Criminal Code* to impose “reasonable conditions” on an individual who is being released, either to ensure attendance in court or to reduce the likelihood of re-offending. Conditions of release are not meant to punish or meant for rehabilitation or treatment; rather, they are to be related to the reason for detention that is being addressed.

### **Release to a “responsible person”**

Even if a judge finds that a young person could be held in pre-trial custody, the YCJA requires that the judge must consider an alternative to custody, again reflecting the policy goal of keeping young persons out of custody. Section 31(1) allows a judge to release a young person whose detention would otherwise be justified under section 515(10) of the Code into the care and control of a “responsible person,” such as a parent, guardian, or other adult. The Court must consider the responsible

person to be “willing and able to take care of and exercise control over the young person.” The responsible person must undertake in writing to “take care of and be responsible for the attendance of the young person in court when required and to comply with any other conditions” the Court imposes. If the responsible person “wilfully fails” in complying with the undertaking, he or she may be charged with an offence (section 139). There are rules for the suspension of the responsible person arrangement if necessary.

For their part, the young person must be “willing to be placed in the care” of the responsible person and must make an undertaking to comply with the arrangement.

### **Arguments and outcome of AB’s bail hearing**

The transcript of AB’s July 6 bail hearing was entered as an exhibit during Gary Holt’s testimony. During the hearing, Mr. Holt presented the facts to the judge, including the long list of pending charges against AB. It was the Crown’s position that AB should be held in custody while awaiting his trial on the charges he faced that day.

Mr. Holt summarized the law of judicial interim release under the YCJA and the *Criminal Code*. AB had shown no indication that he would not turn up for his expected court dates, so the primary ground for detention would not apply. Mr. Holt therefore made an argument under the secondary ground, which meant that he would have to consider whether AB would be held in custody under section 39(1) if he was eventually sentenced for the offences.

Mr. Holt noted that AB’s circumstances did not fit into any of the first three conditions for custody in section 39(1). First, none of the offences would be considered a “violent offence” as defined by the common law. Second, AB had not failed to comply with any sentences—he had not been sentenced at all. Third, while some of the charges were indictable offences for which imprisonment was possible (the “theft over” charges, for example), AB did not have the required

history that indicated a pattern of findings of guilt. A “finding of guilt” is a term that refers to section 36 of the YCJA and a finding that a youth court judge must make before a young person is sentenced for a crime to which he or she pleaded or was found guilty. Therefore, AB would not be sentenced to custody for any of these charges. Because of this, Mr. Holt faced the presumption of section 29(2); he would have to argue that the circumstances in this case somehow rebutted that presumption.

Mr. Holt did so, but by considering a paragraph not mentioned in section 29(2). He turned to paragraph 39(1)(d). He argued that the number of offences made AB’s situation an “aggravating circumstance.” Mr. Holt reasoned that paragraph 39(1)(d) was not subject to any presumption, although it dealt only with custody at sentencing, not for bail. In making the argument, Mr. Holt was candid with the judge, conceding that his argument “might not fly.” He added that it “flew in the face of the legislation.” I am inclined to agree; this construction of the statute is suspect, but well intentioned. At the end of the day, it appears that Mr. Holt was essentially looking for support for his position that the judge should look at all of the factors, including some not set out in the statute, to overcome the presumption that detention was not necessary.

As I have explained, even if the judge were to find that AB should be kept in pre-trial custody, he still had to inquire about the availability of a responsible person to whom AB could be left, as an alternative to custody. AB’s lawyer, Ms. Slawter, presented his mother, TL, as a responsible person, and the lawyers and judge had the opportunity to examine her.

Ms. Slawter advised the Court that AB had just turned 16 and said that he intended to go to school in September and also try to find work. She noted that AB’s mother and stepfather were willing to have him return home. AB’s mother asked the judge to allow AB to go home: “I am just praying to God that he has learned and he is home, should be home, where he belongs, with us.”

In response to questions about whether she would be able to exercise any more control over AB than previously, TL said that she didn't know, but she said she hoped that he had learned his lesson after being in custody in Waterville for two weeks. She acknowledged that AB would be home alone during the day and that she was unsure if he would stay home.

AB himself testified that he was willing to follow the conditions of his release and would try to "get a summer job and start school up in September." Mr. Holt asked AB what was different from when he was released on June 10, to which he replied: "Well, I kind of learned from my mistakes now ... I found out how good I had it at home and house arrest is a lot better than jail."

The Court also heard that AB intended to spend the summer with his father in Newfoundland.

Without giving specific reasons, after these arguments Judge Tufts agreed with Mr. Holt's call for pre-trial detention for AB and stated that he was "satisfied that detention could be ordered under 515 and under [section] 29 of the YCJA." The judge noted that the allegations were "extremely aggravating" and "give the court some considerable concern about the safety of the public." Judge Tufts issued his decision from the bench. He did not prepare a written judgment.

Having decided that bail would be denied, Judge Tufts then turned and considered whether AB could, instead of custody, be placed in the care of a responsible person. He was impressed with TL as a responsible person and said "I believe that she will do the right thing, notwithstanding that her position to supervise [AB] is not the best, given her situation." While AB would not be under TL's care while in Newfoundland, the judge permitted him to visit his father during the summer.

Judge Tufts released AB on a responsible person undertaking, an undertaking of both AB and his mother. AB undertook to abide by several conditions. He agreed to keep the peace and be of good

behaviour, reside at his mother's home in Dartmouth, not associate with certain persons, and abide by a curfew from 10:00 p.m. until 6:00 a.m. He was permitted to go to Newfoundland. Judge Tufts gave AB a warning:

I can say that your words, that you are not going to get into trouble, are simple words at this point. It is not that I don't believe you, but you need to back up your words with action ... So if you say that you are not going to get in trouble, and you don't get in trouble, then your word is going to mean something. But if you say one thing and do another, then the next time around, you are not going to be believed that much more.

## 5.6

### **TL's Withdrawal as "Responsible Person"**

AB left for Newfoundland on July 6. We do not know what his experience in Newfoundland was like. His father sent him back to Dartmouth in August. Apparently, upon his return AB's behaviour was improved. He started with a youth employment program, YouthLive, and managed to attend for two days. He was even doing chores around the house. But his turnaround was short lived. By late September, he had resumed his defiant and challenging behaviour. TL reached the point where she felt she could no longer assume the role of "responsible person."

On September 14, AB appeared in court again, accompanied by his mother, this time to plead guilty to nine of these outstanding charges and to set trial dates for the others. The Court granted AB's requests for a pre-sentence report and to adjourn the section 36 findings of guilt to the date of sentence for the guilty pleas. Dates were scheduled for sentencing for November 17 and for trials on the other charges in January and February 2005.



Two weeks later, TL, without AB, appeared in court on short notice and asked the youth court judge to relieve her of her responsible person undertaking. She explained that she was “losing control” and that AB was “basically doing his own thing.” He was defiant, and she suspected him of stealing from her and her husband. She said she felt intimidated by him. AB was no longer at home, but was “running from the police,” because she had called them when he had broken into their home.

Following the provisions of YCJA section 31(5), the court order to relieve TL of her responsible person undertaking automatically triggered the issuance of a Warrant of Arrest for AB. In a rather strange procedural twist, her withdrawal also released AB himself from his undertakings. When arrested, AB was to be taken “before a youth justice court judge or a justice without delay” for a fresh bail hearing under section 31(6). As we shall see, a new bail hearing on these charges was not conducted until after the car crash that killed Theresa McEvoy.

The Warrant of Arrest, which included all of AB’s outstanding charges, was an order to “All Peace Officers in the Province of Nova Scotia” to arrest and bring AB “before the Youth Court at 5250 Spring Garden Road, Halifax, Nova Scotia, Courtroom No. 5 to be dealt with according to law.”

# Chapter 6

## The Windsor Chase and Charges: The Events of September 29



While his mother was withdrawing as his responsible person, AB was continuing his criminal activity, stealing cars. He soon led police on a long and dangerous late-night chase toward Windsor.

It was the events following this police chase of September 29, 2004, up to October 14 when AB caused Ms. McEvoy's death, that gave rise to a major public outcry and ultimately to the establishment of this Commission of Inquiry. The thrust of the public outcry was that this tragedy would not have occurred had AB been properly handled by the justice system because he should have been in custody at the time. The reasons for why he was not were the subject of a great deal of the evidence in this inquiry. I am now satisfied that I have a complete picture of these events, sufficient to identify the actions of all involved. Additionally, I have a full understanding of all of the systems and procedures involved and how they applied to AB's circumstances. In this chapter and the next, I have examined the events of these days in great detail.

### 6.1

#### The Windsor Pursuit

Shortly after 2:00 a.m. on September 29, the RCMP sent a "be on the lookout for" message to other detachments in the surrounding areas indicating that a Dodge Neon had been reported stolen near Windsor, N.S.

At 2:25 a.m., Cst. Eric Jeanson of the RCMP was parked on the Beaverbank Road in Lower Sackville. He reported to S/Sgt. Scott Warnica, a watch commander for the Halifax Detachment, that a Dodge Neon had just gone by and he was going to catch up to it to

check if it was the stolen vehicle. He followed the vehicle without activating his emergency lights or siren, got close enough to read the licence plate, and reported what he had read. He was advised that the vehicle was, indeed, the stolen car.

Constable Jeanson radioed that he would follow the vehicle into Sackville and requested other RCMP officers to set up close to the Beaverbank Road. He wanted to be sure that when he turned on his emergency lights the other officers would be able to stop the vehicle if it attempted to speed away.

As the Neon approached, Constable Jeanson activated his emergency lights. At that, the Neon took off at high rate of speed with Constable Jeanson and two other RCMP vehicles in pursuit. They followed it from south of the Beaverbank Road towards Sackville, across Sackville Drive and the Old Sackville Road.

Staff Sergeant Warnica, who was stationed at Lower Sackville, joined the chase. As he reached the traffic lights at the intersection of the Beaverbank Road and the Old Sackville Road, he observed the Neon travelling south towards Highway 101 at an estimated speed of 100 to 120 km/h. As watch commander, his role was to “call the chase,” by directing the RCMP response to the situation.

The Neon reached Highway 101 and proceeded westbound towards Windsor. By this time there were five RCMP police cruisers in pursuit, all with emergency lights and sirens activated: two in direct pursuit, one a mile back, and two, Staff Sergeant Warnica and another, two miles back.

It was a clear night, the road was dry, and fortunately, there was no other traffic on the highway, as the vehicles were travelling at 180 km/h. The chase lasted 22 minutes and covered a distance of 55 km. The duration gave Staff Sergeant Warnica time to order out a spike belt and the canine unit.

The spike belt was put in place on the highway and caused the blowout of three of the Neon’s tires, effectively stopping it. As Staff Sergeant Warnica arrived where the car had been stopped, two of his

officers were arresting a young female. They advised him that two more people had run into the bush, a triangular wooded area off the highway. It was not long before the police dog flushed out two young males, one of them AB, into the open. They were arrested, one by Cst. Nancy Lambert and the other by Cst. George Cameron. Both of these officers were from Windsor and had been about to go off shift when, by radio, they heard of the high-speed chase, the spike belt, and the two males who had fled into the woods. They arrived on the scene to assist at the same time as the canine unit arrived.

Police officers took AB, the other male, and the female to the Windsor RCMP cells.

This was the end of a high-speed, dangerous, and dramatic police pursuit. AB's actions were reckless and endangered the lives of all involved. Frankly, it was a miracle that the tragedy that befell Theresa McEvoy did not happen to a number of others before the chase ended that night.

## 6.2

### **The “Windsor Charges”**

Once all three were placed in the cells, the female young person told Constable Cameron that there was a second stolen car in the Sackville area, but she did not know its location. Both Constables Cameron and Lambert spoke to AB about this. He revealed that it was at a cabin in Rawdon Gold Mines. Constables Cameron and Lambert, along with a backup vehicle, went looking for this location. They found the car, also a Dodge Neon, and found two youths asleep in the cabin, which had been broken into. The police officers immediately arrested the youths and brought them into custody in Windsor.

From this point on, I will relate and discuss only the events relating to charges laid against AB.

## **The RCMP in Windsor**

Though the officers who participated in the chase were from the Lower Sackville Detachment, it was the two officers of the Windsor Rural Detachment who made two of the arrests, took the three youths into custody, and followed up with the additional arrests, as the final events all took place within the jurisdiction of the RCMP Windsor Rural Detachment.

Actually, at the time there were two RCMP detachments in Windsor—Windsor Municipal and Windsor Rural—each with its own location, staff, and jurisdiction. These have since been amalgamated.

Windsor Rural had two basic divisions, one that handled the plainclothes investigatory work and another that included the uniformed general patrol division. S/Sgt. Tom Grant and an operational sergeant supervised the plainclothes members, while Cpl. MaryJo DeLuco was the supervisor of the 12 constables of the uniformed general patrol. Staff Sergeant Grant was the officer in overall charge of both detachments. Corporal DeLuco assumed the major role in the police investigation relating to AB and the other arrested young persons.

## **The RCMP investigation**

Corporal DeLuco arrived at the detachment at 6:30 a.m. on September 29. She was advised of the pursuit and capture and, by radio, heard that other officers were in the process of arresting the two youths in the cabin.

She and Staff Sergeant Grant discussed the situation and decided, because of the number of youths involved, together with the number of charges and the varied locations of the events underlying the charges, that plainclothes officers should assist in the conduct of the investigation. They were also aware that the young persons had to be before a judge within 24 hours after arrest. Constables Harvey O'Toole and Luc Côté were assigned. They, together with

Constables Cameron and Lambert, would conduct the investigation under the general guidance of Corporal DeLuco.

Through early morning checks on several police data systems, the team was made aware that AB was facing a number of charges in Halifax and that he had an outstanding Warrant of Arrest. Corporal DeLuco's first knowledge of the warrant came from Constable Cameron, who was told of it by AB's mother when he called to advise her that her son had been arrested and was in custody.

Corporal DeLuco contacted the Halifax Regional Police by phone regarding the arrest warrant, as she wanted it removed from the Canadian Police Information Centre (CPIC) data system to prevent any possible erroneous arrest of another person. She was advised that Halifax Regional Police did not have a warrant, but she told whoever she was speaking to that there was, indeed, an arrest warrant and when they found it to "pull it" from the system as the RCMP had the person in custody. I find this request somewhat strange in view of the RCMP's position throughout that they had not arrested AB on the warrant from Halifax, but only with respect to the offences relating to the overnight police chase.

The morning's investigation began with a briefing session with Corporal DeLuco and the assigned officers. Corporal DeLuco related the early morning events and assigned various aspects of the investigation. A lot had to be done in a short time, as the youth could be detained for only 24 hours unless remanded in custody by court order. Interviews were required of the five youths in custody, together with the owners of the two stolen vehicles and of the cottage. Arrangements had to be made for photographing and fingerprinting the youths. Charges had to be drawn up for the multiple offences.

During this investigation, AB revealed in an interview that some time earlier he had abandoned a stolen vehicle somewhere on the Old Guysborough Road. He was taken by Constables O'Toole and Côté to try to locate it. That took considerable time that day, and the vehicle was not found.

During the drive with the officers, AB talked about his family and living in Newfoundland. He also boasted of his knowledge of the streets and his ability to avoid being caught by the police.

While the team was busy with the various elements of the investigation, Corporal DeLuco was preparing the paperwork. Eight charges were to be laid against AB: two for theft over \$5,000 (the two vehicles), two for possession of stolen property over \$5,000 (the vehicles), one for break and enter (the cabin at Rawdon), one for evading the police (the chase), one for theft under \$5,000 (stealing gasoline), and one for breach of undertaking. Corporal DeLuco, who had been away from Nova Scotia for a year and had just returned that July, prepared eight separate Informations, unaware that the practice had changed during her absence to laying multiple charges on a single Information. This created more paperwork than was usually required and complicated later communication.

Since the investigation was taking up most of the day, it became apparent that an application for a remand would have to be made to the Justice of the Peace Centre at Dartmouth because the application could not be brought during regular court hours and comply with the 24-hour window. Corporal DeLuco, therefore, in addition to drafting the Informations, prepared the Crown sheet and the cover sheet for the Justice of the Peace Centre. She also telephoned the centre advising that they would be seeking an after-hours remand and asked about the process for such an application.

By mid-morning of September 29, the Windsor Rural Detachment had received a copy of the list of outstanding charges against AB in the Halifax youth court, as well as a copy of the Warrant of Arrest. All the members of the team were aware of them. The receipt of these confirmed what had been revealed earlier by several police data source searches.

In the discussion that follows, I will refer to the charges that AB was facing out of the Halifax youth court before September 29 as the

“Halifax charges” and the eight charges prepared by Corporal DeLuco as the “Windsor charges,” even though some of the latter arose from offences that took place in other communities (Lower Sackville and Rawdon, for example).

As the arrest warrant and the Halifax charges play a significant role in the events to follow, I note here that the evidence is clear that the warrant had not been executed by Corporal DeLuco or any member of the team on September 29. AB was never specifically arrested by the RCMP, or any police officer, on the outstanding Halifax charges. In fact, Corporal DeLuco made it very clear during her testimony that she was holding on to the Warrant of Arrest as a way to gain an additional 24 hours if the investigation required it. If the police failed to have AB before a judge within 24 hours, they could arrest him on the Warrant of Arrest, thereby gaining more time.

Meanwhile, following procedure, Constable O’Toole contacted the on-duty Crown prosecutor to indicate that they were going to seek a remand of AB and to receive his approval. The Crown prosecutor he spoke to was Michael MacKenzie, a *per diem* prosecutor. Mr. MacKenzie testified that he was contacted but, having made no notes at the time, had only a hazy memory of the conversation. He is satisfied, however, that he would have advised Constable O’Toole to seek a remand to the next morning for a bail hearing as the Youth Justice Court for Windsor was sitting that day.

## 6.3

### **Arraignment before the Justice of the Peace Centre**

The RCMP investigating team considered these circumstances to be a very serious chain of events. They were looking at a late-night pursuit over 55 km at speeds as high as 180 km/h. They knew the fleeing car had to be stopped by a spike belt across the highway. The youths in the car had fled and had to be flushed out by the RCMP canine unit.



Added to this was evidence of a second stolen vehicle and a break and enter. The RCMP believed that these events certainly warranted a remand to appear for a bail hearing before a judge at youth court the next day.

From the evidence presented to the inquiry, there can be no doubt that the RCMP intended that the remand sought would relate solely to the Windsor charges, and if granted, they expected that the court would be dealing only with the eight Windsor charges.

It was at this point, when the documentation for the application was being prepared, that Corporal DeLuco decided to include the arrest warrant with its schedule of Halifax charges. Her intention was that this would strengthen the request for a remand by showing that AB was facing numerous other charges, including breaches of undertakings, and there was an outstanding warrant. She expected the Court would consider AB's pattern of behaviour. They were to be, so to speak, the "icing on the cake" to remove any doubt that AB should be remanded on the Windsor charges.

Corporal DeLuco's decision, though well intentioned, was one important link in the chain of events, actions, and decisions that was connected to AB's release on the morning of October 12. At the same time, that decision, when added to the other links in the chain, illustrates a number of deficiencies and shortcomings in the systems, procedures, and offices of those involved. These include a need for continual, regular training for police, court administrative staff, and lawyers in the Public Prosecution Service, along with better communications among all the participants in the youth criminal justice system. All of this will be further and more precisely dealt with as I address each occurrence.

## **The Justice of the Peace Centre**

Justices of the peace have a long history in Nova Scotia, going back to the 1700s. Over the more recent years, changes have been made in their

manner of appointment, qualifications, and jurisdiction. By 1991, there were about 375 justices of the peace in Nova Scotia. By 2002, the justice of the peace system was completely overhauled, primarily due to the *Charter of Rights* and the increasingly complicated issues regarding the liberty of accused persons. The existing system was abolished and replaced by an entirely new one. The new system requires presiding justices of the peace to be practising lawyers with at least five years' experience (previously there were no more than two or three with legal training). Once appointed, they have tenure of office, judicial independence, and salaries fixed as a percentage of Provincial Court judges' salaries.

Under the prior system, there were justices of the peace throughout the province. However when the system changed, a Justice of the Peace Centre, known as the "JP Centre," was established in Dartmouth to serve all areas of the province. Access is available in person and by telephone, and it operates as a court office.

The JP Centre is staffed by "presiding justices of the peace," who are lawyers with years of practice experience and who function as independent judges in their areas of jurisdiction, and "staff justices of the peace," who are administrative persons with certain assigned powers in that regard. There are presently 17 presiding justices of the peace in Nova Scotia, 13 of whom preside at or through the JP Centre in Dartmouth. All hold office on good behaviour until age 65 and enjoy the same level of judicial independence as Provincial Court judges.

The JP Centre's jurisdiction is province-wide, and most of its work is performed through electronic means, using telephone, fax machine, and computer. Its operations are fully integrated into the provincial justice computer database. Its offices are open from 8:30 a.m. to 9:00 p.m. with on-call services at all other times, providing 24-hour service, seven days a week. While it is relatively new, it has been operating successfully, serving the judicial system by exercising the functions and powers within its jurisdiction.

The presiding justices of the peace at the JP Centre consider applications for search warrants and arrest warrants and conduct judicial interim release (bail) hearings, all matters concerning the liberty of the subject.

In the case of AB, the matter going to the JP Centre was an application by the RCMP on September 29 for a remand in custody until the next day and for the arraignment of the Windsor charges.

The facts relating to this application as set out in the following sections are most important in the determination of the events relating to AB's confinement and release from custody.

### **Preparation for the JP Centre hearing**

Corporal DeLuco telephoned the JP Centre sometime on September 29 to tell them that the RCMP would be making an after-hours application for a remand and for the laying of eight Informations by means of telecommunications alternative to oath, the latter being provided for in section 508.1(1) of the *Criminal Code*.<sup>1</sup>

Cherri Brown, the on-duty staff justice of the peace, testified at the inquiry. Ms. Brown cannot remember this conversation with Corporal DeLuco, but she related what she would normally do on such a request. Ms. Brown also gave helpful evidence on the JP Centre's administrative procedures. She would discuss what was being requested, whether it was an adult or a youth and, if the latter, whether a parent had been notified, was unable to be located, or was not wanted to be in attendance by the youth. The discussion would cover all documentation that was deemed necessary for the particular application.

Cst. Harvey O'Toole was assisting Corporal DeLuco. The responsibility to conduct the JP Centre hearing was assigned to him. It was he who actually faxed a package of 32 pages of documents to the JP Centre. Corporal DeLuco had prepared these documents earlier. She had included a JP Centre fax cover sheet, the eight Informations, the

1. *Criminal Code*, R.S.C. 1985, c. C-46.

Crown sheet, and, thinking it was pertinent to support a remand request, the arrest warrant with the schedule of Halifax charges, as well as a Promise to Appear from Halifax.

Very noteworthy here is the Fax Cover Sheet: Request for Justice of the Peace Services. According to Ms. Brown, the staff justice of the peace, this cover sheet is really considered to be a separate document because it sets out a series of boxes to tick off to indicate what the application is for. In this case three boxes were ticked: “Fax Swearing of an Information,” “Judicial Interim Release Hearing,” and “Particulars to a Justice attached.”

Notably, the box “Warrant for Arrest attached” was not ticked. The other boxes are of no concern here. The fax cover sheet had a second page that was to provide additional information. The RCMP did not send the second page of the cover sheet.

It seems obvious that the “Warrant for Arrest attached” box should have been ticked, since one was sent. But Corporal DeLuco testified that the box was not ticked deliberately, as the warrant was not executed and was included only to strengthen the application for remand on the Windsor charges. Corporal DeLuco thought the person receiving the cover sheet would understand this.

Contrary to Corporal DeLuco’s assumption, in Ms. Brown’s experience the JP Centre had never had an arrest warrant submitted where it was not intended that they act upon it.

Ms. Brown testified that although this cover sheet does indicate what is requested, her experience is that it is often not properly filled in. The result is that what is in the file material is important to them and whatever is in the file will be dealt with.

Adding some support to her testimony of many cover sheets being erroneously completed, Ms. Brown indicated that in this case, although “Particulars to a Justice Attached” was ticked, no such particulars were included. However, the form for Particulars to a Justice, if attached, might have helped clarify any communication

gap relating to the Warrant of Arrest as there is a place on that form to indicate whether or not the arrest was made on the warrant. At least it would have alerted the JP Centre to why the RCMP had included the arrest warrant in its supporting material.

### **The telephone hearing**

The presiding justice of the peace that evening was Kelly Shannon. He would conduct the hearing by telephone. Constable O'Toole was on the line with AB. It was a brief hearing, lasting only nine minutes. JP Shannon made the appropriate inquiries as to whether AB had had the opportunity to speak with defence counsel, the time of arrest, AB's age, and whether his parents had been contacted.

Constable O'Toole said that he had spoken to the Crown prosecutor, who opposed AB's release, and he requested a remand to youth court the next morning, September 30, at Windsor.

JP Shannon, after dealing with the eight Windsor charges, ordered that AB be held in custody (known as "remand") at a designated youth detention facility (the Windsor RCMP cells) for a show cause hearing the next morning.

Following this he stated:

Now, I understand that also I'm going to deal with one additional matter. There is a warrant of arrest that I have here as well and I will deal with that. You understand also one of the additional reasons, Mr. [B], as to the reasons why you were picked up is that there was a warrant of arrest that was issued on the 28th day of September out of ... the Halifax Youth Justice Court requiring that the accused be brought before the Youth Court at 5250 Spring Garden Road to be dealt with at that point and the warrant is unendorsed. What I'm going to do is have that matter set over and have the Judge tomorrow morning deal with the issues associated with the warrant for your arrest, do you understand?

After this he asked Constable O'Toole if he had any questions. Constable O'Toole replied "No, I don't," and the hearing concluded. JP Shannon endorsed the warrant of arrest as follows:

ACCUSED IN CELLS AT WINDSOR RCMP; ARRAIGNED ON 8 SEPARATE NEW CHARGES PROCEEDING AT WINDSOR; CROWN OPPOSED TO RELEASE; SEEKS ADJ [adjournment] FOR PURPOSE OF CALLING EVIDENCE; ADJ [adjournment for] SHOW CAUSE TO SEPT 30/04 AT WINDSOR YC [Youth Court] 10:00 AM

### **Legal status of the "Halifax charges" and "Windsor charges" after the JP Centre hearing**

Looking at the transcript of the JP Centre hearing of September 29, conducted by telephone, it is apparent that JP Shannon read the charges of the eight Informations and on these charges arraigned and remanded AB back to the RCMP cells until the next morning, when he would appear at Family Court in Windsor for a bail hearing. I understand this to be a remand order with the issues being adjourned until the next day. This was all the RCMP believed they were requesting, and only on the Windsor charges.

However, the presiding justice of the peace then continued during the hearing and referred to the arrest warrant. He presumed that AB had been arrested on the warrant, which was not the case, according to the RCMP. He observed that the warrant was unendorsed and said that the matter of that warrant would be "set over and have the Judge tomorrow morning deal with the issues associated (with it)." He endorsed the arrest warrant. In this case also, though the warrant was endorsed, the issues and the outstanding associated Halifax charges were adjourned to the next day.

Although the presumption that AB was also arrested on the arrest warrant was erroneous, JP Shannon acted quite properly in endorsing the warrant and setting over the issues to the judge on the next day. He was acting in accordance with the JP Centre practices

regarding arrest warrants, and his decision was consistent with liberty-of-the-subject principles. In a case such as this, where the liberty of the subject is involved, there is a duty to exercise the warrant, and it should be done without delay.

Nevertheless, at this point, based upon the evidence before me, it is clear that there were two diametrically opposed views about the result of the hearing. The JP Centre staff and the presiding justice of the peace considered that the arrest warrant was endorsed and the Halifax charges transferred to the Windsor youth court, along with the Windsor charges. All of AB's pending charges were to be before the court to be dealt with the next day.

The RCMP, on the other hand, believed that they had not executed the warrant, and they had no immediate intention to execute it. On this Corporal DeLuco was quite explicit; the arrest warrant was included only as a supporting document. Though Constable O'Toole did have an opportunity to clarify the RCMP position when JP Shannon referred to the warrant and asked if Constable O'Toole had any questions, his testimony was that he did not understand that the Warrant of Arrest was being executed and that the Halifax charges were being transferred to the Windsor court, along with the Windsor charges. Constable O'Toole, who had been aware that the arrest warrant was submitted to strengthen the remand application and that it was not intended that it be acted upon, explained his failure to respond by indicating he thought the JP knew what he was doing and, regardless of any mention of the warrant, it was only the Windsor charges that were being dealt with.

To remove any confusion as to whether or not the warrant was endorsed, I have no doubt that it was endorsed and dealt with by JP Shannon. To do so was within his powers, was done in the usual manner, and was consistent with liberty-of-the-person principles. So, whatever questions might arise by the wording of the endorsement, it was endorsed, and the Halifax charges on the schedule attached to the arrest warrant were transferred to the Windsor youth court.

It is interesting, and perhaps important, to note here that after the JP hearing, all the evidence relating to the arrest warrant and executing it on October 12 only goes to support the erroneous misunderstanding that existed as to this warrant, because legally it did not exist after it was executed on September 29, for once executed the warrant had no further effect. It was, as one witness described it, “spent.”

## 6.4 **Breakdown in Communications**

Hearings on criminal matters at the JP Centre, by their preliminary nature, are usually a one-occasion event. This was the situation here. In AB’s case, after the RCMP laid the charges against him during the hearing, the next step in the legal process—a possible bail hearing—was to be decided by a judge sitting in the appropriate court the next day. In cases like this, the staff of the JP Centre must provide the necessary documentation or orders to the parties to the hearing. As well, after a hearing that leads to additional court appearances for a matter, it is up to the staff justice of the peace to communicate the results of the hearing to the administration of the court that will next hear the matter.

It goes without saying that this communication must be prompt and effective, particularly when changes are made to another court’s dockets after hours. If that communication somehow breaks down, there is a significant risk that police, Crown, defence counsel, court reporters, and even the judge will lack all of the information they need to appropriately deal with the matters to be heard by the court.

The JP Centre therefore had careful procedures—a combination of fax, courier, and computer entries—to communicate this information. All parts of this combination had to function for all of the players to see the whole picture in criminal matters. Each part played a role in effective communication.



Unfortunately, in this case, the communication did not happen as it should have on the evening of September 29. Leaving aside the issue of the different understandings of the RCMP and the staff of the JP Centre as to the nature of AB's hearing, necessary details about AB's matters did not reach the intended recipients by the time AB's next court hearing was to start in the Windsor Family Court (sitting as a Youth Justice Court) at 10 a.m. the next morning. I should note that communication has two parts: the sender and the recipient. In this case, there were difficulties at both ends. Some of the faxed information sent by the JP Centre never reached the court reporter in the Windsor court. The courier package arrived only after the hearing. But the computer database entries to the Windsor docket, which Ms. Brown appropriately made, were not checked by the court reporter before court started the next morning; furthermore, she did not even have the facility to check the computer at the Windsor Courthouse.

All of this led to incomplete information about the nature of the matters AB was facing, which in turn led to confusion that plagued his later court appearances right up to his release on bail on October 12.

### **Electronic entries into JOIS**

After the JP Centre hearing, Ms. Brown, the staff justice of the peace, prepared the necessary documents to reflect the outcome of the hearing. JP Shannon had endorsed the eight Informations laid by Constable O'Toole against AB. He had dealt with the arrest warrant by preparing an endorsement as I have already described. His orders required the preparation by Ms. Brown of a Warrant of Remand for the RCMP to allow them to keep AB in custody on the Windsor and Halifax charges until the court appearance the next morning. Finally, his orders meant that all of AB's outstanding matters were to be added to the docket of the Windsor Family Court for the judge to consider the next morning.

The JP Centre had access to all of the separate parts of the JOIS network across the province, including all of the individual courts. JOIS—Justice-Oriented Information System—was the province-wide court computer database in use at the time. All justice-related information was stored in that system. Generally, a court’s ability to gain access to JOIS records was limited to the matters in their local jurisdiction. For example, court staff in Kentville were able to review and manipulate or change only matters pending in the Kentville, Windsor, and Annapolis Royal courts. The JP Centre, on the other hand, could make changes to any matter pending anywhere in the province. It simply meant remotely opening that court’s section of JOIS and making changes.

In this case, I understand that Cherri Brown entered the eight new Windsor charges in the JOIS system. The system assigned to the charges case reference numbers, each linked to AB’s existing individual entry, and she ensured that they were added to the electronic docket of the Family Court for the next morning’s hearing in Windsor. The Halifax charges, which had been entered in the JOIS system earlier that year when Constable MacDonald laid them in the Halifax youth court, each already had a case number. Ms. Brown was able to go into the JOIS records for the Halifax court, locate the 29 charges associated with the arrest warrant, and reschedule their hearing away from Halifax and to the Windsor court along with AB’s new matters. By doing so, she in essence took the Halifax charges away from the control of the Halifax court and put them into the control of the Kentville court, which administered the Windsor court.

Ms. Brown, seeing JP Shannon’s endorsement of the arrest warrant, also ensured that the Halifax charges no longer showed on the system that there was an outstanding warrant against them.

All of these JOIS entries were consistent with the outcome of the JP Centre hearing. The electronic component of communication of the hearing results was complete. Ms. Brown double-checked and verified all of the JOIS entries before her shift was over, and all seemed in

order. If Kentville court staff had looked at the JOIS electronic docket for the September 30 hearing in Windsor Family Court, by this point on the evening of September 29, AB and all his charges, new and outstanding, would have been clearly seen.

### **Attempted fax communication to the RCMP and the court**

After the JOIS entries were complete, Ms. Brown prepared the Warrant of Remand for the RCMP. One of the JOIS system's limitations was that it could not automatically generate all of the new forms required by the YCJA. Ms. Brown had to prepare the Warrant of Remand by hand but was able to use JOIS to generate a list of charges that was to form the basis for the remand. Because of her entries, that schedule showed that AB was being remanded for charges that included both the Windsor charges and all of the outstanding Halifax charges. The JOIS system also assigned to the Warrant of Remand an order number, 674049, which was also shown on the schedule of charges attached.

Following procedure, Ms. Brown prepared a fax to go to Constable O'Toole at the RCMP. That 20-page fax included a cover sheet identifying the contents, the Warrant of Remand (with schedule), and copies of the eight endorsed Informations. She successfully sent the fax at 10:11 p.m. Each of the Informations bore JP Shannon's signature, a stamp, a cross-reference to the remand order number, and a handwritten endorsement reading:

Accused in custody at Windsor cells; arraigned; Crown opposed to release; seeks adjournment for purpose of calling evidence; adjourned s/c [show cause hearing] to Windsor Y.C. [Youth Court], Sept. 30, 2004 at 10:00 a.m.  
— Order #674049

The Windsor RCMP now had the legal justification for keeping AB in custody until the morning and copies of the laid Informations.

Ms. Brown now prepared another fax, with a slightly different combination of documents, this time to be sent to the administrative centre or “base court” for the Windsor Family Court. According to the JP Centre procedure, that was the Kentville Justice Centre, the main administrative point for the Provincial and Supreme Courts for the area. In this case, the Family Court in Windsor was, in fact, administered by the Kentville Family Court, which was located in another building some distance away from the Kentville Justice Centre. Since it was the staff of the Kentville Family Court who maintained the docket for the Windsor Family Court hearings, it would have been more appropriate to direct the fax to that court. However, that was not the procedure in place at the time.

The fax to the Kentville Justice Centre was 21 pages and included a cover sheet, the endorsement by JP Shannon of the September 28 Warrant of Arrest, the Warrant of Arrest itself, along with its schedule of Halifax charges, and the copies of the eight endorsed Informations (the same as those sent to the RCMP). The Warrant of Remand was not included, since it was meant only for the police. (This is interesting, since it would have been the only document generated to date that would have shown a schedule of charges that included both the Halifax and the Windsor charges. Whether an observer would have noticed that when the documents were reviewed is another question.) The arrest warrant and JP Shannon’s endorsement were included to have the court ensure that the record was in the file and to signal the basis for the appearance of the Halifax charges on the docket, since none of the Informations or court files relating to the Halifax charges would have been available to the court in Windsor by the next morning.

At 10:18 p.m., Ms. Brown placed the package on the fax machine. Unfortunately, the fax transmission to the Kentville Justice Centre was unsuccessful because of what the machine called “poor line quality,” a rare occurrence, according to her. No more than nine

pages appeared to have been successfully sent. After the fax failure, Ms. Brown left a note for her colleague, Terry Lewis, to attempt to resend the fax package first thing in the morning.

In the meantime, Ms. Brown prepared the original documents to be sent by courier to the Kentville Justice Centre (the same documents as were to be faxed). As well, she would have prepared a separate package to be sent to the Halifax Youth Court, including the endorsed arrest warrant.

The next morning, Ms. Lewis found the instructions from Ms. Brown. Meanwhile, someone from the Kentville Justice Centre, seeing the partial fax, contacted the JP Centre. Ms. Lewis learned that the information should be sent to the Kentville Family Court rather than the Justice Centre and prepared a revised fax cover sheet with the Family Court's fax number. She called them during transmission to alert them to the arrival of the fax. At 8:19 a.m., the entire fax successfully arrived in Kentville. Unfortunately, that was as far as it went.

### **Unsuccessful attempts to send the documents to the Windsor Family Court**

The staff at the Kentville Family Court still had time to try to send a copy of the material to Eunice Patton, the Family Court reporter in the Windsor court, some 40 km away, for the 10:00 a.m. hearing. Ms. Patton had taken the docket and the files with her after the previous day and was by now en route or settling in for a day at the Windsor court. (I will discuss the usual court preparation procedures in the Kentville Family Court in greater detail later.)

It was too late to give Ms. Patton the hard copy. There was no means to send it to her, even by courier, because of the time, except by re-faxing the material. That seems straightforward, but there was a problem. The fax machine in the Windsor Courthouse was not working. I understand that it had been non-functional for some time. Further, I understand that there was no way to reach her directly at the courthouse. There was a Sheriff's office in the courthouse where

the fax machine was located, but the Sheriff's telephone was not accessible to Ms. Patton. There was no computer or access to e-mail or the JOIS network from the Windsor Courthouse.

In the Kentville Family Court, the task of trying to send the fax to Ms. Patton fell to Patricia Parker-Mutch. Ms. Parker-Mutch had experience as a court reporter, but her primary task was reception and some administrative duties for one of the Family Court judges. She handled communication for the Family Court, including fax correspondence. According to Ms. Parker-Mutch, who testified at the inquiry, direct faxes from the JP Centre arrived only very rarely. She knew it was important that those documents get to Ms. Patton, but the clock was ticking.

As she was considering how to do this, a visitor to the office, Michael MacKenzie, overheard her talking about the problem. Mr. MacKenzie was the same *per diem* Crown attorney who had been consulted by Corporal DeLuco by telephone the evening before. Although his office was in Windsor, he was in Kentville that morning for other matters. He knew that his associate Richard Hartlen was also a *per diem* Crown, who worked out of the same law firm, Anderson Sinclair. Mr. Hartlen was handling youth criminal prosecutions in the Windsor Family Court that morning, as well as acting for private clients on family law matters. Mr. MacKenzie suggested to Ms. Parker-Mutch that she try to fax the material to Mr. Hartlen in Windsor, who might be able to carry the documents with him when he left his office to the courthouse.

Mr. MacKenzie called Mr. Hartlen just a few minutes before 9:00 a.m. Mr. Hartlen was about to walk out of his office to head for court, but he agreed to take the fax to Ms. Patton if it was sent immediately.

Ms. Parker-Mutch remembers sending the fax to Mr. Hartlen's office. Records show a call from her fax line at 9:05 a.m. to Anderson Sinclair's fax number, lasting just under eight minutes. However, Ms. Parker-Mutch testified that her records do not include a fax

confirmation sheet that would show if the transmission had been successful.

It appears that the faxed documents could have been sent to Mr. Hartlen's office, but they seem never to have arrived, or they disappeared upon receipt. According to Mr. Hartlen and Mr. MacKenzie, their staff would ordinarily have kept documents like this, and they would have been put in the appropriate court file. There is no real explanation for why this fax did not make it to Windsor that morning.

It did not really matter because, in any event, the materials from the Kentville Family Court certainly did not arrive before Mr. Hartlen had to leave for court. He was the only means of getting the documents to Ms. Patton before court began. Mr. Hartlen left his office not long after 9:00 a.m., without the fax.

The documents, which had been carefully prepared by Ms. Brown the evening before, never made it to their intended recipient, Ms. Patton, despite the fax odyssey. This lack of information—a key piece of communication from the JP Centre—caused later confusion, duplication, and a lingering lack of clarity about which of AB's matters were before the Windsor courts that day and up to October 12.

# Chapter 7

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## **In the Windsor Courts and AB's Release: September 30–October 12**



### 7.1

#### **First Windsor Court Appearance, Family Court, September 30**

Corporal DeLuco brought AB, with another youth, to the Windsor Courthouse on September 30. In her testimony, she indicated that she had her file relating to the two accused. The file contained a Crown sheet with a copy for the defence lawyer, her unsigned and unendorsed copies of the charges, the Warrant of Remand, a copy of AB's undertaking, and the September 28 arrest warrant.

Richard Hartlen, who shared *per diem* Crown prosecutor duties with Michael MacKenzie, was the Crown prosecutor that day. He left his office shortly after 9:00 a.m. and arrived at the courthouse a few minutes later to organize the matters he would be dealing with that day. His only information about the AB matter, prior to meeting with Corporal DeLuco that morning, was that there were several youths in custody after a high-speed pursuit and that the police wanted AB held in custody.

Brian Stephens, a Legal Aid lawyer, represented AB. His knowledge of the facts came from his discussion with Mr. Hartlen and his copy of the Crown sheet plus whatever he learned from AB himself.

Eunice Patton was the court reporter for that day. Though she had almost 20 years' experience as a court reporter prior to 1992 in Provincial, Supreme, and Family Courts, she was working in 2004 as a court reporter on a casual basis at the Kentville Family Court. When she arrived at Windsor on September 30, she was unaware of the AB matter. It was not on her docket for the day, and she had no



documentation referring to it. As we shall see, none of the information or documents that would have alerted the court to the addition of these matters to the day's docket reached Ms. Patton before court started and AB's case was heard.

The judge sitting that day was Judge Corrine Sparks.

### **Windsor court organization and procedure**

Before going further into describing the events of this hearing and those of later days, I will briefly explain the organization of the courts in Kentville and Windsor, as this played a part in later difficulties. The central justice facility for the Valley Region of Nova Scotia is the Kentville Justice Centre, which houses staff, Provincial and Supreme Court judges, and facilities.

It also operates two satellite courts, one at Windsor and the other at Annapolis Royal, each with scheduled days of operation and with all staff and services coordinated by the Kentville Justice Centre.

Operating in a separate building apart from the Kentville Justice Centre, though an adjunct of it, is the Kentville Family Court. The Windsor Courthouse is used as a satellite Family Court, staffed and administered by the Kentville Family Court, again operating on fixed days. At the time in that judicial district, both the Family Court and the Provincial Court would sit as a Youth Justice Court, with the Family Court handling young offenders under 16 and the Provincial Court handling those between 16 and 18.

During the period of these events, Family Court activities in the Kentville region were divided 90 per cent on family matters and only 10 per cent on youth criminal matters. Involvement with youth was minimal in the Family Court, and staff experience in youth criminal matters was limited.

To have a complete understanding of the events, I need to explain the practice of the preparation of the Windsor Family Court docket. The court reporter has the responsibility of preparing the

docket, getting all the files organized and together for a court hearing, and where necessary, as with a satellite court, actually transporting them to the court facility. During court, the court reporter is responsible for the administration of the court's activities, its records, and results of hearings. The court reporter sometimes prepares orders and sees that the results of certain hearings are posted on the computer data system.

The Family Court kept a handwritten docket book in which all court matters were entered for their scheduled day, together with appropriate entries relating to each matter. Court staff continually updated this docket, since most matters in this court arose well in advance of the actual hearing date. Several days before the court day, the necessary related court files were gathered and organized. New matters would be added to the docket, and those files added to the files already gathered.

Thus prepared, court staff then entered a revision of the docket on the court's local computer, not using the JOIS network, but rather using the WordPerfect program. As changes or entries were made on the handwritten docket, they were also made to the WordPerfect data. None of those entries was made on the JOIS data system nor was JOIS ever used for docket information. I understand that at the time Family Court staff had some training on JOIS, but casual staff, like Ms. Patton, had limited training and exposure to that system.

At the end of the workday before the Windsor Family Court sitting, the docket and files were usually taken home by the assigned court reporter, who, the next morning, took them directly to the Windsor Courthouse. She ensured that she and the files would be in the courthouse with adequate time to make all the necessary preparations for the day. There was no usual practice to check for updates, by telephone or by electronic means, before the court hearing would start.

That is exactly the procedure followed in preparation for the September 30 Windsor Family Court. As the assigned court reporter,

Ms. Patton took home the files and docket on September 29 and the next morning took them directly to the Windsor Courthouse. Since AB's JP Centre hearing did not take place until after the end of the workday of September 29, neither the Family Court's handwritten docket nor the WordPerfect docket would have included AB's matters. Further, since the JOIS docket for September 30 had been updated only after the late evening JP Centre hearing, even if Ms. Patton had checked JOIS before leaving the Kentville Family Court office on September 29, she would not have seen AB and his numerous charges on the court's docket.

As a result, Ms. Patton was unaware of anything that may have come to the Kentville Family Court Office, either the evening before or that morning, and to further complicate the situation, she had no telephone or e-mail contact with that office. The only way she could have been contacted by Kentville was through the Sheriff's office, provided someone had been present to receive the call. Receipt of any faxed material was through a fax machine in the Sheriff's office, which was not working.

### **Pre-court discussions**

Corporal DeLuco transported AB and the other youth involved in the pursuit from the RCMP cells to the Windsor Courthouse on September 30, sometime before 10:00 a.m., so that she would have time to discuss the matter with the Crown prosecutor before court began. This was the usual practice in most police matters.

The Crown prosecutor, Richard Hartlen, met with Corporal DeLuco. He was not aware that AB's matters were on the docket. She gave him a brief summary of the incident giving rise to the arrest and explained that there was an outstanding arrest warrant and that AB was facing multiple charges in Halifax. She was clear that the RCMP wanted him remanded in custody.

Corporal DeLuco provided Mr. Hartlen with the eight long-form Informations with the Windsor charges. These were the unendorsed documents that the RCMP had faxed to the JP Centre the evening before, all of which were marked to be laid by fax rather than by swearing. She did not provide him with the endorsed Informations. Corporal DeLuco believes she gave Mr. Hartlen other documents when she learned he had no paperwork, namely, the September 28 Warrant of Arrest with the Halifax charges and the undertaking the RCMP had received after its Halifax inquiries. She did not provide him with the Warrant of Remand sent from the JP Centre, the only document that would have shown all of the Halifax charges and the Windsor charges on one single list.

Brian Stephens, AB's Legal Aid defence lawyer, was assigned before court that morning. He participated in pre-court discussions with Mr. Hartlen, which, he indicated, were the source of much of his information about AB. Mr. Hartlen testified that he met with Mr. Stephens. He said he gave one copy of the Crown package to Mr. Stephens, although Mr. Stephens could not recall this.

Since there was no docket entry for the AB matter and no documentation for the court, Corporal DeLuco provided Ms. Patton, from her file, with unsigned copies of the eight Informations. These were her copies of the ones sent by Constable O'Toole to the Justice of the Peace Centre. I do not understand why she did not provide the court with the endorsed faxed copies she had received from the JP Centre.

According to Mr. Hartlen, it was a busy time before court was to begin, and these pre-court discussions lasted no more than four minutes.

### **The September 30 hearing**

The testimony before the inquiry clearly established what each of the persons involved understood was to take place at the hearing that morning.

Corporal DeLuco's understanding, despite the faxed material from the JP Centre, was that AB was at a show cause hearing during which the Crown would be seeking a remand based only upon the eight Windsor charges.

Mr. Hartlen, Crown prosecutor, also believed that he was dealing only with the Windsor charges. Although he was aware of the arrest warrant with its schedule of Halifax charges, his understanding was that it was outstanding. In fact, Mr. Hartlen discussed the Windsor charges and his intent to seek a remand in custody on those charges with Mr. Stephens and referred to the outstanding warrant and the Halifax charges. According to Mr. Hartlen, it was this latter reference that "sealed the deal" for Mr. Stephens to consent to the remand in custody. As well, Mr. Hartlen had suggested to Mr. Stephens that the only court with jurisdiction over the Halifax charges was the Halifax youth court.

Brian Stephens, the defence lawyer, knew that AB was facing charges in Halifax and that there was an arrest warrant after his mother withdrew as a "responsible person," but he was "absolutely certain" that only the eight Windsor charges were before the court that day. He understood that the arrest warrant, Halifax charges, and undertaking were only further ammunition to support a remand. His view, on the limited knowledge he had at the time, was that the warrant, the undertaking, and the Halifax charges were a matter for Halifax.

Finally, Eunice Patton, as the court reporter, knew only that AB and another youth were in the courtroom. She had no other information and no documents except those provided to her. Her handwritten and WordPerfect dockets for the day contained only the matters scheduled as of the end of the workday on September 29. She had no way to check the JOIS docket from the Windsor Courthouse, even if that had been the usual practice, which it was not. The fax bundle from the JP Centre, which included documents that would have shed some light on the situation (although not the entire

picture), never reached her in Windsor that day. All she had were eight unendorsed Informations, each with a single charge. This was not unusual, and she had no reason to think there was anything else she needed. Ms. Patton understood that AB was to be arraigned on these eight new charges and that a bail hearing would follow.

Of course, it was only through the documents provided to Ms. Patton and the comments by the lawyers during the hearing that the presiding judge had the information she needed to formulate an appropriate court order for AB's matters.

It is apparent from the transcript of the September 30 hearing that Judge Sparks dealt first with the other youth and then with AB. Mr. Stephens explained AB's situation to the Court, indicating that it was similar to the previous accused, though he added to the number of charges (the Windsor charges) a breach of undertaking and the information that AB had been picked up on an arrest warrant. After explaining the withdrawal of AB's mother as responsible person he told the Court, "There is a warrant that has been executed in addition to the new charges."

The judge questioned Mr. Stephens about the Halifax matters. In response Mr. Stephens said:

My friend and I had some discussions to the effect of ... that maybe there is something we can't deal with here, that it's something that has to be dealt with in Halifax because that's in addition to his being picked up on the charges that are before this Court this morning.

Mr. Stephens indicated to the Court that he was consenting to a remand of AB in custody to appear in Windsor Provincial Court on October 4 and that his references to the arrest warrant and undertaking were only to put these matters on the record as an indication of his reason for so consenting. He appeared to see the Halifax matters as strengthening the Crown's case for remand.

After a brief discussion, the judge indicated that perhaps Mr. Stephens should go back to the Halifax court if he needed

clarification on the undertaking and asked if there was any urgency to deal with that matter. No mention was made by anyone of the list of Halifax charges. At the end of one of the comments by Judge Sparks, she added, “but there are several other charges here,” a clear reference to the Windsor charges only.

Mr. Hartlen’s only comments to the court were that Mr. Stephens had summed up the Crown’s position and that the Crown was opposed to AB’s release.

My counsel questioned Mr. Stephens during his testimony at this inquiry on two statements he made to the Court that day: first, his statement that AB was “also picked up pursuant to a warrant of arrest,” and, second, that “a warrant has been executed, in addition to the new charges,” as they implied that AB was arrested on the warrant and that it had been executed. Mr. Stephens explained to the inquiry that he had no such knowledge. He said he was using imprecise language to express his intention, which was merely to place on the record these matters to show why he was consenting to the remand.

At the end of the September 30 hearing, Judge Sparks ordered that AB be remanded until Monday, October 4 at 10:00 a.m. at the Windsor Provincial Court.

The transcript makes it quite clear that Judge Sparks was satisfied she was dealing only with the Windsor charges and the consent to remand was based only upon those charges. She had no knowledge that JP Shannon had adjourned the bail hearing on all charges to her care. Had she been so aware, I have no doubt she would have dealt with the whole matter. It was the system’s failure to get the appropriate documents and necessary information to the court in time that caused the problem.

The hearing lasted no more than five minutes. The actual Warrant of Remand issued at the September 30 hearing sets out in Schedule “A” only the eight Windsor charges.

Ms. Patton, for her part, was firm in stating that, based upon the documentation she had and what she heard in court, the Windsor charges were the only matters before Judge Sparks, and she thought they were new charges not previously laid.

## 7.2

### **JOIS Entry of Case Hearing Results**

Ms. Patton returned to her Kentville office with the day's files sometime after 5:30 p.m., and on her arrival, Ms. Parker-Mutch gave her the fax received from the JP Centre and told her how they had attempted to send it to her. As it was late, Ms. Patton put the fax in the file.

The next day, she took the eight Informations and endorsed the back of each one. While she did that, her co-worker, Judy Whiteway, entered the new Informations on the JOIS system, giving each a number and noting the results. Around this time, either Ms. Patton or Ms. Whiteway learned that the JOIS docket for September 30 showed the eight Windsor charges that Ms. Whiteway had just entered plus what appeared to be eight additional Windsor charges. These were, of course, the same charges that had been entered the previous evening by Cherri Brown at the JP Centre. The result was that 16 Windsor charges were showing in the system. The JOIS docket also showed the 29 Halifax charges. A printout of this JOIS docket was made, whereupon Ms. Patton was faced with a dilemma. Every JOIS Court docket required an entry for each item indicating how it was disposed of, yet the only matters she knew that the Court had dealt with were the eight Windsor charges from the Informations she had received that morning. Those were the only ones she felt she could make an entry about. The duplicate Informations presented a further record-keeping concern under the JOIS data system, as each item required an entry indicating how it was dealt with.



Ms. Patton left this dilemma to her colleagues, who had much more training in the JOIS system. She had no further involvement with making any entries on these other matters, though she was aware that Ms. Whiteway and another colleague, Deborah de Graaf, were dealing with that.

Ms. Patton's final involvement was to prepare the physical file for the October 4 hearing and send it along to the court. Since the matter would now be heard in the Provincial Court (sitting as the Youth Justice Court), she had to send the file to the Kentville Justice Centre, located in another building. The file she prepared had the eight Informations from Windsor, the fax from the JP Centre, a copy of the Warrant of Remand she had prepared in Windsor showing only eight charges, a WordPerfect printout for the judge of what happened in the Windsor court, together with confirmation sheet of the fax attempted to be sent to Windsor.

Ms. de Graaf, a court reporter at the Kentville Justice Centre since 1988, testified that Ms. Patton sought her help about how to make entries on JOIS with regard to charges that were on the docket, but not dealt with by the Court on September 30. Ms. de Graaf said she would look after it. Her only information was from Ms. Patton, and knowing that the Windsor charges were remanded to October 4, she had no problem in making the entry of a remand on each charge. Since none of the Halifax charges had been dealt with by Judge Sparks on September 30, she decided that the best action was to delete them from the JOIS docket, which she did. Altering the docket for a court date after the fact was possible under JOIS. Having done this for September 30, Ms. de Graaf realized that the effect would be that the data system would reflect the last entry before the deletion. She then thought that since the Halifax cases had been at least discussed on the record on September 30, even though there was no final outcome, she should put something on JOIS to show that. This was based upon what Ms. Patton had told her: there had been no charges before the court on the Halifax matters, and the court had no jurisdiction. Since

she had deleted them, she had to call the Halifax court and get them to reschedule the 29 charges back to September 30 so she could enter different hearing results.

Ms. de Graaf then entered a hearing result that she felt addressed the situation. The entry indicated that the September 28 arrest warrant had *not* been executed, and since there was no documentation (Informations) regarding the Halifax charges, the court did not have jurisdiction. The JOIS printout shows the date of her last changes as October 7.

All of these changes took some time, so Ms. de Graaf was still sorting out what she considered to be an appropriate results entry on Monday, October 4, the scheduled date for AB's next hearing in Windsor. The JOIS system showed both the Windsor and the Halifax charges when the docket was printed before the Monday hearing.

Therefore, the Halifax charges were on the docket for October 4 before all her changes were entered. Ms. de Graaf did not recall doing that, but she said it was an error as it was never intended for the Halifax charges to be dealt with on October 4. She understood that Judge Sparks had never adjourned them to that date as they were never before her.

Based upon this, Ms. de Graaf called the court reporter who was scheduled for October 4 and told her that the charges were not supposed to be on that docket for the reasons just described and that she would delete them. She said that the judge and lawyers need not concern themselves with trying to get the Informations relating to the Halifax charges. Also, they would have time to print a new docket reflecting the actual matters for October 4.

As a result of all these changes, a JOIS search would have shown only the show cause hearing scheduled for October 4 on eight Windsor charges and an outstanding arrest warrant. At the end of the day, the effect of Ms. de Graaf's actions was to completely remove the actions of the JP Centre of September 29, as far as a JOIS search would show. Ms. de Graaf's actions were well intentioned, and she meant to

use her familiarity with the JOIS computer to clear up any confusion. Unfortunately, despite some uncertainty by those involved, including Ms. Patton, Ms. de Graaf did not contact any of the counsel, police, or even Judge Sparks to ensure that her entry reflected the matters that were before the court on September 30. The Halifax charges on her instructions were not on the October 4 actual docket for that day, once again leaving their status uncertain and subject to ongoing confusion.

## 7.3

### **Court Appearances, October 4 and 5**

William Fergusson, Q.C., is a senior Crown counsel who has been in the prosecutorial service for 25 of his 34 years as a barrister. Mr. Fergusson is in charge of the region covered by Kentville Justice Centre, which includes the Windsor courts.

Since AB was not under 16 years of age, he had been remanded to the Windsor Provincial Court, sitting as Youth Justice Court. For the remand date, October 4, Mr. Fergusson was to be the prosecutor. On the previous Friday, Mr. Hartlen had brought his file to Mr. Fergusson with a file memo to the effect that AB was in custody on the Windsor charges, that Hartlen understood there was an outstanding Warrant of Arrest from Halifax for a number of charges, and that the remand was from September 30 to October 4, following a previous remand from the JP Centre, whereby AB had been held in custody until September 30.

Mr. Fergusson's only knowledge of this matter was from Mr. Hartlen and the file, which also contained Mr. Hartlen's copy of the Crown sheet prepared by Corporal DeLuco. That document set out the eight Windsor charges and then noted there was "a consent remand" to October 4. As well it noted: "There's a current outstanding warrant from Halifax Provincial Court," explaining that the warrant was the result of AB's mother ceasing to be the responsible person. Nothing was in the memo to show what charges were attached to the arrest warrant.

The Warrant of Remand issued by Judge Sparks related only to the Windsor charges. Nevertheless, the JOIS October 4 docket, actually printed by the court reporter that day, included the Halifax charges, as well as the Windsor charges, now shown in duplicate. According to Mr. Fergusson, although they were listed on the docket, since the Informations relating to those charges were not in court, in his experienced view the Halifax charges were not, in fact, on the docket.

On October 4, AB had new counsel, Karen Armour, also from Legal Aid. Ms. Armour's practice is exclusively criminal law, and in that context she deals with young persons 16 years of age and older. Her understanding and knowledge of the AB matter were essentially the same as Mr. Fergusson's: AB had outstanding Windsor charges, there was an arrest warrant out of Halifax, and there were other Halifax charges of which she had no details, together with the withdrawal of the responsible person undertaking of his mother.

Regarding the Halifax charges and the arrest warrant, her main concern on October 4 was the uncertain role they might play in his release on the bail hearing on the Windsor charges. Nevertheless, she wanted to know what was going on in Halifax so she could properly defend AB.

She and Mr. Fergusson discussed the situation. He agreed to find out more from Halifax.

The transcript of the October 4 hearing confirms that, at the outset, Mr. Fergusson referred to the docket showing "a number of matters from Metro," which he suggests should not have been there, or "may or may not belong there." He told the judge that he and Ms. Armour had agreed to put the matter over for a day to October 5 to clarify the matter of all these charges. Ms. Armour clearly indicated on the record that it was only the Windsor charges they were concerned with and that eight of the extra charges were really duplicates of those and 29 others were from Halifax.

The result was that the judge remanded AB by consent to the next day, October 5.

At the October 4 hearing, Mr. Fergusson testified at this inquiry, either Constable O'Toole or Constable Cameron of the RCMP was present, though he believed it was Constable O'Toole because it was to him that Mr. Fergusson addressed his report. Also, he asked the constable if Halifax police were being kept advised of AB's status appearance by appearance. He was advised that they were.

AB was back in court on October 5 for a brief appearance. Mr. Fergusson indicated to the judge that he and Ms. Armour were discussing what was going to happen regarding the Windsor charges, including a possible guilty plea and probation. In the courtroom were two RCMP officers, possibly Constables Cameron and O'Toole, well within earshot. One of them later asked Mr. Fergusson if that meant they did not have to come to court on the October 12 for the bail hearing, to which Mr. Fergusson replied that there would be no bail hearing on that date.

Mr. Fergusson had indicated privately to Ms. Armour on October 5 that if AB was to plead guilty to at least four of the eight charges and an amended breach of undertaking charge, the Crown would be seeking probation. It was really Ms. Armour who was prepared to extend the remand to October 12, as she wanted to find out if AB wanted the Halifax matters transferred to Windsor, so that all charges against him would be dealt with there, and to see if Halifax would agree to their transfer. As a result, both Mr. Fergusson and Ms. Armour agreed to a consent remand of AB to October 12 at Windsor.

The foregoing understanding was confirmed in writing by Ms. Armour in her letter to Mr. Fergusson of October 5.

Of special significance here is that both the Crown and defence, in discussing sentence, spoke of probation. There was no mention of custody: both lawyers believed there was no possibility of a custodial sentence on the Windsor charges.

Judge Alan T. Tufts, quite properly, acted upon the advices given him by Crown Prosecutor Fergusson and the consent of AB's lawyer, Ms. Armour, and granted adjournments on both October 4 and 5. He was entitled to rely on the Crown prosecutor's representations as to what was on the docket for that day—and what the circumstances are on any given matter. Here, he would have had no indication of any other charges before him. In fact, he was being advised of some mix-up that the Crown was going to “sort out” relating to the Halifax charges, while he was being asked to grant a remand on the Windsor charges, which was consented to by defence counsel.

## 7.4

### **Mr. Fergusson's “Streams of Involvement,” October 5–12**

Although Mr. Fergusson believed, after talking to Constable O'Toole, that the RCMP were keeping the Halifax Regional Police informed of the AB events, appearance by appearance, after the October 5 hearing he phoned Leonard MacKay, whom he knew to be one of the two Halifax youth court Crown attorneys, at his office direct line number. When Mr. MacKay did not answer, Mr. Fergusson left a message on Mr. MacKay's voice mail. He explained that AB had been remanded in custody in Windsor until October 12 and would likely not be kept after that date on the Windsor charges. Since there was an outstanding Warrant of Arrest and a number of charges in Halifax, he said that if the Halifax Crown prosecutors were interested in dealing with him while in custody, they should consider a transfer (“pick-up”) order.

Mr. Fergusson made this contact to let the Halifax Crowns know AB's status. His understanding at the time was that the police agencies decided the action to be taken on arrest warrants, while the Crown handled pick-up orders for accused persons already in custody.

Since the Halifax Crowns were familiar with all the charges against AB through its files, he was letting them know the situation so they could decide what course of action they wished to take.

Mr. Fergusson never received any response from Mr. MacKay to his message, which did not call for a reply, nor did he ever have any further telephone conversation with him. He was satisfied that what he termed in his testimony the “two streams of involvement,” the police with the arrest warrant and the Halifax Crown with the pick-up order, were now well aware of the AB situation. He expected that each would take whatever course of action they deemed appropriate. As the system was, if either or both decided to act, by arresting AB on October 12 or by execution of a pick-up order, there would not need to be any contact with Mr. Fergusson beforehand as to what was taking place.

At this stage Mr. Fergusson, who was engaged in many matters on busy daily dockets, felt that everything regarding AB was under control. The RCMP were keeping the Halifax Regional Police informed, and he had informed the Halifax Crown. If anything was going to be done, it would be done by one or other or both of them. He believed his “streams of involvement” covered the situation.

### **Leonard MacKay’s oversight**

Though Leonard MacKay had been a Crown prosecutor for several years, he had just moved to the Youth Justice Court in February 2004. He was aware of AB, having seen his name on many youth court files, although he had not been in court with AB. From the publicity, he had some understanding of the Windsor pursuit and the related charges.

In his testimony before the inquiry, he indicated that he was involved in a large matter on October 5, had interviewed a number of witnesses prior to attending at court, and only got back to his office at lunchtime. He checked his voice mail messages and heard Mr. Fergusson’s message about AB. His recollection of the content of the message was essentially the same as indicated by Mr. Fergusson.

Mr. MacKay returned to the courthouse that afternoon. Before going upstairs to court, he met two Halifax police officers whom he knew quite well and “ran the scenario of how to deal with the warrant issue for a person in a different jurisdiction by them.” He himself was uncertain. Their advice was to formally contact the Halifax Regional Police. He then continued upstairs and related the situation to Constable MacDonald of the youth court and asked him to take care of it in these terms: “There’s a young person in custody in Windsor. He has charges in warrants here in Halifax. Can you make sure that something gets done to bring him to Halifax?”

Mr. MacKay’s understanding at that time was that the Warrant of Arrest was still outstanding.

Mr. MacKay then went to his office at the courthouse to ready himself for the afternoon docket. He was meeting with three police officer witnesses when Constable MacDonald entered, told him that he had learned that AB had been remanded for a week, and suggested that the Crown simply do a pick-up order—an order of a court directing the transport of AB to Halifax to face the Halifax charges. Mr. MacKay agreed to do that and understood that it was typically the Crown who could have a pick-up order prepared and authorized by a judge.

A pick-up order is simply an order directing a sheriff to take a person who is already in custody and transport him to the location directed in the order. The draft order presented to the judge for signature is supported by a sworn affidavit setting forth the reasons for requesting the order. It would, in most cases, be prepared by court staff on the instructions of Crown counsel as to the contents of the affidavit. According to Constable MacDonald, Mr. MacKay asked him who did these pick-up orders. He told him the name of the two persons in the Crown office who did them.

These were the few steps that Mr. MacKay was to take after his short discussion with Constable MacDonald: instruct staff to prepare



the order and provide the information for the affidavit. However, he took no such steps. Mr. MacKay simply forgot. As he explained, he was busy in court that day, and it just slipped his mind. This obviously was an unfortunate mistake. Mr. MacKay recognizes this. I was impressed by his forthright testimony on this point.

The result of Mr. MacKay's oversight, of course, was that no pick-up order was made for AB, and one of Mr. Fergusson's "two streams of involvement" was out of commission.

### **What if the pick-up order had been issued?**

During the months leading up to this inquiry, some observers, including the Department of Justice in its own internal assessment of these circumstances, blamed AB's release on October 12 in large measure on Mr. MacKay's oversight in forgetting to obtain the pick-up order after Mr. Fergusson's call. Upon careful analysis, I feel it is important to note that there is certainly no guarantee, even if the order had been issued, that AB would have been held in custody and thus not have been free to steal the car that killed Ms. McEvoy.

The pick-up order presumably would have resulted in a sheriff standing by in the Windsor court on October 12 to transport AB to Youth Justice Court in Halifax. There he would have faced a new bail hearing arising from the withdrawal by his mother of the responsible person undertaking. As I have explained the procedure, a new judge would have had to make a new decision about the circumstances relating to the Halifax charges to determine if AB should be held in custody pending trial on the charges. Whether such a hearing could have taken place on that day is unknown, nor do we know what would have happened to AB if a hearing had been delayed.

At a new bail hearing, the Crown prosecutor assigned to argue this time (there was no guarantee it would have been Mr. Holt for a second time) would have had some additional supporting facts. For example, by October AB had pleaded guilty to a number of the

Halifax charges he was facing, although no section 36 findings of guilt had yet been made. Also, the existence of the new Windsor charges would have been significant new facts to put before the judge. The Crown could have buttressed an argument with these additional facts. In questioning by my counsel, Mr. Holt, when asked about this hypothetical new Halifax bail hearing, agreed with the characterization that these new facts were a “little more ammunition,” but he had little confidence that it would have resulted in pre-trial custody.

On the other hand, a key different fact in October would have been that there was no responsible person waiting in the wings, potentially available to provide a ready alternative to custody for AB.

We know that Mr. Holt had successfully argued on July 6 that AB should be held in custody on these same charges, although Judge Tufts assessed TL as a responsible person in lieu of custody and knew that she was ready and willing. As I indicated, Mr. Holt himself acknowledged in July that his argument went against the presumption for pre-trial release. Judge Tufts’ decision appears to have been a rare result. Any new hearing would have had to take place within the confines of the presumptions in the *Youth Criminal Justice Act*.<sup>1</sup> Given the uncertainties in the application of the pre-trial detention provisions of the YCJA and the discretion given to the youth court judge to determine afresh the question of judicial interim release, it is impossible to say if AB would have been held in custody for the Halifax charges, even with the new facts available. We can only speculate as to the outcome of an October 12 Halifax bail hearing.

It is possible that a pick-up order could have resulted in AB being returned to Halifax *before* October 12. That possibility provides even more room for speculation, which is of little assistance at this stage.

Therefore, to simply suggest that had the pick-up order been issued that AB would not have been on the streets to re-offend does

1. *Youth Criminal Justice Act*, S.C. 2002, c. 1.

not adequately recognize the restrictions in the YCJA and the uncertainties in the process, the timing, and the outcome. While it would certainly have been a welcome development in AB's case, and while it may have increased the likelihood of AB's being held in custody, Mr. MacKay's oversight can in no way be considered determinative of his release from Windsor on October 12.

### **Police contact**

On October 5, Mr. Fergusson sent a fax to Constable O'Toole that listed the *Criminal Code*<sup>2</sup> sections with which AB was charged, noting that all charges were in duplicate, and reported that AB had been remanded on an adjournment to October 12. This fax was typical of reports a prosecutor completes and sends to the police after a person appears in court, advising what has occurred.

The RCMP at the Windsor Rural Detachment were, as a result of this fax, aware that AB had been remanded in custody until October 12. Actually, on each remand from September 30 onward AB was kept in custody at the Nova Scotia Youth Centre at Waterville and was no longer in the RCMP cells at Windsor.

Sometime between October 5 and 12, Corporal DeLuco received a telephone call from a male Halifax police officer. In response to his query, she confirmed that AB was in custody, and Corporal DeLuco said "He's yours any time after the 12th of October." That was the extent of the conversation. In actual fact, the inquiring Halifax Regional Police officer was Cst. Richard MacDonald who was confirming the information Mr. MacKay had related to him; this conversation most likely took place on the afternoon of October 5.

Between these dates, aside from the items just referred to, there was no further contact between Mr. Fergusson and the Halifax Crown attorney or the Windsor RCMP. As well, there were no further contacts between the Windsor RCMP and the Halifax police regarding AB.

<sup>2</sup> *Criminal Code*,  
R.S.C. 1985, c. C-46.

## **Was more expected of Mr. Fergusson?**

In the final submission of the McEvoy family, some criticism was directed towards Mr. Fergusson. It was suggested that he should have taken further steps between October 5 and October 12 by contacting the Halifax prosecutors, especially since he had had no response from his call to Mr. MacKay or from the RCMP in regard to the Warrant of Arrest. More importantly there was a strong suggestion that he should have sought detention on October 12 because he was aware of the Halifax charges and the arrest warrant and could have used those to support detention.

Having heard all the evidence surrounding these events, I would hesitate to pinpoint one person or event in all that occurred that would have led to detention of AB on October 12, the only thing that would have prevented Ms. McEvoy's death on October 14.

This is not unlike trying to put the genie back in the bottle. Obviously, Mr. Fergusson could have done as was suggested. Even if he had, the question still arises, would it have made a difference? In view of the YCJA detention provisions, as will be discussed in detail, it most likely would not. He has satisfactorily explained his actions and the reasons behind them in his testimony. The fault in AB's release could be attributable only to a series of system failures complicated by restrictive legislation.

## **7.5**

### **AB's Release: October 12**

The RCMP were not asked to attend on October 12 by Mr. Fergusson. This was not unusual. Mr. Fergusson believed that the RCMP knew from the earlier attendance at court that, although October 12 was scheduled for AB's bail hearing, no bail hearing was going to take place, as guilty pleas were to be entered and the Crown would not be seeking a custodial sentence.

It happened that there were two RCMP officers from two other detachments in court that day, but they were unaware of AB's situation.

Mr. Fergusson arrived at the court around 9:30 a.m. and Ms. Armour shortly thereafter. They continued to discuss what they were going to present to the court. Both were looking around the courtroom to see if any Halifax police were present to arrest AB when he was released, and they recognized no one there in that capacity. Apparently, Mr. Fergusson's second "stream of involvement" was also out of commission.

Court commenced at 10:00 a.m. with Judge Claudine MacDonald presiding. Ms. Armour indicated to the Court that AB wished to enter pleas on certain charges. AB pleaded guilty to three of the charges: *Criminal Code* section 249.1, operating a motor vehicle in a manner that is dangerous to the police, and two counts of section 334, theft of the two motor vehicles.

Ms. Armour then advised the judge that the Crown was seeking a pre-sentence report with all other matters going over to the date of sentencing. She said the Crown was agreeing to AB's release from custody. This was putting to the Court agreements already made between Mr. Fergusson and Ms. Armour.

Mr. Fergusson then stated to the Court, following Ms. Armour's advising of her understanding that the Crown was agreeing to AB's release from custody:

Yes, Your Honour, Mr. B. has no record. He has trouble in the city. His surety has withdrawn the surety, but Metro Police aren't showing much interest in dealing with Mr. B. He's been in custody over a week now on our matters. They haven't arranged to transfer him to deal with the matters so I'm just going to deal with him strictly on ours. He has no prior convictions, Your Honour, and the Crown is not seeking to hold him, where he's a young offender.

The Court then released AB on a promise to attend court on the sentencing date, December 10, 2004, and to keep the peace and be of good behaviour, whereupon AB was free to leave the courtroom. After being escorted to the Sheriff's office, he was released and headed home.

Judge MacDonald had only the Windsor charges on her docket for that day and was unaware of the nature or extent of the Halifax charges. Her only knowledge was Mr. Fergusson's reference to AB having "trouble in the city."

I have no doubt that Judge MacDonald was well aware of how and when a custodial sentence was warranted under the YCJA and that the Windsor charges themselves would not have led to a custodial sentence. When Mr. Fergusson indicated that AB had no record and the Crown was not "seeking to hold him," I can see no reason why she would require anything further. Her release on conditions of AB in the circumstances before her was quite proper and in accord with the provisions of the YCJA.

Under our legal system, a judge of any court is limited to the matters properly before him or her, in this case the Windsor charges, and can rely on representations by Crown counsel in criminal matters.

## 7.6

### **The Starting Point for My Analysis**

I have now come full circle. I started my consideration of the facts with the singular event that prompted the establishment of this inquiry—the tragic death of Theresa McEvoy. Similar to the approach my counsel took in the presentation of the evidence, I then stepped backward in time to consider the facts, people, circumstances, and decisions that led AB from his early childhood to his presence in a stolen car at the intersection of Almon Street and Connaught Avenue on October 14, 2004.

I have reviewed AB's early life and education at length, including his family background, education challenges, and dysfunctional home life. I considered in detail how he went from being a troubled youth to a repeat young criminal, "spiralling out of control" in early 2004. I looked in even greater detail at the events of the two weeks starting with AB's dangerous flight from police toward Windsor and the charges and court proceedings that followed. Finally, I discussed the concatenation of circumstances that resulted in AB's release from custody on October 12, despite the numerous criminal charges he faced in Halifax and Windsor. He left the Windsor Courthouse that day, hitchhiked to Halifax, and soon stole the car that he was driving when he struck and killed Ms. McEvoy.

Along my way through the facts, I have made subjective comments on certain aspects of the evidence. Some of the facts are frankly troubling. As I have identified, the reasons for AB's release from court are many and include oversight, miscommunication of key information, mechanical breakdown, well-intentioned but misguided actions or decisions, lack of clear procedures, and over all, the limiting provisions of the *Youth Criminal Justice Act*. In doing this, I have attempted to lay out and review the processes and procedures used by public officials in dealing with AB and his charges, and public officials' involvement in his life before the charges arose.

Even on an objective assessment of facts in this matter, this particular chain of events has drawn attention to areas calling out for response, assessment, or change. That is part of my mandate. On that basis, I now turn to my analysis and recommendations.



# Part Four

ANALYSIS AND RECOMMENDATIONS

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REPORT OF THE **Nunn Commission of Inquiry**



# Chapter 8

## Understanding the Context of Youth Crime



### 8.1

#### The Challenge of Youth Crime

Youth crime is an issue in all societies and has been since time immemorial. It is universal. It runs the range from those youth who, for whatever reason, find themselves in conflict with the law once or twice and never again to a smaller group who repeatedly offend and unless rehabilitated continue on to a life of adult crime.

Taking history into account, it is unlikely that we will ever rid ourselves of youth crime. The challenge we face is to create a social order that will eliminate as much as we can by recognizing youth problems early—in the homes, in the schools, and in society at large—and providing help and encouragement, where and when it is needed, by means of an organized and collaborative effort of all social agencies involved with youth and parents, all divisions of mental health, schools and education, and justice. The emphasis must be on collaboration. The aim should be to meet the problems with the proper response by recognizing at an early stage the symptoms leading to youth justice problems and providing an appropriate intervention to give the child the means to cope with his or her situation. If it is done in time, by people who have the skills required, who have an interest in youth and youth development and the wisdom to understand the problems they observe, and who know the best approach to deal with them as provided by their training mixed with a real smattering of common sense, it cannot help but be more successful. It will cut down the occurrence of youth crime substantially.

We often forget, though we must realize, that every child is born with a bundle of potentialities. It falls on all who are and who become involved with a child to assist in untying the bundle and developing those potentialities. Therefore, it is the task not only of the family, but also of all those in our society who are responsible in any way for the raising, looking after, caring for, educating, and protecting of children to make available all the facilities and services for best developing all those potentialities for each child's own individual betterment and social well-being.

In the past and up to the present, we have often failed miserably in untying the bundle. Rather than look for potentialities, we have looked for differences and treated those differences as failures. Disabilities and disorders have been treated with ridicule and disrespect rather than as a complicated congenital health matter or a differently operating brain.

It is no great credit to claim success, in any of our social systems, for the vast majority of youth who pass through adolescence to adulthood without difficulty or being a problem for our education system, justice system, or social agencies. The real credit belongs to those whose intelligence alerted them to oncoming problems, whose wisdom, kindness, and common sense helped the youths to understand themselves and their limitations, and who showed them the way to march along to their potential. It is these latter individuals who made a real difference in steering those children along a more desirable path of life and away from anti-social behaviour that may lead to an involvement in the criminal justice system.

It is clear from the evidence presented to me that if we want a safer society free of a large part of youth crime, we have to look at our educational system, our social services systems, our health and community services, our youth programs, and our justice system. It is in those acting together that a safer society, as we shall see, can be achieved.

As I have said, youth crime is not a new phenomenon, nor is it limited to any one country, state, or province. Its occurrence is directly related to the very nature of youth. In our everyday language concerning the stages of life, we talk of childhood, adolescence, and adulthood, recognizing that each stage is significantly different from the others. For legal responsibility, childhood is under 12 years of age, adolescence is from 12 to 18, and adulthood is after 18.

This inquiry is concerned primarily with the youth at the second stage, adolescence. To have a better understanding of adolescent youth from a criminal perspective, this Commission, on its own initiative, brought before it Prof. Nicholas Bala of the Faculty of Law of Queen's University, a pre-eminent Canadian expert on youth criminal behaviour and the *Youth Criminal Justice Act*.<sup>1</sup> He testified for two days and provided a wealth of information.

To understand youth crime and why it is treated differently from adult crime, one has to understand adolescence and what is going on with the youth during that period between 12 and 18 years of age.

Adolescence is a stage of life when many things are taking place in the young person. Between 15 and 18 years a boy develops most, if not all, of his physical growth. For a young girl, physical development occurs earlier. However, intellectual development, brain development, the ability to think and reason, and the development of moral reasoning are all continuing throughout this stage and, for some, even longer. Also continuing through the stage is sexual development and emotional maturation, together with the development of understanding of social relationships. The brain is developing throughout the stage and even longer into a person's twenties.

It is noteworthy that the last area of the brain to develop is the frontal cortex, which involves self-control and reasoning. Just as no two youths are the same, the rate of development to maturity varies greatly between individuals.

1. *Youth Criminal Justice Act*, S.C. 2002, c. 1.

For purposes of brevity, I have taken the foregoing from the presentation and testimony of Professor Bala so as to provide some basis for understanding youth behaviour and youth crime. All of these developmental characteristics are abundantly supported by the experts in youth growth and development. We can readily see that adolescence is a period of immaturity, an imprecise length of time to pass from childhood to adulthood, a time of less self-control and less judgment.

Professor Bala told the inquiry that for youths adolescence is a time of testing limits and taking risks, of making mistakes and errors in judgment, of a lack of foresight and planning, and of feelings of invulnerability. These factors do not mean that a youth who commits a criminal offence should be excused or should not suffer consequences. Rather, they are factors to be taken into account when dealing with a youth.

We have to understand that almost all adolescents commit offences, mostly minor, such as underage drinking, minor theft, and minor assaults, but there are some who commit serious and repeat offences. Some of those serious ones can be brutal and senseless crimes without empathy or understanding of the impact on the victims. Others, such as AB's crime causing the death of Ms. McEvoy, lack the element of brutality, but are nevertheless senseless and reflect the risk-taking element and the notion of invulnerability I referred to earlier.

Adolescence is the stage where many types of harmful and self-destructive behaviour peak. Drugs and alcohol abuse enter the picture, as well as unsafe sex, smoking, and reckless driving. Family life may deteriorate, as do education and school careers.

It is obvious that adolescence is a difficult time of development. Maturity is on the slow road, and adulthood is a future stage, which, for our purposes, we take as starting at 18, though for some it may not begin until significantly later.

## 8.2

### Youth Crime in Nova Scotia

Gary Holt, Q.C., a senior Crown prosecutor with the Nova Scotia Public Prosecution Service, who since 1999 has been assigned to youth court in Halifax, provided the inquiry with a great deal of information on youth crime in the Halifax Regional Municipality and the setup and operation of the Youth Justice Court.

Dealing with youth crime at this point, Mr. Holt testified that, in his experience, there are two broad categories: one, the youths the courts see once or twice and never again; and two, the ones that appear to be starting a criminal career. The latter group generally continues their criminal behaviour beyond age 18 and into the adult courts.

In this latter group, which, for lack of a better word, Mr. Holt referred to as “bad kids,” he estimated that the number in the Halifax region at any given time would be 35 to 40. There would probably be correspondingly lower numbers in other areas of the province.

Mr. Holt’s categories relate to those youths who become involved in the youth court system, though there is a large group of youths who are apprehended for one offence or another, who are dealt with by the police, and who never get to the court. The great majority of this group never re-offend.

Robert Purcell, Director of Policy, Planning and Research for the Nova Scotia Department of Justice, presented into evidence a substantial paper his department produced entitled *Perspectives on Youth Crime in Nova Scotia*. This lengthy paper provided statistical information on youth criminal activity, an overview of risk and protective factors, and insights on effective interventions, among other areas of youth behaviour concerns. Its intent is to provide a snapshot of youth justice issues in Nova Scotia. I understand its drafting was done in response to this inquiry. It will be a useful reference tool for policy makers—although it is only a start.

The paper sets out the widely accepted conclusions by experts in the field about the development of youth-offending behaviour. Professor Bala also discussed some of these general observations on youth-offending behaviour. The paper substantiates Mr. Holt's testimony based on his experience. In line with Mr. Holt's second category, it is the general experience that the majority of court-related activity in Nova Scotia is committed by a small percentage of offenders. This group of repeat offenders tend to have many other co-occurring problems in their lives such as poverty, family abuse, learning disabilities, truancy and lack of engagement at school, other family members already involved with the law and courts, gang membership, and drugs, to name a few.

The study concludes that criminal activity peaks during the adolescent years, and to establish preventative measures, it is important to start early in these young lives, to recognize problems at a young age, and to have available the ways and means to help bring about the desired result.

I include here a portion of the study in its entirety as it provides important and useful context of youth crime in Nova Scotia, which I have considered in the recommendations that follow in this part of my report:

In Canada, young people between the ages of 15 and 24 have the highest age-specific rates of offending. In 2003, this cohort represented 14% of the total Canadian population while accounting for 45% of those accused of property crimes. Property crime is the most commonly committed crime by Canadian youths.

In Nova Scotia, the overall crime rate has increased by 4% between 1999 and 2004. However, during this time period the province has seen a 4% overall decrease in property crime despite a 7% increase in property crime between 2003 and 2004.

Between 1999 and 2004, Nova Scotia experienced a 12% increase in the rate of youth charged with violent offences. Specifically, there has been a 43% increase in the rate of youth charged with assault level 2 (assault with a weapon) as well as a 38% increase in the rate of youth charged with robbery.

However, between 2003 and 2004, youth violent crime decreased 8%. It is too early to tell if this is the beginning of a downward trend.

Between 1999 and 2003, rates of violent crime increased for young men and young women, with a 21% increase in rates of violent crime committed by young men and a 24% increase among young women.

In Nova Scotia, as in most parts of the country, crime is more likely to be committed by males than females. Young females (12–17 years old) were responsible for only 19% of all criminal activity that took place in Nova Scotia in 2004. Just over a quarter of all violent crime was committed by young women (mostly level 1 assault), while 16% of property crime was committed by young women. This proportion is reduced even further when examining motor vehicle theft (15%) and drug offences (13%), two offences which warrant particular attention in Nova Scotia.

Common assault (the least serious form of assault) traditionally accounts for the largest proportion of violent crime. In 2004, common assault accounted for 51% of violent youth crime. This proportion has been decreasing since 1999 when common assault accounted for 55% of youth violent crime.

Only a small portion of violent crime committed by youth in Nova Scotia involved a firearm. However, over the past

two years, rates of robbery involving a firearm have been higher in Nova Scotia than the national average.

There has been a steady decrease in overall crime in Nova Scotia since 1995; this decrease is largely attributable to a decline in the rate of property crime, a decrease of 50% between 1999 and 2004 despite a 7% increase between 2003 and 2004.

In Canada, the proportion of youth court cases including at least one offence against the administration of justice has steadily increased over the past decade from 30% in 1994/95 to 40% in 2003/04. Nova Scotia reported the most rapid increase in administrative offences from 24% in 1994/95 to 43% in 2003/04.

A recent Statistics Canada study notes that youth are more likely to physically and sexually assault other youth. Therefore, if the rate of youth violent crime is increasing, it is safe to assume the rate of youth violent victimization is also increasing.

Compared to the rest of Canada in 2004, the rate of youth charged with crime in Nova Scotia was marginally higher than the national average (3,423 per 100,000 youth in Nova Scotia compared to 3,065 per 100,000 youth in Canada). This was also the case for the rate of youth charged with property crime (1,329 per 100,000 in Nova Scotia compared to 1,190 per 100,000 youth in Canada). Nova Scotia ranks fifth out of 10 provinces in respect to youth property crime.

Regarding motor vehicle theft in Nova Scotia, the overall rate of youth charged with motor vehicle had decreased 6% between 1999 and 2004. During this time



period, with the exception of 2000 and 2004, Nova Scotia's rate of youth charged with motor vehicle theft has been below the national rate. However, the rate of youth who were not charged with motor vehicle theft [that is, arrested but not formally charged] increased 313% between 1999 and 2004 (from 29 per 100,000 to 121 per 100,000 youth in 2004).

In 2004, within the regions of Nova Scotia (North-Central, Cape Breton, Halifax Regional Municipality ("HRM"), Valley and South-West), HRM ranked first in the proportion of youths charged total property crime (37%) and motor vehicle theft (39%). HRM also accounted for the largest proportion of male and female youth charged with property crime (35% and 49% respectively). This is not surprising given HRM's population base.

While this was a snapshot of youth crime in Nova Scotia between 1999 and 2004, it probably is reflective of the situation today. Like any set of statistics, it is based upon certain available information, in this case from the Canadian Centre for Justice Statistics and the court computer data system. It includes only limited references to the number of young offenders dealt with on a pre-charge basis, which would appear to be substantial, nor does it provide statistics on repeat offenders.

It is not the statistics of youth crime—the rates of increase or decrease, the numbers charged, gender breakdowns, or regional percentages—that are of concern to this inquiry. Statistics are reflections of past periods and events.

For our purposes, based upon the totality of testimony provided and the documents filed, we can take as a given that Nova Scotia has its share of the total Canadian youth crime and in significant numbers. As one would expect, the size of the problem in Nova Scotia varies in proportion to the population, with Halifax

having the highest rate and the Annapolis Valley and Cape Breton regions proportionally less.

While a youth may commit any of the large number of *Criminal Code*<sup>2</sup> offences, in fact, most youth offences are concentrated in a few general areas. Most youth violent crimes are assaults, with the majority being common assault and a much smaller number involving the more serious offences of sexual assault, assault causing bodily harm, assault with a weapon, and robbery. On the non-violent side, the main youth offence is theft, extending from a charge of minor theft and shoplifting to a more serious charge of theft over a value of \$5,000. This latter more serious charge is often related to theft of a vehicle.

Another disturbing class of youth crime relates to drugs, their use and distribution, and the offences they seem to lead to, such as break and enter, robbery, and prostitution. Along with drugs, both soft and hard, there is a significant increase in underage drinking and alcohol abuse.

It is also significant that young females are engaged in youth crime at a rate of about one-third that of males, excluding, of course, sexual offences.

This is just a brief snapshot of the existence and types of youth crime in Nova Scotia as revealed to the inquiry, primarily by those witnesses involved in the justice system. It must be understood that though the inquiry was created as a result of a particular youth's crime, it is not an inquiry into youth crime *per se*. If it were, much more detailed evidence would have been required. For my purposes, receiving evidence of the existence of youth crime and its general nature and extent was significant. It enables me to provide the public with an accurate picture, in snapshot form, of the problem of youth crime and its nature here in Nova Scotia. With that basis we can better look at its causes and discuss how we might respond to it.

2. *Criminal Code*,  
R.S.C. 1985, c. C-46.

## 8.3

### Responding to Youth Crime

The first federal legislation in Canada respecting the criminal responsibility of youth was the *Juvenile Delinquents Act*,<sup>3</sup> passed in 1908. It related to youth between the ages of 7 and 16 years in Nova Scotia (the age varied from province to province). It was welfare oriented, with a focus on treatment directed to change behaviour. However, the means used were indeterminate custodial sentences for youth at training schools to rehabilitate the offenders. There was little concern for legal rights, and long sentences were served for minor offences. Gradually, pressure built for reform, and with the passage of the *Charter of Rights*<sup>4</sup> in 1982, it became obvious that the act could not be sustained. It was replaced by the *Young Offenders Act*<sup>5</sup> (YOA) in 1984.

Under the YOA, the ages provided for criminal responsibility for youths were made 12 to 18 years of age throughout Canada, and there was a great deal more emphasis on legal rights and due process. However, while it had an accountability focus, the YOA lacked a clear sentencing philosophy, with a correspondingly wide judicial discretion, resulting in great variations in the sentences imposed. The result was excessive use of the courts and custodial sentences.

More young people were being charged and sent to court for relatively minor offences, and more of them were being sentenced into custody. In fact, youth were much more likely to be put into custody than were adults. The result was that by the late 1990s Canada had one of the highest rates of use of courts and custody for young people in the world, including, on a per capita basis, the United States.

Again, the pressure for change mounted, and the YOA was replaced. The *Youth Criminal Justice Act* (YCJA) came into force on April 1, 2003. This is a complex statute of 200 sections (compared to

3. *Juvenile Delinquents Act 1908*, R.S.C. 1970, c. J-3.

4. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

5. *Young Offenders Act*, R.S.C. 1985, c. Y-1.

about 40 in the *Juvenile Delinquents Act* and about 80 in the YOA). It completely changed the system of youth justice. Basically, it provided for much wider use of non-court intervention and other rehabilitative measures, while intending to drastically reduce the use of custody.

The provisions of the YCJA that are of direct concern to us will be dealt with in Chapter 10 and have been discussed in the facts of AB's criminal career and court experience. I have included this short description of the statutory development of youth justice legislation to show that our society, reflected through Parliament, recognizes the immaturity of youth, their strengths and their weaknesses. It responds to the need to provide a variety of dispositions, other than institutional care, to aid the youth's individual growth and development and, at the same time, benefit society at large with the rehabilitation of the offending youth, thereby contributing to the long-term protection of society.

The United Nations is now a significant worldwide influence on the treatment of youth and any governing youth crime legislation. The United Nations *Convention on the Rights of the Child*,<sup>6</sup> which came into force September 2, 1990, is based, among other things, upon the principle that "the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection ..."

Article 3 of the convention provides: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**" (emphasis added)

The Convention contains 53 articles relating to children, their growth, care, development, and treatment. Canada became a signatory to the Convention in 1991, and the *Youth Criminal Justice Act* incorporates the Convention by reference in the preamble to the act:

6. *Convention on the Rights of the Child*, U.N. General Assembly Document A/RES/44/25 (12 December 1989).

Whereas Canada is a party to the United Nations *Convention on the Rights of the Child* and recognizes that young persons have rights and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms.

Along with the Convention there is another United Nations document entitled *United Nations Standard Minimum Rule for the Administration of Juvenile Justice*,<sup>7</sup> more commonly referred to as “The Beijing Rules.” As its title implies, it provides minimum rules to be applied regarding the administration of youth justice.

While the *Convention on the Rights of the Child* and the Beijing Rules do not have the force of legislation, they play a significant role in the interpretation of the *Youth Criminal Justice Act* in Canada. In *R. v. R.W.C.*, Justice Fish stated at paragraph 41:

In creating a separate criminal justice system for young persons, Parliament has recognized the heightened vulnerability and reduced maturity of young persons. In keeping with its international obligations, Parliament has sought as well to extend to young offenders enhanced procedural protections, and to interfere with their personal freedom and privacy as little as possible: see the United Nations Convention on the Rights of the Child, incorporated by reference in the YCJA.<sup>8</sup>

To provide a brief picture of the current legislative regime, I have set out the stages in the development of the present *Youth Criminal Justice Act* and the national issues leading up to its development, with the underlying international philosophical, regulatory, and administrative principles that formed the thinking behind its actual drafting and passage through Parliament.

7. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”), U.N. General Assembly Document A/RES/40/33 (29 November 1985).

8. *R. v. R.W.C.*, [2005] 3 S.C.R. 99.

## 8.4

### Premises on Which Youth Criminal Justice Is Based

To understand the challenges of youth crime in today's world in Canada, one first has to accept certain premises upon which the youth justice is based. In view of the extent of present-day knowledge of growth and development, one has to take as a given that the period of adolescence, 12 to 18 under the YCJA, is marked by a series of characteristics such as immaturity, under-developed sense of responsibility, vulnerability, and undeveloped character and moral sense, to name a few, which distinguish adolescent behaviour from adult behaviour.

Another given is that the approach of the YCJA reflects the advances made in legislation governing youthful offenders based upon actual experience under previous legislation and also upon the developed philosophy of the rights of all children, reflected in the *Charter of Rights* and in the United Nations *Convention on the Rights of the Child*.

A third given is that the approach of Parliament through the YCJA is based, first, upon rehabilitation of the offender and this is to be achieved through mainly community means, and, second, upon the principle that custody is to meant be severely restricted.

Throughout this inquiry no evidence was introduced to challenge these points. In fact, the testimony largely supported the recognition of behavioural difference between adolescents and adults and the manner of treatment of young offenders programmed by the YCJA and the activities of involved community and government departments. Further, the evidence clearly established that the YCJA has been highly successful in the manner in which the vast majority of youth is handled. Basically it is very sound legislation.

The challenge is whether the YCJA in its present form is adequate to deal with that smaller number of repeat offenders that the justice system is concerned with on a regular basis. Does it provide the

necessary flexibility to the courts to design an appropriate response to these repeat offenders? What of the youth “spiralling out of control” or the “frequent flyers”?

In this regard, the inquiry testimony was more critical, and parties called for significant changes to the present act. I have no difficulty in determining that advocacy for significant changes must be recommended. Nevertheless, it is a challenge to construct recommendations that will lead to the desired results while deviating as little as possible from the sound underlying principles enshrined in the act.

## 8.5

### **Elements of Effective Response**

Based upon the suggestions of witnesses who testified at the inquiry from their various interests and points of view on youth justice and upon the recommendations of the various counsel who were granted standing, I see three major areas in which I can address the problems identified in this report. I hope thereby to influence changes in various aspects of dealing with youth crime and youth at risk. I am not making these recommendations in a vacuum. Each of the major areas is connected, directly or indirectly, with the events leading to the calling of this inquiry: AB’s background and later spiral into crime; the actions of police, courts, lawyers, and other public officials in dealing with his offences; and the legislative context, which had significant bearing on the approach taken by various individuals.

The three areas I have identified are the administration of justice and accountability, more effective youth crime legislation, and prevention of youth crime.

### **Administration of justice and accountability**

In this area, I will be concerned with how the Nova Scotia youth criminal justice system deals with a youth charged with a criminal

offence, for example, how a youth is processed, from the initial charge to final result—the problems identified, beneficial changes, and targets with controlling mechanisms. There are also promising new programs planned that will more effectively deal with youths already in the justice system and increase accountability. This area goes to the core of my mandate.

### **More effective youth crime legislation**

A number of provisions of the YCJA loomed large in my consideration of the facts of AB's situation. Because of this, I must take a hard look at the *Youth Criminal Justice Act*. I fully recognize this act to be a federal statute and beyond my direct jurisdiction. Nevertheless, my mandate does require me to look into what happened regarding AB's release from custody. That directly involves the YCJA, thereby enabling me to comment on the operation of the act itself and to make any recommendations I see fit for advocacy for change to the Nova Scotia Minister of Justice. I have already set out my approach to jurisdictional issues relating to changes to the YCJA in Chapter 2.

### **Prevention of youth crime**

The inquiry has been concerned with broader issues of youth crime, including its causes, how we identify these at an early stage, and the responses required of the various social agencies and institutions. Because the YCJA is directed towards substantial community involvement, it would be irresponsible of me not to consider its role in a larger context of youth crime and improvements necessary to accomplish the desired result of lessening youth crime and rehabilitating those who become involved in criminal acts.

I will be considering those broader areas, identifying many of the problems facing youth that lead to crime; our strategies, practices, and procedures presently in place; their inadequacies; and what



services must be provided to meet these problems in a timely, efficient, and organized manner. We can make substantial improvement to our systems that will greatly assist in preventing youth crime. At the same time, we can provide the mechanisms for these youth so they can meet their particular risks head on, learn and develop the necessary coping abilities to deal with them, with help and supervision where necessary, and develop their potentialities without behavioural aberrations destructive to themselves and to society at large.

## 8.6

### **Summary of Approach to Recommendations**

It would be foolhardy to suggest that we can prevent all youth crime. However, we can prevent a great deal by reducing the causes, and we can control others by instituting programs and systems to cut down on further criminal activity by those already in the system.

We are not starting from ground zero. We already have much in place and many first-class people involved. With some changes and adjustments, we can move ahead to a greater level of success in preventing youth crime. I cannot think of any area of human concern where the adage “an ounce of prevention is worth a pound of cure” is more apt.

I think of these three areas of recommendation as three concentric circles, each broader than the other. The larger the circle, the farther from the core of my mandate as I have considered it. The area of youth justice administration and accountability includes recommendations related to this core. Youth crime legislation is also connected, although less directly, as it formed some of the important framework for actions with regard to AB. I think of this as a larger circle, a bit farther from the core. The final area, prevention of youth crime in the province, has the largest circle. I consider it connected to the issues before this inquiry, although I recognize that these areas are farthest from the core of the circumstances that gave rise to this

inquiry. Nevertheless, I believe that to “do justice” to the concerns before me, and mindful of the public nature of this process, I need to consider these issues too.

The specificity of my recommendations in each area will directly correlate to how close they are to the core of my mandate.

# Chapter 9

## Administration of Justice and Accountability



In this chapter I am concerned with the procedures and processes involved when a youth is charged with a crime: the time involved, community procedures, if any, court procedures, different pleas, and their results. The purpose is to identify any problems that may have an adverse effect on the youth justice criminal system and could, at the same time, contribute to a worsening of anti-social behaviour and further criminal activity on the part of a youth who has started through the system. I also consider programs that can increase accountability for young persons charged with crimes.

It is in this chapter that I provide my analysis of the particular issues that were identified as I carefully reviewed AB's path through the youth criminal justice system. His path was not smooth. There were many bumps along the way. I consider these bumps and make comments and recommendations where necessary for avoiding them in the future.

### 9.1

#### Delay in the Administration of Youth Criminal Justice

The Youth Justice Court handles all youth offences covered by the *Criminal Code*,<sup>1</sup> provincial statutes, including the *Motor Vehicle Act*<sup>2</sup> and *Protection of Property Act*,<sup>3</sup> and a more limited number of offences under the *Youth Criminal Justice Act*<sup>4</sup> itself. A charge starts by the laying of an Information by a police officer. The Crown prosecutor becomes involved only after the charge is laid. There is no pre-screening of charges by Crown prosecutors in Nova Scotia. At this point or earlier, police or the Crown prosecutor have discretion, if

1. *Criminal Code*, R.S.C. 1985, c. C-46.

2. *Motor Vehicle Act*, R.S.N.S. 1989, c. 293.

3. *Protection of Property Act*, R.S.N.S. 1989, c. 363.

4. *Youth Criminal Justice Act*, S.C. 2002, c. 1.

deemed appropriate, to refer the youth to Restorative Justice, the community program referred to earlier, designed to assist the rehabilitation of youth. If this program succeeds, no charge may be filed, or the charge may be withdrawn by the Crown, which ends the matter.

However, if a pre-conviction, post-charge referral to Restorative Justice is not made or is not deemed successful, then the matter will proceed through Youth Justice Court. It is this process that merits some inspection.

Though the actual processes are similar throughout the province, the procedures may vary to take local practices into account. For my purposes, I will use the Halifax youth court processes to illustrate events, while acknowledging that it may be more structured because of the larger numbers. As well, I will outline only the most common situations occurring in this court.

When an arrest is made and a charge laid by an Information is served upon a youth, the Information indicates some future date when the youth is to appear in court. In Halifax, Youth Justice Court holds its Arraignment Day on Thursdays. Usually young persons are not represented by counsel, so in this illustration I will assume that to be the case.

On that date in court, the youth's name is called, and if he or she is present, the youth court judge must establish the date of birth of the youth, whether there is a parent present, and whether a Notice to Parent has been served. The judge then asks if the youth wishes to seek counsel and strongly urges that counsel be obtained, indicating that Legal Aid is provided free of charge. The response is usually in the affirmative, and the matter is adjourned to a future date, commonly about three weeks ahead, allowing time for the youth to meet counsel.

On the return date, the young person enters a plea. On a plea of "not guilty," the matter is set over for trial, with dates given depending on the length of trial involved and days available, sometimes months ahead. On the other hand, if a plea of "guilty" is

entered, the practice in Nova Scotia has been to adjourn the matter further to the date of sentencing for a “finding of guilt,” as required by section 36 of the YCJA. Sentencing itself delays the process. In most cases it requires a Pre-Sentence Report, which often takes two or three months to prepare.

Obviously, this whole process takes a long time. This is not to say that there are not cases that proceed faster here in Halifax and in other areas of the province. I have to deal in generalities, though I am aware that other issues can affect the speed of a case, such as the availability of judges, counsel, and witnesses, both police and civil, and unexpected but necessary adjournments, which can extend the period much longer.

### **The importance of avoiding delay**

Prof. Nicholas Bala has suggested that delay is a major issue, with heavy emphasis on the youth’s perception of time as constituting a requirement that the manner of dealing with charges eliminate as much delay as possible. He illustrated this by explaining that the “future” for many youth extends only to the weekend party or dance, and three or four months is an eternity away. I entirely agree; because of this there is even a special urgency for youth who are beginning an out-of-control spiral or are achieving special notice on the police radar screen.

During Professor Bala’s testimony about the length of time for completion of youth cases, he noted that Nova Scotia has one of the worst records in Canada in terms of length of time from charge to final disposition. He cited available statistics from 2003 and 2004 that showed that the average length of time for Canada was 141 days, while New Brunswick was 69 days and Prince Edward Island, 84 days. In Nova Scotia, however, it was 175 days.

Following this testimony, the Province of Nova Scotia produced to me further statistics, which they said were more accurate. These

revised numbers showed a reduction from the 175 days to 144 days, in effect reducing the total average time from just under six months to just under five months, only marginally significant, especially when one understands that these are averages, indicating that some may be somewhat longer.

What must be understood today is that there are competing interests that must be recognized and somehow accommodated if the aim of youth justice is to be accomplished. A certain amount of delay in completion of matters is inherent and necessary in our justice system, if it is reasonably related to procedural rights or similar matters. Nevertheless, our justice system must accept that youth are different from adults, and those differences must be taken into account. The YCJA in its Statement of Principle emphasizes that a criminal justice system for young persons must include timely intervention to reinforce the link between offending behaviour and its consequences, recognizing a youth's perception of time. This is set forth in section 3(1)(b) of the act as follows:

3 (b) the criminal justice system for young offenders must ... emphasize ...

(iv) timely intervention that reinforces the link between the offending behaviour and its consequences; and

(v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time ...

The United Nations *Convention on the Rights of the Child*<sup>5</sup> similarly provides the youth's right to have the matter determined without delay.

The issue is delay, and it is a major problem in the administration of youth justice. Justice Osborne in *R. v. M. (G.C.)*<sup>6</sup> in addressing the youth court's proceedings to a conclusion, stated:

It seems to me that, as a general proposition, Youth Court proceedings should proceed to a conclusion more quickly

5. *Convention on the Rights of the Child*, U.N. General Assembly Document A/RES/44/25 (12 December 1989).

6. *R. v. M. (G.C.)* (1991), 3 O.R. (3d) 223 (C.A.) at para. 23.

than those in the adult criminal justice system. Delay, which may be reasonable in the adult criminal justice system, may not be reasonable in the Youth Court. There are sound reasons for this. They include the well-established fact that the ability of a young person to appreciate the connection between his behavior and its consequences is less developed than an adult's. For young persons, the effect of time may be distorted. If treatment is required to be part of the disposition process, it is best that it's begun with as little delay as possible.

I would venture an even stronger view. It is not just more reasonable to avoid delay, it is a legal requirement. Section 3 of the YCJA requires the criminal justice system for youth to respond promptly for very valid reasons as a matter of principle. We must do what we can to have our system comply and avoid all unnecessary delay and promote prompt action when required.

### **Delay in the case of AB**

The record of AB's offences is an outstanding one to support the necessity of reducing delay. As we have seen, AB's first charges were on January 23, 2004, for auto theft, possession of property obtained by crimes, and possession of a break-in instrument. On February 18, he was referred to Restorative Justice, and on June 25, he returned as having failed to complete the program. His first court appearance was July 6, at which time he faced 13 Informations with 30 charges. He was released on a responsible person undertaking with all charges adjourned to August 26, on which day, at the request of defence counsel, they were further adjourned to September 14. On that day some "guilty" pleas were entered, and those charges were adjourned to November 17 for sentencing. On that date a section 36 "finding of guilt" was entered on two of the three January 23 charges, with the possession of property obtained by a crime charge being withdrawn,

and the matter was again adjourned for sentencing with a psychological assessment ordered. On December 17, the matter was further adjourned to December 20, when sentencing finally took place. By this time, 24 charges were before the youth court. Eleven months, almost a year, had elapsed from start to finish, with a significant number of charges occurring in between on different dates, but only completed at the time of sentencing.

AB, with his youthful 15-year-old perception of time and consequences, especially with this 11-month passage of time, actually believed that nothing was ever going to happen to him. As he had learned on the street, if and when any penalty was considered, it would relate only to the first offence, and the others would incur no significant further penalty. In his view, the multiple car thefts were “freebies” and gave him a licence to continue stealing cars.

### **The causes of delay in the administration of youth criminal justice**

I have attached to this report a table showing the progress of AB's charges through the court (Appendix L). What is apparent is that his matters took considerably longer than the Nova Scotia average.

Delay is a complex matter, involving the police, courts, prosecutors, defence counsel, and community organizations. I consider delay to be a significant part of my mandate; and the testimony I heard and the submissions made to me make it essential that all those engaged in youth justice understand not only the rights of youth regarding timeliness and the sections of the YCJA involved, but also what it means to be an adolescent, the psychology of adolescence, and how best to deal with a young offender to accomplish the general rehabilitative aim of the act. This involves an appreciation of the seriousness of the offence committed, the particular circumstances of the offender, and most important, how the young person is to be dealt with at each stage of the process. On the general issue of delay in the various stages of this process, mechanisms or procedures to bring about



a reduction of delay time must be determined and put in place, and the co-operation of all involved is an essential requirement to that end.

The link between an action and its consequences is most significant when dealing with adolescents, particularly due to their perceptions of time. For the youth who commits a serious crime, poses a public safety risk, is a repeat offender, or whose frequency on the police radar screen is increasing, undue delay is prejudicial to developing a sense of responsibility as well as to giving a timely wake-up call that such anti-social behaviour is not accepted.

Perhaps a significant aspect of delay is attributable to the fact that almost all who are involved with youth justice—from police to prosecutors, defence counsel, court officials, and judges—have generally had far more experience with the adult system, in which significant delay seems to be the rule. However, it is fundamental that all involved understand and accept that the YCJA has created a different system for youth criminal justice. One pillar of that system requires delay to be reduced to a minimum, and for good reasons.

### **Reduce front-end delay for serious cases**

In his submissions to me, Mr. Zimmer, counsel for AB, urged me to consider the initial area of unacceptable delay, which he defined as “front-end delay,” the time between the commission of the offence to the time of first appearance. He illustrated this in AB’s case as follows:

| <b>Arrest and Charge</b> | <b>Appearance Date</b> | <b>Delay</b> |
|--------------------------|------------------------|--------------|
| January 23, 2004         | March 26, 2004         | 7 weeks      |
| April 23, 2004           | June 10, 2004          | 7 weeks      |
| May 10, 2004             | June 25, 2004          | 6+ weeks     |
| May 25, 2004             | August 12, 2004        | 11 weeks     |

While Mr. Zimmer continued with further offences, the circumstances were different and need not be referred to here. What the foregoing means is that AB was arrested and charged on each date

shown and was immediately released on his undertaking to return to court on the Appearance Date given.

The Appearance Date is the first opportunity for the judicial system to attempt to engage the young person in a meaningful way. I can only assume that the lengthy periods between arrest and first Appearance Date were not peculiar to AB, but were typical of the general situation. This delay is unacceptable. The actual appearance in court is the first wake-up call for the youth and is proven to have substantial beneficial results. Releases on undertakings established by the Court can be much more meaningful and effective than the initial police release on an undertaking to come to court on the appointed day.

For the more serious cases and repeat offenders, a young person should be required to attend at the next Appearance Date following the arrest or, at most, within one week. I am confident that this can be accomplished, as the numbers of the serious crime offenders or repeat offenders is not so large as to impose an impossible burden on the youth criminal justice system. Since this would apply to offenders of serious crimes or repeat offenders, there is significant discretion to provide a workable limit for the courts. Obviously, there is a significant difference between a 15-year-old stealing his parent's car late at night and being apprehended before he returns home and another 15-year-old who breaks into and steals some other person's car and either damages it, abandons it, or engages in a high-speed joyride. For the former, some delay, though significantly less than is now the case, is not unreasonable, and in many cases there really is no need for further involvement. In the latter case, a prompt response gives the youth a "wake-up call" that his or her conduct will result in serious consequences.

While there are delays that are inherent to the system and necessary in the provision of justice, there must be areas of delay or bottlenecks in the procedures that can be looked at and ways found to avoid them. The testimony I have heard is not precise enough to point

to any detailed areas of delay, so I am unable to identify such areas specially other than the front-end delay I have just referred to.

Nevertheless, delay is of such considerable importance that every effort must be made to cut it to a minimum by all involved in our youth justice system in Nova Scotia.

### **Recommendation 1**

**Front-end delay in the administration of youth criminal justice in Nova Scotia should be immediately reduced by requiring a young person facing a new charge on a serious crime, or a young person facing other pending charges, to appear in Youth Justice Court by the next scheduled Appearance Date, or within one week of arrest.**

### **Reducing overall delay**

Having made a specific recommendation on removing delay between arrest and appearance and accepting the seriousness of the issue of delay as outlined by a number of witnesses and several counsel of parties with status, I conclude that it is necessary for the Province to respond more generally to the issue of delay in a manner that will bring results. The Province should establish a process whereby there is consultation between all stakeholders involved—police, court staff, prosecutors, representatives of Restorative Justice, Community Services, other government agencies, and partner organizations—so that all are aware of the problem and can provide their input to the larger approach to be considered in determining strategy. From this consultation, timelines should be established during which youth criminal justice matters are expected to and should proceed. These should point to a target number of days for movement from arrest to completion. To cover all bases, there could and should be different

timelines for offenders in Restorative Justice. While the obviously longer timelines for these latter youth may skew statistics toward a longer average, they can be covered with appropriate explanations or kept separately. Statistics are not our problem. Statistics do not commit offences, nor are they affected by delay. Youth do and are. They are our major concern.

Setting the targets is not enough. The Province must report on a regular basis, preferably twice annually, on whether the targets have been met and must provide reasons why if they have not. Such a system should operate so as to keep all the justice partners involved, aware of the problem, and actively working together to reduce delay by a significant amount. Leadership in instituting a target system should come through the Department of Justice.

What I am suggesting is not new. Other jurisdictions have tackled the issue of delay in the youth criminal justice system with some success. For example, a target system presently in effect in England and Wales has apparently resulted in substantial reduction of process delays. Some elements of that approach may be instructive for Nova Scotia.

The Youth Justice Board for England and Wales (YJB) oversees the youth justice system in those countries. The aim is to prevent offending and re-offending by children and young people under the age of 18 and to ensure that custody for them is safe and secure and addresses the causes of their offending behaviour.

The YJB has instituted a model of reducing delay in one part of the youth criminal justice system that could provide an example of a targeted, measured, and accountable approach. In 1996, the YJB pledged to halve the average time from arrest to sentence for a group of young people called “persistent young offenders” (PYOs) from 142 days to 71 days. A persistent young offender is defined as a young person aged 10–17 years who has been sentenced by a criminal court on three or more separate occasions for one or more offences and who

is subsequently arrested or charged with a new offence within three years of the last sentencing.

The YJB recognizes that it is important that young people see the direct correlation between their criminal actions and the consequences of those actions, between the offence they commit and the subsequent consequences in court. For this to take place, justice needs to be quick and effective. This is particularly important for repeat young offenders, whose offending can be very entrenched. The “PYO Pledge” was aimed to speed up the time from arrest to sentence, ensuring that young offenders take greater responsibility for their actions. I understand that it has met with significant success.

The YJB measures all of the parts of the justice system against the pledge target. Data is collected, measured, and reported regularly. It measures the time taken between arrest and sentence for PYOs. To accomplish this, the YJB:

- established a careful approach that accurately identifies PYOs as soon as possible to allow for prioritization through the arrest-to-sentence period and anticipated delays in the justice system
- requires collaboration by all agencies to ensure that these cases are fast-tracked
- tracks, reviews, and manages progress in overcoming delay in light of targets at various stages
- takes steps to reduce non-attendance from witnesses to avoid excessive adjournments
- ensures prompt sentencing, with a verdict-to-sentence target of two weeks
- requires the performance of action plans by groups in the justice system to be proactive in tackling delay.

The board also recommends putting time limitations on the production of pre-sentence reports and acknowledges the value of avoiding these reports where similar information can be provided by *viva voce* evidence.

The setting of targets like this could serve to jump-start an approach to addressing concerns of delay. It is only a first step. After all, “you don’t make a pig fatter by weighing it,” as the authors of a recent review of developments at the YJB have stated.<sup>7</sup> The authors also note that, while general standards are important, a local and flexible response is also required at the community level, a lesson the YJB is learning.

I am sure that it would be helpful to look into the YJB’s system to see what help it would lend to developing the target system recommended. Of course, I am calling for a review of the causes of delay in the whole youth criminal justice system, not just for “persistent young offenders” like in the U.K., although the needs of repeat offenders are particularly acute. This is not rocket science, and I would expect that whoever is assigned to set up the system does not allow the consultative feature to slow down its initiation. I see no reason why this target system cannot be up and running within six months of the filing of this report. We cannot afford to keep losing our youth to criminal activity and its inherent harm by not responding quickly to measures widely accepted as necessary.

In a province the size of Nova Scotia, with the number of repeat offenders in the system, an adequate response time comparable to that at the Youth Justice Board should result in an even shorter target time from arrest to sentence. It can be done.

7. C. Hume and C. Wright, “You Don’t Make a Pig Fatter by Weighing It—Performance Management: The Experience of the Youth Justice Board” (2006), *Public Money & Management* 26(3) at 189–92.

## Recommendation 2

**The Province should publicly commit to reduce overall delay and improve the speed at which the youth criminal justice system in Nova Scotia handles young persons' cases from arrest to sentencing or other final disposition. In doing so, within six months of this report, under the leadership of the Minister of Justice, the Province should**

- **consult justice partners (police, Crown prosecutors, defence lawyers, judges, court administrators, Restorative Justice officials, community partners, and other key stakeholders) to identify general and particular causes of delay**
- **take steps to work with these justice partners to amend procedures or change practices to address the causes of delay**
- **set and publish realistic but challenging targets, measurably faster than the current average, for the speed of the handling of young persons' cases from arrest to final disposition**
- **report publicly at least twice annually on progress against the targets, including details on whether targets have been met and identification of appropriate action to address any ongoing failure to meet targets.**

## 9.2

### Court Procedures and Administration

AB's involvement with the justice system gave rise to a great deal of testimony before the inquiry concerning the operation of our Youth Justice Courts and their administration. The testimony provided in detail many of the procedures in place and followed all steps along the

way, from police involvement to final disposition, including, in this particular case, a hearing at the Justice of the Peace Centre. All of this related directly to some of the specific parts of the inquiry's mandate, including a review of the procedures and practices relating to the handling of the charges against AB and the actions of law enforcement, the Public Prosecution Service, the courts, and justice and other officials. In the course of my review of the facts, I set out the relevant procedures as part of the narrative, along with my occasional comments and observations.

Because of the complexity of these facts and the numerous players, nowhere in this report have I set out a complete list of all of the relevant procedures and practices and evaluated them separately. Instead, my comment and review take place in the context of Part 3 of this report.

As I examined AB's path through the justice system, I found a number of examples of court procedure and administration that could have been improved. Arising out of Ms. McEvoy's tragic death and the investigation and work of this inquiry, I was heartened to learn of the number of administrative and procedural changes and initiatives already undertaken to address areas of concern that might otherwise have formed part of my recommendations.

One of the most significant system failures was that the documents from the JP Centre did not get to the Windsor Courthouse before the court opened on September 30. Had they arrived, I am certain that Judge Sparks would have dealt with both the Windsor and Halifax charges that day. She would have had a number of options: adjourn all charges to a future date and continue the remand; keep the Windsor charges and transfer the Halifax charges back to Halifax; or take pleas, and if "guilty" pleas were entered, adjourn for a finding of guilt hearing and sentencing, or if "not guilty" pleas were entered, set dates for trial. In any event, all those involved—the judge, the Crown, and defence counsel—would have been fully aware that all the charges were before the youth court.



Notwithstanding the schedule of charges attached, the RCMP always presumed that AB's Warrant of Remand was based only upon the Windsor charges and, therefore, that was all that was before the court. The court staff did not have the required documentation at the appropriate time and later tried to clarify the matter, according to their belief, in the JOIS data system. The Crown prosecutors were told and accepted that they were dealing only with the Windsor charges, and accordingly, this is what they advised the judge. The defence counsel were of the same mind.

Obviously these misapprehensions continued during the period from September 30 to October 12.

A second key system failure occurred in relation to the handling of AB on October 12.

Mr. Fergusson thought he had his "two streams of involvement," the Halifax Regional Police for an arrest and the Halifax Crown for a pick-up order. The RCMP thought the Halifax police would be acting on the arrest warrant. Finally, the Halifax Crown who made the necessary inquiries as to obtaining a pick-up order simply forgot to do it.

It is very important to keep in mind that the circumstances that occurred here were most unusual in every respect, and it would be terribly wrong for anyone to conclude, based upon these events, that the Nova Scotia youth criminal justice system is incompetent or out of control. It certainly is not.

The whole situation was unique. There was a late-night fax coming from the JP Centre for a next-day hearing at the Windsor Courthouse, a satellite court. For some reason, that fax did not go through until the next day. It was first addressed to the Kentville Justice Centre and only redirected to the Family Court office the next morning. September 30 was Family Court day in Windsor, which included youth court and all matters relating to it. The Family Court offices were in another building in Kentville. Add to this the very short

time factor, roughly from 8:30 to 10:00 a.m., to transfer the documents received. Complicate everything by adding a broken fax machine, which was the only method of transfer available.

Despite this unique situation, there are still lessons to be learned and recommendations I will make to support the changes already made. I also identify some further areas for beneficial changes.

### **Court administrative procedures**

Clearly, a complete revision of all procedures is not called for by the events here. Nevertheless, the unusual facts do point to areas where additional training may be required so that all staff concerned know the procedures and consistently follow them. Staff need training in the existing data system. Manuals must be continually amended or revised to respond to particular needs. Satellite courts must have the necessary electronic equipment to be able to transfer information as needed.

As these events gained considerable notoriety in the media during the testimony before the inquiry, many of the areas of possible problems have been remedied. I have set out a partial list of these changes to various aspects of court procedure, along with the circumstances that prompted the revision.

#### **Issue or Concern**

The Windsor Courthouse had no working fax machine, access to the computer database, or accessible telephone for use by the court staff.

#### **Implemented Changes**

*All court sites, including satellite courts, must have reliable access to fax machines and working recording equipment and to the current electronic data system, JEIN (Justice Enterprise Information Network), including printing capabilities.*

**Issue or Concern**

The court reporter did not check the court computer system (then JOIS) for an updated docket before going to court on September 30 and was therefore unaware that AB and his eight Windsor charges had been entered into JOIS and were scheduled for the morning's court docket.

**Implemented Changes**

*Court reporters are now required to check the computer system (JEIN) immediately before court to determine if any changes or additions have been made to the docket. If the docket has been changed, the court staff must make available for the presiding judge the original file materials or a faxed copy for all new matters and immediately prepare an updated docket.*

*If a satellite court has no access to JEIN, the court staff must contact the base court or justice centre to obtain an updated docket.*

**Issue or Concern**

The courts in Windsor at no time had the original Informations relating to the Halifax charges for AB. Changes were made to scheduling and handling of the Halifax charges without the original Informations being endorsed.

**Implemented Changes**

*Every action that affects a court case must be endorsed on the original Information. If the original Information is held at another court location, it is the responsibility of the court reporter to reproduce the endorsement in writing and transmit it to the other office for endorsement on the original Information, together with a copy of any documents prepared in the process. A record of the transmission must be maintained.*

*As well, new administrative procedures are in place to deal with requests for the transfer of charges from one court location to another, along with the transfer of court documents and Informations.*

**Issue or Concern**

Delay in entering the results of AB's September 30 court appearance resulted in confusion on the October 4 and 5 court dockets.

**Implemented Changes**

*Court staff must update the JEIN system as soon as possible after a court appearance to accurately reflect the decision of the judge.*

**Issue or Concern**

There was some confusion by court staff as to the outcome of the September 30 hearing because of the post-hearing discovery of the Halifax charges on the electronic court docket.

**Implemented Changes**

*Any doubt by court staff regarding a particular endorsement is to be raised with a supervisor or the presiding judge for clarification.*

**Issue or Concern**

There was uncertainty as to the effect of the Halifax arrest warrant of AB during the court proceedings.

**Implemented Changes**

*When a court appearance or other action results in the resolution of an arrest warrant of an accused, witness, or any other person, the warrant must be recalled from the police agency having custody of the warrant, if it was not returned to the court office at the time of the court appearance. Notification must be in writing and faxed (using a newly created form) as soon as possible to the appropriate police agency. When a court action results in the resolution of a warrant of arrest and the original Information is in the custody of another court office, it is the responsibility of the court office having custody of the original Information to recall the warrant from the police.*

### **Issue or Concern**

When it was recognized that a Transfer Order (“pick-up order”) was required for AB to take him from Windsor to Halifax to face a new bail hearing on the Halifax charges, the order was not obtained by the Halifax Crown attorney because of an oversight following a voicemail request from the Windsor Crown attorney.

### **Implemented Changes**

*The Public Prosecution Service, working with police and court administration, has prepared new forms and procedures to formalize this request. In a remand situation like AB’s in Windsor, the Crown attorney located where the accused is (for whom there is an outstanding arrest warrant from another court) applies to the judge for a remand transfer back to the court that issued the warrant. If the application is successful, the Crown provides a form to the police.*

*If the Court does not grant the application for transfer, the Crown who made the application is responsible for faxing a new inter-office form requesting a Transfer Order to the Crown at the court from which the arrest warrant is issued. The Crown in that court must then respond in writing using the same form to indicate whether a Transfer Order will be issued and is responsible for providing the necessary written notification to police to effect the transfer.*

The JP Centre is also subject to these changes, but I have also set out recent changes to the JP Centre’s particular procedures in the next section.

## **Administrative procedure at the Justice of the Peace Centre**

The Justice of the Peace Centre, with its professional presiding justices of the peace serving throughout the Province of Nova Scotia, is a great improvement over the previous system. During the hearings and in several of the submissions of parties with standing, some concern was expressed that I might interfere with a well-designed system and fail to recognize the judicial independence of the presiding justices of the peace. The concern was unnecessary as I intend neither. The evidence did raise two areas of concern, one regarding what would be described as “intake procedures” at the centre and the second related to the police.

I will deal with the police issue first. During the hearings, counsel for the RCMP, quite correctly, cautioned me that I had no jurisdiction to dictate the internal affairs of a federal organization such as the RCMP. However, my mandate clearly authorizes me, in the circumstances of the AB events, to look at the actions of all public officials, and my recommendations here, although stemming from the actions of the RCMP on the night of September 29, can apply to all police forces in the province. Additionally, regarding jurisdiction, the RCMP operate as the local police in a number of municipalities in Nova Scotia, and fair comment is not necessarily a matter of jurisdiction.

The problem, illustrated particularly in this case, relates to initiating a hearing at the JP Centre. First is the issue of the necessary documents. While a simple telephone call elicits the help of the administrative staff at the JP Centre, the police must know exactly what it is they are requesting, provide the necessary supporting documents, and with precision, indicate to the JP Centre what remedy they are seeking.

After the application is made, it is time for the hearing itself. The police officer involved is acting as a “quasi-counsel” in a judicial

hearing. The officer must fully understand the nature of the hearing, including exactly what remedy is being sought, and must be able to deal with questions that might arise from the presiding justice of the peace.

While the particular circumstances regarding the JP Centre application for AB are admittedly unique, the facts illustrate the point of my concern. Here, eight single-charge Informations were prepared when one with all the charges would have sufficed. The constable who did the hearing had not prepared the documents for the application, and he was not fully aware of all the circumstances. For example, he did not know whether AB had been arrested on the arrest warrant.

This all points to the necessity of training some police officers in each detachment or local police force on how to make and conduct applications to the JP Centre in a manner that will eliminate the likelihood of error or undesired results.

The second issue relates to procedures at the JP Centre itself. In this regard, the evidence indicated that there was uncertainty in the fax cover sheet (the request form) either corrected by the administrative staff or the matter adjudged by the contents of the file itself. During this testimony, my thoughts were that it would be appropriate to recommend that the JP Centre take the necessary steps to have the administrative staff insist that an application be precise as to the remedy requested and the documents included before the hearing is scheduled. As well, there was a concern about getting the results of hearings to the appropriate courts and persons concerned.

However, I need not pursue any of this further as I am pleased to see that the JP Centre has established new practices that relate to my concern over JP Centre procedures.

For example, the JP Centre has implemented a new, more complete fax cover sheet on which police will make requests for services. Greater detail is required for the purpose of including arrest warrants, for example. On the first page, for a bail hearing, those

completing the form must now indicate whether “accused arrested on new charges,” “accused arrested on arrest warrant,” and other specifics. This will help ensure that police and the JP Centre are on the same page about the purpose of the hearing and the supporting documents. I trust the JP Centre staff will insist that police complete and send the whole form before proceeding to set up the hearing.

For hearings like that held for AB on September 29, there are also new procedures for what documents are to be included in the request, which should also help clarify expectations. If new Informations are to be filed, they must be attached, and an arrest warrant is to be attached only if an arrest was made pursuant to the warrant. The police are now clearly instructed not to fax the criminal record, Crown sheet, or any other synopsis unless the presiding justice of the peace grants approval during the hearing.

The JP Centre has also clarified the documents that issue after a bail hearing, including those that go to the base court to which the new matters relate, as well as to any other court involved through existing charges or an arrest warrant. For the base court, a more detailed “Judicial Interim Release Hearing (Bail) Report” is provided. Upon receipt, the base court must confirm in writing to the JP Centre by return fax that all of the information has been successfully received. This should avoid some of the communication gaps that occurred in AB’s case. If there are charges from another court, like the Halifax charges in AB’s case, another report is made to that court respecting any relevant arrest warrant. It indicates that the arrest warrant has been deleted from JEIN and that the court is to notify the police. It also indicates specifically the case numbers that have been scheduled for a judicial interim release hearing. Again, confirmation of receipt is required.

I recognize that the JP Centre’s operational procedures do not have the force of law, so a presiding justice of the peace may still exercise discretion in each case. Presiding justices of the peace are subject



to certain directions from the Chief Judge of the Provincial Court. I expect, however, that these new procedures will be followed by JP Centre staff as well as those seeking hearings before the presiding JPs, particularly police.

My findings in this report may also prompt consideration of further refinement of administrative procedures at the JP Centre.

### **Recommendation 3**

**The Department of Justice, in consultation with local police services and the RCMP, should ensure that police officers are familiar with and trained in the procedural requirements of the administration of the courts and, in particular, with the purpose and procedures of the Justice of the Peace Centre.**

### **Recommendation 4**

**The Justice of the Peace Centre should continue to refine its administrative procedures and forms to ensure that all parties to a JP Centre hearing are familiar with its purpose, process, and outcome and that results are communicated promptly and clearly to the courts, police, or others affected by the hearing outcomes.**

## **Monitoring court staff training**

It is one thing to recommend training or improved procedures but quite another to make sure that such training and retraining from time to time does occur.

To assure that our court staff are well trained and up-to-date on changes, procedures, and manuals, I recommend that the Department of Justice re-establish an audit function to monitor that the training does take place as required. There is always some turnover of staff and internal movement of personnel, which adds the need for a necessary and regular training system. I am not suggesting mass training with expensive programs, but rather that on a regular basis some time be set aside whereby the court staff, either in smaller groups or together, if it is appropriate, can receive the necessary training and be kept up-to-date on changes or additions to manuals or procedures, especially computer systems. It is crucial that there be specific training of court staff on the electronic database.

From my own experience in various courts throughout the province, I am aware that we are fortunate to have the dedicated and skilled staff that we do. The intent of my recommendation is to make sure that the appropriate steps are taken not only to provide the training, but to create a system that assures that it will be provided.

With the Halifax Judicial Region being the largest in the province and the city being the main location of most courts, as well as the principal location of the Department of Justice, it is likely that the main attention in training has been in that area. Nevertheless, all the judicial regions operate in a similar manner and therefore require similar training. In regions with satellite courts or adjunct courts in separate buildings, special training is required to enable staff to cope with the problems these circumstances present.

It would be worthwhile to ensure that this training is appropriate, available, and implemented.

### **Recommendation 5**

**The Department of Justice should establish an audit section to provide training to and monitor compliance by court staff with procedures, court manuals, and use of electronic systems.**

#### **Availability of electronic data systems and training in their use**

There was considerable evidence as to the various electronic data systems in use by the various police forces and the Department of Justice, each with its identifying acronym and specific use. A number of them have been replaced over time, and most related to police information and activities.

The one data system that played a significant role directly relating to AB was the Justice Oriented Information System (JOIS). That was the computer system on which entries of court actions on a matter were made, including actions by the JP Centre, and which, in fact, created docket additions in various courts and kept track of actions by courts as they occurred.

Part of the problems described related to a lack of familiarity with the system and its use, as I have already discussed, combined with a lack of communication of various pieces of information.

JOIS was replaced in 2005 by the Justice Enterprise Information Network (JEIN), which was two years in the making and described as a “world class information system developed to support the Department of Justice and its partners in the administration of justice and public safety.”

This JEIN system allows for the preparation of YCJA orders. It provides access to Corrections, sheriffs, courts, justices of the peace, Court Services, Legal Aid, the Public Prosecution Service, Victim Services, Service Nova Scotia and Municipal Relations, and municipal, provincial, and federal police agencies. Obviously the various users are limited to the areas of their concern.

The development of data systems over the past few years that led to the JEIN information data bank illustrates that Nova Scotia has made great strides in its use of technology in its courts at considerable cost. Obviously, the system is only as good as its users, and for that reason, I have referred to and emphasize the need for training throughout the province. Computers and their programs and software are not as awesome today as they once were. I am sure that the competent staff in the various judicial districts would have little difficulty being trained to use the aspects of the system relating to their work.

It is easy to concentrate less on the judicial districts outside Halifax, for obvious reasons, and perhaps pay less attention to their technology needs in equipment and training. But we must realize that many of the misapprehensions, misunderstandings, and actions that occurred between September 29 and October 12 in relation to AB were the result of technological and communication failures. This reflected a failure to provide adequate training, a failure to provide adequate equipment, and a failure to take into account the unique organization of a judicial district, an adjunct Family Court separately located, and a satellite court.

The JOIS system was working perfectly. The JP Centre decisions of September 29 were properly entered and added to the Windsor docket in JOIS.

All that was needed was for Eunice Patton to turn on a connected computer and open the docket for Windsor, and the accurate docket information for that day regarding AB would have been revealed. With a printer, a paper copy would have been immediately on hand. The whole procedure would have taken only a

minute or two. The police, lawyers, court staff, and judges would all have known what was to be considered in court that morning.

But Ms. Patton had no computer, no printer, no real training in JOIS, and no way of contacting anybody, as well as no way of receiving a faxed communication because the only nearby fax machine was broken.

If one considers these shortcomings, it is obviously necessary to ensure in future that all the bases are covered, particularly in the judicial districts outside Halifax where local situations may be different. Satellite courts are one major difference, as they are not operating every day and are not regularly staffed. Another difference is how youth court matters are dealt with throughout the province, in some cases in Family Court and in others in Provincial Court.

From my own judicial experience outside the inquiry, I have no doubt that the central office of each judicial district in the province is adequately supplied with modern, up-to-date, electronic equipment. Whether there is adequate training on a continuing basis both on the use of the equipment itself and on the software and programs, particularly JEIN, I leave to the Department of Justice and the audit system. I have made these recommendations, with, of course, the admonition that training on a regular basis is essential.

With regard to the Windsor Courthouse, I certainly recommend that the proper technological equipment be available. This is consistent with the requirements of the changes to the court procedures manual, but it is worth emphasizing and repeating. Fixing or replacing a fax machine in the Sheriff's office is not an adequate response. This needs to be looked at by someone in the Department of Justice responsible for provision of technological equipment. While I am not in a position to specify particular equipment, I suggest that the final decisions on equipment should be made in a fashion to least disturb the existing methods of operation.

## Recommendation 6

**Court staff working in the Windsor Courthouse, as well as all satellite or adjunct court facilities in the province, must be provided with adequate and working telephone, facsimile, printing, computer equipment, and e-mail communication, along with the necessary equipment for stable and dependable access to JEIN.**

### Consider enhancements to JEIN

Ensuring that the right information is available where and when it is needed is crucial for the court system to run effectively. In AB's case, at several times difficulties arose because information was incomplete or missing. I was struck by the complicated web of paper (originals and faxed) and electronic records required for the system to work smoothly, especially in circumstances like these in which more than one court location was involved.

For example, to communicate the results of AB's telephone hearing on September 29, the JP Centre received and generated hard-copy documents, faxed copies, and made electronic entries. These were all needed: receipt of only a part of the material was not sufficient. We know that the lawyers, court staff, and judge in court in Windsor on September 30 did not receive any of the faxed documents, nor were they aware of the changes to the JOIS electronic docket. But on that morning, even if they *had* received only the electronic JOIS docket, they would still not have had the full picture necessary to deal with the Halifax charges. All of the communication streams had to work for the players to have the full picture of the circumstances faced by AB. The more streams of communication needed, the more likely the system could break down.

Even if the youth court had been aware of the Halifax charges, the important details on the endorsements of the relevant Informations were handwritten on paper copies in Halifax. It would have been difficult to obtain those Informations and place them before the judge that morning.

While there is a risk of relying too heavily on technology, in the case of JEIN I understand that the system has proved to be a reliable and useful improvement in court administration. From the testimony of Carolyn Hebert, a Department of Justice official who was instrumental in the development of JEIN, I learned that there has been some discussion about further enhancements to the system. One suggestion is the possibility of generating secure electronic versions of key documents, including Informations, to replace reliance on paper copies. The electronic versions could presumably be endorsed and even signed electronically. If this was the case, then any person identified as an appropriate user of JEIN could view an up-to-date Information, no matter where the paper file existed. JEIN could provide instantaneous access to crucial information, available at screens or workstations in the courtroom.

Along with these suggestions is the encouragement of increased use of the system by all of those in the justice system. If a tool like JEIN is available, those who can benefit should be adequately trained, and the tool should be used. This is the case not only for court staff and other justice partners, but also Crown attorneys and even judges if court documents can be displayed.

I am not a computer expert. I do not presume to indicate specific recommendations for particular changes in this regard. I can see where the communication system seemed to break down in this case and can recognize the opportunity for possible enhancements to the systems in place, including JEIN, that could address my concerns. The key is to ensure that in dealing with a young person facing charges, all of the players have as much accurate, up-to-date information as possible. These ideas are worth discussion and attention.

### **Recommendation 7**

**The Department of Justice, in consultation with all of its key justice stakeholders, should consider enhancements to the JEIN system, including the possible development of electronic versions of Informations or other court documents, with the goal of increasing the effectiveness and efficiency of communication among justice partners and reducing the reliance on multiple forms of communication for delivery of crucial information.**

## 9.3

### **Court Facilities for Young Persons**

Section 3(1)(b) of the *Youth Criminal Justice Act* states that “the criminal justice system for young persons must be separate from that of adults ...” Whether the word “separate” as used here refers to location of youth courts as well as the matters the section emphasizes is a matter of interpretation. However, to require separate youth court locations away from adult courts would result in prohibitive cost and just does not seem to fit in a province like Nova Scotia with its large rural areas and small towns.

Halifax, because of its size and population, is able to have a separate courtroom for youth matters, though located in the central Provincial Court Building. In most of the other judicial districts, youth are dealt with in the same building and the same courtroom as adults, with the same judge who merely “changes hats” from Provincial Court judge to Youth Justice Court judge.



The system is working, however, as all youth in the criminal justice system are being dealt with in all respects pursuant to the YCJA by all our judges.

This area of concern was raised in testimony before the inquiry, and the benefits of a separate location where practical were noted. It does seem to me that ideally it would be significantly better if a youth court were located apart from and away from adult courts. Ideally, it would also be beneficial if space were provided for those partner agencies involved in youth care and rehabilitation, such as Restorative Justice.

None of the parties with standing made submissions on this matter, and it would not add credence to my report were I to make a “pie in the sky” recommendation to add a very significant cost item when there are many more-immediate matters that must be identified as needing reform or change.

Nevertheless, when new courthouses are being planned and built in the province, separate facilities should be provided for youth court matters, completely apart from the adult facilities, and with dedicated space for partner agencies where possible. While I have left the “where possible” door in place, I must add that the different treatment required by law for youth restricts one’s discretion significantly. If the interest is to work with youth for their rehabilitation, positive efforts to create the best environment point to providing the best facility to attain that end. It is fundamental that we recognize that youth criminal justice is no longer a “justice only” concern, but one profoundly influenced by and involved with community organizations and other government departments. They all are the partner agencies, and the benefits of their presence in the one facility are quite obvious.

## **Recommendation 8**

**When new courthouses are planned and built in the province, separate facilities should be provided for Youth Justice Court matters, completely apart from the adult facilities and with dedicated space for partner agencies where possible.**

### **Staffing for satellite courts**

The matter of staffing of satellite courts was raised, with suggestions of some level of permanent staffing being provided. I make no recommendation in this regard. I do not know the extent of their use and leave that matter to the discretion of the judicial district in which a satellite court is located. Further, I am satisfied that in this electronic age provision of the proper equipment and training would eliminate any problem relating to any lack of physical presence at the location when not otherwise required.

### **Youth court liaison police officers**

I have already mentioned Cst. Richard MacDonald and his work, in Chapter 5. For purposes here, some repetition is worthwhile to illustrate the position and its benefits. The Youth Justice Court of the Halifax Regional Municipality is most fortunate to have the full-time services of Constable MacDonald as its police youth court liaison officer. He has been a police officer since 1975, performing regular duties until 1994 when he was appointed court liaison officer at the Devonshire Avenue Family Court, dealing with Halifax youths from 12 to 16 years of age. With municipal amalgamation, his duties expanded to those same-aged youths from Dartmouth and Bedford.

Then, in 2003, with the coming into force of the YCJA, his duties again expanded, this time to all youth aged 12 to 17 in Halifax Regional Municipality.

All youth files are vetted by him. He is the most “hands-on” person in the youth justice system in this area, for he is in regular contact with the police officers involved in any file, as well as with Restorative Justice, the Crown prosecutors, defence counsel, social workers, and mental health workers. Having grown up in Halifax and served on regular patrol as a police officer for almost 20 years, he has full knowledge of the territory and knows many of the youths and their families. His experience, understanding, and wisdom are invaluable. His services were highly praised by the senior Crown prosecutor, Gary Holt, Q.C., in his testimony, as he indicated the extent of Constable MacDonald’s involvement and his contribution to youth justice.

At this point, I need not relate in more detail the work of this police liaison officer. What I must emphasize is that the creation of this position in this municipality has resulted in an extremely successful, even outstanding addition to the manner in which the youth criminal justice system operates.

Keeping in mind the principle that the youth criminal justice system is different for youth, with its thrust for rehabilitation and community involvement outside of custody in most cases, it is obvious that an approach proven helpful to attaining that end is desirable. I believe Constable MacDonald’s position and efforts have been a winner for the Halifax Regional Municipality.

As a result, I recommend that the Department of Justice look into and consider the appointment of police youth court liaison officers in the other judicial regions in the province. It would require close consultation with police forces across the province. If the numbers are sufficient in larger areas, such as Cape Breton, then a full-time appointment should be considered. If not, and in smaller-sized circumstances, a part-time appointment would be beneficial so

long as it is the same person for any given area and for a fixed number of days in a given period.

I am confident that there are police officers in other areas of the province with talents similar to those of Constable MacDonald, able to provide the necessary services and willing to do so, if given the opportunity.

### **Recommendation 9**

**The Department of Justice, in consultation with police agencies, should encourage the appointment of youth court liaison police officers in other judicial regions in the province.**

### **Youth court Crown attorneys**

The YCJA is a complex piece of legislation. Crown attorneys must acquire a full knowledge of the act and existing interpretations in case authorities, but they must also have an understanding of the policy reasons behind the sections and what the provisions are intended to accomplish. To do their job well, they need, besides good training, experience in youth criminal matters as regularly as possible, and this is difficult to achieve on a sporadic basis.

Just as the YCJA is complex so also are youth. Crown attorneys who deal with youth criminal justice must appreciate the fact that in order to perform their duties in the youth forum an understanding of youth in all its aspects and complexities, together with an interest in youth, their problems, their needs, and their welfare, is highly desirable.

Most of the testimony I heard related to Gary Holt, Q.C., and the Halifax Regional Municipality Youth Justice Court. This area is

fortunate to have two full-time youth court Crown attorneys, particularly one with Mr. Holt's experience. The workload, however, may require another in this area.

The Public Prosecution Service should consider appointing another youth court Crown attorney for the Halifax Justice Youth Court. At the same time, it should consider the need in other areas of the province, providing full-time youth prosecutors where appropriate. A response that the numbers in any area do not warrant a specific appointment is too simplistic. The advantages of permanent youth court Crown attorneys are so beneficial to our system that I would suggest the PPS look into the possibility of a permanent appointment to serve more than one judicial district in such cases. To accomplish such a possibility, where it would be practical to do so, would really become only a matter of scheduling, and the benefits would far outweigh any of the more technical problems such a decision might face.

### **Recommendation 10**

**The Public Prosecution Service should consider appointing an additional dedicated youth court Crown attorney in the Halifax Youth Justice Court, and consider the appointment of specialized youth court Crown attorneys elsewhere in the province where numbers warrant.**

## 9.4

### **Attendance Centres and Bail Supervision**

I have discussed issues of court administration and procedure at the core of my mandate. I also heard evidence of the type of programs that would have directly assisted AB during his spiral into crime

and increased the likelihood that he would have refrained from committing crimes while released pending trial. These areas deal with the important issue of accountability.

### **Non-residential community program as a YCJA sentencing option**

The challenge that gives rise to attendance centres as well as bail supervision stems from the fact that many young offenders are released with nothing more than a promise to appear on a date indicated, while others, even after a court appearance, are released on a “keep the peace and be of good behaviour” undertaking. They go right back to the lifestyle, friends, and problems that led to the offence in the first place. They have no place to go to alter their situation, to be exposed to avenues of learning—whether skills or hobbies or personal development, anger management, and the like—and at the same time to receive personal counselling, guidance, and support.

Attendance centres have already been established in two Canadian jurisdictions, Alberta and Yukon, while Ontario has now established 25 attendance centre pilot sites. Such centres are used as an alternative to incarceration for young offenders in conflict with the law. They allow these young people to remain in their own environments while, at the same time, receiving access to a variety of services. My description of the proposed Halifax Attendance Centre, in the next section, provides more detail about attendance centres, the programs they offer, and how they function.

As a starting point, I need to consider the option under the YCJA of a sentence to a non-residential community program like an attendance centre. Section 42(2)(m) of the YCJA provides the basis for a court order directing a youth to attend a non-residential program, but limits the time of the order to a “maximum of 240 hours over a period not exceeding six months.”

Alan Markwart, Assistant Deputy Minister of Children and Family Services of the Province of British Columbia, provided helpful testimony before me. It was useful to look beyond the borders of this province for other experience and perspective. In Mr. Markwart's testimony, he approved of the value of attendance centres, but described the time limitation in the YCJA as "madness," indicating that it was impossible to effectively turn around a difficult young offender in that short a period. I agree. In fact, the courts have not generally used these referral orders because of these limitations, preferring to use probation, including reporting and program requirements, as permitted by section 42(2)(k) of the YCJA.

This time limitation reflects the "one size fits all" notion evident in a number of sections of the YCJA and fails to take into account the essential value of the non-residential program as an "in-community" alternative to custody and a program oriented to the rehabilitation of the young offender. For such a program to be successful, the act should recognize that the youths ordered into this program are all different, with different problems and different needs. The legislation should give Youth Justice Courts, which have all the information when considering sentence, the flexibility to tailor the order to the individual youth.

The Province should urge the federal government to amend section 42(2)(m) by removing the two time limits presently in effect. This would restore flexibility to the courts with an aspect of sentencing that the judges would use rather than finding a way to avoid, as is the present approach. I appreciate that this recommendation relates to advocacy for changes to the YCJA, the rest of which I set out in the next chapter, but this recommendation belongs here.

## Recommendation 11

**The Province should advocate that the federal government amend section 42(2)(m) of the federal *Youth Criminal Justice Act* to remove the time limits on the sentencing option for a court to require a young person to attend a non-residential community program like the proposed Halifax Attendance Centre.**

### Establishment of a Halifax Attendance Centre

The idea of an attendance centre is not new in Nova Scotia, but it has very much been on the back burner. This has changed. The YCJA, with its approach of rehabilitation and reintegration, and the necessity to deal more effectively with young offenders have given new life to the establishment of attendance centres. Aside from the concern over finances in this regard, up to now there had been no determination of need and of the services and programs required.

Partly as a result of increased information and partly because of the notoriety of the incident that gave rise to this inquiry and the testimony given to it, there has been a substantially elevated interest in the establishment of an attendance centre in Nova Scotia. The interest led to a study and report in 2006, followed by the indication of an intention to establish an attendance centre in the Halifax Metro area. This is a most welcome development.

Fred Honsberger, Executive Director of the Correctional Services Division of the Nova Scotia Department of Justice, during his testimony presented the inquiry with a copy of the 106-page report entitled *Attendance Centre Program Model—Halifax Planning Committee Report*, dated March 27, 2006, and spoke to its contents. He indicated that the YCJA, with its underlying thrust of reducing custody, has resulted in many young offenders who would otherwise



be in custody serving sentences in the community. The act also requires that most who are serving custodial sentences serve one-third of their sentence under supervision in the community.

Coupled with this is an identifiable substantial increase in violent crime in the Halifax Regional Municipality. Available information indicates that there has also been a significant increase in “hard-to-manage” youth who are typically involved in violent behaviours, drug use, joyriding, swarming, and other criminal activity. Many of these are classified as multi-problem youth with histories of victimization, emotional problems, lack of achievement in the regular school system, limited pro-social friends and activities, and no work skills to allow them to succeed in society—all factors leading to children at risk.

Within this group there is a smaller percentage regarded as “out of control and not responsive to traditional probation supervision enforcement strategies.” Some characteristics of this group include being expelled from school, lack of parental control and guidance, and prior involvement with child welfare agencies and group homes with poor outcomes.

The report indicated that it is essential to develop and expand a range of programs and services in the community for this population of youth in order to ensure safe communities, concluding that the development and implementation of an attendance centre program for Halifax would assist in that objective.

While it is not my function to detail the programs and services to be provided in an attendance centre, it is important here to publicize what is actually being considered for the programs to which offenders will be referred, as indicated in the planning committee report and the objectives and intended results:

- a full-time school program
- a full-time career development/work skills program
- a cognitive/life skills program
- recreation and leisure activities

- experiential learning opportunities including wilderness activities
- treatment services (psychologist and social worker) including individual, group, and family therapy and counselling
- youth health centre services.

Specific objectives of the Halifax Attendance Centre programs are to:

- provide flexibility in program development based on youth needs
- provide individualized education to meet youth needs
- assist youth to identify areas of their lives where change is needed and desirable
- challenge each youth's judgment in regard to civic, social, and moral responsibilities
- foster a safe and supportive environment conducive to personal and academic growth
- work collaboratively with community resources (e.g., school, police, health care, recreation, and employment outreach)
- assist youth to achieve skills and develop pro-social attitudes, goals for continued education, and problem-solving strategies
- ensure that skills learned are reinforced
- assist youth to develop personal goals, (e.g., problem solving, self-confidence, trust, leadership skills, and getting along with others)
- empower youth to develop new skills and use positive choices
- challenge anti-social thinking and foster pro-social values.

In terms of its intended results, I understand that the overall goal of the attendance centre will be to deliver multi-modal programs and services that target a variety of young offender needs. This is considered a first step toward achieving positive outcomes that reduce recidivism and thereby increase public safety. All programs and therapeutic services will provide targeted interventions appropriate to the needs of the young person. Program participants will be provided with new skills and training based on their learning styles,

developmental levels, and abilities. Carried out in this manner, the program's benefits should be readily apparent.

Having heard the variety of witnesses who testified before me and from other information provided to the inquiry, there is no question as to the need to establish an attendance centre that provides the programs and services indicated to serve the Halifax Regional Municipality initially. As the need develops in other regions of the province, some accommodation must be made to provide essentially similar services and programs, though finances and resources must be taken into account in determining feasibility. If the numbers are very low, perhaps, in time, young offenders from other parts of the province who could most profit from attending such a centre could somehow be permitted to enter the Halifax centre. The problem, though greater in the Halifax region, is province wide. Applying a cure to Halifax, while undeniably most desirable, does not offer much to the young offender from another region. My comments in this regard are directed to assure that, if this attendance centre achieves a substantial measure of success, then those in authority in the appropriate departments of government involved begin to give consideration to some expansion of the program and services. Unquestionably, resources are a significant matter, even in relation to establishing one centre in the Halifax region, but they must be found and provided. There are no halfway measures that will be satisfactory. A proper location, easily available, must be found and well-trained staff provided, all at substantial costs. While it is dangerous to generalize, there seems to be much support for the notion that, though the initiation of a new program is costly, this particular measure will provide significant savings in the long run by reforming offenders, reducing crime, and enhancing public safety.

I would have recommended the establishment of an attendance centre if the Province had not indicated that one would be created. My recommendation now is that appropriate steps be taken immediately to establish an attendance centre in the Halifax Regional

Municipality. There is no reason to require further studies at significant costs. It should be established and fully funded. We have the need, the plan, the know-how, and considerable public support, so all is in place to “just get on with it.”

I do have one caution here. We are dealing with youth who have a myriad of problems, and an attendance centre is not a panacea for all those. Too often in our society when some new response is created to meet a problem, there is a tendency to walk away from the problem with an attitude that the problem is being looked after, so there is no need to give it further consideration. There will always be youth problems facing our justice system and society at large. We—the public, bureaucrats, and politicians—all have the continuing obligation to respond as best we can to help our youth learn how to cope with their problems. We need to provide them with the help they need to achieve their potential within society rather than continue a lifestyle of being on the outside looking in.

### **Recommendation 12**

**The Province should immediately establish a fully funded, adequately resourced, and fully programmed attendance centre in Halifax, following a plan that includes all of the programs and features contemplated by the Correctional Services Division’s *Attendance Centre Program Model—Halifax* report, presented as evidence at the inquiry.**

## **Bail supervision**

The Nova Scotia Department of Justice looked at bail supervision when the YCJA came into effect, but did not believe that the right setting existed to put such a system in place. Instead, it continued with a probation system that included an Intensive Supervision Service Program (ISSP), established to assist youth who were sentenced to deferred custody and those being released from a term of custody. Throughout the province there are numbers of regular youth probation officers. For the ISSP there are a number of probation officers specifically trained to provide the intense supervision.

I need not set out in any detail the present system. Regular reporting and curfew enforcement will continue, as will some intensive services as is being done now. However, the establishment of an attendance centre changes the picture somewhat, as bail supervision is a necessary adjunct to an attendance centre. In his testimony Mr. Honsberger agreed that the time is now ripe to start a bail supervision program.

A bail supervision program provides a necessary intermediate option between pre-trial detention and release on conditions only. It has the advantage of keeping pre-trial custody to a minimum, while at the same time, making undertakings meaningful through enforcement, as well as providing significant help and guidance to the youth during the time the bail supervision is in effect.

Bearing in mind that the aim in youth justice is twofold—to reduce custody and rehabilitate the youth—I can easily see the advantages of an attendance centre dedicated to providing programs to that end. Once an attendance centre is established, it seems reasonable that the youth court in the Halifax Metro region will direct attendance by those for whom such attendance will be of most help by way of a probation order. However, making the order and providing the centre are not enough. To complete the picture there must be a way to ensure that all the terms of the probation order, including

attendance at the centre, are enforced. This is one of the significant functions of bail supervision, though by no means the only one.

While bail supervision provides a greater assurance of compliance with bail conditions through monitoring, surveillance, and enforcement, it is also a vehicle to provide support and assistance to the youth. The more intensive the supervision becomes, the more the probation officer becomes involved in the youth's regular life activities, helping and giving advice. It is now well recognized that bail supervision supplements an attendance centre and vice versa.

It must be understood that bail supervision for youth is different from bail supervision for adults. For the latter it is essentially reporting and enforcement, with reporting that may be a little more than calling in or attending a particular office. For youth, there should be personal contact to indicate that the youth is being monitored, but also to give the officer an opportunity to see a little more of what is going on in the youth's life and to provide guidance and help.

The inquiry, on its own motion, called Deputy Minister Alan Markwart, who described the bail supervision program that has been in effect in British Columbia for a considerable time. He described three levels of bail supervision in the province, depending on the nature of the offender. First, there is regular bail supervision, which involves meeting with a probation officer for an interview. Checks are made with the parents and schools as to compliance with the bail conditions. It is not summary in nature and is dedicated to helping a youth more than just reporting a breach. A second level is intensive bail supervision using trained workers (usually from a contracted agency in the province) with designated maximum caseloads, who work in the community in the best interests of the assigned youth, dealing with parents, schools, work locations, available programs, youth organizations, addictions, and all the many facets of a youth's life, including associates, activities, and interests. It is heavily oriented toward support. The third level, which Mr. Markwart

described as “an alternative to remand or a kind of enhanced bail,” is a family care residential placement, not to be construed as a foster home. The provision of these services in British Columbia is by way of a contract with agencies who recruit the family care placements and provide the training, oversight supervision, and support to give quality assurance.

From the testimony before me, I am satisfied that the government must initiate a bail supervision program in Nova Scotia. I recommend its establishment because one of the most widely expressed concerns regarding youth justice is the lack of enforcement of conditions and undertakings of young offenders. Besides providing some answers to this situation, it is also a necessary complement to attendance centres.

I have referred to the British Columbia system, not to hold it as a model for Nova Scotia, but to illustrate a system that is working well, some of the aspects of which might be helpful in developing our Nova Scotia system.

Again, it is clear that the Department of Justice has the knowledge and experience to create the bail supervision program and already has a body of well-trained youth probation officers. It is not, therefore, necessary for me to make specific recommendations beyond the general one of initial start-up, with one exception, which relates to regular bail supervision. In that case, I recommend that it be carried out at a level similar to that in British Columbia. It follows that more professional services most likely will be required at increased cost. Both approaches—increased staff or contracting out—or a combination of the two can be considered. British Columbia does provide some of these services through contracted agencies.

The problem of application throughout Nova Scotia also arises here, and every effort should be made to assure that such a service is available throughout the province. I realize that providing the increased supervision and support in smaller locations may be

somewhat of an immediate problem, but with regular training, the present probation officers may be able to provide the necessary supervision and support.

I make no recommendations as to the third level supervision in the British Columbia system, that is, family care home placement, but I do suggest that the department look into this area, comparing it to what exists here, determining need, costs, and the like, to see whether there would be any advantage to having such a system here in Nova Scotia.

### **Recommendation 13**

**The Province should establish a fully funded bail supervision program for young persons in the Halifax Regional Municipality in conjunction with and integrated into the establishment of the Halifax Attendance Centre.**

### **Recommendation 14**

**The Province should make every effort to implement a program of bail supervision for young persons in the province outside the Halifax Regional Municipality, to include a focus on both compliance with bail conditions and identification of proactive supports and services for the young persons in the program.**



## **Would these recommendations have made a difference for AB?**

Lest an observer think I am making these recommendations without foundation, I believe strongly that the way that AB responded to his charges, his education, and his behaviour would likely have been dramatically affected if an attendance centre and bail supervision been available to him. These recommendations are therefore firmly connected to my observations and review of AB's experience with the justice system and other community organizations starting in January 2004. At that time, when AB was entering the court system, courts in Nova Scotia were faced with only three options as to how to deal with a youth before trial. The court could detain the accused, release the accused to the care of a "responsible person," or release the accused on his or her own recognizance. In most cases, the young person was released subject to conditions, which are usually sufficient to secure attendance at future court dates and appropriate behaviour in the meantime. However, in some cases, like that of AB, further supervision is desirable to ensure compliance with conditions and to provide support services for the youth.

It would not have been long before the justice system recognized AB as a good candidate for the programs envisaged by the attendance centre. As soon as April or May, and at least by July, in conjunction with the appointment of his mother as a responsible person, I expect he would have been identified. He would have been eligible for the school program, which would have recognized his particular learning styles and challenges in an environment that was prepared to deal with troubled youth. There would have been opportunities for positive engagement in the community. Perhaps these opportunities would have provided an alternative to his running during his time as a resident in the group homes.

While there is no way to know for sure if AB would have responded and made positive changes in his behaviour in response to

these initiatives, I believe that the chances of his continued spiral out of control would have been lessened. These programs may have prevented further offending and slowed, if not stopped, his pattern of anti-social behaviour. Bail supervision, had it existed at the time, would have given the courts an intermediate option for AB between custody and release. Nevertheless, I am of the view that pre-trial detention for AB would have been appropriate, at least for a short time, for reasons of public safety. I will address that issue in the next chapter. But with these recommended new programs, AB would have known that there was some accountability for his actions, even during his period of bail, through regular contact with youth workers at the attendance centre and bail supervision staff.

These recommended programs would have made a difference for AB, and I believe that they can make a difference for other troubled youth in conflict with the law.

## 9.5

### **Common Approaches to Youth Criminal Justice Proceedings**

Taking into account that the Public Prosecution Service's Crown attorneys, full time and part time, perform in both adult and youth court throughout the province except for the Halifax Regional Municipality, it is fundamental to the youth criminal justice system that there be as much consistency in approach as possible. The best way to accomplish this is by the preparation of policy directives and other guidelines with occasional refresher-type seminars, which could also be conducted on a regional basis. This consistent approach is particularly important regarding pre-trial detention for young persons. The Crown should be consistent in its determination that a particular situation warrants pre-trial detention and consistent in the preferred approaches a Crown should take in such a situation.

Similar policy directives regarding youth sentencing and longer-term custody could be desirable.

Following this report, with the establishment of the Halifax Attendance Centre and bail supervision, the need for the guidance of policy directives is even more obvious. Crowns must quickly understand these new features, why they are being put in place, who they are intended to serve, and how to advise the courts so as to make the best use of them.

In other words, in each of these matters, and any others that are deemed appropriate, all Crowns in the Province should be playing the same tune.

### **Pre-trial detention and responsible persons**

At the July 6, 2004 court hearing respecting AB, Mr. Holt held the belief that AB should be detained in custody due to the number of charges AB faced, the short period of time in which they occurred, and the fact that AB went right back to these offences after each release. Because of the difficulties posed by the YCJA, he was less than convinced of his chance of success. In fact, he suggested that his argument was flying in the face of the legislation.

Though unexpected, the Court did conclude that AB should be detained. However, section 31, the responsible person provisions, came into play. TL, AB's mother, offered to be a responsible person, a person required by the YCJA to be "willing and able to take care of and exercise control over the young person," and upon being appointed signed the necessary undertaking, as did AB.

I make no comment regarding whether or not she should have been appointed. That was a matter for the judge hearing the case. One cannot comprehend the number of times a mother who loves her son is willing to forgive and forget and start anew. I have no doubt that TL does love AB, and over the years there have been a number of occasions that she did just that, hoping that things would change.

Unfortunately, several of these times occurred when AB really needed some intervention, which TL's actions precluded.

The most major of these occasions was when she became AB's responsible person, referred to more fully in Chapter 5 of this report, which precluded his detention, thereby depriving the system of the opportunity to give him a wake-up call to alert him that society would not accept his behaviour and at the same time provide some help and guidance. Clearly she accepted the responsibility on the "hope" that he would accept her control, which in retrospect was a faint hope that circumvented the very assistance she indicated she wanted.

Along with the evidence relating to AB, the inquiry heard other evidence relating to responsible persons, which indicated that often the Court is informed that the Crown and defence have agreed upon an appointment of a responsible person and anticipate that the Court will make the agreed-upon appointment. This was suggested as a time-saving measure, avoiding a bail hearing, since pre-trial detention would not likely be granted in any event.

This appears to be a defence device that, while admitting the young offender merits detention, keeps him free on a responsible person undertaking. I am sure that most responsible persons are parents of the young person in question, and their capability of controlling the person could be seriously questioned. If they can exercise control how is it that the young person has committed the number and types of crimes that warrant detention in the first place?

All this evidence, together with the results in the AB matter, points to the need for a recommendation to the Public Prosecution Service that it direct its Crown prosecutors to take the position of requiring a hearing with evidence before the Court rules as to whether a particular person does, in fact, have the necessary requirements to be a responsible person as intended by the act.

### **Recommendation 15**

**The Public Prosecution Service should direct its Crown prosecutors across the province to take a common general approach to pre-trial detention for young persons under the *Youth Criminal Justice Act* and the *Criminal Code*, by ensuring that its Crown prosecutors are familiar with and up-to-date in training in the relevant statutory provisions and recent developments in the law. The directive should recognize the flexibility required and the discretion of individual Crown prosecutors, along with the desirability of a common approach.**

### **Recommendation 16**

**The Public Prosecution Service should direct its Crown prosecutors across the province that, during a judicial interim release hearing for a young person for which a responsible person is proposed in lieu of pre-trial detention, they are to request that the judge hear evidence about whether the proposed person is willing and able to take care of and exercise control over the young person, in keeping with the requirements of section 31(1) of the *Youth Criminal Justice Act*.**

### **Findings of guilt (YCJA section 36)**

Another particular concern relates to “findings of guilt” required by section 36 of the YCJA. The practice in the courts has been that when a guilty plea was entered, the matter was adjourned to a sentencing date, at which time the finding of guilt was made. In some cases, other than contributing to delay and its effects, this process has not created any significant problems. However, in AB’s case and that of others

like AB, this process causes some serious problems in relation to the application of other provisions of the act, especially those relating to pre-trial detention.

These problems arise because one factor a judge is to consider when deciding whether to deny bail to a young person is whether he or she has a “history that indicates a pattern of findings of guilt.” (This is through the complicated interaction between sections 29 and 39 of the YCJA, which I will address in more detail in Chapter 10.) Those “findings of guilt” refer to findings under section 36. The problem arises if a young person like AB pleads guilty to criminal charges but the findings of guilt for those charges are delayed until a later sentencing date. If, in the meantime and before that sentencing date, the young person commits a new offence and is brought before a judge for a bail hearing, the judge would have no findings of guilt from the earlier offences to consider, notwithstanding the young person’s admission of guilt. The Crown attorney at the second bail hearing would not be able to point to any “history of findings of guilt” to support pre-trial detention because in this example there are no findings of guilt at all.

The reason behind the process, according to the testimony, relates primarily to scheduling, that is, the existing notion that the judge who makes the finding of guilt is seized with the matter for sentencing. This means that the same judge is seen to have continued sole responsibility for the particular court matter, even at future hearings. Because sentencing is usually adjourned, it might prove difficult to schedule matters before the same judge several months later.

I will make some comments on section 36 in Chapter 10, along with certain recommendations for change to the pre-trial detention provisions of the YCJA. However, in the meantime, and in the event no changes occur, the arguments for making the finding of guilt at the time the plea is entered are overwhelmingly persuasive. In the course of this hearing and based upon the evidence presented, the Public Prosecution Service has recently established a policy that its

prosecutors request the court to make the finding of guilt at the time that a guilty plea is entered. This is a good move, and I recommend that such a request be made in all cases.

The court's response to such a request is entirely a matter for the court itself. I certainly respect the independence of the judiciary. I leave it with only a suggestion that this matter be discussed by the judges, Public Prosecution Service, and court administrators at their regular meetings so as to determine appropriate policies.

### **Recommendation 17**

**The Public Prosecution Service should continue its practice to request that a presiding judge make a “finding of guilt” as required under section 36 of the *Youth Criminal Justice Act* at the time a young person pleads guilty to a charge, not at the time of sentencing.**

### **Recommendation 18**

**Court administration, the Public Prosecution Service, and the judiciary should discuss the question of the timing of YCJA section 36 “findings of guilt” to resolve any concerns about scheduling or other matters that would prevent making a finding of guilt at the time of a guilty plea.**

## Common protocol on arrest warrants

It was an arrest warrant that played a significant role in the evidence before me that revealed some gaps in knowledge, training, practices, and procedures in dealing with them.

I make no claim to being able to deal with all the intricacies of this subject, nor would I interfere with the general police approach to arresting on an outstanding warrant. It makes eminent sense for a police officer who learns of an outstanding Warrant of Arrest against a person he or she is in contact with to inquire of the issuer of the warrant as to whether it should be executed. For example, it may be cost-prohibitive to arrest a person in Nova Scotia on a warrant issued in British Columbia over some minor matter. Considering that with today's computer use by police forces every Warrant of Arrest issued in Canada for any individual comes up on a check of the individual's name, one must be careful in designing any approach not to create even worse problems.

Nevertheless, there is one aspect of this matter that deserves comment. In AB's case the reason given by the RCMP for not executing the warrant was that it was being held in case they needed more time for the investigation. In other words, if the 24-hour time limit expired without a court hearing, they could arrest him on the warrant and gain another 24 hours.

I would venture to state that this approach would not survive a court challenge. In my opinion, when there is an outstanding warrant for a person who is already arrested for one matter, that person is entitled under the *Charter of Rights*<sup>8</sup> to have all matters against him or her dealt with "without delay." Once the person is arrested, the outstanding warrant is automatically executed, and the issuer should be contacted to determine what is to be done regarding that warrant.

The Department of Justice and all its justice partners, including police, sheriffs, court staff, and Crown attorneys, should meet to

8. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 11.



determine a common protocol on the execution and administration of arrest warrants. I am aware that some steps have already been taken in this regard following the evidence presented, but the whole issue should be looked at and best practices instituted. While this issue arose out of these rather unusual occurrences, this is an area that, nevertheless, demands attention. All matters of arrest should be left to the police subject only to certain practices such as I suggested being instituted if determined to be correct, with no involvement of Crown attorneys. Their involvement should be limited to “pick-up orders,” and procedures to direct them in this regard should be developed and put into practice.

### **Recommendation 19**

**The Department of Justice and all of its justice partners, including police, sheriffs, court administrative staff, and the Public Prosecution Service, and others as necessary, should meet to determine a common protocol on the execution and administration of arrest warrants.**

# Chapter 10

## **Advocacy for Changes to the *Youth Criminal Justice Act***



Aside from the misunderstandings and missteps that occurred in relation to AB, many of which were procedural in nature, the real culprit, which failed to provide an adequate response to AB's behaviour and, indeed, to society's rightful expectations, was the *Youth Criminal Justice Act*<sup>1</sup> itself.

As indicated earlier, as a Commissioner on a provincial public inquiry, as a central part of my mandate I do not have jurisdiction to make recommendations directly to the federal government regarding changes to this legislation. Nevertheless, due to the nature of this inquiry, I am well within my jurisdiction to point out the role played by the act in the events relating to AB and, as a consequence, to recommend that the Province advocate for certain changes to the relevant provisions of the federal statute in its discussions with the federal government.

Throughout the hearings I had the benefit of full explanations of the provisions of the act and its operation, together with an indication of some of its shortfalls and suggestions for change. Prof. Nicholas Bala, a major expert in the youth criminal justice field, provided extensive testimony. As well, I heard the views of Robert Lutes, Q.C., an author and trainer in youth justice. To hear the experience from another jurisdiction, I invited British Columbia's Deputy Minister of Children and Family Development, Alan Markwart, to testify. I also heard the evidence of Crown prosecutors, primarily Gary Holt, Q.C., and William Fergusson, Q.C., several defence counsel, and senior police witnesses such as Halifax Regional Police Deputy Chief Christopher McNeil, all dealing with the operation of the act in particular situations and the problems it presents. As a result, I feel competent to make the recommendations that will follow.

1. *Youth Criminal Justice Act*, S.C. 2002, c. 1.

Before doing so, it is important to state that not one of the parties with standing took exception to the philosophy behind the act or to the majority of its provisions. Rather, they identified a number of sections causing concern and recommended changes.

During my career as a Supreme Court Justice I was never involved in youth criminal justice, either under this act or its predecessors. I have had the opportunity to learn, in considerable detail, the YCJA's aims and objectives. As a result I can categorically state that the *Youth Criminal Justice Act* is legislation that provides an intelligent, modern, and advanced approach to dealing with youths involved in criminal activities. Canada is now far ahead of other countries in its treatment of youth in conflict with the law, and Nova Scotia is active in playing a key part in the system.

This is not to say that there are not those who are opposed to the YCJA, just as there were those opposed to the previous acts, the *Juvenile Delinquents Act*<sup>2</sup> and the *Young Offenders Act*.<sup>3</sup> Many of these critics believe that jail is the answer: "There they'll learn the error of their ways." These critics pay little attention to contrary evidence, nor do they understand that with young persons jail for the terms they recommend does not correct or rehabilitate, but rather often turns out a person whose behaviour is much worse than it was. Others espouse the vengeful adage "adult crime—adult time," paying no attention to the fact that it is a youth crime and not an adult crime. I have elsewhere summarized the experts' views on the particular nature of youth offending, in general and in the case of AB.

It is apparent that some members of the public share these critics' views. The Commission received a number of e-mails and letters very critical of the YCJA, claiming that society is much too soft on our youth. I have received similar suggestions from people I have met outside the inquiry. Many expressed the view that the act should be repealed.

These views are representative of a "revenge-based" response to criminal activities, which seems to have become more prevalent in the

2. *Juvenile Delinquents Act* 1908, R.S.C. 1970, c. J-3.

3. *Young Offenders Act*, R.S.C. 1985, c. Y-1.

adult system in recent years. The punishment must fit the crime, and preferably should be on the severe side. A perpetrator should be locked up for as long as possible. Such an attitude is in direct conflict with modern approaches to treating criminal behaviour. Most of the adherents of these views refuse to accept that youth should be treated differently and separately from any adult system.

Nevertheless, they are entitled to the views and opinions they express. Unfortunately, in the present state of our youth criminal justice system, they are unable to make any contribution to reform even when some reform is not only reasonable but desirable.

At the very beginning, it must be understood that my terms of reference limit me to the handling of AB's activities and charges leading up to October 12 and then to October 14, 2004. That is my area of jurisdiction. I have no authority to inquire into any portions of the YCJA relating to events after those dates. My concern, therefore, relates to those provisions of the act that affected AB, primarily those sections relating to and incidental to pre-trial detention. It is to those that I will direct most of my attention and recommendations. Indeed, most of the legitimate criticisms of the act since its inception relate to this area. Some of the sections I will be considering have been referred to in the facts set out in Chapters 5 to 7 of this report.

## 10.1

### **Challenges and Analysis**

The YCJA, though several years in the making, only came into effect in 2003. It was a major shift in public policy. While one might expect that some time would be given to shake out the problem areas, such was not the case. Despite its major success in reduction of custody and in fostering community involvement, it has received severe public criticism from its introduction, most of which relates to a lack of emphasis on public safety, a belief that there are no consequences to

youth criminal acts, and a belief that, in general, the act lacks the measures needed to effectively control youth crime.

Since its inception, the prevailing attitude among police, judges, Crown attorneys, defence counsel, and related staff people, and many of the public, has been that YCJA initials actually mean “You Can’t Jail Anyone.” The act is clearly not that prohibitive. However, it does appear that such was, and is, accepted as the underlying philosophy of the act, especially in relation to the pre-trial detention.

From the testimony presented to me, it is clear that there has been sufficient time and sufficient experience to support a call for change. There does exist a certain public outrage stemming from the apparent inability of the act to provide remedies to highly undesirable behaviour. Unfortunately, if real inadequacies remain unchanged, increased antagonism will relate to the whole act, and the voices for change will be much louder to do away with the whole act. This would result in a great step backward. The witnesses and counsel for all parties in this inquiry have indicated full support for the aims and goals of the act while recognizing, at the same time, a need for a number of amendments to give flexibility to the courts in dealing with repeat offenders, primarily by opening a door to pre-trial custody and enlarging the gateways to custody. Such amendments would give greater credence to and public support for the act, a much-desired result.

I cannot overestimate the importance of taking a balanced approach. Parts of the YCJA must be changed in order to create a workable and effective approach to handling repeat young offenders in a manner based upon protection of the public as a primary concern, as well as providing a means to step in to halt unacceptable criminal behaviour in a timely manner. This is not an option. It is crucial.

AB’s story, fully outlined earlier, is a textbook situation illustrating some of the act’s shortcomings and pointing to a need for change.

Deputy Chief Christopher McNeil of the Halifax Regional Police gave testimony at this inquiry. I was impressed with his practical and balanced approach to the issues, arising from his experience. His evidence was persuasive. In a January 18, 2006, report to his chief, related to the YCJA, he wisely stated:

The YCJA is premised on the belief that the vast majority of young offenders, with proper guidance and support, can overcome past criminal behavior and develop into law-abiding citizens. I believe that this is true for the vast majority of young people, however, the YCJA is ineffective in dealing with the small percentage of young people from whom the public needs protection.

The YCJA fails to recognize that there is a small group of incorrigible young people whose activities pose a risk, and that the criminal law must provide mechanisms to protect society from their behavior. The YCJA is very prescriptive legislation and restrictions on the use of custody in the YCJA have been interpreted as a bar to detention or custody in certain cases which risks public safety.

His emphasis in this report and in his oral testimony is that the YCJA has drastically shifted the balance away from public safety or the protection of the public by eliminating custody and pre-trial detention as tools to protect the public in all but the most extreme cases.

The act has established one main gateway to a custodial sentence—the commission of a “violent offence”—and three other very narrow ones with such restrictions as to render them of limited effect.

The Supreme Court of Canada has determined just how narrow those gateways are. In its decision late last year in *R. v. C.D.*,<sup>4</sup> a case involving theft of a vehicle and a high-speed police pursuit on

4. *R. v. C.D.*, [2005] 3 S.C.R. 668.

Edmonton city streets, the court accepted the restriction of custody as the aim of the act. As a result, a narrow interpretation of “violent offence” was preferred because a “violent offence” opens the gate to custody. It defined “violent offence” as “an offence in the commission of which a young person causes, attempts to cause or threatens to cause bodily harm.” It rejected a broader view that would have considered the foreseeability of harm in the definition.

The decision also highlighted the reference in the preamble of the act to the United Nations *Convention on the Rights of the Child*<sup>5</sup> indicating that section 37(b) of the Convention states that “the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.”

The Court also held that, in that case, a high-speed police pursuit on city streets was not a violent offence, thereby indicating that dangerous acts or offences are not necessarily “violent.”

It follows from this decision that the court has slammed shut the door to any broad interpretation of the gateways to custody of section 39 of the act, not only regarding the violent offence gateway to custody, but the other gateways as well, by establishing a restrictive approach to all custodial references in the act.

In Professor Bala’s view, the general notions behind the gateways to custody of section 39 are good, but the words used make each one too narrow. Coupled with the direction of the Supreme Court of Canada toward narrow interpretation, there is no way to effectively respond to young offenders facing multiple charges similar to AB. In fact, rather than operating to rehabilitate these types of offenders, it works in the opposite direction by preventing initial steps for rehabilitation from occurring when most needed.

Any expansion of the gateways requires legislative amendment. Professor Bala suggested changing the concept of violent offence to include “endangerment,” an “offence endangering or likely to endanger the life or safety or another person, or inflicting or likely to inflict severe psychological damage on another person.” It is

5. *Convention on the Rights of the Child*, U.N. General Assembly Document A/RES/44/25 (12 December 1989).

interesting to note here that this approach would potentially place certain high-speed police pursuits into the custodial sentence arena, as they then may be considered a violent offence.

In his testimony Professor Bala suggested actual wording changes to section 39 to widen the gateways. Mr. Markwart cautioned me to avoid recommending the actual word changes. While agreeing that some revision to section 39 was needed, his advice was to consider indicating the problem areas, determining where changes are needed, and recommending the changes in a general way, leaving the actual wording to the experts.

I prefer to follow Mr. Markwart's advice. Since I will be making recommendations to the Nova Scotia Minister of Justice to seek amendments, it would be not only restrictive, but also presumptive of me to propose actual statutory language. Nevertheless, anyone wishing to find Professor Bala's recommended wording need only look to the record of his testimony.

To indicate testimony in support of a need for legislative reform must not be taken in any way as a call for major reform of the YCJA. First, the subject matter of my inquiry is limited to those portions of the YCJA that had relevance to AB, so I am concerned only with those sections of the act relating to pre-trial detention. Second, I must make it absolutely clear and not open to question that all the witnesses I heard—police, prosecutors, defence counsel, and experts—agree with and support the aims and intent of the act. They accept it as a vast improvement over the previous legislation. All are convinced it is working well for the vast majority of young offenders, though it needs to be fine-tuned to provide effective means to handle the smaller, but regular number of repeat young offenders.

None of the witnesses recommending change expressed any concern that the suggested changes would, in any way, open the door to a return to a wide use of pre-trial custody. That result is not intended by the witnesses nor by me in my recommendations. Fear of that



result must not be allowed to hold up the important changes that must be made. I am confident that those drafting new legislation will be able to maintain the necessary balance while addressing the significant concerns.

## 10.2

### **YCJA Declaration of Principle and Public Safety**

One of the principal goals of the *Criminal Code*<sup>6</sup> is the protection of the public, and the relevant sections are interpreted by the courts with that in mind. It is interesting to note that an earlier version of the YCJA, which was introduced to Parliament in 1999 as Bill 63, provided in section 3, the “Declaration of Principle”:

3. (1) The following principles apply in this Act:
- (a) the principal goal of the youth criminal justice system is to protect the public by
- (i) preventing crime by addressing the circumstances underlying a young persons’s offending behaviour,
  - (ii) ensuring that a young person is subject to meaningful consequences for his or her offence, and
  - (iii) rehabilitating young persons who commit offences and reintegrating them into society;

When the final version of section 3 was passed, it was significantly different. The reference to the protection of the public as a principal goal was removed when the list of principles was enacted. The only reference to protection of the public is contained in section 3(1)(a)(iii), which reads:

- ... ensure that a young person is subject to meaningful consequences for his or her offence in order to promote

6. *Criminal Code*, R.S.C. 1985, c. C-46.

the **long term protection of the public**. (emphasis added)

In other sections of the act the only other reference to protection of the public occurs in section 38:

The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and integration into society, thereby contributing to the **long term protection of the public**. (emphasis added).

There is no reference in the act to public safety itself as a goal of the act, primary or otherwise. With the courts' continual reference to the Declaration of Principle in section 3 for interpretation purposes, it is clear that something important is missing from the final version of section 3. Deputy Chief MacNeil was of the view that the YCJA has not adequately considered the protection of the public. I believe Professor Bala has the same opinion by the changes he advocated.

Based upon the evidence presented to me and acknowledging the wide use of the Declaration of Principle as an interpretive tool, I accept that highlighting public safety as one of the goals or principles of the act is a must. I am satisfied that to do so would not in any way affect the majority of young offenders. However, it would be of considerable help in dealing with the small group of repeat offenders who may need to be "brought up short" so that their behaviour must change.

It is apparent that the public, as well as police, prosecutors, and other justice partners, are frustrated with the inability of the system to deal effectively with these repeat offenders, whose behaviour in many cases is extremely dangerous. These views are not peculiar to Nova Scotia. I have received a number of correspondences from other provinces indicating similar concerns.

Taking all this into consideration, it is important that the first changes to the YCJA must be made to the section setting out the principles upon which the act is based.

I therefore recommend that an amendment be sought to add to section 3 of the YCJA a clause including the protection of the public as one of the primary goals of the act. Sections 3(1)(a)(iii) and 38(1) may also benefit from the minor change of adding “short-term protection of the public” or similar wording to each or by removing references to terms, short or long, completely from those sections.

## Recommendation 20

**The Province should advocate that the federal government amend the “Declaration of Principle” in section 3 of the *Youth Criminal Justice Act* to add a clause indicating that protection of the public is one of the primary goals of the act.**

### 10.3

#### Pre-trial Detention

Sections 29 and 39 are the operative sections relating to custody. Section 39 applies to sentencing, while section 29 applies to pre-trial custody. A major problem with section 29 is it contains a presumption against detention if the young person could not, if found guilty, be confined to custody under section 39(1)(a) to (c).

The relevant sections of the act are:

Section 28:

28. Application of Part XVI of *Criminal Code* – Except to the extent that they are inconsistent with or excluded by this Act, the provisions of Part XVI (compelling appearance of

an accused and interim release) of the *Criminal Code* apply to the detention and release of young persons under this Act.

Section 29 (1) and (2):

29. (1) Detention as social measure prohibited – A youth justice court judge or a justice shall not detain a young person in custody prior to being sentenced as a substitute for appropriate child protection, mental health or other social measures.

(2) Detention presumed unnecessary – In considering whether the detention of a young person is necessary for the protection or safety of the public under paragraph 515(10)(b) (substantial likelihood—commit an offence or interfere with the administration of justice) of the *Criminal Code*, a youth justice court or a justice shall presume that detention is not necessary under that paragraph if the young person could not, on being found guilty, be committed to custody on the grounds set out in paragraphs 39(1)(a) to (c) (restrictions on committal to custody).

Section 39 (1)(a), (b), (c), and (d):

39(1) Committal to custody – A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless

- (a) the young person has committed a violent offence;
- (b) the young person has failed to comply with non-custodial sentences;
- (c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985; or

(d) in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

Further restrictive provisions in section 39 that relate to sentencing are not relevant to this inquiry.

Essentially, section 29 directs the court to presume that pre-trial detention is not necessary for the protection or safety of the public or for the administration of justice as section 515(10)(b) of the *Criminal Code* provides if the young offender could not, if found guilty, be committed to custody under section 39(1)(a) to (c).

Obviously, applying these sections in any given situation is a complex exercise, with the cards stacked heavily against custody. The very notion of public safety or protection of the public, an essential consideration of section 515(10)(b) of the *Criminal Code*, is presumed not to apply unless the offence falls within the narrow gateways of YCJA section 39.

The Supreme Court of Canada in *R. v. C.D.*, already mentioned, and in *R. v. B.W.P.*<sup>7</sup> has confirmed the policy of the YCJA as set forth in section 3 for a separate criminal justice system for young persons, that adult sentencing provisions of the *Criminal Code* do not apply to youth (section 50): that deterrence, both general and specific, are excluded as principles of sentencing, that protection of the public is not an immediate objective of sentencing, but rather as the long-term effect of a successful youth sentence, and that section 39 requires a narrow restrictive interpretation so as to give effect to the deliberate policy of reducing incarceration.

Public safety is relegated to a minor concern of little weight except in certain very narrow circumstances. The act is heavily balanced in favour of rehabilitation through the use of a variety of

7. *R. v. B.W.P.*, 2006  
SCC 27.

community measures and other justice devices, with custody being a last resort and, then, only if no other reasonable alternative is available.

It is significant to relate here that AB's sentencing hearing on 22 *Criminal Code* offences and two *Motor Vehicle Act* offences, including some of the Halifax and Windsor charges, finally took place on December 20, 2004, before Judge Marc C. Chisholm. Judge Chisholm made a thorough review of the YCJA sentencing principles, referring to sections 38 and 39 of the act. Gary Holt, Q.C., was the Crown prosecutor, and the Crown position, as expressed by the judge, was custody if the Court had the authority, given all the offences and reports before it. Mr. Holt urged the Court to order custody. However, Mr. Holt expressed the view that the law did not appear to permit the Court to impose a period of custody in this case and recommended a lengthy period of probation. Defence counsel's position was that the Court had no authority to impose custody for any of the offences before it.

Judge Chisholm stated the general intent of the sentencing principles in essentially similar terms as I have indicated. Then he applied section 39 to the charges. He found that none of the offences constituted a violent offence under section 39(1)(a), as none constituted a causing of bodily harm or an attempt to do so. He then found that, since AB had never been sentenced on any of these charges and this was, in fact, his first time being sentenced, subsection (b) did not apply. Similarly, subsection (c) was held not to apply, although there were indictable offences for which an adult could be imprisoned for more than two years (theft over, possession over). There was no pattern of findings of guilt; this was AB's first sentence.

Judge Chisholm then went on to subsection (d) and ruled that all indictable offences prior to September 29, 2004, were not exceptional cases, and custody was not an option. However, he considered AB's September 29 activities and the nature of one of the Windsor charges, theft over \$5,000. The judge considered the offence,

its surrounding circumstances, its potential impact upon the community, and AB's own circumstances and determined that these were, indeed, aggravating circumstances. Since the charge met the initial requirements Judge Chisholm, after full consideration, imposed a custodial sentence.

Noteworthy here is the fact that this sentencing took place just over two months after Theresa McEvoy's death.

Judge Chisholm's studied and careful review of the act points out clearly that in his view the act would not have permitted the pre-trial detention of AB for any of his offences prior to September 29. Applying the same reasoning, detention would not have been available under subsections 39(1)(a), (b), or (c) for his September 29 offences, that is the Windsor charges, at AB's October 12 court appearance.

The only avenue left to seek pre-trial detention on October 12 would have been for Mr. Fergusson to argue that detention was necessary by trying to rebut the section 29 presumption against custody. To have any hope of success, all of AB's charges, his psychological and psychiatric reports, and evidence similar to that in his pre-sentence report, as well as his personal history throughout his troubled times, would have had to be before the Court, which they were not.

Section 39(1)(d) would not have been of any assistance as it applies only to the sentencing process and has no application to pre-trial detention.

From the testimony I heard I am convinced that there was no confidence whatsoever that, even with full information before the Court, a pre-trial detention order would have been issued for AB on October 12.

## **Recommended amendments to YCJA pre-trial detention provisions**

Without the express circumstances of subsections 39(1)(a), (b), and (c), pre-trial detention is pretty much a myth. I have no doubt this was the deliberate intent of the framers of the act. Under the *Young Offenders Act*, pre-trial detention was extensively used, for many different reasons and for varying lengths of time, in disregard in many cases of the rights of the youth and for reasons unrelated to the offence being dealt with. Substantial reform was necessary. However valid the reasons for this approach were in the minds of the framers of the act and the Parliament that passed it, those with experience in the field since the act came into force—police and prosecutors and other experts who appeared before me—contended that the YCJA went too far.

From too much to almost none at all was too wide a swing. Closing the door to pre-trial custody to the vast majority of young offenders and for reasons unrelated to the offence (as a substitution for child protection, mental health, or other social measures, for example) is now widely accepted as wise and desirable in the treatment of young offenders.

Nevertheless, I believe that the YCJA has gone too far when I consider the small group of repeat young offenders. My intent is not to restore the old YOA system. It is rather to give to the youth court some additional flexibility to deal with repeat young offenders, especially those like AB who may be considered as “spiralling out of control.” By restoring public safety as one of the goals and by opening the gateways somewhat, the principle of establishing meaningful consequences for an act is respected, and the chances of interrupting unacceptable behaviour and advancing rehabilitation and reintegration into society would begin earlier and thereby have an increased likelihood of success.



These gateways to custody could be widened to include a broader definition of “violent offence” in section 39(1)(a) that imports the idea of endangerment to the public. They could also be widened for young offenders on a rapid crime spree by permitting a court to consider for section 39(1)(c) not just a history of a pattern of “findings of guilt” but a pattern of offending.

The intent as expressed by witnesses at the inquiry, and urged upon me by some of the parties with standing, is to expand the possibility of pre-trial detention to a degree necessary to meet the small group of repeat offenders’ situations, while still maintaining the basic integrity of the YCJA. It can be done.

I am convinced that the Province should advocate for amendments to the sections relating to pre-trial custody to restore some flexibility to the courts and provide an appropriate response to particular behaviour of this small group. I make two recommendations, both related to slightly relaxing the gateways to pre-trial custody. These recommendations would allow a court to consider findings of guilt and outstanding charges, thereby gaining the flexibility to deal with those young offenders whose behaviour falls within a short-term crime rampage or who are spiralling out of control like AB.

These recommendations are based on the facts in this case and are part of my consideration of why AB was released from custody on October 12. When I consider the facts, these proposed amendments, if they had been enacted in 2004, would have provided a Crown prosecutor—Mr. Holt on July 6 or Mr. Fergusson on October 12—with an enhanced ability to convince a youth court judge that the nature of AB’s offences, which risked endangerment of the public, and given his pattern of rapid, repeated offences, warranted pre-trial custody. It still would have been up to the Crown to make out the case for remand. In circumstances like AB’s, I am confident that if there had been slightly more flexibility in the YCJA on both of those dates the Crown would have succeeded, and AB would not have been released

to offend again. AB would probably not have been at large on October 14 and able to steal a car, initiate a high-speed joyride in residential Halifax, and cause the collision that killed Ms. McEvoy.

### **Recommendation 21**

**The Province should advocate that the federal government amend the definition of “violent offence” in section 39(1)(a) of the *Youth Criminal Justice Act* to include conduct that endangers or is likely to endanger the life or safety of another person.**

### **Recommendation 22**

**The Province should advocate that the federal government amend section 39(1)(c) of the *Youth Criminal Justice Act* so that the requirement for a demonstrated “pattern of findings of guilt” is changed to “a pattern of offences,” or similar wording, with the goal that both a young person’s prior findings of guilt and pending charges are to be considered when determining the appropriateness of pre-trial detention.**

## **Complexity of pre-trial detention provisions**

In my view, these recommended amendments alone are not sufficient to accomplish the desired result of assuring that some degree of pre-trial detention is available for serious repeat offenders, so long as

section 29 is so intricately tied to section 39. This has created a very complex situation. Bail hearings occur at an early time in the judicial process, usually at a brief hearing, where none of those involved, the Court, prosecutor, and defence counsel, has had ample time to deal with the complexities. Further, very few, if any, of these matters result in appeals in which the courts can make rulings to clarify some of the complex issues.

These sections need not be so complex. Pre-trial detention is significantly different from sentencing. It has a completely different purpose from sentencing. Properly used, it is more in line with principles of early intervention to effectively begin the rehabilitation and reintegration process. As I have indicated earlier, some repeat offenders need to be brought up short, so that they become aware that their behaviour is not acceptable. For those who reject all attempts to help or work with them, and who brazenly continue their criminal activities despite the law and their own undertakings, pre-trial detention with judicial flexibility as to its duration is now a necessity and not just desirable. Public safety, when properly considered, demands it.

It is not my intent to take issue with the policies and aims of the YCJA. My concern is to show that amendments must be sought to enable our justice system to adequately deal with young offenders such as AB. His experiences point out the act's inadequacies regarding youths in those types of circumstances.

It would be wrong to allow our judgment to be so coloured by the successes of the YCJA that we are blind to its failures. AB was one of its failures. His same criminal behaviour went on, without intervention, until he caused Theresa McEvoy's death. AB's pattern of repeat offences, however, is not unique. There may be as many as 100 young persons at any one time acting as repeat offenders in Nova Scotia, with proportionate numbers in other provinces, for whom the act is failing. We cannot sit back and praise ourselves on the nobility of our aims of rehabilitation and reintegration while not actively

engaging those most in need of those very aims. The goals of the act are worthy, but some detention, where it would contribute to public safety and still be consistent with the goals of the act, is also worthy.

Taking all this into consideration, the Province, in its pursuit of amendments to the YCJA, should make every effort to have the re-drafters of the act make the necessary changes to other related sections of the act so as to give full effect to the changes I have already recommended.

In line with this, a strong position should be taken to have the re-drafters remove the complexity of the present situation and to create separate provisions that relate solely to pre-trial detention for young persons in the type of circumstances we have been talking about.

Any fear of a return to the YOA days of large-scale pre-trial detention is not warranted. The gateways are opened only enough to provide some flexibility to the Youth Justice Court to enable it to deal with particular situations. As we move ahead with other measures to work with troubled youth, such as the establishment of an attendance centre and bail supervision program, we can expect an increased judicial flexibility having available at the same time powerful systems and services that will provide a brake to detention.

### **Recommendation 23**

**The Province should advocate that the federal government amend and simplify the statutory provisions relating to the pre-trial detention of young persons so that section 29 will stand on its own without interaction with other statutes or other provisions of the *Youth Criminal Justice Act*.**

## 10.4

### **Responsible Person Undertaking**

In Chapter 5, I set out in some detail the operation of the pre-trial detention sections and discussed the effect of the provisions for appointment of a “responsible person” instead of custody. I am of the view that the Province should also seek some fine-tuning amendments to the responsible person provisions in section 31 of the YCJA, as this section also is significant when pre-trial detention is sought.

Presently, this section provides for a youth to be in the care of a responsible person instead of being detained in custody if the judge is satisfied of certain specifics, including that the youth would otherwise be detained in custody, the proposed responsible person is willing and able to take care of and exercise control over the young person, and the young person is willing to be placed in the care of that person.

All of these are to be determined by the judge, and again I will not tread upon judicial independence, having already limited my comments to suggesting that the prosecutor urge the Court to have a full hearing on whether the proposed responsible person actually meets the requirement of the act. I have already explained AB’s situation.

My fine-tuning recommendations relate to two other aspects of the section. Subsection 3 requires the responsible person to give an undertaking to, among other things, take care and control of the young person. It also requires the young person to undertake to comply with the arrangement and any other conditions.

The problem arises when, as in this case, the responsible person is relieved of the undertaking. In such a case, the act directs the Youth Justice Court judge to make an order relieving the young person of the obligations undertaken and issue a warrant for the young person’s arrest. It appears that if the judge relieves a responsible person of his or her undertaking, the young person’s

undertaking is also thereby revoked. This leaves the troubling result that the young person is no longer subject to conditions on his undertaking, even those not related to the responsible person, like keeping the peace and other behavioural requirements. In this case, for example, when AB's mother revoked her undertaking, AB was no longer subject to the promises he made on July 6, and there was no way to hold him accountable for any breach, for example, by charging him with an administrative offence after that date upon his arrest.

The result of this is that the young offender, whom the Court has already determined would have been detained in custody except for the responsible person, is now free without any undertakings until arrested.

Of even greater significance is section 31(6), which directs a new judicial interim release (bail) hearing. Considering that this hearing could take place in a different location, with a different judge, a different prosecutor, and different defence counsel, the possibility of inconsistent results is greater.

When a youth court judge is satisfied that pre-trial detention is appropriate under the narrow and restrictive provisions of the YCJA, one can be certain that all the aims and goals of the act and its principles have been considered. In such a case, pre-trial detention is required to respond to a particular course of conduct of criminal activity. It is unnecessary to burden the system with further bail hearings as long as measures like those I have suggested are provided.

Obviously the intent of this part of legislation is to avoid detention or make it extremely difficult to obtain. What is missing, however, is a recognition that by this point the determination to order detention has already been made, for it is only then that the responsible person enters the picture.

**Recommendation 24**

**The Province should advocate that the federal government amend section 31(5)(a) of the *Youth Criminal Justice Act* so that if the designated “responsible person” is relieved of his or her obligations under a “responsible person undertaking” the young person’s undertaking made under section 31(3)(b) nevertheless remains in full force and effect, particularly any requirement to keep the peace and be of good behaviour and other conditions imposed by a youth court judge.**

**Recommendation 25**

**The Province should advocate that the federal government amend section 31(6) of the *Youth Criminal Justice Act* to remove the requirement of a new bail hearing for the young person before being placed in pre-trial custody if the designated “responsible person” is relieved of his or her obligations under a “responsible person undertaking.”**

# Chapter 11

## Addressing the Causes of Youth Crime: Targetting Resources and Prevention



This section relates to the broadest area of my mandate. It falls under the discretionary clause, though it also stems directly from the events in AB's life leading up to his offending behaviour. It would be hard to design a better set of circumstances than those that occurred here in the life of a 16-year-old boy to illustrate societal failures in education, social services, mental health, justice, and the statute governing youth criminal justice.

In the document *Perspectives on Youth Crime in Nova Scotia*, spoken to at the inquiry by Robert Purcell, the following list of risk factors are indicated to be consistently and strongly related to delinquency, youth crime, and violence:

- raised in poverty
- neighbourhood crime/disadvantage
- exposure to or victim of violence
- early childhood aggression
- hyperactivity/impulsivity
- association with deviant peers/siblings/parents
- early initiation of violent behaviour and involvement in other forms of anti-social behaviour (e.g., substance use)
- poor family management practices
- poor academic achievement
- member of a gang
- being male.

Most of the studies of offending behaviour and the risks leading to it are related to males. There are, however, indications that some of the above factors are common to young females as well,



though there are some additional factors that contribute to female offending behaviour. Some of those are also referred to in the foregoing study:

- problematic family dynamics and parental relationship
- gender-based oppression and abuse
- mental health and personality factors
- school difficulties
- alleviation of boredom and attention seeking grounded in a need to be noticed, including being stimulated and valued
- abuse of alcohol
- connections to delinquent peers, especially older males
- negative self-representation.

Certainly there may very well be many other risk factors for youth offending behaviour. Adolescence itself, with its baggage of experimentation, risk taking, recklessness, and feelings of invulnerability, plays a role in some offending behaviour. I need not elaborate. I make no claim of expertise in this aspect of human relations. The references I have indicated are from the work of others whose studies and opinions are valued. Nevertheless, from my own experience as a parent, teacher, practising lawyer, and judge, I would suggest that some of those factors for females fit equally well with males.

I have set these factors out for several reasons that are fundamental to the comments and recommendations I will be making in this chapter.

First, the risk factors listed fall into general categories:

- family
- school
- disabilities and disorders
- relationships
- the individual youth, male or female.

Second, each of these categories falls under the jurisdiction and concern of one or more of our government departments: Community Services, primarily for families; Education, primarily for schools, including disabilities and disorders; Health and Health Promotion and Protection for mental health, disabilities and disorders, the individual, and relationships, as well as for some family situations.

Third, there is an obvious overlap of responsibility for the provision of needed services from one department to another. There also may be a similar overlap between separate sections or divisions within a department.

Finally, each of the departments mentioned operates separately and independently from the others, as do many of the divisions within each department. This is understandable. Professionals tend to centre their interest in the area of their training, often to the exclusion of other considerations. Added to this is the burden of the heavy load of numbers of those requiring their services. Additionally, there are limits on services in the departments concerned, attributable to available resources and statutory limiting provisions.

Returning to the categories, my portrayal in Chapter 4 of AB's early life shows that he fit into most of them. He came from a dysfunctional family. There was an element of volatility throughout the events of his life. He had continual problems at school and home. As a teenager, his life at home cycled through periods when his mother felt she could not handle him to times when she believed that things had changed. The family sought help from AB's early childhood onward, but, for various reasons, seldom followed through. TL and her husband badly needed improved parenting skills, but never acquired them. As a teenager, AB became more and more unwilling to participate in or even accept efforts designed to assist him. He was going his own way at home, at school, and in the community without control. He was, in his mind, untouchable. When

his criminal activity started, he expected no consequences and had the usual adolescent belief of invincibility.

His mother, father, and stepfather were the other part of the dysfunctional family. Hostility existed between the mother and father, seriously and negatively affecting any hope of a good relationship of AB with his stepfather. The lack of stability stemming from changes of location, both of homes and schools, led to unfortunate consequences. Undoubtedly the family's economic situation was not good, though there was no indication that they were poor. Both mother and stepfather had full-time jobs.

In the category of relationships, AB had few. He was never in one community or one school long enough to develop any peer friends. He had a tenuous relationship with his father, a very poor one with his stepfather, and a loving but volatile and difficult relationship with his mother. He had few school relationships as he was at a grade 5 level while his peers were at grade 7 or 8, although he was at times older than his classmates. They did not take to him. He began to develop relationships while at the Reigh Allen Centre and Hawthorne House, but those were the very kind he did not need, boys with significant behavioural problems.

In the individual category, he was a boy who suffered the break-up and divorce of his father and mother and the acquisition of a stepfather. He was diagnosed with attention deficit hyperactivity disorder (ADHD) and not properly treated for this condition. As his years in school progressed, he fell further and further behind his peers in the traditional school subjects such as reading and mathematics, undoubtedly due to his condition. At home, he was usually in conflict.

I have already referred to his ADHD, which certainly is indicative of a need that it be recognized, understood, and treated. That was not so for AB. For the very short time he was on medication his behaviour settled somewhat, and he was making progress. It did not last.

At school he had attention and behavioural problems from the start. As his behaviour continued to become more and more disruptive in class, especially in his last year, the only disciplinary action deemed appropriate was suspension. AB was suspended 14 times before finally his mother and the school principal agreed to his withdrawal from school, despite the requirement to attend. On the occasions of his suspension AB was not allowed to go home, so he was “on the street” and found other associates who were also out of school. I have discussed these circumstances at length earlier in this report.

This, in summary and while somewhat repetitive, was AB’s background. It led me to hear evidence from representatives of those organizations and government departments with which he and his family were involved. As witnesses were examined and cross-examined, more general evidence of systems, procedures, and sources and availability of assistance was produced and considered. This became the evidence relating to what I called the fringe of my mandate, but all of which emanated from AB’s behaviour and charges.

The first question that arises is whether or not AB and his family’s situation is unique. The answer appears to be “no.”

As this evidence was being developed during our hearings, it drew considerable daily media attention. This resulted in the inquiry receiving a substantial number of telephone calls, letters, and e-mails from the public at large, some from other provinces. Stories of family strife, offending children, and pleas for help were revealed. Written submissions were invited, and a number were received. To accommodate the public, an evening public forum was held, and 22 persons told their stories and made representations. Many more attended or read the transcripts on the inquiry website.

A number of the presenters revealed their personal family tragedies with offending youth, as did some who made written submissions. Their stories are heart breaking. Unanswered pleas for help. Lack of any timely response to immediate problems. Failure of

the justice system, delays, and inconsequential penalties. Lack of enforcement of release conditions. Failure to recognize the rights and interests of parents and their inability to cope with their errant children, repeatedly returned to them under provisions of house arrest or curfew. Failure of schools to adequately understand and educate children suffering disabilities or disorders, of which young offenders, especially repeat offenders, form a high percentage. Inability to keep children in school. Lack of timely mental health assessment and assistance. Parents not knowing where to turn as they watched a child they love slide deeper and deeper into a life of crime. While these stories were not subject to cross-examination, they were real examples of the ways youth crime affects lives.

Youth criminal activity is not confined to the poor. It is present at every level of society, so it concerns us all. Understanding its causes and how it can be dealt with, first, involves an understanding of the society in which it exists. Our youth's society today is vastly different than that of most parents. We must accept that we live in a world of single-parent families, broken marriages, working parents, freer children, less discipline, sexual freedom, changed moral values, early use of alcohol and drugs, with all the problems these present. The "traditional" families are not untouched. Many face the same difficulties. Often parents in our communities have no extended family nearby to avail upon for help.

So, in responding to offending behaviour and attempting to prevent it by early intervention with adequate resources directed to those we are attempting to reach, we have to accept that these are the cards we are dealt. Older approaches may very well not suit. We must adapt to changing needs.

Obviously a serious situation exists. Remedies must be found. Considering the criminal justice system, the YCJA anticipates government involvement with community organizations and other local programs or resources, either existing or being established, to promote rehabilitation and reintegration as the alternative to custody.

Questions were asked at the inquiry as to whether the resources provided by the Province were adequate to meet the requirements of the new policy approach under the YCJA.

Society has a fundamental interest in prevention of youth crime and decreasing its occurrence. The advantages of an effective program of crime prevention will be evidenced by greater public safety, a reduction in youth crime in all its aspects, and youths who might otherwise become young offenders maturing to responsible adulthood. Undoubtedly there will be a cost to accomplish this. In time, however, I believe there should be substantial savings measured by the success of the programs.

I must indicate that AB and his family did receive assistance and support from the Department of Community Services from his early life up to his time of offending. However, the family's movement from location to location, a lack of co-operation, and its volatility mitigated against success. No fault can be attributed to the workers involved or to the department.

Notwithstanding the concerns expressed, Nova Scotia is extremely well equipped to provide the required services, and with a few changes, many of the areas of concern like those of AB and his family can be addressed as adequately as can be expected.

## 11.1

### **Improved Collaboration on Responses to Youth at Risk**

We have the people with the necessary expertise. I was impressed with the quality of the professional people from the various government agencies who testified. Each exhibited high professional standards, a deep interest in this whole area of youth and family growth and welfare, and a frankness in recognizing the extent of the problem of youth crime prevention. They displayed a genuine interest in and concern that adequate responses to this problem be developed and put

in place. They did not shy away from pointing out the challenges they face. I am confident in their ability to achieve the desired goals. I have no doubt that there are many more in each department deserving of similar characterization.

Each of the professionals, whether social worker, health-care official, educator, or justice official, testified that one of their major difficulties was a lack of collaboration. More than that, each emphasized it as a serious deficiency in their ability to provide help and services when and where needed. In the most part, service providers could act only in their area of interest without much, and sometimes without any, collaboration with others involved with the same person. This illustrates the unfortunate situation where those in each department or organization deal with a *part* of the child without anyone dealing with the *whole* child.

Part of the problem in this regard is the very structure of the departments themselves. Each is directed to a different aspect of life, with its own governing legislation, hierarchy, and budget. One can presume the jurisdiction of each is jealously guarded.

Changes have to be made. A number of general recommendations would be helpful, if implemented, to bring about substantial improvement in the collaborative delivery of services for youth at risk and their families.

### **Improve strategy and coordination of existing services to children and youth**

In the Province's own *Perspectives on Youth Crime* report it noted that in Nova Scotia "there is no comprehensive strategy in place linking interventions and strategies across departments." This is a key missing link and should be an immediate first step, and it forms the first of my broad recommendations in this chapter.

To meet the need for collaboration in the provision of services, I recommend that a new and more effective strategy be developed to

coordinate the various services to youth of the Departments of Community Services, Justice, Health, Health Promotion and Protection, and Education and other departments and their partner agencies (including police and community organizations) to enable greater collaboration in the provision of services to youth, better and more accessible services for at-risk children and youth and their families, and more efficient use of public services.

There is an existing committee or group that has been created and still meets periodically to advance collaboration among other things with youth, the Children and Youth Action Committee (CAYAC). From the inquiry evidence, CAYAC appears to have become little more than a discussion group with limited direction and without responsibility. I understand that there have been some areas where CAYAC has worked to improve some collaboration. But it is clear that CAYAC is not the body to ensure targeted and collaborative approaches to preventing youth crime. I would anticipate a much more concerted effort to put effective collaboration of all concerned into place and up and running quickly. It would seem that the creation of a committee has not proven itself as the best method of getting something done, especially in a short time.

Given my approach to this aspect of my mandate, my task of making comments and recommendations does not include advising how to accomplish them. I would, however, be prepared to recommend that the Province should consider appointing a senior, experienced “hands-on” person in each of the Departments of Community Services, Health, Health Promotion and Protection, Education, and Justice, and other departments as identified, as departmental coordinators with a clear direction that they get together and establish a steering group to direct and supervise the development of this strategy. With their experience, and given authority within the existing framework to do it, I would envision significant improvements could be quickly implemented.



A number of parties have strongly suggested that I go much further and force collaboration by recommending the establishment of a new Ministry of Youth and Family Services. This would be similar to the ministries in British Columbia and Ontario, which could include community and family services, youth health, and youth justice, depending on the model.

To establish a ministry here would require a significant political will, first, to create another department of government at substantial cost and, second, to force existing departments to hive off employees to a new department, together with real budget consequences in the required transfers to the new ministry.

I do not go so far as to make that recommendation at this time. It may very well turn out that the government will decide, as the strategy is promulgated and the whole area relating to youth and family responds to coming change, that in future a new ministry is the most effective way to ensure that one department is responsible for “the whole child.” The evidence I heard from witnesses like B.C. Deputy Minister Alan Markwart indicates that it may be an effective way to put the care of the whole child under one roof.

For our purposes at the present time, I think we can go a long way forward via a different route. It would be far less costly, but could be extremely effective.

### **Recommendation 26**

**The Province should immediately begin the development and implementation of a public, comprehensive, collaborative, and effective interdepartmental strategy to coordinate its programs, interventions, services, and supports to children and youth at risk and their families, with a particular focus on the prevention of youth crime and a reduction in the likelihood of re-offending of young persons already in conflict with the law.**

### **Recommendation 27**

**The Departments of Community Services, Justice, Health and its Mental Health division, Health Promotion and Protection, and Education, and other government departments or agencies as required, should each immediately appoint an accountable senior official to a steering group to develop and implement the Province's strategy for youth and children at risk.**

### **Appointment of Director of Youth Strategy and Services**

For our youth at risk, and to implement the strategy I have recommended, I recommend the appointment of one senior public official, a "Director of Youth Strategy and Services." The director would be responsible for managing the overall strategy and ensuring collaborative approaches for all of the Province's programs and services for youth at risk, no matter which departments are involved.

He or she could work with the other senior departmental officials. The position's responsibilities would include establishing the necessary vehicles to assure that youth have available the services and assistance they require from whatever government department or partner organization on a timely basis. Follow-up and supervision of the strategy would be a major part of the job. The director would be the "champion" of the youth strategy. This position would necessarily be at a very senior level, perhaps equal to a deputy minister, to assure that he or she would be on an equal footing in dealing with the various other departments. I believe this is necessary if the director is to be able to effectively require services and co-operation of a number of departments and organizations. It would be the director's task not only to coordinate the services for youth at risk but to oversee ensuring that proper efforts to implement the strategy are in place. I would foresee that the director would have the full support of Cabinet as he or she makes what may be difficult, but strategic decisions about priorities and allocation of resources.

This appointment would have the immediate effect of establishing the collaboration I referred to earlier for the benefit of youths at risk already in the criminal justice system. Notwithstanding this, my earlier recommendation of widespread collaboration extends to the full involvement of the various departments with all youth at risk.

I attach a great deal of importance to this position of Director of Youth Strategy and Services. It will require a person of broad experience who understands youth, their hopes and desires, interests, activities, and challenges, who is not judgmental, but is flexible to accommodating differing individual needs and who has a deep interest in the welfare and growth of youth. At the same time, the person must be capable of working with the various professionals and gaining their co-operation to assure a smoothly operating system, pushing where necessary even senior officials of the various departments involved. I realize that would describe quite an individ-

ual, but I am confident there are such persons here in Nova Scotia.

I cannot conceive of a better time and environment to make these changes, as the inquiry evidence clearly shows that there exists in the departments I have referred to, and in the government generally, a genuine interest in developing collaborative strategies for the prevention of youth crime, all of which is further encouraged by growing public support. In this environment, great strides ahead can be accomplished. We must not lose the momentum.

### **Recommendation 28**

**The Province should appoint one senior official, preferably at the deputy minister level, as a “Director of Youth Strategy and Services,” who would oversee and be accountable for the development and implementation of the Province’s strategy for children and youth at risk. The director would manage the steering group of senior officials and should have the support required to ensure co-operation and collaboration by officials and staff from all government departments and agencies involved in providing services, programs, and interventions for children and youth at risk. In accordance with the strategy, the director would recommend and coordinate any re-allocation of resources to services, programs, and interventions identified as priority areas. The director should also regularly communicate to the public progress in the development and implementation of the strategy.**

## 11.2

### **Targetting Resources for Youth Crime Prevention and Early Intervention**

Acknowledging that resources are not unlimited, there must be a real concern that present resources are appropriately allocated.

Two central themes run through the established approach to the broad issue of youth at risk. The first is early intervention, and the second is prevention. It reasonably follows that our resources must be directed primarily to those areas.

Prevention of youth crime is a major matter. Early intervention is merely reacting to the first signals that steps are must be taken to avoid or prevent development of further and greater problems, and to prevent children at risk from growing into youth criminals.

Regarding intervention, all witnesses emphasized that it had to be early, meaning as early as possible. As I understand it, action is suggested at the first signs of trouble, whether behavioural or intellectual. It may be identified at home, at day care, or public school. This is the time when understanding and help are most important, and remedial action should be taken. Everyone involved with the child should be on the same track in promoting the best program to advance the child's well-being.

The Province must emphasize a commitment to early intervention as the underlying philosophy and approach in promoting the welfare of children at risk and as part of its collaborative strategy. This will help prevent later young offenders.

### **Increase supports that promote the integrity of families**

As I have indicated earlier, the need for support and services for families of whatever nature is crucial. A coincidence of need is availability. When help is needed now, it is useless to offer it six months hence. Can one really understand the turmoil where a parent has reached the stage to call for help only to find that none is

available and she is left to her own devices? Consider the personal cost on her health, on her other relationships with spouse and other family members, or on her work. It must be devastating and, in many cases, can lead to disastrous consequences in family terms.

I need not elaborate. How and where can this be tackled? The where is easy, as this must be a function of the Department of Community Services (DCS), which presently operates under the *Children and Family Services Act*.<sup>1</sup> As I understand it, this act is 90 per cent directed to child protection; and the provisions relating to family services fall far short of providing for the real needs, focused especially on early intervention and prevention of family dysfunction.

There has been a strong suggestion that today's society is much more willing to seek professional help in this area than was the former situation. Nevertheless, I suggest that any system created to meet this need be kept separate from that relating to protection. The protection aspect has unfortunately led, in the minds of some, to somewhat of a lack of comfort or a stigma against voluntarily requesting help from DCS.

I recommend that the Province of Nova Scotia consider establishing a separate division within the Department of Community Services empowered and with adequate resources to provide a full range of services more particularly directed towards promoting the integrity of the family. Its main thrust should be directed to preserving the family unit and to responding without delay to requests for assistance or other occasions of obvious need. Collaboration with others involved is essential. The provision of some of these kinds of services is already noted in section 13 of the *Children and Family Services Act*. These services should be more widely available and part of the overall strategy for dealing with youth and families at risk.

I am aware that implementation of this recommendation may prove costly. Nevertheless, this must be done, and the ultimate return should far outweigh the initial costs if the commitment to this approach is kept. It is another element of the prevention of youth crime.

1. *Children and Family Services Act*, S.N.S. 1990, c. 5.

Community Services is a massive department with over 1,000 staff and a huge budget. With a rapidly changing society with its corresponding changing needs, it seems to me that a periodic audit of its services and activities would be valuable as a means to evaluate whether any particular activity is necessary, desirable, or worth its costs. Quite possibly this could produce savings, financial or staff, that could be applied to family services. That, however, is only my suggestion and will be a decision for the department to make.

In considering new programs, I was urged by several of the parties to recommend amending the *Children and Family Services Act* to increase the age limit from 16 to 18. This would require the provision of protection or other social services to youth who do not now receive assistance under the act. While to do so would take the age up to that of the YCJA, it has other implications, including substantial cost.

It may be desirable, in fact, but to consider its implementation one would need much more information than I have been provided. I make no specific recommendation on this request and, similarly, no recommendation on establishing new social service programs for youth 16–18 years of age or creating a system of youth agreements that also relate to that age group. It may, however, be an area that the Province should consider as it develops its strategy for early intervention and youth crime prevention.

### **Recommendation 29**

**In collaboration with the Director of Youth Strategy and Services, and as part of the Province’s strategy for children and youth at risk, the Department of Community Services should consider establishing a separate division that will provide a range of services to families directed toward the promotion of the “integrity of the family” similar to those set out in section 13 of the *Children and Family Services Act*.**

## **Perform a gap analysis of existing programs to ensure a targeted and strategic approach**

We have to be sure that our limited resources directed to youth at risk are used wisely. Currently, there are at least 18 initiatives and services relating to children under the auspices of the Department of Community Services, ranging from child protection to early childhood educational training, including grant funding to other child-care centres and related facilities to support quality early childhood programs.

The Department of Education has 12 initiatives, from programs for young adult education, guidance, and resource teacher support to student assistance. The Department of Health has three particular services relating to addictions and HIV-AIDS prevention. Its subdivision of Mental Health has 15 programs, from mental health treatment to community-based treatment, crisis intervention, and various mental health conditions and treatments. Nova Scotia Health Promotion and Protection has 25, ranging from healthy eating to youth health centres, sexual health, sports and physical activity, tobacco and injury prevention, alcohol and drug addiction to parental campaigns aimed at promoting health. The Department of Justice has 17 correction services to community supervision and support, Restorative Justice, and victim services.

These are all outlined in summary form in the Department of Justice's report *Perspectives on Youth Crime in Nova Scotia*. The report also indicates numerous other initiatives focused on school, individual, family, and community. That report was striking in that on the one hand it considered the literature about what is known as factors that cause or prevent youth crime, for which there is remarkable consistency. On the other hand, the report listed these numerous specific programs in this province directly or indirectly targeted at children and youth at risk. What was missing, what Mr. Purcell acknowledged the report did not do, was what could be called a "gap analysis." When our existing programs and their goals are measured against what the experts can already say works, are



there gaps in our services? Are some of the programs not likely to be effective based on the literature? Do other programs need to be emphasized because they are precisely the kind of targeted responses that have been shown to work? That is the step the authors of the report did not take, but precisely the step I recommend that the Province does take.

Evidence was presented on some of these programs and initiatives as to the services provided and the numbers involved. My purpose here is not to assess the value of any particular initiative or to recommend its content. The Province should take the next step to assess the real value of each and every initiative in terms of costs and results to determine if the activity should be continued, incorporated in some other existing initiative, or discontinued. At the same time, there should be a comparison of existing programs and initiatives with those that are proven to be successful in the field generally in other jurisdictions, making adjustments here in our programs and initiatives to fill any gaps in necessary services and to reduce, combine, or discontinue those proven less effective. Where additional resources are required, the Province should provide them.

While the government cannot be all things to all people, it certainly has the obligation to direct its resources and its personnel toward those programs and initiatives best adapted to meet the determined goals. Therefore, this recommendation is an important exercise at this time in our attempt to best deal with our youth at risk.

### Recommendation 30

**The Department of Justice should build on the results of its report *Perspectives on Youth Crime in Nova Scotia* and continue its analysis of youth crime by comparing the Province’s existing interventions, programs, and services for children and youth at risk with the interventions, programs, and services that are known to be effective in preventing youth crime. The department should publicly report the findings of this “gap analysis” as a key part of the development of the Province’s strategy for children and youth at risk.**

## 11.3

### Improving Education for Youth at Risk

AB’s life story reveals his problems with education. These problems do not always reflect well on the school system. In AB’s case, there was some recognition of his ADHD at an early stage, even during his schooling. Admittedly, the movement of AB’s family from place to place and his attendance at different schools contributed to his personal situation, as did his mother’s confusion regarding his medication and his actual disorder. It seems that his condition was not understood. There was no apparent understanding that AB, through no fault of his own, was falling behind his peers in the basic school skills and needed some different approaches. Instead, he was being considered as lacking intelligence and seen as a growing discipline problem. Disciplinary measures taken raise the general concerns of discipline, suspensions, and school attendance.

Missing also from AB’s education experience was any significant effort or opportunity to collaborate with other agencies,

organizations, or family to advance AB's best interests, though admittedly there were some such efforts.

All of this can be perceived as giving credence or support to one view that the sole function of the school is to provide the basic school services and all other matters are the parents' or someone else's responsibility. In my view, in today's society, such a division of responsibility is not sustainable.

My reasons for this are uncomplicated. They are based upon two basic tenets, namely obligation and entitlement. Pursuant to the *Education Act*,<sup>2</sup> all children between the ages of 5 and 16 are obligated to attend school. The provided exceptions are of no concern here. The corresponding obligation on the schools is to provide an education.

Because we live in a democratic society, all children are entitled to receive an education. Consequently, entitlement demands of the system its best efforts to meet the varying range of capabilities of its school populations. It is not a one-size-fits-all situation.

Recently, arising out of the YCJA philosophy of community responsibility for young offenders, a further category of "youth at risk" has come to the fore as a community concern. Education is one major aspect of community life. Consequently, education has a major role to play in the large area of youth at risk. This also must call for significant adjustments, including collaboration with other youth service providers and care givers and collaboration within the system itself in the provision of its educational programs.

This was not an inquiry into our educational system. Any comments or recommendations will only relate to educational issues raised as part of matters relating to AB or those students who, like him, could be considered at risk of conflict with the law. I did hear witnesses from the Halifax Regional School Board and the Department of Education. They are aware of the issues raised in the inquiry, aware of student needs and of the societal changes in the student population

<sup>2</sup> *Education Act*, S.N.S. 1995-96, c. 1.

affecting discipline, attendance, and other aspects of student life. They are trying to keep up with the ongoing needs and are doing a credible job.

### **Approach to students with attention deficit and other disorders**

The vast majority of students proceed through elementary, junior high, and high school presenting no problems. A large proportion of the remainder, though presenting some additional needs or problems, are adequately handled. My concern here is with the number of the balance who suffer from learning along with behavioural problems, more particularly ADD and ADHD. I am aware there are other disorders that must be considered, but they are beyond the matters raised in this inquiry.

I do not profess to have any expertise in regard to either of the above conditions. During the inquiry my counsel and I attended the Nova Scotia Conference on Learning Disabilities at which Dr. Edward Hallowell, an internationally recognized expert on ADD and ADHD, conducted a day-long forum on the subject with a large audience of psychologists, teachers, university students, and people with the disorders. It was a most informative exercise. Among other things, we learned some very basic facts. First, for the vast majority with the disorder, it is a lifetime problem, not one grown out of as a child matures. Second, it has nothing to do with intelligence: someone with the disorder may be very smart, and certainly most would fall into the normal ranges of intelligence. Third, for those with ADHD, their behaviour is not a matter only for discipline, as they have no control mechanism to arrest behaviour. Dr. Hallowell, in asserting that those with ADD and ADHD are born with a “different brain,” described their situation as akin to “having a Ferrari car with Chevrolet brakes.” Dr. Hallowell has written a number of books and one, *Driven to Distraction*, co-authored by Dr. John Ratry, should be required reading

in university psychology courses and as part of a Bachelor of Education program.

Studies of repeat young offenders tend to consistently show that approximately 80 per cent of their number are living with disorders. Why this is so is relatively obvious. Youth repeat offending is generally an adolescent activity. By the time a boy with one of these disorders reaches early adolescence, he may find himself several years behind his peers in his learning skills, particularly in reading and mathematics, and unable to keep up with them. Many of his peers may consider him to be “stupid,” as sometimes does his teacher. The result is that he may be two to three years behind his peers and yet the same number of years older than those of his learning level. In such cases, many boys are turned off in school, in conflict at home, getting comfort on the street, and easily lulled into taking drugs, alcohol abuse and other criminal activities.

I have referred to boys in this illustration because girls with the disorder present quite differently. Nevertheless, many girls also have the disorder, and those in authority must be made aware of the symptoms and behaviour of the disorder in each case. I am not suggesting that there must be a large influx of psychologists or other specialists into the school system at great cost. A certain pattern of behaviour is symptomatic of these disorders, and properly informed teachers would be alerted early on to the possibility of the disorder. In many cases, the disorder is well known and being treated before the child begins attending school. The problem becomes what to do next.

Educating those who have attention deficit disorders particularly, though all other learning disabilities cannot be excluded, is a provincial matter as opposed to only a local one. The Department of Education should therefore bear the initial burden of assuring fulfillment of the obligation of assuring an education for these children, like AB.

As an essential part of its collaborative strategy for youth at risk, the Department of Education should ensure that there is

additional and appropriate training and adequate funding for assessment and early intervention in the education system for children and youth with attention deficit and other disorders that may increase the likelihood of children coming into conflict with the law. Best practices for assessment are always changing, and our educators should be up-to-date on the latest methods.

According to many local witnesses who testified, including police, social workers, mental health providers, and education officials of both school boards and the Department of Education, this cannot help but be a desirable improvement, vital to success for a large number of children in their reach for an education, and it may contribute to a reduction in the number of youth criminals in the province.

There will be occasions where, despite all the proper responses by the system, the child does not respond. That must not be interpreted in any manner destructive to the policies. Illustrating the occasional situation where best efforts are not successful actually becomes testimony illustrating its success in so many other cases.

The education system must meet its existing obligation to educate all children, including those with the disorders with which I am concerned. As providing this education is an essential obligation, finances must be provided, even to the detriment of other less-essential programs or services. Individuals, families, and businesses are continually faced with rearranging budgets to meet present needs, and I do not consider government departments or school boards to be any different. I suggest periodic value audits of programs and services of the department and of the individual school boards that may free up some available funds to meet any additional costs these essential services might entail.

While I have indicated the possibility of finding funds within the present systems, I do not want to diminish the importance of additional resources being provided. Resources must be provided and

targetted to the necessary programs and services relating to these areas of concern.

This whole area of learning disabilities is so important and afflicts so many children, but is so misunderstood by both professional educators and laypersons alike, that it requires particular focus and support. We heard of the positive work being done at the Department of Education's Student Services Division for students who need special education. To the extent that my recommendations can be accomplished through that or another appropriate department, the Province should provide their staff and programs with the necessary support.

It seems to me we have two choices. We can continue the present system with a significant number of children being turned off to education and beaten down by the system, who will become either significant problems over the years in the criminal system or a continual drag on our social systems. The alternative choice is to alter the system so as to provide as complete and meaningful an education as possible for these children, thereby enabling them to become productive members of society. The best choice is obvious.

### **Recommendation 31**

**The Department of Education should ensure that there is additional training for teachers and administrators on best practices in assisting students with attention deficit and other disorders, along with adequate funding for assessment and early intervention of students with these disorders in Nova Scotia schools.**

## **Better support for programs and services for youth at risk in the education system**

Early intervention is primarily directed to the younger children in the elementary grades. While collaboration applies at this level, it also applies throughout a child's school years and is equally essential for those students who are presently adolescents in the higher grades. They have the problems and the need for multidisciplinary support. AB's troubles with the law arose while he was in junior high school. I heard much evidence about the difficulties in providing him with adequate and effective educational support. I also heard about AB's own lack of willingness to engage with his education, even when some supports were made available to him.

Access to education, satisfactory academic performance, and school attachment are fundamental to the success of at-risk youth like AB. From AB's example, and understanding the educational gaps in his life and the crucial role that education plays as a key strategy for prevention of youth crime, I am prepared to make general recommendations for better support in the education system for youth at risk.

There should be consideration and support of initiatives to develop and sustain programs and supports that encourage what may be called "school attachment," meaning a greater likelihood that students like AB will engage in their education and find success. These programs can be in the regular school or in dedicated, alternative programs.

For this recommendation, I do not have to look far for examples of the kind of initiatives I envision.

As one example of an in-school program, I heard about the appointment in the Halifax Regional School Board (HRSB) of what are called "junior high support teachers." I understand that the program is unique to Halifax. Twenty-four junior high schools in that board have been provided with these teachers, on a half-time basis. These teachers work directly with the "at-risk" students in an effort to assist



them in a variety of ways. These students would include those who may be at risk for suspension, trouble in the community, and social difficulties and who, like AB, lack engagement with their schooling. The teachers have a flexible and responsible role; they may act as part coach, part encourager and also provide some accountability and consistency to the students. They usually have less-formal interactions with the students as compared to guidance counsellors or resource teachers. They will also work with students who have been suspended from school, to help them carry on with their studies. They are also envisioned as one of the resources that may be available to support in-school suspensions. According to the HRSB witnesses, this program of junior high support teachers has been successful in helping these troubled students better engage with their studies. This staffing model is encouraging. As part of this recommendation, I suggest that the Department of Education carefully examine the HRSB's experience with the introduction of the position of junior high support teachers and consider targeting funding to create these positions in junior high schools across the province.

As an example of alternative programs, I heard about the various initiatives under the title "Youth Pathways and Transitions," including both the broader approaches considered by the Department of Education and the HRSB's own program for junior high and high school students who need particular forms of educational intervention. Without going back to the old approach of "streaming" children into academic or technical programs, these programs recognize that different children learn differently. Hence, the emphasis for some students may not be on the purely academic subjects but would consider an individual's strengths and interests and provide some alternatives, sometimes in approach (a more trades-based school program) and sometimes in location (a dedicated class or school facility). In the HRSB, the Youth Pathways program provides students who, because of behaviour or social problems, are unable to effectively function for a time in the mainstream classroom

with a dedicated program focused on their particular needs. It is provided in a separate facility within a school in the HRSB. The program is transitional and helps students return to their usual school community and studies. Former Vice-principal Lachie MacIntosh told the inquiry that this was a program that he would have strongly recommended for AB if it had been available when he was a student at Sir Robert Borden Junior High School. This program has limited availability, and I understand the demand for student places at Youth Pathways outstrips the supply.

Again, as part of this recommendation, I suggest that the Department of Education and the HRSB continue the Youth Pathways and Transitions programs and consider building on these promising new initiatives. In particular, more support, locations, and resources should be found for the HRSB Youth Pathways program. I leave the details to the consideration of the capable officials in the department and the school boards.

I am mindful as well that the new attendance centre model proposed by the Province sees education as an important part. I expect that those receiving education there may have similar experiences or backgrounds to those in other existing programs that cater to youth at risk. Experiences and expertise should be shared willingly among the partners in the attendance centre, and there should be ongoing collaboration on these points.

For youth at risk to achieve any measure of success, measures like these must be put in place to adjust the educational program so that they can and do succeed while receiving the education to which they are entitled. I am convinced that if these programs had been in place before AB reached junior high school and if the supports envisioned had been made available to him, he may not have continued on his downward spiral of disengagement and into crime.

### **Recommendation 32**

**The Department of Education should consider additional funding of initiatives to develop and sustain programs and supports that encourage “school attachment” for students at risk, either within the regular schools or in dedicated, alternative programs. Without limiting this recommendation, as particular examples I recommend that:**

- **the department should consider the introduction of and targetted funding for junior high support teachers throughout the province; and**
- **the department and Halifax Regional School Board should continue and expand their respective “Youth Pathways and Transitions” programs.**

### **Encourage measures to increase school attendance**

The matter of school attendance was raised by a number of witnesses and parties, including the Halifax Regional School Board and the Department of Education. The problem is simple. The *Education Act* requires that students attend school. Many adolescents do not attend in any regular fashion. AB was frequently intentionally absent from school. Few methods exist to enforce attendance.

Resolving the problem seems to be difficult for all concerned. I have no specific suggestions other than to highlight the problem and hand it to the educational policy makers in the hope that an answer can be found.

I do expect that in the case of young offenders the bail supervision and attendance centre program, when instituted, will

result in their school attendance being significantly improved. Bail supervision lends itself to increased use of court-ordered attendance at school being included in conditions of release. It provides, through supervision, some assurance that the condition will be met with the implication of additional judicial measures if not followed. It also provides a vehicle to respond to any disciplinary problems these children present while in school.

The evidence did suggest that educators approach attendance as a matter for the parents. On the other hand, I heard evidence indicating that in the case of many troubled youth, parents have little or no control of their adolescent children and no more ability to force these children to go to school than the school has to force them to come.

It may be that the collaboration I recommended earlier will provide a vehicle to increase regular attendance for some.

With a statutory duty to attend school provided by the *Education Act*, it is reasonable to expect measures to ensure attendance. It may be that additional programs directed to encourage attendance should be developed and introduced. Maybe the relevant statutes should be amended to give to a government agency the ability to enforce the mandatory school attendance provisions. Possibly the broader introduction of initiatives that encourage school attachment like those I set out earlier may target truant youth and reduce absenteeism. All of this goes to the important need that youth, especially youth at risk, stay in school as long as possible.

Obviously, there is no easy solution. The problem certainly does not lend itself to one cure. Nevertheless, I recommend that educational policy makers consider measures to increase school attendance and reduce the level of truancy. Measures should be tried in individual schools, with enough flexibility permitted to attain as high as level of success in encouraging attendance as possible.

### Recommendation 33

**The Department of Education, in consultation with the school boards, should identify effective measures aimed at enforcing the school attendance provisions of the *Education Act* and reducing the levels of truancy in Nova Scotia schools.**

#### **Ensuring alternatives to out-of-school suspension as discipline for most youth at risk**

Discipline is seldom a serious problem in the early school years. Adequate disciplinary measures take place in the classroom, with an occasional referral to a principal's office. However, it is a growing problem as adolescence sets in. Whatever the reason, throughout the system there are a number of youth who present serious disciplinary issues at school. The problem is the lack of adequate and effective remedies to handle them. One consequence of this has been the liberal and widespread use of suspension from school. What was once a rarity has become commonplace. During the inquiry, there was a media report indicating a large number of suspensions from school, into the many thousands in one school year.

Under the *Education Act*, a principal has the power to suspend a student from school for up to five days. Suspension beyond that follows a different procedure. Unfortunately, its use for disciplinary problems has a negative side. First, it conflicts with the child's duty to attend school. Just because a power to suspend exists, that does not sanction its unreasonable use. Second, it can lead to even more behavioural problems and significant social problems, all detrimental to enabling any realistic further education.

AB is a good case in point to illustrate this. He was suspended from school on 14 occasions in his last school year in grade 8. The reasons essentially were chronic minor disruptions, usually in the classroom. Allegedly one such minor disruption was caused by his failure to be prepared for class by lacking a pencil. Of course, the chronic and intentional nature of his misconduct made even these minor infractions more serious. I have no doubt that AB was a cause of class disruptions. I also have no doubt that once a pattern of suspension was commenced, he deliberately caused incidents to create that result.

The evidence is clear, however, that AB's mother had a regular job and that leaving her work to pick up AB and somehow deal with him on these occasions created its own problems. As I explained in Chapter 4, as the incidents escalated and AB's behaviour was growing beyond her control, she gave up attending on him, and he was left to his own devices when suspended. However, he was not allowed to go home when no one else was present. The result was that AB was on the street. Who was he associating with? Other youths also suspended, youths not attending school for one reason or another, or older youths outside the school system. It would not be a great leap of reason to conclude that these circumstances were partial contributors to AB's later rash of criminal activity nor to conclude that AB's situation is not unique.

AB's school activities took place up to early 2004. Inquiry evidence indicated that under the leadership of the Department of Education significant changes have occurred respecting discipline. I heard about some positive steps taking place at the provincial level that are ongoing. The Department of Education has introduced and is now implementing a new approach to school discipline called "Positive Effective Behaviour Supports" (PEBS), which emphasizes and encourages proactive, pro-social behaviours, rather than reactive actions. This new initiative is based on significant research. Under this

approach, and the codes of conduct that school board and individual schools adopt, out-of-school suspensions are to be used only in limited, carefully defined circumstances. PEBS is designed to reduce the need for suspensions, and it appears to be working in the schools in which it has been implemented.

At the time of the end of the testimony, PEBS had been introduced and was in effect in 200 schools in Nova Scotia, with 240 soon to adopt it. Within two years, PEBS will apply to every school in the province. The schools in the system where the system is in use have already experienced a significant drop in the number of disciplinary referrals to the principal's office.

Presently, new regulations are being drafted for the *Education Act* relating to codes of conduct. Over the past few years, a code of conduct system has been developed and is being implemented along with PEBS. The guiding document is entitled *Provincial School Code of Conduct* and *School Code of Conduct Guidelines*. It is an excellent document, covering the whole range of behavioural issues occurring in a classroom setting. Along with the general principles that are basic to any understanding of and response to behavioural problems, it sets out possible strategies and actions as recommendations to handle particular types of behaviour.

The aim of the impending regulations is to have each school board in the province develop its own code of conduct using the provincial code as a framework. The Halifax Regional School Board has introduced a new code of conduct, nearly identical in significant ways to the provincial code. I have no evidence regarding other school boards, although I assume the process is under way. After the school boards, each individual school is to develop its own particular code of conduct. This latter is necessary, as discipline is a matter clearly delegated to school principals.

Reviewing the details of the HRSB code is not necessary here, although it is worth noting that it does provide that an out-of-school

suspension is no longer a punishment option for “chronic minor offenders” like AB.

I applaud these efforts and urge the Province to continue its support of PEBS. School behaviour and discipline is such an important area of concern for so many reasons that I would strongly urge all school boards to move quickly to adopt new codes of conduct based on the provincial code, keeping as consistent with it as possible. School principals should strive for the same consistency. The ideal would be to have a consistent approach to behaviour and discipline throughout the province and to have it established as soon as possible.

Of course, in conjunction with PEBS and a decrease in the availability of out-of-school suspension as a measure, there will likely need to be an increase in in-school suspensions. In-school suspension keeps students in school, even if they are removed for a time from their usual classroom environment. Of course, there must be places for them to go, and staff to supervise them, and presumably an educational program to follow. Witnesses before me said that this is a problem. There need to be creative solutions to addressing this issue. One idea is for greater use of junior high support teachers, which I addressed earlier. They may be able to play a role in making in-school suspensions more effective.

I recommend that as part of the overall collaborative strategy for youth at risk, and in concert with PEBS, Nova Scotia schools should be provided with adequate space, staff, and programs for alternatives to out-of-school suspension as a disciplinary measure. Putting at-risk youth out of school without continuing educational support is a harmful and likely ineffective means of discipline in most cases.

In concluding this section, I would be remiss if I did not indicate that the education witnesses at the inquiry, including Ann Power from the Department of Education, and Iris Peet and Denise Bell from the Halifax Regional School Board, were most impressive. Education is such an immense area, constantly changing, but if these



witnesses are representative of those in charge, the development of progressive, creative, and necessary education policies, programs, and systems is in capable hands. Our schools are continually adjusting to meet changing times and needs, which impose significant problems along the way.

### **Recommendation 34**

**The Department of Education, in conjunction with the Province’s strategy for children and youth at risk, should provide Nova Scotia schools with adequate space, staff, and programs for in-school alternatives to out-of-school suspension as a disciplinary measure.**

## 11.4

### **Conclusion**

AB’s life history heightens the awareness of a need to open doors of collaboration in the interests of the “whole child,” to open even wider the doors to educating those with learning difficulties and children and youth at risk, and finally to open a window allowing some fresh air into the whole matter of behaviour and discipline. Tragedy highlights problems, yet, at the same time, it can ignite the fires of social change and advancement.

# Chapter 12

## Consolidated Recommendations



### Delay in the Administration of Youth Criminal Justice

#### Recommendation 1

Front-end delay in the administration of youth criminal justice in Nova Scotia should be immediately reduced by requiring a young person facing a new charge on a serious crime, or a young person facing other pending charges, to appear in Youth Justice Court by the next scheduled Appearance Date, or within one week of arrest.

#### Recommendation 2

The Province should publicly commit to reduce overall delay and improve the speed at which the youth criminal justice system in Nova Scotia handles young persons' cases from arrest to sentencing or other final disposition. In doing so, within six months of this report, under the leadership of the Minister of Justice, the Province should

- consult justice partners (police, Crown prosecutors, defence lawyers, judges, court administrators, Restorative Justice officials, community partners, and other key stakeholders) to identify general and particular causes of delay
- take steps to work with these justice partners to amend procedures or change practices to address the causes of delay
- set and publish realistic but challenging targets, measurably faster than the current average, for the speed of the handling of young persons' cases from arrest to final disposition

- report publicly at least twice annually on progress against the targets, including details on whether targets have been met and identification of appropriate action to address any ongoing failure to meet targets.

## **Court Administrative Procedures and Training**

### **Recommendation 3**

The Department of Justice, in consultation with local police services and the RCMP, should ensure that police officers are familiar with and trained in the procedural requirements of the administration of the courts and, in particular, with the purpose and procedures of the Justice of the Peace Centre.

### **Recommendation 4**

The Justice of the Peace Centre should continue to refine its administrative procedures and forms to ensure that all parties to a JP Centre hearing are familiar with its purpose, process, and outcome and that results are communicated promptly and clearly to the courts, police, or others affected by the hearing outcomes.

### **Recommendation 5**

The Department of Justice should establish an audit section to provide training to and monitor compliance by court staff with procedures, court manuals, and use of electronic systems.

## **Court Facilities, Communication, and Technology**

### **Recommendation 6**

Court staff working in the Windsor Courthouse, as well as all satellite or adjunct court facilities in the province, must be provided with adequate and working telephone, facsimile, printing, computer equipment, and e-mail communication, along with the necessary equipment for stable and dependable access to JEIN.

### **Recommendation 7**

The Department of Justice, in consultation with all of its key justice stakeholders, should consider enhancements to the JEIN system, including the possible development of electronic versions of Informations or other court documents, with the goal of increasing the effectiveness and efficiency of communication among justice partners and reducing the reliance on multiple forms of communication for delivery of crucial information.

### **Recommendation 8**

When new courthouses are planned and built in the province, separate facilities should be provided for Youth Justice Court matters, completely apart from the adult facilities and with dedicated space for partner agencies where possible.

## **Dedicated Youth Court Police Liaison Officers and Crown Attorneys**

### **Recommendation 9**

The Department of Justice, in consultation with police agencies, should encourage the appointment of youth court liaison police officers in other judicial regions in the province.

### **Recommendation 10**

The Public Prosecution Service should consider appointing an additional dedicated youth court Crown attorney in the Halifax Youth Court, and consider the appointment of specialized Youth Court Crown attorneys elsewhere in the province where numbers warrant.

## **Attendance Centre and Bail Supervision**

### **Recommendation 11**

The Province should advocate that the federal government amend section 42(2)(m) of the federal *Youth Criminal Justice Act* to remove the time limits on the sentencing option for a court to require a young person to attend a non-residential community program like the proposed Halifax Attendance Centre.

### **Recommendation 12**

The Province should immediately establish a fully funded, adequately resourced, and fully programmed attendance centre in Halifax, following a plan that includes all of the programs and features contemplated by the Correctional Services Division's *Attendance Centre Program Model—Halifax* report, presented as evidence at the inquiry.

### **Recommendation 13**

The Province should establish a fully funded bail supervision program for young persons in the Halifax Regional Municipality in conjunction with and integrated into the establishment of the Halifax Attendance Centre.

### **Recommendation 14**

The Province should make every effort to implement a program of bail supervision for young persons in the province outside the Halifax Regional Municipality, to include a focus on both compliance with bail conditions and identification of proactive supports and services for the young persons in the program.

## **Common Approaches to Criminal Proceedings for Young Persons**

### **Recommendation 15**

The Public Prosecution Service should direct its Crown prosecutors across the province to take a common general approach to pre-trial detention for young persons under the *Youth Criminal Justice Act* and the *Criminal Code*, by ensuring that its Crown prosecutors are familiar with and up-to-date in training in the relevant statutory provisions and recent developments in the law. The directive should recognize the flexibility required and the discretion of individual Crown prosecutors, along with the desirability of a common approach.

### **Recommendation 16**

The Public Prosecution Service should direct its Crown prosecutors across the province that, during a judicial interim release hearing for a young person for which a responsible person is proposed in lieu of

pre-trial detention, they are to request that the judge hear evidence about whether the proposed person is willing and able to take care of and exercise control over the young person, in keeping with the requirements of section 31(1) of the *Youth Criminal Justice Act*.

### **Recommendation 17**

The Public Prosecution Service should continue its practice to request that a presiding judge make a “finding of guilt” as required under section 36 of the *Youth Criminal Justice Act* at the time a young person pleads guilty to a charge, not at the time of sentencing.

### **Recommendation 18**

Court administration, the Public Prosecution Service, and the judiciary should discuss the question of the timing of section 36 “findings of guilt” to resolve any concerns about scheduling or other matters that would prevent making a finding of guilt at the time of a guilty plea.

### **Recommendation 19**

The Department of Justice and all of its justice partners, including police, sheriffs, court administrative staff, and the Public Prosecution Service, and others as necessary, should meet to determine a common protocol on the execution and administration of arrest warrants.

## **Advocacy for Changes to the Federal *Youth Criminal Justice Act***

### **Recommendation 20**

The Province should advocate that the federal government amend the “Declaration of Principle” in section 3 of the *Youth Criminal Justice Act* to add a clause indicating that protection of the public is one of the primary goals of the act.

### **Recommendation 21**

The Province should advocate that the federal government amend the definition of “violent offence” in section 39(1)(a) of the *Youth Criminal Justice Act* to include conduct that endangers or is likely to endanger the life or safety of another person.

### **Recommendation 22**

The Province should advocate that the federal government amend section 39(1)(c) of the *Youth Criminal Justice Act* so that the requirement for a demonstrated “pattern of findings of guilt” is changed to “a pattern of offences,” or similar wording, with the goal that both a young person’s prior findings of guilt and pending charges are to be considered when determining the appropriateness of pre-trial detention.

### **Recommendation 23**

The Province should advocate that the federal government amend and simplify the statutory provisions relating to the pre-trial detention of young persons so that section 29 will stand on its own without interaction with other statutes or other provisions of the *Youth Criminal Justice Act*.



### **Recommendation 24**

The Province should advocate that the federal government amend section 31(5)(a) of the *Youth Criminal Justice Act* so that if the designated “responsible person” is relieved of his or her obligations under a “responsible person undertaking” the young person’s undertaking made under section 31(3)(b) nevertheless remains in full force and effect, particularly any requirement to keep the peace and be of good behaviour and other conditions imposed by a youth court judge.

### **Recommendation 25**

The Province should advocate that the federal government amend section 31(6) of the *Youth Criminal Justice Act* to remove the requirement of a new bail hearing for the young person before being placed in pre-trial custody if the designated “responsible person” is relieved of his or her obligations under a “responsible person undertaking.”

## **Development and Implementation of Strategy for Children and Youth at Risk**

### **Recommendation 26**

The Province should immediately begin the development and implementation of a public, comprehensive, collaborative, and effective interdepartmental strategy to coordinate its programs, interventions, services, and supports to children and youth at risk and their families, with a particular focus on the prevention of youth crime and a reduction in the likelihood of re-offending of young persons already in conflict with the law.

### **Recommendation 27**

The Departments of Community Services, Justice, Health and its Mental Health division, Health Promotion and Protection, and Education, and other government departments or agencies as required, should each immediately appoint an accountable senior official to a steering group to develop and implement the Province's strategy for youth and children at risk.

### **Recommendation 28**

The Province should appoint one senior official, preferably at the deputy minister level, as a "Director of Youth Strategy and Services," who would oversee and be accountable for the development and implementation of the Province's strategy for children and youth at risk. The director would manage the steering group of senior officials and should have the support required to ensure co-operation and collaboration by officials and staff from all government departments and agencies involved in providing services, programs, and interventions for children and youth at risk. In accordance with the strategy, the director would recommend and coordinate any re-allocation of resources to services, programs, and interventions identified as priority areas. The director should also regularly communicate to the public progress in the development and implementation of the strategy.

### **Recommendation 29**

In collaboration with the Director of Youth Strategy and Services, and as part of the Province's strategy for children and youth at risk, the Department of Community Services should consider establishing a separate division that will provide a range of services to families directed toward the promotion of the "integrity of the family" similar to those set out in section 13 of the *Children and Family Services Act*.

### **Recommendation 30**

The Department of Justice should build on the results of its report, *Perspectives on Youth Crime in Nova Scotia* and continue its analysis of youth crime by comparing the Province's existing interventions, programs, and services for children and youth at risk with the interventions, programs, and services that are known to be effective in preventing youth crime. The department should publicly report the findings of this "gap analysis" as a key part of the development of the Province's strategy for children and youth at risk.

### **Education Initiatives**

#### **Recommendation 31**

The Department of Education should ensure that there is additional training for teachers and administrators on best practices in assisting students with attention deficit and other disorders, along with adequate funding for assessment and early intervention of students with these disorders in Nova Scotia schools.

#### **Recommendation 32**

The Department of Education should consider additional funding of initiatives to develop and sustain programs and supports that encourage "school attachment" for students at risk, either within the regular schools or in dedicated, alternative programs. Without limiting this recommendation, as particular examples I recommend that:

- the department should consider the introduction of and targeted funding for junior high support teachers throughout the province; and
- the department and Halifax Regional School Board should continue and expand their respective "Youth Pathways and Transitions" programs.

**Recommendation 33**

The Department of Education, in consultation with the school boards, should identify effective measures aimed at enforcing the school attendance provisions of the *Education Act* and reducing the levels of truancy in Nova Scotia schools.

**Recommendation 34**

The Department of Education, in conjunction with the Province's strategy for children and youth at risk, should provide Nova Scotia schools with adequate space, staff, and programs for in-school alternatives to out-of-school suspension as a disciplinary measure.



# Postscript

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REPORT OF THE Nunn Commission of Inquiry

# Postscript

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In January 2006, shortly before the hearings in this inquiry started, AB was sentenced to five and a half years as an adult for his crimes connected to the incident that killed Theresa McEvoy. He was convicted of criminal negligence causing death and dangerous driving. Because of his age, he is nevertheless able to serve a portion of his sentence at the Nova Scotia Youth Centre in Waterville.

In May, as the public hearings were finishing, my counsel, Mr. Messenger, and I had the opportunity to visit AB at Waterville. I was provided with a tour of the facility and received a briefing on the impressive accountability, rehabilitation, mental health, and education programs offered to Waterville “residents.” The staff, from the superintendent, Alyson Muzzerall, to the front-line youth workers in each of the “cottages,” are, to a person, committed to the youth they serve and are trying to have a positive impact in the lives of these troubled young people. Although the atmosphere is informal, and there were no guards with uniforms and few iron bars, it is far from a summer camp; Waterville provides a highly structured, secure environment for young offenders.

Most importantly, during this visit I met and briefly conversed with the boy at the centre of the events and much of the testimony. This was important. It was an opportunity for me to talk face-to-face with this offender whose life had been opened wide for the public to see. It is the lessons learned from this boy in trouble that are set out in the recommendations in this report.

Let me be clear. It was AB’s poor choices—his fault—that led him to Waterville. His criminal acts caused Ms. McEvoy’s death and resulted in calls for this inquiry. He is now being held accountable for

his crimes. AB will have to live with the responsibility of Ms. McEvoy's death, and his criminal record, for the rest of his life. It is appropriate that he should.

But I also saw in the AB I met at Waterville a glimpse of the rehabilitation that our system professes to offer to youth at risk. In the few short months he had been there, he had applied himself to schooling and had already moved up two grade levels. He was an avid reader. He was involved in a host of programs, including sessions on anger management. AB was finding that he had skills in swimming; when we visited, he was taking lifeguarding and water safety skills courses.

He spoke openly to me about his experience at Waterville. He told me about his school history and experiences. He expressed his desire to improve his skills, obtain a high school diploma, and start a career. He hoped to learn a trade and perhaps find a career in the oil patch in Alberta.

I was encouraged. I know that he was undoubtedly on his best behaviour during my visit. He knew the importance of this Commission of Inquiry and, as a party through his lawyer, was generally following its work. But it seemed to me that he had turned a corner. He appeared to be taking responsibility for his actions, past and present. He was engaged in the supports that were offered to him. The intensive, structured environment seemed to be the right fit for him. AB is being offered a new lease on life, and he appeared to understand that.

Before I sent this report to the printer in the late fall, I asked for an update on AB. I learned that he is continuing to make progress. He continues his schooling and hopes to obtain his high school equivalency certificate next year. He was selected for Waterville's maintenance program and works as a cleaner and landscaper within the perimeter of the facility; he is apparently showing a good work ethic. One of the most notable changes is his positive and productive involvement with counselling, willingly accepting the assistance and

programs offered to him. He has had no major behavioural incidents in almost a year.

AB is now receiving supports and opportunities. He is taking advantage of them. I wish him the best as he continues his sentence. He should recognize the opportunity in the midst of this tragedy and do his best to get his life back on track. Unfortunately, it took a criminal conviction and a custodial sentence to reach him.

This should not be the only way that our society is able to reach the small group of troubled teens who are at risk of “spiralling out of control.” We should be able to halt the spiral: through prevention, through quick action, through creative thinking, through programs that address clearly identified needs. And we should be able to stop behaviour like AB’s once it starts, through more flexible and responsive provisions in the youth criminal law.

Our children and youth at risk deserve it. Their families deserve it. Our society deserves it. I urge the Province to take action—AB’s situation must not be repeated.





# Appendices

BACKGROUND INFORMATION  
AND REFERENCE MATERIAL

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REPORT OF THE **Nunn Commission of Inquiry**

# Appendix A

## Commission Staff and Counsel

|                      |   |
|----------------------|---|
| M. Phyllis Perry     | Office Administrator/Manager  |
| Michael J. Messenger | Commission Counsel<br>Cox Hanson O'Reilly Matheson<br>Halifax, NS           |
| W. Glenn Hodge       | Assistant Commission Counsel<br>Cox Hanson O'Reilly Matheson<br>Halifax, NS |

## Appendix B

### Orders in Council

#### 1. Order in Council 2005-259, June 29, 2005

**Whereas** it is deemed appropriate to cause inquiry to be made into and concerning the public matters hereinafter mentioned in relation to which the Legislature of Nova Scotia may make laws;

**By and with the advice of the Executive Council of Nova Scotia**, Her Honour the Lieutenant Governor is pleased to appoint the to appoint the Honourable Justice D. Merlin Nunn of the Supreme Court of Nova Scotia, to be a Commissioner under the *Public Inquiries Act*, effective June 29, 2005, and order that

**Whereas** Theresa McEvoy was fatally injured in a car crash on October 14, 2004, and that following an investigation a young person was charged with multiple offences arising out of the fatal car crash; and

**Whereas** the young person was released from custody two days previously on October 12, 2004;

- (a) the Commissioner inquire into
  - (i) why the young person was released from custody on October 12, 2004;
  - (ii) the procedures and practices pertaining to the handling of the charges against the young person at the time of his release, in particular,
    - (A) what were the procedures and practices,
    - (B) whether those procedures and practices were followed, and
    - (C) whether those procedures and practices were appropriate;
  - (iii) the actions of law enforcement, the Public Prosecution Service, the courts and justice or other public officials, up to and including October 14, 2004, with respect to the handling of the charges against the young person;

- (iv) the actions of law enforcement, the Public Prosecution Service, the courts and justice or other public officials after the young person's release up to and including October 14, 2004;
  - (v) any other matter, at the discretion of the Commissioner, that the Commissioner deems necessary to fulfill his mandate in (b);
- (b) the Commissioner must make findings, conclusions and recommendations based on the Commissioner's inquiries into the matters in clause (a);
- (c) the Commissioner must perform his duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization;
- (d) the Commissioner may give the Minister of Justice interim reports, if the Commissioner considers it appropriate, to address urgent matters in a timely fashion and the report must be in a form appropriate for release to the public, subject to the *Freedom of Information and Protection of Privacy Act*, the *Youth Criminal Justice Act* (Canada) and all relevant laws;
- (e) the Commissioner must complete the inquiry and deliver a final report containing the Commissioner's findings, conclusions and recommendations to the Minister of Justice, in a form appropriate for release to the public, subject to the *Freedom of Information and Protection of Privacy Act*, the *Youth Criminal Justice Act* (Canada) and all relevant laws;
- (f) in conducting the inquiry, the Commissioner must take all steps necessary to prevent disclosure of information that would tend to identify or identify any young person as defined under the *Youth Criminal Justice Act* (Canada);
- (g) the Commissioner has the power to hold public hearings;
- (h) in his discretion, the Commissioner may grant any person who satisfies him that they have a substantial and direct interest in the subject matter of the inquiry an opportunity, with respect to

evidence that is relevant to that person's interest and relevant to the inquiry, to give evidence and to examine or cross-examine witnesses personally or by counsel;

(i) in his discretion, the Commissioner may consolidate the standing granted under clause (h) to two or more parties where he is satisfied that the parties' interests are not adverse;

(j) the testimony of witnesses during the inquiry must not be used in subsequent legal proceedings;

(k) all Departments, agencies and public bodies must assist the Commissioner to the fullest extent permitted by law, so that he is able to fully carry out his duties during the inquiry.

**The Governor in Council is further pleased**, pursuant to Section 119 of Chapter 1 of the Statutes of Canada, 2002, the *Youth Criminal Justice Act*, to designate the Commissioner and legal counsel retained by the Commissioner as persons under paragraph 119(1)(r) of the *Youth Criminal Justice Act* (Canada) who must, on request, have access to records kept under Section 114 of the *Youth Criminal Justice Act* (Canada) and may have access to records kept under section 115 or 116 of the *Youth Criminal Justice Act* (Canada) for the purposes of conducting the inquiry.

**The Governor in Council is further pleased to:**

(1) authorize the payment of the Commissioner for reasonable expenses for travel, living expenses and additional disbursements necessarily incurred by the Commissioner for the purposes of the inquiry, in accordance with the *Judges' Act* (Canada);

(2) authorize the Commissioner to retain the services of legal counsel and expert, technical, secretarial and clerical personnel who, in the opinion of the Commissioner, are required for the purposes of the inquiry and to fix their remuneration;

(3) authorize the Commissioner to approve payment of reasonable expenses for travel, living expenses and additional disbursements necessarily incurred by persons retained under clause (2);

- (4) direct the Commissioner to arrange for suitable facilities, recording and transcribing equipment and additional administrative matters that, in the opinion of the Commissioner, are necessary for the purposes of the inquiry, and authorize the Commissioner to approve payment of these costs;(5) authorize the Commissioner to make recommendations to the Minister of Justice for public funding of legal costs,
- (a) respecting the parties to receive funding,
  - (b) respecting rates of remuneration and reimbursement, the extent of funding and the assessment of accounts, and
  - (c) respecting consolidating parties for funding purposes where he is satisfied they are not adverse in interest;
- (6) authorize the Commissioner to make rules to regulate the proceedings of the inquiry and to conduct its business;
- (7) order that remuneration, costs and expenses payable in respect of the inquiry be paid out of the Consolidated Fund of the Province.

## 2. Order in Council 2005-563, December 15, 2005

The Governor in Council on the report and recommendation of the Minister of Justice dated December 15, 2005, and pursuant to Section 2 of Chapter 372 of the Revised Statutes of Nova Scotia, 1989, the *Public Inquiries Act*, is pleased, effective December 15, 2005 to amend Order in Council 2005-259 by adding the following:

**The Governor in Council is further pleased**, pursuant to Section 119 of Chapter 1 of the Statutes of Canada, 2002, the *Youth Criminal Justice Act*, to designate parties granted standing by the Commissioner before the inquiry and their legal counsel, under paragraph 119(1)(r) of the *Youth Criminal Justice Act* (Canada) as persons who must,

on request, have access to records kept under Section 114 of the *Youth Criminal Justice Act* (Canada) that are produced to the Commissioner for the purpose of the inquiry and may have access to records kept under section 115 or 116 of the *Youth Criminal Justice Act* (Canada) that are produced to the Commissioner for the purpose of the inquiry.

## Appendix C

### Notice of Inquiry



Nova Scotia

Nunn Commission of Inquiry

### Notice of Public Inquiry and Call for Applications for Standing

Justice D. Merlin Nunn has been appointed as the Commissioner for an independent public inquiry set up by the Province of Nova Scotia under the *Public Inquiries Act*, with specific terms of reference.

**Theresa McEvoy** was fatally injured in a car crash on October 14, 2004. Following an investigation, a young person was charged with multiple offences arising out of the fatal car crash. The young person was released from custody two days before Ms. McEvoy's death, on October 12, 2004. The Nunn Commission is to inquire into issues including:

- why the young person was released from custody;
- the procedures and practices pertaining to the handling of the charges against the young person at the time of his release; and
- the actions of law enforcement, the Public Prosecution Service, the courts and justice or other public officials with respect to the handling of the charges against the young person and after his release up to and including October 14, 2004.

The Commissioner may also consider any other matter, at his discretion, deemed necessary to fulfill his mandate. Following the conclusion of hearings, the Commissioner will prepare a public written report, in which he will make findings and any recommendations he deems appropriate and in the public interest.

**The Commissioner encourages anyone who may have information that may be helpful to the Inquiry, including documents and the names of potential witnesses, to provide this information to the Commission as soon as possible.**

**Applications for standing** are being invited from any person or group who has a substantial and direct interest in the subject matter of the Inquiry or whose participation may be helpful to fulfill the Commission's mandate. Standing before the Nunn Commission gives the individual or organization the right to take part in the proceedings and to make submissions, on terms set by the Commissioner.

Written requests for standing, setting out the reasons that standing is requested, should reach the Commission **no later than 4 p.m. on Friday, October 21, 2005**. Detailed criteria for standing are contained in the Inquiry's **Rules of Procedure**, which can be obtained from the Commission at its offices in Suite 702, 1660 Hollis Street, Halifax, Nova Scotia B3J 1V7. Telephone (902) 424-3489. Fax (902) 424-6587.

*Hearings on the applications for standing are to be held on Tuesday, October 25, 2005, at the address above. Public hearings are tentatively scheduled to start in December 2005.*



## Appendix D

### Parties Granted Standing and List of Counsel

| <b>Party</b>                                    | <b>Firm and Counsel</b>  |
|---|--|
| AB, a young person                              | Warren Zimmer<br>Cameron MacKeen   |
| Attorney General of Nova Scotia                 | <i>Department of Justice (Nova Scotia)</i><br>Glenn Anderson, Q.C.<br>Jacqueline Scott<br>Alasdair MacDonald |
| Canadian Bar Association,<br>Nova Scotia Branch | <i>Wickwire Holm</i><br>James Rossiter   |
| Halifax Regional Police                         | <i>Beveridge, MacPherson &amp; Duncan</i><br>Patrick J. Duncan, Q.C.<br>Sandra MacPherson, Q.C.              |
| Halifax Regional School Board                   | <i>McInnes Cooper</i><br>Ian Pickard<br>Leigh Davis  |
| Leonard MacKay                                  | <i>Garson, Knox &amp; MacDonald</i><br>Mark Knox<br>Kelly Serbu  |
| McEvoy Family                                   | <i>McInnes Cooper</i><br>Hugh Wright<br>Danny Graham<br>Julia Clark<br>Jennifer Biernaskie                   |
| Royal Canadian Mounted Police                   | <i>Department of Justice (Federal)</i><br>Michael F. Donovan, Q.C.<br>Susan Taylor<br>Angela Green           |
| William Fergusson, Q.C.                         | <i>Boyne Clarke</i><br>David Bright, Q.C.<br>Jan Murray  |

# Appendix E

## Dates of Public Hearings

### 2005

|            |  |
|------------|--|
| October 11 | Commissioner's Opening Statement                 |
| October 25 | Hearing of Applications for Standing and Funding |

### 2006

|  |  |
|--|--|
| January 16, 17, 18, 19, 25, 26, 30, 31                 | Public Hearings                                    |
| February 2, 6, 7, 8, 9, 13, 14, 16, 17, 20, 21, 23, 28 | Public Hearings                                    |
| March 1  | Public Hearings                                    |
| May 8, 9, 10, 11, 15, 16, 17, 19                       | Public Hearings                                    |
| May 11   | Public Forum                                       |
| June 5, 6  | Closing Oral Submissions for Parties with Standing |

## Appendix F

### Witnesses at Public Hearings

|                          |   |
|--------------------------|---|
| Armour, Karen            | Legal Aid defence lawyer, Windsor   |
| Bala, Prof. Nicholas     | Expert on Youth Criminal Justice,<br>Faculty of Law, Queen's University,<br>Kingston, ON                                  |
| Bell, Denise             | Director of School Administration,<br>Halifax Regional School Board   |
| Bentley, Det. Cst. Bruce | Halifax Regional Police   |
| Bowden, Hope             | Restorative Justice Worker,<br>Community Justice Society, Halifax   |
| Brown, Cherri            | Staff Justice of the Peace,<br>Justice of the Peace Centre, Nova Scotia<br>Department of Justice, Dartmouth               |
| Brown, Stephen*          | Sheriff, Department of Justice, Halifax   |
| Burke, David             | Director, Court Services Division,<br>Nova Scotia Department of Justice   |
| Cameron, Cst. George     | RCMP, Windsor   |
| Clark-Foran, Shauna      | Supervisor, Male Unit,<br>Reigh Allen Centre, Dartmouth   |
| de Graaf, Deborah        | Court Reporter,<br>Provincial Court, Kentville  |
| DeLuco, Cpl. MaryJo      | RCMP, Windsor   |
| Doiron, Leonard          | Acting Director of Child Welfare and<br>Residential Services, Nova Scotia<br>Department of Community Services,<br>Halifax |
| Falkenham, Cst. Ron      | Halifax Regional Police   |
| Fergusson, William, Q.C. | Senior Crown Attorney, Windsor  |
| Gorham, Patricia         | Coordinator, Restorative Justice Program,<br>Nova Scotia Department of Justice,<br>Halifax                                |

|                                     |  |
|-------------------------------------|--|
| Hartlen, Richard                    | Crown Attorney ( <i>per diem</i> ), Windsor  |
| Hebert, Carolyn                     | Supervisor of Court Administration,<br>Metro Provincial Courts, Dartmouth                                  |
| Holt, Gary, Q.C.                    | Crown Attorney, Youth Justice Court,<br>Halifax  |
| Honsberger, Fred                    | Executive Director,<br>Correctional Services Division,<br>Nova Scotia Department of Justice                |
| Jefferies, Cst. Jonathan            | Halifax Regional Police  |
| L., T.                              | AB's mother  |
| Langille, Sgt. John                 | RCMP (Halifax Integrated Auto Theft<br>Unit), Halifax  |
| Lutes, Robert, Q.C.                 | Former Nova Scotia Crown Attorney and<br>Youth Justice Expert, Kentville                                   |
| MacDonald, Cst. Richard             | Youth Court Liaison Officer,<br>Halifax Regional Police  |
| MacIntosh, Lachie                   | Principal, Sir Robert Borden Junior High<br>School, Dartmouth  |
| MacKay, Leonard                     | Crown Attorney, Halifax  |
| MacKenzie, Michael                  | Crown Attorney ( <i>per diem</i> ), Windsor  |
| Markwart, Alan                      | Assistant Deputy Minister, Ministry of<br>Children and Family Development,<br>Province of British Columbia |
| *McCoombs, Sgt. Reid                | Halifax Regional Police  |
| McNeil, Deputy Chief<br>Christopher | Deputy Chief of Operations, Halifax<br>Regional Police   |
| Muzzerall, Alyson                   | Senior Superintendent, Nova Scotia<br>Youth Centre, Waterville   |
| O'Brien, Trish                      | Program Supervisor, Hawthorne House,<br>Dartmouth  |
| O'Toole, Cst. Harvey                | RCMP, Windsor  |

|                        |  |
|------------------------|--|
| Osmond, Cheryl         | Long-term Social Worker, Department of Community Services, Dartmouth   |
| Parker-Mutch, Patricia | Judicial Assistant, Family Court, Kentville  |
| Patton, Eunice         | Court Reporter, Family Court, Kentville  |
| Peet, Iris             | Coordinator of Programs and Student Services, Halifax Regional School Board  |
| *Pineo, Kenneth        | Court Administrator, Kentville Justice Centre  |
| Pottier, Al            | Manager of Policy and Programs Division, Nova Scotia Department of Justice, Halifax                                  |
| Power, Ann             | Director of Student Services, Nova Scotia Department of Education, Halifax   |
| Purcell, Robert        | Director of Policy, Planning and Research, Nova Scotia Department of Justice, Halifax                                |
| Reid, Adrian, Q.C.     | Deputy Director, Nova Scotia Public Prosecution Service, Halifax   |
| Savoury, George        | Senior Director, Family and Community Supports, Nova Scotia Department of Community Services, Halifax                |
| Scallion, Kelly        | Youth Care Worker, Reigh Allen Centre, Dartmouth   |
| Shaw, Sgt. Rick        | RCMP, Halifax  |
| Smith, Linda           | Executive Director of Mental Health, Child Health and Addiction Treatment, Nova Scotia Department of Health, Halifax |
| Stephens, Brian        | Legal Aid defence lawyer, Windsor  |
| Warnica, S/Sgt. Scott  | RCMP, Lower Sackville  |

Wilson, Erika

Intake Social Worker, Department of  
Community Services, Dartmouth

*\* These individuals were not called as witnesses during the hearing.  
However, their Statements of Evidence were entered as exhibits.*

## Appendix G

### Notice of Public Forum



Nunn Commission of Inquiry

## Share Your Suggestions About Youth Criminal Justice In Nova Scotia

### You are invited to participate in a Public Forum

4 p.m. to 7 p.m. on Thursday, May 11

On Thursday, May 11, the Nunn Commission of Inquiry will hold a public forum to hear from individuals and groups who wish to address the Commissioner. You are invited to come and share your views on the issues before this public inquiry. Details on the Commission's work to date and its terms of reference are available at [www.nunncommission.ca](http://www.nunncommission.ca).

Commissioner Nunn wants to hear your views on youth criminal justice in Nova Scotia, especially ideas and suggestions. What is the best mix of policy, legislation, procedures, and community supports to improve how we can respond to the problem of youth crime in our Province?

If you have regular contact with children and youth, especially youth at risk of being in conflict with the law, you are encouraged to attend. The Commissioner hopes to hear from educators, community service workers, community groups, parents, young people, and others. This public forum is a chance to share your insights—and to offer your suggestions.

The public forum will take place from **4 p.m. to 7 p.m.** at the Commission's hearing room, **Suite 703, 1660 Hollis Street, Halifax.**

If you wish to address the Commissioner, you must register with Commission staff by telephone, fax or e-mail by Monday, May 8. Simply provide your name, contact information and a short summary of the issue or topic you want to address. Presentations will be time-limited and topics will be screened.

The public is also invited to make written submissions to the Commission anytime before May 16.

### To register for the Public Forum, or to receive more information please contact:

The Nunn Commission of Inquiry  
Suite 703, 1660 Hollis Street  
Halifax, Nova Scotia B3J 1V7

Telephone (902) 424-3489

Fax: (902) 424-6587

e-mail: [info@nunncommission.ca](mailto:info@nunncommission.ca)

*The Nunn Commission of Inquiry is conducting hearings, looking into issues surrounding the death of Theresa McEvoy of Halifax, who was fatally injured in a car crash on October 14, 2004. The Inquiry is also examining issues relating to the custody and handling of previous charges laid against the young person involved in the incident. Part of the Inquiry's context is the youth criminal justice system in Nova Scotia.*

## Appendix H

### Witnesses at Public Forum, May 11, 2006

|                  |   |
|------------------|---|
| B., D.           | Parent of young person, Hammonds Plains   |
| B., M.           | Parent of young person, Hantsport   |
| Britton, Bob     | Deacon, Archdiocese of Halifax<br>(Roman Catholic)  |
| C., K.           | Participant, Leave Out Violence (LOVe)  |
| Crooks, Timothy  | Executive Director, Phoenix Youth<br>Programs, Halifax  |
| Doherty, Penny   | Attention Deficit Education Specialist,<br>Halifax  |
| Dubin, Rick      | Vice President, Investigations,<br>Insurance Bureau of Canada, Toronto  |
| Earle, Jane      | Social worker, Upper Tantallon  |
| F., N.           | Parent of young person, Eastern Passage   |
| Feix, Christiane | Representative, Nova Scotia Parent<br>Support Association and Cobequid<br>Parent and Youth Resource Centre, Truro |
| Gray Mews, Kate  | Social Worker, IWK Child Protection<br>Team, Halifax  |
| Hollis, Nancy    | Executive Director, Boys & Girls Clubs<br>of Dartmouth  |
| K., T.           | Relative of young persons, Dartmouth  |
| Longley, Megan   | Lawyer, Legal Aid Commission, Halifax   |
| Lotz, Jim        | Member of the public, Halifax   |
| M., D.           | Grandparent of young person,<br>Dartmouth   |
| M., D.           | Participant, Leave Out Violence (LOVe)  |
| Malick, Anne     | Lawyer, Legal Aid Commission, Halifax   |
| P., S.           | Participant, Leave Out Violence (LOVe)  |



|                     |  |
|---------------------|--|
| R., T.              | Parent of young person, Middleton  |
| Rankin, Joan        | Social Worker, IWK Child Protection Team, Halifax                            |
| Simonsen, Stephanie | Regional Director, Boys & Girls Clubs of Nova Scotia, Halifax                |
| Stephens, John      | Coordinator of Youth Programs,<br>Archdiocese of Halifax<br>(Roman Catholic) |
| Wilde, Peter        | Member of public, Lower Sackville  |

# Appendix I

## List of Written Public Submissions

|   |  |
|---|--|
| B., D.  | Parent of young person, Hammonds Plains  |
| B., M.  | Parent of young person, Hantsport  |
| Barkley, Jacqueline                                 | Social worker, Halifax   |
| Baxter, Larry                                       | Member of the public, Halifax,   |
| Braganza, Brian                                     | Executive Director, HeartWood Centre for<br>Community Youth Development, Halifax |
| Coates, Jon   | Member of the public, Halifax  |
| Crooks, Timothy                                     | Executive Director, Phoenix Youth<br>Programs, Halifax                           |
| de Boer, Dr. Cornelis                               | Child and Adolescent Psychiatrist, Truro   |
| Dey, Marilyn  | Member of the public, Halifax  |
| Doherty, Penny                                      | Attention Deficit Education Specialist,<br>Halifax                               |
| Dubin, Richard                                      | Vice President, Investigations,<br>Insurance Bureau of Canada, Toronto           |
| Dyer, Brian   | Member of the public, Grandville Ferry   |
| F., N.  | Parent, Eastern Passage  |
| Feix, Christiane                                    | Coordinator, Cobequid Parent and Youth<br>Resource Centre, Truro                 |
| Rector, Kathy                                       | Youth Coordinator, Cobequid Parent and<br>Youth Resource Centre, Truro           |
| Robichaud, Gloria                                   | President, Nova Scotia Parent Support<br>Association, Truro                      |
| Fraser, Graeme                                      | Social Worker, Nova Scotia Association of<br>Social Workers, Halifax             |
| Nasser, Susan L.<br>Gray Mews, Kate<br>Rankin, Joan | Social Workers, IWK Child Protection<br>Team, Halifax                            |

|                                     |   |
|-------------------------------------|---|
| Jackson, Natasha                    | Envision Halifax Leadership   |
| MacLeod, Deanne                     | Program participants  |
| Sanderson, Catherine                |   |
| Specht, Janet                       |   |
| Walls, Cathy                        |   |
| Lotz, Jim                           | Member of the public, Halifax   |
| MacDonald, Randy                    | Project Coordinator, Priority Youth Centre<br>Project, Cape Breton                  |
| McFetridge, Mike                    | Member of the public,<br>Middle Musquodoboit  |
| McKinnon, Mike                      | Member of the public, Cambridge Station   |
| N., S.                              | Parent of young person, Dartmouth   |
| O'Connor, Sharon                    | Executive Director, Family Services of<br>Support Association (Family SOS), Halifax |
| Peach, Kevin                        | Member of the public, Glace Bay   |
| Prendegrast,<br>Most Rev'd Terrance | Archbishop, Roman Catholic<br>Archdiocese of Halifax                                |
| R., T.                              | Parents of young persons, Middleton   |
| R., P.                              |   |
| Simonsen, Stephanie                 | Regional Director, Boys and Girls Club<br>of Nova Scotia, Halifax                   |
| Smith, Beverly                      | Member of the public, Calgary   |
| Weagle, Anthony                     | Member of the public, South Brookfield  |

# Appendix J

## List of Exhibits

The inquiry entered 59 exhibits as evidence, totalling nearly 12,000 pages of documents. The exhibits included six collections of multi-volume document disclosure bundles. Brief summary descriptions are included in the table below.

| Exhibit | Date    | Description  |
|---------|---------|--|
| 1       | Jan. 16 | <p><b>Document Disclosure</b>, Volumes 1–21 (6,464 pages), includes</p> <ul style="list-style-type: none"><li>• Documents of Canadian Bar Association on amendments to federal youth criminal justice legislation</li><li>• Files of Halifax Regional Police regarding investigation of events of October 14, 2004</li><li>• Files of Halifax Regional Police and Halifax area RCMP regarding AB's various criminal charges, 2004</li><li>• Files from Restorative Justice regarding AB</li><li>• Extensive court files, Informations, records of proceedings, dockets, undertakings, orders, electronic printouts, warrants, and similar documents regarding AB's various offences and criminal charges, 2004</li><li>• Halifax Regional Police Pursuit Policy and Reports</li><li>• Various records from the Nova Scotia Youth Centre, Waterville</li><li>• Reports of Internal Public Prosecution Service Investigation</li><li>• Internal communications regarding technology at the Windsor Courthouse</li><li>• Transcripts of various court proceedings, including September 28, September 30, October 4, October 5, and October 12, 2004</li><li>• Windsor RCMP file on AB, September–October 2004 and RCMP briefing notes</li><li>• Records and documents relating to September 29 Justice of the Peace Centre hearing, and follow-up fax communications</li><li>• Selected newspaper reports</li></ul> |

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|---|---------|--|
| 2 | Jan. 16 | <p><b>First Supplementary Document Disclosure,</b> Volumes 22–24 (1,047 pages), <i>includes</i></p> <ul style="list-style-type: none"> <li>• <i>Memorandum from Deputy Chief C. McNeil to Chief F. Beazley regarding the Youth Criminal Justice Act and supporting materials</i></li> <li>• <i>Various documents regarding the Youth Criminal Justice Act</i></li> <li>• <i>Files from HomeBridge regarding AB’s stays at Reigh Allen Centre and Hawthorne House</i></li> <li>• <i>Various extensive files relating to AB from Department of Community Services</i></li> <li>• <i>Selected school records for AB</i></li> <li>• <i>Additional Restorative Justice documents</i></li> <li>• <i>Additional records relating to AB from the Nova Scotia Youth Centre, Waterville</i></li> <li>• <i>Report of Justice Ministers’ Joint Meetings, January 1 and November 1, 2005</i></li> </ul> |
| 3 | Jan. 16 | <p><b>Second Supplementary Document Disclosure,</b> Volumes 25–28 (780 pages), <i>includes</i></p> <ul style="list-style-type: none"> <li>• <i>Transcripts of court proceedings, June 10, June 24, June 28, August 26, and September 14, 2004</i></li> <li>• <i>Additional files from HomeBridge regarding AB’s stays at Reigh Allen Centre and Hawthorne House</i></li> <li>• <i>Additional files from the Department of Community Services</i></li> </ul>  |
| 4 | Jan. 16 | <p>Halifax Regional Police Vehicle Examination Report, October 2004</p>  |
| 5 | Jan. 16 | <p>Halifax Regional Police Motor Vehicle Collision Diagram, October 14, 2004</p>   |
| 6 | Jan. 17 | <p>Handwritten notes of Sgt. J. Langille, RCMP/HRP Integrated Auto Theft Unit</p>  |
| 7 | Jan. 19 | <p>Brochure on Nova Scotia Restorative Justice Program</p>   |
| 8 | Jan. 19 | <p>Transcript of AB’s July 6, 2004, Judicial Interim Release Hearing</p>   |
| 9 | Jan. 25 | <p>Public Prosecution Service Internal Memorandum regarding YCJA section 36 “Findings of Guilt”</p>  |

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| 9A  | Jan. 30 | Public Prosecution Service Practice Note regarding YCJA section 36 “Findings of Guilt”   |
| 10  | Jan. 26 | Four Policies, RCMP Operations Manual  |
| 11  | Jan. 26 | RCMP Report on Pursuit, September 29, 2004   |
| 12  | Jan. 30 | <b>Third Supplementary Document Disclosure</b> (155 pages), <i>includes</i> <ul style="list-style-type: none"> <li>• RCMP policies</li> <li>• RCMP Pursuit Form, September 29, 2004</li> <li>• Various RCMP files, notes, and related material regarding AB</li> <li>• Various CPIC printouts regarding AB</li> <li>• Additional files from the Halifax Regional Police</li> </ul> |
| 13  | Feb. 2  | Two sections of the RCMP Act   |
| 14  | Feb. 6  | Justice of the Peace Centre, fax cover sheet and attached Particulars to a Justice   |
| 15  | Feb. 6  | Memorandum to file re AB, R. Hartlen   |
| 16  | Feb. 7  | Court Docket, Kentville, October 4, 2004   |
| 17  | Feb. 8  | Handwritten note, L. MacKay  |
| 18  | Feb. 8  | Public Prosecution Service Practice Note   |
| 19  | Feb. 9  | Windsor Youth Court Docket, September 30, 2004   |
| 20  | Feb. 16 | Curriculum Vitae of Prof. N. Bala  |
| 21  | Feb. 16 | Slides of Presentation of Prof. N. Bala  |
| 22  | Feb. 16 | United Nations <i>Convention on the Rights of the Child</i>  |
| 22A | Feb. 16 | Government of Canada Reservations on sections 27, 37(c) and 30 regarding the United Nations <i>Convention on the Rights of the Child</i>   |
| 23  | Feb. 16 | The United Nations <i>Standard Minimum Rules for the Administration of Juvenile Justice</i> (the “Beijing Rules”)  |
| 24  | Feb. 16 | List of Publications of Prof. N. Bala  |
| 25  | Feb. 20 | Report of the Nova Scotia Child Welfare Steering Committee, <i>Improving Services for Children and Families</i>  |
| 26  | Feb. 20 | Report, <i>Too Important to Ignore</i> , April 2000  |

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|----|---------|---|
| 27 | Feb. 21 | Draft Halifax Regional School Board and Provincial Codes of Conduct, with attached Memorandum   |
| 28 | Feb. 22 | Memorandum of Understanding between the Nova Scotia Department of Justice and the Halifax Regional School Board   |
| 29 | Feb. 23 | Brochure, <i>A Guide to HomeBridge Youth Society</i>  |
| 30 | Feb. 23 | HomeBridge Youth Society Annual Report  |
| 31 | Feb. 23 | HomeBridge Youth Society Youth Care Worker Training Video   |
| 32 | Feb. 23 | HomeBridge Youth Society Promotional Video  |
| 33 | Feb. 28 | Statement of Evidence, K. Pineo   |
| 34 | Feb. 28 | Statement of Evidence, Sgt. R. McCoombs   |
| 35 | Feb. 28 | Decision of Judge M. Chisholm, AB's December 20, 2004 Sentencing Hearing  |
| 36 | Feb. 28 | Public Prosecution Service Training Materials, <i>Youth Justice—Moving Forward</i>  |
| 37 | Feb. 28 | Public Prosecution Service Training Materials, <i>Youth Justice—Pocket Guide</i>  |
| 38 | Feb. 28 | Preface to Public Prosecution Service Manual  |
| 39 | Feb. 28 | Report on Nova Scotia Resolutions on Law Reform   |
| 40 | Feb. 28 | Nova Scotia Minister of Justice's Statement on AB's Release, November 1, 2004   |
| 41 | March 1 | Letter to Associate Chief Judge B. Gibson from F. Hoskins, Public Prosecution Service, February 20, 2006  |
| 42 | May 8   | <p><b>Fourth Supplementary Document Disclosure,</b><br/> Volumes 34–36 (1,237 pages), <i>includes</i></p> <ul style="list-style-type: none"> <li>• <i>Report, "Perspectives on Youth Crime in Nova Scotia"</i></li> <li>• <i>Various statistical reports</i></li> <li>• <i>Reports on youth justice funds and program response to Youth Criminal Justice Act</i></li> <li>• <i>Various polices of the Correctional Services Division</i></li> <li>• <i>Report on proposed judicial interim release supervision program, 1999</i></li> </ul> |

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|----|--------|--|
|    |        | <ul style="list-style-type: none"> <li>• <i>AB's records from the IWK Health Centre</i></li> <li>• <i>Files relating to Nova Scotia Mental Health Services</i></li> <li>• <i>Documents relating to Nova Scotia's Early Childhood Development Initiative and related materials</i></li> <li>• <i>Documents on school codes of conduct and the "Positive Effective Behaviours Support" Program</i></li> <li>• <i>Various documents on educational initiatives and programs and strategies for special education</i></li> </ul> |
| 43 | May 8  | <b>Fifth Supplementary Document Disclosure, Volume 37</b> (173 pages), includes <ul style="list-style-type: none"> <li>• <i>Curriculum vitae of R. Lutes, Q.C. and A. Markwart</i></li> <li>• <i>Updated Justice of the Peace Centre Operational Procedures</i></li> <li>• <i>Statistics on elapsed time in Youth Court, 2003–05</i></li> <li>• <i>Statement of Evidence of Sheriff Stephen Brown</i></li> </ul>   |
| 44 | May 9  | Series of letters from the Public Prosecution Service regarding suggested changes at the Justice of the Peace Centre   |
| 45 | May 9  | Slides of presentation of R. Lutes, Q.C.   |
| 46 | May 9  | Document, <i>A Strategy for the Renewal of Youth Justice</i>   |
| 47 | May 9  | RCMP Community Consultation Booklet  |
| 48 | May 10 | Halifax Regional Police's Synopsis of Criminal Charges   |
| 49 | May 10 | Halifax Regional Police Recommendations to the Nunn Commission of Inquiry  |
| 50 | May 10 | Halifax Regional School Board Regional Code of Conduct Policy  |
| 51 | May 15 | 1997 Halifax Regional School Board Student Behaviour and Discipline Policy   |
| 52 | May 15 | Statement of Evidence of L. Smith  |
| 53 | May 16 | Statement of Evidence of G. Savoury  |
| 54 | May 17 | Chart of Average Number of Youth in Custody, British Columbia  |



|    |        |   |
|----|--------|---|
| 55 | May 17 | Youth Justice Programs, Province of British Columbia  |
| 56 | May 17 | Article by A. Markwart, <i>The Intensive Rehabilitative Custody and Supervision Sentence: An Alternative to an Adult Sentence</i> |
| 57 | May 17 | Article by A. Markwart, <i>Provincial Discretion in Implementing Optional Provisions of the Youth Criminal Justice Act</i>        |
| 58 | May 19 | Biographical Sketch of Theresa McEvoy, 1952-2004  |
| 59 | May 19 | Internal memorandum, Public Prosecution Service, April 6, 2006  |

## Appendix K

### List of Charges against AB, January–October 2004

| Offence Date     | Summary of Offence   | Charges  |
|------------------|--|--|
| January 23, 2004 | <p>Theft of vehicle (Halifax)</p> <p><i>AB and another male stole a vehicle from outside a convenience store and drove it to Dartmouth, where they were apprehended.</i></p> <p><i>AB was found with a flat-headed screwdriver in his pocket.</i></p>                | <p>334(b)—theft under \$5,000</p> <p>355(b)—possession of property obtained by crime (under \$5,000) [later withdrawn]</p> <p>351(1)—possession of break-in instrument</p> |
| April 23, 2004   | <p>Co-charged in suspicious circumstances (Dartmouth)</p> <p><i>AB and another male were found by police in a parking lot. AB had a modified coat hanger in his pocket (known to be used for breaking into vehicles).</i></p>  | <p>351(1)—possession of break-in instrument</p>  |
| May 10, 2004     | <p>Theft of vehicle (Cole Harbour)</p> <p><i>Police pursuit of stolen vehicle resulted in stolen vehicle side-swiping another vehicle.</i></p> <p><i>AB was a passenger in the stolen vehicle (one of four other occupants). The occupants fled the vehicle.</i></p> | <p>335(1)—taking motor vehicle or vessel or found therein without consent</p> <p>355(b)—possession of property obtained by crime (under \$5,000)</p>                       |

| Offence Date | Summary of Offence   | Charges  |
|--------------|--|--|
| May 22, 2004 | <p>Theft of vehicle<br/>(Lower Sackville)</p> <p><i>On June 3, 2004, Police arrested a young male. He told police that he and AB were driving a stolen vehicle on May 22 and AB knew it was stolen. On June 9, 2004, AB was interviewed by police and admitted to driving the vehicle and knowing it was stolen.</i></p>   | <p>355(b)—possession of property obtained by crime (under \$5,000)</p>   |
| May 25, 2004 | <p>Other Criminal Code violation<br/>(Dartmouth)</p> <p><i>The police received a report of dangerous driving. AB was driving a stolen vehicle with a male passenger. The vehicle hit a telephone pole, and the male passenger fled the vehicle. AB left the accident scene in the vehicle. Police attended AB's home with the male passenger and found stolen vehicle parked on AB's street.</i></p> | <p>355(a)—possession of property obtained by crime (over \$5,000)</p> <p>64—licence required to drive on highway (Motor Vehicle Act)</p> <p>97(1)—duty to stop at accident and to report (Motor Vehicle Act)</p> |

| Offence Date        | Summary of Offence  | Charges  |
|---------------------|---|--|
| May 30–June 1, 2004 | <p>Theft of vehicle<br/>(Lower Sackville)</p> <p><i>A vehicle was reported stolen to RCMP on June 1, 2004. On June 2, 2004, the RCMP found the vehicle abandoned. After investigation, on June 9 AB was interviewed by police and admitted to his involvement in the theft.</i></p> | <p>334(b)—theft under \$5,000<br/>[later withdrawn]</p> <p>355(b)—possession of property obtained by crime (under \$5,000)</p>   |
| June 3, 2004        | <p>Theft of vehicle<br/>(Dartmouth)</p> <p><i>A vehicle was stolen on June 3, 2004 and reported stolen to police on June 4, 2004. On June 9, 2004, AB was interviewed by the police and admitted his involvement in the theft.</i></p>  | <p>334(b)—theft under \$5,000</p> <p>355(b)—possession of property obtained by crime (under \$5,000)<br/>[later withdrawn]</p>   |
| June 9, 2004        | <p>Theft of vehicle<br/>(Dartmouth)</p> <p><i>The police received a call from a person notifying them of drugs found in a garbage dumpster and a stolen vehicle. AB and another male were found by police in the vehicle.</i></p>   | <p>334(b)—theft under \$5,000<br/>[later withdrawn]</p> <p>355(b)—possession of property obtained by crime (under \$5,000)</p> <p>351(1)—possession of break-in instrument</p> |

| Offence Date  | Summary of Offence  | Charges   |
|---------------|---|---|
| June 11, 2004 | <p>Breach of undertaking</p> <p><i>AB's stepfather, contacted police on June 23, 2004, and requested that the police attend his home and arrest AB for violation of his undertaking.</i></p>  | <p>145(3)—failure to comply with conditions of undertaking</p>  |
| June 12, 2004 | <p>Theft of vehicle (Dartmouth)</p> <p><i>AB stole a vehicle, which he later abandoned. He then stole another vehicle and was involved in a high-speed pursuit with police (see June 13 entry below).</i></p>   | <p>145(3) x 2—failure to comply with conditions of undertaking (one of these charges is in relation to another matter)</p> <p>334(a)—theft over \$5,000</p> <p>355(a)—possession of property obtained by crime (over \$5,000) [later withdrawn]</p> <p>334(b)—theft under \$5,000 [later withdrawn]</p> |
| June 13, 2004 | <p>Theft of vehicle (Bedford)</p> <p><i>On June 13, 2004, police observed a stolen vehicle with three occupants travel through a flashing red light without stopping. Police activated their emergency equipment, and the vehicle fled at a high rate of speed. The police eventually called off their pursuit of the</i></p> |   |

| Offence Date  | Summary of Offence   | Charges  |
|---------------|--|--|
| June 14, 2004 | <p><i>vehicle. That night, police arrested a male occupant of the vehicle who advised them that AB was the driver of the vehicle involved in the pursuit. He also advised them that earlier that night AB had picked him up in a different stolen vehicle, which they abandoned before stealing the vehicle involved in the pursuit.</i></p> <p>Theft of vehicle (Lower Sackville)</p> <p><i>The police found a stolen vehicle along with a female driver. She told police that AB was responsible for the initial theft of the vehicle.</i></p> | <p>145(3) x 2—failure to comply with conditions of undertaking [one count later withdrawn]</p> <p>334(a)—theft over \$5,000</p> <p>355(a)—possession of property obtained by crime (over \$5,000) [later withdrawn]</p>  |
| June 22, 2004 | <p>Break and enter (Elmsdale)</p> <p><i>AB stole a vehicle and used it to commit a break and enter at a Radio Shack store.</i></p>   | <p>145(3) x 2—failure to comply with conditions of undertaking [one count later withdrawn]</p> <p>334(a)—theft over \$5,000</p> <p>335(1)—taking motor vehicle or vessel or found therein without consent</p> <p>348(1)(a)—breaking and entering with intent to commit an indictable offence therein [later withdrawn]</p> |

| Offence Date       | Summary of Offence  | Charges   |
|--------------------|---|---|
| September 29, 2004 | <p>Theft of vehicle (Hantsport)</p> <p><i>RCMP attempted to stop the stolen vehicle, resulting in a high-speed pursuit. The pursuit ended when a spike belt was deployed on the highway. AB and another male fled the vehicle and were apprehended by the RCMP dog unit. Police later learned of another vehicle stolen by AB from Lower Sackville that same night.</i></p> | <p>334(a) x 2—<i>theft over \$5,000 [later withdrawn]</i></p> <p>334(b) x 1—<i>theft under \$5,000</i></p> <p>354(1) x 2—<i>possession of property over \$5,000 obtained by crime [one count later withdrawn]</i></p> <p>348(1)(a)—<i>breaking and entering with intent to commit an indictable offence therein</i></p> <p>249.1(1)—<i>flight (evading police by motor vehicle)</i></p> <p>145(3)—<i>failure to comply with conditions of undertaking [later withdrawn]</i></p> |
| October 14, 2004   | <p>Theft of a vehicle (Halifax)</p> <p><i>AB was driving a stolen car in Halifax with four other occupants. AB failed to stop for police and, while trying to avoid police, fatally injured Theresa McEvoy when his vehicle hit Ms. McEvoy's vehicle at an intersection.</i></p>  | <p>249(4)—<i>dangerous operation causing death</i></p> <p>220(b)—<i>causing death by criminal negligence</i></p> <p>334(a)—<i>theft over \$5,000</i></p> <p>355(a)—<i>possession of property obtained by crime (over \$5,000)</i></p> <p>249.1(4)(b)—<i>flight causing bodily harm or death</i></p> <p>139(2) x 10—<i>failure to comply with an undertaking (Youth Criminal Justice Act) [later withdrawn]</i></p>  |

# Appendix L

## Table of Time for Handling of AB's Criminal Charges

| Date of Offence     | Counts Involving AB                             | Pleas   | Date of First Court Appearance       | Intended Sentencing/Trial Date | Date of Last Court Appearance | Time from First Appearance to Intended Sentencing/Trial Date | Total Time Elapsed from First to Last Appearance |
|---------------------|---|---|--------------------------------------|--------------------------------|-------------------------------|--|--|
| Jan. 23, 2004       | 1. Stolen vehicle                               | 1. Guilty (Sept. 14)                                      | July 6, 2004 (referred back from RI) | 1. Nov. 17, 2004               | 1. Dec. 20, 2004              | 134 days   | 167 days   |
|                     | 2. Theft, possession under ( <i>withdrawn</i> ) | 3. Guilty (Sept. 14)                                      |                                      | 3. Nov. 17, 2004               | 3. Dec. 20, 2004              |  |  |
|                     | 3. Possession of break-in instruments           |   |                                      |                                |                               |  |  |
| Apr. 23, 2004       | 4. Possession of break-in instruments           | 4. Not Guilty (Sept. 14) changed plea to Guilty (Nov. 17) | June 10, 2004                        | 4. Jan. 18, 2005 (trial date)  | 4. Dec. 20, 2004              | 222 days   | 193 days   |
|                     | 5. Possession under                             | 5. Guilty (Nov. 17)                                       | June 24, 2004                        | 5. Nov. 17, 2004               | 5. Dec. 20, 2004              | 146 days   | 179 days   |
| May 10, 2004        | 6. Took vehicle without consent                 | 6. Guilty (Sept. 14)                                      |                                      | 6. Nov. 17, 2004               | 6. Dec. 20, 2004              |  |  |
|                     | 7. Possession under                             | 7. Guilty (Sept. 14)                                      | June 10, 2004                        | 7. Nov. 17, 2004               | 7. Dec. 20, 2004              | 160 days   | 193 days   |
| May 21–June 1, 2004 | 8. Possession over                              | 8. Guilty (Sept. 14)                                      | June 10, 2004                        | 8. Nov. 17, 2004               | 8. Dec. 20, 2004              | 160 days   | 193 days   |
|                     | 9. MVA—driving without a licence                |   |                                      | 9. Nov. 17, 2004               | 9. Dec. 20, 2004              |  |  |
| May 25, 2004        | 10. MVA—leaving scene of accident               |   |                                      | 10. Nov. 17, 2004              | 10. Dec. 20, 2004             |  |  |



| Date of Offence           | Counts Involving AB                          | Pleas                                  | Date of First Court Appearance | Intended Sentencing/Trial Date    | Date of Last Court Appearance | Time from First Appearance to Intended Sentencing/Trial Date | Total Time Elapsed from First to Last Appearance |
|---------------------------|--|--|--------------------------------|-----------------------------------|-------------------------------|--|--|
| May 31<br>June 1,<br>2004 | 11. Theft over—<br>( <i>withdrawn</i> )      | 12. Guilty<br>(Sept. 14)               | June 10, 2004                  | 12. Nov. 17, 2004                 | 12. Dec. 20, 2004             | 160 days   | 193 days   |
|                           | 12. Possession over                          |  |                                |                                   |                               |  |  |
|                           | 13. Theft under                              | 13. Guilty<br>(Sept. 14)               | June 24, 2004                  | 13. Nov. 17, 2004                 | 13. Dec. 20, 2004             | 146 days   | 179 days   |
| June 3,<br>2004           | 14. Possession under<br>( <i>withdrawn</i> ) |  |                                |                                   |                               |  |  |
|                           | 15. Theft under<br>( <i>withdrawn</i> )      |  |                                |                                   |                               |  |  |
|                           | 16. Possession under                         | 16. Guilty<br>(Sept. 14)               | June 10, 2004                  | 16. Nov. 17, 2004                 | 16. Dec. 20, 2004             | 160 days   | 193 days   |
| June 11,<br>2004          | 17. Possession of<br>break-in instruments    | 17. Guilty<br>(Sept. 14)               |                                | 17. Nov. 17, 2004                 | 17. Dec. 20, 2004             |  |  |
|                           | 18. Breach of<br>Undertaking                 | 18. Guilty                             | June 24, 2004                  | 18. Nov. 17, 2004                 | 18. Dec. 20, 2004             | 146 days   | 179 days   |
|                           | 19. Theft under<br>( <i>withdrawn</i> )      | 20. Not Guilty<br>(Sept. 14)           | June 24, 2004                  | 20. Jan. 18, 2005<br>(trial date) | 20. Dec. 20, 2004             | 208 days   | 179 days   |
| June 12,<br>2004          | 20. Theft over                               | changed plea<br>to Guilty<br>(Nov. 17) |                                |                                   |                               |  |  |
|                           | 21. Possession over<br>( <i>withdrawn</i> )  |  |                                |                                   |                               |  |  |

| Date of Offence | Counts Involving AB                   | Pleas  | Date of First Court Appearance | Intended Sentencing/Trial Date | Date of Last Court Appearance | Time from First Appearance to Intended Sentencing/Trial Date | Total Time Elapsed from First to Last Appearance |
|-----------------|---------------------------------------|--|--------------------------------|--------------------------------|-------------------------------|--|--|
| June 13, 2004   | 22. Breach of Undertaking             | 22. Not Guilty (Sept. 14)                                  |                                | 22. Jan. 18, 2005 (trial date) | 22. Dec. 20, 2004             |  |  |
|                 | 23. Breach of Undertaking (withdrawn) | changed plea to Guilty (Nov. 17)                           |                                |                                |                               |  |  |
|                 | 24. Theft                             | 24. Not Guilty (Sept. 14) changed plea to Guilty (Nov. 17) | June 24, 2004                  | 24. Jan. 19, 2005 (trial date) | 24. Dec. 20, 2004             | 209 days   | 179 days   |
| June 14, 2004   | 25. Possession (withdrawn)            |  |                                |                                |                               |  |  |
|                 | 26. Breach                            | 26. Not Guilty (Sept. 14) changed plea to Guilty (Nov. 17) |                                | 26. Jan. 19, 2005 (trial date) | 26. Dec. 20, 2004             |  |  |
|                 | 27. Breach (withdrawn)                |  |                                |                                |                               |  |  |
| June 14, 2004   | 28. Theft over                        | 28. Not Guilty (Sept. 14) changed plea to Guilty (Nov. 17) | June 24, 2004                  | 28. Feb. 1, 2005 (trial date)  | 28. Dec. 20, 2004             | 222 days   | 179 days   |

| Date of Offence | Counts Involving AB                | Pleas   | Date of First Court Appearance | Intended Sentencing/Trial Date   | Date of Last Court Appearance | Time from First Appearance to Intended Sentencing/Trial Date | Total Time Elapsed from First to Last Appearance |
|-----------------|------------------------------------|---|--------------------------------|----------------------------------|-------------------------------|--|--|
|                 | 29. Breach                         | 29. Not Guilty (Sept. 14)<br>changed plea to Guilty (Nov. 17) |                                | 29. Feb. 1, 2005<br>(trial date) | 29. Dec. 20, 2004             |  |  |
|                 | 30. Breach<br>( <i>withdrawn</i> ) |   |                                |                                  |                               |  |  |

# Appendix M

## Rules of Procedure

### General

1. The Nunn Commission of Inquiry is an independent public inquiry set up by the Province of Nova Scotia under the *Public Inquiries Act*. The Commission has specific terms of reference as set out in an Order in Council dated June 29, 2005, as amended December 15, 2005, available for review in the Commission office.
2. The terms of reference note that Theresa McEvoy was fatally injured in a car crash on October 14, 2004, and that following an investigation a young person was charged with multiple offences arising out of the fatal car crash. The young person was released from custody two days before Mrs. McEvoy's death, on October 12, 2004. The Commission is to inquire into:
  - a. why the young person was released from custody on October 12, 2004;
  - b. the procedures and practices pertaining to the handling of the charges against the young person at the time of his release, in particular,
    - i. what were the procedures and practices,
    - ii. whether those procedures and practices were followed, and
    - iii. whether those procedures and practices were appropriate.
  - c. the actions of law enforcement, the Public Prosecution Service, the courts and justice or other public officials, up to and including October 14, 2004, with respect to the handling of the charges against the young person;
  - d. the actions of law enforcement, the Public Prosecution Service, the courts and justice or other public officials after the young person's release up to and including October 14, 2004;
  - e. any other matter, at the discretion of the Commissioner, that the Commissioner deems necessary to fulfill his mandate.

3. The Commission will be considering matters raised in the terms of reference. Following the conclusion of hearings, the Commissioner will prepare a public written report and make findings and any recommendations he deems appropriate and in the public interest.
4. Throughout these Rules, the words “Commission” and “Inquiry” are used interchangeably.
5. Public hearings will be held in Suite 703, 1660 Hollis Street, Halifax, Nova Scotia. The Commissioner will set the dates for the hearings. Hearings will usually take place between 10:00 a.m. and 4:30 p.m., Monday through Thursday each week.
6. The Commission is committed to an open and fair process, including public hearings and public access to evidence and documents used at the hearings, except that evidence or those documents which are subject to confidentiality, like records subject to the *Freedom of Information and Protection of Privacy Act* or the *Youth Criminal Justice Act (Canada)* (“YCJA”). In particular, as set out in the terms of reference, the Commissioner will take all steps necessary to prevent disclosure of information that would tend to identify any young person as defined under the YCJA.
7. The Commissioner has appointed Commission counsel to represent him and the public interest. Commission counsel will ensure that all matters which bear on the public interest are brought to the attention of the Commissioner.

#### **Notice of Inquiry**

8. The Commissioner encourages anyone who may have information that may be helpful to the Inquiry, including documents and the names of witnesses, to provide this information to the Commission as soon as possible.
9. Witnesses are encouraged to come forward and give full and forthright evidence to the Inquiry. The testimony of witnesses during the Inquiry may not be used in subsequent legal

proceedings. The Commissioner will express no conclusion or recommendation regarding the civil or criminal responsibility of any person or organization.

10. Commission counsel will contact and provide notice of the Inquiry to any person, groups of persons, organizations, corporations, Ministers of the Crown or government agency or department who may have an interest in the Inquiry.
11. The Commission will also publish notice of the Inquiry in the *Nova Scotia Royal Gazette* and in appropriate Nova Scotia newspapers or other publications.

### **Standing**

12. Commission counsel, who will assist the Commissioner throughout the Inquiry and is to ensure the orderly conduct of the Inquiry, will have standing.
13. Persons, groups of persons, organizations, agencies or corporations who wish to participate may apply for standing before the Inquiry.
14. The Commissioner may grant standing if applicants can satisfy him that they have a substantial and direct interest in the subject matter of the Inquiry or that their participation may be helpful to the Commission in fulfilling its mandate. The Commissioner will determine on what terms standing may be granted. Those terms may include full or limited standing, depending on the applicant's interest and relevance to the issues before Inquiry.
15. The Commissioner, in his discretion, may consolidate any standing granted where he is satisfied that the parties' interests are not adverse.
16. Those granted full or limited standing are referred to in these Rules as "parties." The terms "party" or "parties" are used to convey the grant of standing and are not intended to suggest that the Inquiry's procedures or hearings are adversarial in nature.

17. Parties are deemed to undertake to follow these Rules of Procedure.
18. Applicants for standing will first be required to provide written submissions explaining why they wish standing. Written submissions are to be received at the Commission office no later than 4:00 p.m. on Friday, October 21, 2005.
19. Applicants for standing will also be given an opportunity to appear in person before the Commissioner to explain their reasons for requesting standing. Applications for standing will be heard on Tuesday, October 25, 2005.

#### **Right to Counsel**

20. Witnesses and parties are entitled, but not required, to have counsel present while Commission counsel interview them and also when they testify.
21. Counsel will be retained at the expense of the witness and parties.

#### **Recommendations for Funding of Legal Costs**

22. The Commissioner does not have any power to order payment of legal costs from public funds. However, under the terms of reference, the Commissioner may make recommendations to the Minister of Justice that legal costs for particular people should be met out of public funds, and on what terms such funding may be granted.
23. Applicants for standing or witnesses may apply to the Commissioner for a recommendation for funding of legal costs.
24. In considering applications, the Commissioner will follow separate guidelines on funding of legal costs, which will be available at the Commission office.
25. Applicants for a recommendation for funding of legal costs will be required to provide written submissions explaining why they wish such funding, with appropriate reference to the Commission

guidelines. Written submissions on funding are to be received at the Commission office no later than 4:00 p.m. on Friday, October 21, 2005, or at such other time as the Commission may direct.

26. Applicants for funding may also be given an opportunity to appear in person before the Commissioner to explain their reasons for requesting funding.

#### **Identification of Witnesses**

27. As soon as possible following the granting of standing, parties are to advise Commission counsel of the names, addresses and telephone numbers of all witnesses they feel should be heard, together with a summary of the information the witnesses may have. This information is to be provided to the Commission office no later than 4 p.m. on Monday, November 14. If parties require an extension of time, they may make application to the Commissioner.

#### **Preparation of Documentary Evidence**

28. As soon as possible following the granting of standing, parties will produce to the Commission all documents having any bearing on the subject matter of the Inquiry in their possession or control. The term “documents” is intended to have a broad meaning, and includes written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data or information recorded or stored by means of any device.
29. The Order-in-Council, as amended, provides that, for the purpose of conducting the Inquiry, the Commissioner, Commission counsel, parties and legal counsel to the parties have access to relevant documents kept under sections 114, 115 and 116 of the YCJA, including court records, police records and government records. Parties with documents subject to those sections will include them in the documents they produce to the Inquiry.



30. All documents received by the Commission will be treated by the Commission as confidential, unless and until they are made part of the public record or the Commissioner otherwise directs; however, Commission counsel are permitted to produce such documents to proposed witnesses. Documents received by the Commission that are subject to sections 114, 115 and 116 of the YCJA, even if they are entered as exhibits or referred to by a witness or legal counsel during public hearings, shall continue to be treated as confidential. Such documents shall not be made available for review at any time by anyone not authorized by the Order in Council.
31. Commission counsel will try to provide, both to witnesses and parties, those documents that will likely be referred to during a witness' testimony. Before being provided with such documents, witnesses and parties will be required to sign an undertaking that they will use the documents only for the purposes of the Inquiry.
32. No document will be used in cross-examination or otherwise unless Commission counsel have been advised in advance and the document has been provided to Commission counsel, the witness, and parties, unless the Commissioner decides otherwise.

#### **Witness Interviews**

33. Commission counsel will interview people who have information or documents which have any bearing upon the subject matter of the Inquiry and may be helpful in fulfilling the Commission's mandate. People who are interviewed are welcome, but not required, to have legal counsel present.
34. Following the interview, Commission counsel will prepare a summary of the witness' anticipated evidence and, before that person testifies before the Commission, will provide a copy of the summary to the witness for his or her review.

35. The witness summary, after being provided to the witness, will be shared with parties. Before being given a copy of the witness summary, parties will be required to sign an undertaking that they will use the witness summary only for the purposes of the Inquiry.

### **Evidence**

36. The Commissioner may receive any evidence that he considers to be helpful in fulfilling the mandate of the Inquiry. The strict rules of evidence used in a court of law to determine admissibility of evidence will not apply.
37. Witnesses who testify will give their evidence under oath or upon affirmation.
38. It will be the practice of Commission counsel to issue and serve a subpoena (summons to witness) upon every witness before he or she testifies.
39. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purpose of that witness' testimony.
40. Witnesses may be called more than once.
41. In the ordinary course, Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a witness may apply to the Commissioner to lead a particular witness' evidence in-chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner.
42. The order of examination will be as follows:
  - a. Commission counsel will lead the evidence from each witness. Except as otherwise directed by the Commissioner, Commission counsel is entitled to ask both leading and non-leading questions;

- b. Parties will then have an opportunity to cross-examine the witness to the extent of their interest, subject to time limits determined by the Commissioner. The order of cross-examination of each witness will be determined by the parties and, if they are unable to reach agreement, by the Commissioner;
  - c. Counsel for a witness will examine last, unless he or she has questioned the witness in chief, in which case there will be a right to re-examine the witness. Such examination-in-chief or re-examination may be subject to time limits determined by the Commissioner; and
  - d. Commission counsel will have the right to re-examine last.
43. If Commission counsel elects not to call a witness or to file a document, anyone with standing may apply to the Commissioner to do so or to direct Commission counsel to do so.
44. Parties may suggest, in advance, lines of questioning to be put by Commission counsel to witnesses.
45. All hearings are open to the public; however, where the Commissioner is of the opinion that,
- a. matters that would risk identification of any young person as defined under the YCJA may be disclosed at the hearing; or
  - b. intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, the Commissioner may hold the hearings concerning any such matters in the absence of the public, or subject to particular restrictions or on such terms as he may direct.

46. Applications from witnesses or parties to hold any part of the hearing in the absence of the public should be made in writing to the Commission at the earliest possible opportunity.
47. The transcripts and exhibits from the hearings will be made available as soon as possible for public viewing. If any part of the hearings is held in the absence of the public, the transcripts and exhibits from that part of the hearing will only be made available for public viewing on such terms as the Commissioner may direct.
48. The proceedings are open to the public. The use of television cameras or other electronic or photographic equipment in the hearing room will be permitted at the direction of the Commissioner.

#### **Expert Evidence**

49. The Inquiry may hear written or oral evidence from experts on topics relating to issues before the Commission, if the Commissioner believes it would be in the public interest to hear from someone with professional knowledge in particular subject areas. The scope of the expert evidence may relate to recommendations or policy matters or to assist in understanding facts or events. This evidence may include research, background or policy papers commissioned by or submitted to the Inquiry.

#### **Public Submissions**

50. Any member of the public may make a submission in writing to the Inquiry dealing with recommendations or policy matters. The Commission will set and publish a deadline by which all public submissions must be received.
51. All public submissions will be available for review in the Commission office.

**Notices Regarding Potential Criticism**

52. The Commissioner will not make a finding critical of a person or of misconduct on the part of any person unless that person has had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel.
53. Any notices of potential criticism or alleged misconduct will be delivered on a confidential basis to the person to whom the allegations of misconduct refer. That person may respond on a confidential basis in writing to the notice. The Commissioner may call additional evidence, invite additional submissions or take other steps to ensure that the person has adequate opportunity to hear and challenge the potential criticism.
54. The Commissioner will perform his duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization.

**Amendment to the Rules**

55. These Rules may be amended and new Rules may be added if the Commissioner finds it helpful to do so to fulfil the Commission's mandate and to ensure that the process is thorough and fair.

# Appendix N

## Commission Guidelines for Funding for Legal Costs

### Terms of Reference

1. The terms of reference of the Nunn Commission of Inquiry authorizes the Commissioner to make recommendations to the Minister of Justice for public funding of legal costs,
  - a. respecting the parties to receive funding;
  - b. respecting rate of remuneration and reimbursement, the extent of funding and the assessment of accounts; and
  - c. respecting consolidating parties for funding purposes where he is satisfied they are not adverse in interest.
2. These guidelines set out the principles and approach that the Commission will apply in considering whether to recommend funding to the Minister of Justice.
3. It will be open to the Commissioner to make further recommendations to the Minister of Justice at any stage of the Commission's work.

### General Principles

4. In considering an application for a recommendation for funding of legal costs, the Commissioner will apply the following general principles:
  - a. This Inquiry is an inquisitorial, and not adversarial, proceeding, and the scope of legal counsel for parties and witnesses is thereby limited;
  - b. It is not in the public interest to have open-ended funding of legal costs. The taxpayers of Nova Scotia have a right to expect a principled approach to the spending of their money;
  - c. Recommendations for funding will only be made in circumstances in which legal representation is considered by the Commissioner to be necessary and there are no other means by which such legal representation can be funded adequately, or in such other particular circumstances as the Commissioner, in his discretion, deems appropriate;

- d. Funding for legal representation is not for the purpose of indemnifying applicants for all of the legal costs they incur;
- e. All legal counsel will be expected to work in a cost-effective manner, avoiding both unnecessary duplication and work not reasonably necessary to the representation of their clients.

**Guidelines**

- 5. In considering an application for funding of legal costs, the Commissioner will use the following guidelines:
  - a. The Commissioner does not expect to make a recommendation for funding of legal costs in respect of any public body or any commercial concern;
  - b. It is not in the public interest for public funds to be provided to individuals for their lawyer of choice at that lawyer’s regular hourly rate. The Commissioner will recommend that the Minister of Justice should establish reasonable hourly rates for senior and junior counsel for purposes of this Inquiry, and expects to recommend the following scale:

| <b>Years from Call to Bar</b><br>(calculated in calendar year) | <b>Maximum Hourly Rate</b><br>(limited daily to 10 times the hourly rate) |
|--|---|
| Student/paralegal  | \$ 35–50  |
| 0–2  | \$ 60–75  |
| 3–4  | \$ 70–85  |
| 5–6  | \$ 80–95  |
| 7–8  | \$ 90–105   |
| 9–10   | \$ 100–115  |
| 11–12  | \$ 110–125  |
| 13–14  | \$ 120–135  |
| 15–16  | \$ 130–145  |
| 17–18  | \$ 140–155  |
| 19 plus  | \$ 150–165  |

- c. The Commissioner's recommendation may limit the number of counsel. For hearings, it will likely not be effective or appropriate to have more than one counsel present at a time. Therefore, except in extraordinary circumstances identified by the Commissioner,
  - i. no party or witness shall receive funding for more than one senior and one junior counsel; and
  - ii. no more than one counsel will receive funding for any one hearing day. Whether more than one counsel should be funded for any particular day of hearing will be at the recommendation of the Commissioner;
- d. Counsel for parties and witnesses will only receive funding for attendance at hearings in which their interest, as identified by the Commissioner, is directly engaged and, for any written submissions, as directed by the Commissioner. Commission counsel will be providing parties with standing access to documents and to witness statements, and will be informing parties when certain witnesses are expected to be called. Based on this advance disclosure, parties should be able to anticipate when evidence that may affect their interests will be called. Further, given that transcripts of each day's proceedings will be available, the necessity to appear at the hearings should be limited to a direct engagement of a party's interests. This should not be interpreted as limiting counsel's attendance solely to when the client is testifying;
- e. Commission-related legal work should include reasonable time for preparation by counsel as well as for attendance at hearings;
- f. The Commissioner will consider efficiency as well as effective representation. Counsel should undertake to make the most efficient use of their resources, using law clerks, students, and



junior counsel where it is more efficient and cost-effective to do so. Where preparation time is concerned, counsel should be encouraged to use less expensive resources. Where the hearings are concerned, it may not be effective or appropriate to have more than one counsel present at a time;

- g. In principle, counsel should be entitled to their reasonable and necessary disbursements. However, the Minister should specify which disbursements or expenses will or will not be paid and, where appropriate, disbursement rates should be set (e.g., for photocopying).
- h. Limits should be set on preparation time. Since Commission counsel will be doing most of the preparation and the calling of witnesses, preparation time for individuals with standing will probably be less than that required for Commission counsel. One exception might be preparation for cross-examination of a major witness.
- i. No fees incurred before June 29, 2005 (the date of the publication of the terms of reference) should be paid.
- j. Accounts for legal costs should be subject to assessment. The Minister of Justice may refer any particular account to the Commissioner for his review if the account as rendered appears inconsistent with these guidelines or any recommendation for funding.

#### **Material Required upon Application**

- 6. In accordance with the Commission's Rules of Procedure (refer to Rule 25), an applicant for a recommendation for legal funding must do so in writing. An applicant should specify the following:
  - a. Statement of the applicant's circumstances in which legal representation is necessary;

- b. Evidence that there are no other means by which such legal representation can be funded adequately, including a statement of the extent to which the applicant will contribute its own funds or resources to participate in the Inquiry;
- c. Statement of any particular circumstances the Commissioner should consider in reviewing the application;
- d. The level of seniority of the lawyer(s) who will deal with the case;
- e. Particulars of any foreseeable disbursements or expenses.

# Appendix O

## Statements and Rulings

### 1. Opening Statement, October 11, 2005

Welcome to the first public session of this Commission of Inquiry. I am Justice Merlin Nunn, and I've been appointed by the Province of Nova Scotia under the *Public Inquiries Act* to be the Commissioner of this independent Inquiry. I have been a judge of the Supreme Court of Nova Scotia since 1982.

This morning I am going to make a few opening remarks to describe the work of this public inquiry and to make some introductions.

An important comment first. As we gather here in the first public session, I want first to join with other Nova Scotians in expressing my sympathy to the family of Theresa McEvoy. Ms. McEvoy was killed on October 14, 2004—one year ago this week. It is her tragic death, and the questions her death raises, that bring us here. To her family, let me say today that we are truly sorry for your loss.

#### **The Commission's work and mandate**

I was appointed Commissioner in late June, and since then I have been working behind the scenes to set the stage for the Commission's work. In a few moments I will tell you what we have been doing and introduce the staff that has been assisting me. First, let me discuss the task before us—the terms of reference for the Commission and the purpose of a public inquiry like this one.

By calling this Inquiry, the Province wants an impartial review of certain circumstances. The Commission's job is to understand what happened in this case. The Province has provided me with specific terms of reference, which allow me to examine what happened, including the procedures and practices that were followed while these charges were handled. We'll consider why the young person was released from custody. We'll examine what the procedures were in cases like this one about releasing a young person charged with a crime, and whether they were followed. We'll consider whether those

procedures were adequate. I have also been asked to look at actions of public officials involved. Did they do the right thing? And finally, I am to consider recommendations for the future in the public interest.

In looking into this, I have the power to make investigations, gather evidence and other information, hold hearings and ask whatever questions I consider necessary. As Commissioner, I don't have preconceived notions about the conclusions to which I will eventually come. In reaching those conclusions, I will be guided only by the evidence, documents and submissions presented to me in the course of our hearings.

After the hearing and investigation stages are finished, I will then write a report that may include any recommendations that I think are appropriate and in the public interest.

### **The nature of public inquiries**

Let me talk for a moment about the nature of a public inquiry. An inquiry investigates and reports on matters of public interest to a community. This is not a trial. No one is being sued. No one is charged with any crime. At a trial, a judge or jury does hear evidence of facts—but those facts are retrospective and consider specific events, and only to decide the question of guilt or liability. Trials do not seek to explain why something occurred. A public inquiry can take a broader approach to facts, and can look forward as well as backward in time. Beyond the facts, one of an inquiry's important purposes is to specifically ask the question "*Why?*" and consider recommendations that may improve public policy or prevent any mistakes uncovered from being repeated.

### **The conduct of a public inquiry**

You'll see that because of the nature of an inquiry, the way it proceeds is different from what you might see in a trial in court. Unlike a trial, this Inquiry is inquisitorial and not adversarial in nature. We will not be concerned with questions of criminal or civil liability. There

are, in legal terms, no parties entitled to advance a case. It is an investigation.

In conducting an inquiry, we must be impartial, fair and independent. We also need to be thorough in our investigation. Commission staff will work with the parties and witnesses to obtain the evidence necessary for me so I can consider it all and write my report. So, there will be some important investigation stages first.

The inquiry will also be accessible and public. Later in the Commission's work, we will hold public hearings here. The public may come and listen to the evidence. And the proceedings will be open and available to the media. As the Inquiry proceeds, Commission staff will make information as accessible as possible to the media, within appropriate guidelines.

### **Background work**

We have been at work. Since I was appointed Commissioner, we have obtained this physical space and put together an office with the help of my assistant, Phyllis Perry. She will continue to provide administrative support as the Commission continues.

I have also appointed a lawyer as Commission counsel. I have chosen Michael Messenger, from the Halifax law firm of Cox Hanson O'Reilly Matheson, for this role. Commission counsel is the legal arm of the Commission.

The main responsibility I have given to Mr. Messenger as counsel is to represent the public interest during the work of the Commission. He does not represent any particular point of view, nor is he to take sides. He is not a "prosecutor." He is to present all of the available relevant evidence as fairly and thoroughly as possible. Commission counsel, in co-operation with counsel for the parties and witnesses, will make sure that all issues bearing on the public interest are brought to my attention.

Another step we've taken is to create a simple website to provide public information about the Commission's work. Some basic

information is already on the site, and more will be added later. For example, we expect that the public can access and read our notice of inquiry, terms of reference, and eventually the transcripts of the public hearings. The website address is [www.nunncommission.ca](http://www.nunncommission.ca).

### **Rules of Procedure**

Each public inquiry establishes its own rules. Our Rules of Procedure have been posted on the website and are available in hard copy in our office. We have drafted our Rules of Procedure in a way that makes sure that the process we follow is clear, open and fair to everyone.

Our rules explain the process that I intend to follow. They are flexible, and I can make amendments or additions as necessary. After I've made my decision about who will have standing, I will invite the lawyers representing parties with standing to let me know if there is anything in the rules or other guidelines that they think should be changed.

### **Next steps**

What happens next? With the publication last Thursday of the first Notice of Inquiry and Call for Applications for Standing, we have now begun the process of identifying persons or organizations who "may have a direct and substantial interest in the proceedings of the Inquiry, or whose participation in the Inquiry may be helpful." On October 21, I'm going to receive written submissions from applicants who have expressed an interest in obtaining what is known as "standing." Those who are granted standing can take an active part in the proceedings of the Commission according to the Rules.

As I am also empowered to make recommendations to the Minister of Justice to have legal costs of some persons paid by the Province, I will also be accepting applications on funding on October 21.

On Tuesday, October 25, applicants for standing and funding will also have the opportunity to make oral submissions to me in support of their applications. I will then consider the applications and

later provide a ruling on standing and whether I am prepared to recommend funding for legal costs, and on what terms.

Those are the only firm dates we can provide at this time. Before we can announce the start date for public hearings, we have to be sure that we have obtained information and interviewed potential witnesses and others. This will take some time. Commission staff will have to organize the necessary evidence and prepare for the hearings, so that this information can be presented in an understandable and efficient way. I hope that we will be in a position to start the hearings in December or early in the new year. Subject to the objectives of fairness and thoroughness, we will conduct our work as quickly and economically as possible.

Once we can make more definitive estimates of timing, we will be sure to inform the public and media of significant developments.

At this early stage, I encourage anyone who has information that they think might be helpful to the work of this Commission, whether it involves documents or names of potential witnesses, to provide us with this information as soon as possible. Starting last Thursday, an advertisement was placed in Nova Scotia newspapers asking for this information. It will be published again during the coming week. We look forward to the interest and involvement of Nova Scotians in the work of the Commission.

## **2. Ruling on Standing and Funding, October 27, 2005**

In early October, this Commission published a Notice of Hearing and Call for Applications for Standing, which invited interested persons, groups, organizations, agencies or corporations to apply for standing with the Commission. Further, as the Terms of Reference for the Commission, set out in the June 29, 2005 Order in Council, permits me to make recommendations to the Minister of Justice that legal costs for some parties should be met out of public funds, we invited applications for such recommendations.

The Commission received eight applications for standing, and of those eight, four applicants also sought a recommendation for funding. Applicants provided written briefs to the Commission on October 21. I heard oral submissions from some of the parties at the optional hearing on October 25. All of the applicants are represented by legal counsel.

### **I. Standing**

I have granted standing to persons or groups who have demonstrated either that they have a substantial and direct interest in the subject matter of the Inquiry, or that their participation may be helpful to me in fulfilling my mandate. The specific guidelines for considering these applications have been set out in our *Rules of Procedure*, particularly Rules 12–19.

#### **A. What “standing” means**

Essentially, standing gives a person or group an active level of involvement in the ongoing work of the Commission. Persons granted standing will be allowed to participate fully in the Inquiry unless their standing is limited for some specific purpose. A grant of standing entitles a party to:

- review the documents disclosed in the pre-hearing investigation process;
- receive advance notice of documents proposed to be introduced into evidence;
- receive copies of witness statements of anticipated evidence;
- a seat at the counsel table;
- the opportunity to question witnesses when public hearings begin;
- the opportunity to suggest documents, witnesses and lines of questioning for certain witnesses, thereby assisting in the investigation and hearing processes; and
- the opportunity to make oral and written submissions at the close of the Inquiry as to its findings and recommendations.



By seeking and being granted standing, a party is deemed to undertake to follow the Commission's *Rules of Procedure*.

***B. Decisions on applications for standing***

I have granted standing to all of the eight applicants, for the reasons that follow. I have decided that a broad grant of standing to all parties will best ensure that the parties will be available to assist Commission counsel throughout the Commission's mandate.

The only limitations I make are noted for each party, as applicable. Those limitations are that a party's standing may be limited to its particular interest and relevance to specific issues before the Inquiry. I will expect parties and their counsel to exercise appropriate judgment with respect to which issues (along with related witnesses and documents) engage the scope of their particular interest. The scope of any limitation will also be relevant to my decisions on funding.

Of course, all parties and their counsel are welcome to attend the public hearings even when their interests are not specifically engaged.

***1. The Royal Canadian Mounted Police ("RCMP")***

The Commission's terms of reference notes that I am to examine "the actions of law enforcement" along with other public officials in the relevant time period and circumstances. RCMP members were involved with the young person before his appearance in Windsor on October 12, 2004. As such, the RCMP has a substantial and direct interest in the subject matter of the Inquiry.

The RCMP has requested a form of limited standing. I am granting it full standing. The RCMP and its counsel can decide to what extent, and when, it wishes to be involved.

***2. Halifax Regional Police ("HRP")***

As I noted above for the RCMP, the Commission's terms of reference specifically notes that I am to examine "the actions of law

enforcement” along with other public officials in the relevant time period and circumstances. HRP members were involved in relevant events and the young person’s numerous contacts with law enforcement in the time leading up to and following Ms. McEvoy’s death on October 14, 2004. As such, the HRP has a substantial and direct interest in the subject matter of the Inquiry.

I am granting full standing to the HRP.

### *3. Attorney General of Nova Scotia*

The Attorney General of Nova Scotia, representing Her Majesty the Queen in Right of the Province of Nova Scotia, has applied for standing on behalf of all of the Province’s departments, agencies and officials.

The Commission’s terms of reference include numerous matters for which the Province of Nova Scotia has a direct and substantial interest, including its courts’ and departments’ policies, procedures and practices, along with the actions of the Public Prosecution Service, courts and justice officials and other public officials throughout the relevant time frame. Further, as the Commission may consider more general issues of youth criminal justice or other provincial policy matters, I expect that the Province’s participation will be helpful to me in fulfilling my mandate.

I am granting full standing to the Attorney General.

### *4. The Young Person*

The young person charged with criminal offences arising out of the death of Ms. McEvoy, who cannot be identified under the relevant provisions of the *Youth Criminal Justice Act* and Rule 6 of the Commission’s *Rules of Procedure*, has applied for standing. As the Commission’s work proceeds, the circumstances of this young person’s life and conduct will be considered in detail, particularly those circumstances relating to his involvement with the law in the relevant time periods. As such, this young person has a substantial and direct interest in the subject matter of the Inquiry.

I am granting full standing to the young person, with the only limitation that his involvement must be within his particular interest and relevance to the issues before me. In his case, I expect that interest would be limited primarily to the facts and circumstances in which he was involved.

*5. Canadian Bar Association—Nova Scotia Branch (“CBA”)*

The CBA is a professional, voluntary organization representing over 1,000 lawyers, judges, law teachers and law students. As counsel for the CBA pointed out to me, all but one of Nova Scotia’s provincially appointed judges are members of the CBA. I was told that the CBA, among other things, “promotes fair justice systems, facilitates effective law reform and protects the independence of the judiciary and the bar.”

Some of the public officials whose actions and procedures I am to consider under the Terms of Reference are lawyers and judges, and I expect that the CBA will be in a position to provide helpful input to the discharge of the Commission’s mandate in that regard. Therefore, the CBA’s participation may be helpful to the Commission.

I am granting full standing to the CBA with the only limitation that its involvement should be within its interest and relevance to the issues before me. I understand from its submission that its interest would be engaged primarily at the level of policy and procedure.

*6. William N. Fergusson, Q.C.*

Mr. Fergusson is with the Public Prosecution Service, and was the Crown Attorney in Windsor who prosecuted the young person and participated in events relating to his release from custody on October 12, 2004. As a justice official, Mr. Fergusson’s actions will be considered by the Commission. As such, he has a substantial and direct interest in the subject matter of the Inquiry.

I am granting full standing to Mr. Fergusson, with the only limitation that his involvement must be within his interest and relevance to the issues before me. In his case, I expect that interest

would be limited to the relevant facts and circumstances before the Inquiry in which he was involved, and related issues.

#### *7. Leonard MacKay*

Mr. MacKay is also with the Public Prosecution Service, and was the Crown Attorney in Halifax in legal proceedings involving the young person. As a justice official, Mr. MacKay's actions will be considered by the Commission. As such, he has a substantial and direct interest in the subject matter of the Inquiry.

I am granting full standing to Mr. MacKay, with the only limitation that his involvement must be within his interest and relevance to the issues before me. In his case, I expect that interest would be limited to the relevant facts and circumstances before the Inquiry in which he was involved, and related issues.

#### *8. McEvoy family members*

Twenty-four members of Theresa McEvoy's immediate and extended family have applied individually for standing and together as Ms. McEvoy's representatives, but have indicated that their interests are consolidated into this single application.

Theresa McEvoy's death is what has prompted this Inquiry. In light of the family members' relationship to Ms. McEvoy and their interest in all aspects of this Inquiry, they have a substantial and direct interest in the subject matter of the Inquiry.

I am granting full standing to the McEvoy family members, with their individual interests consolidated into one grant of standing.

## **II. Funding**

The Commission's Terms of Reference, as set out in the Order in Council of June 29, 2005, authorize me to make recommendations to the Minister of Justice for public funding of parties' legal costs, respecting who may receive funding, rates of remuneration and reimbursement, the extent of funding and the assessment of accounts.

### **A. Funding Guidelines**

In anticipation of receiving applications for recommendations for funding of legal costs, the Commission prepared *Guidelines for Recommendations for Funding for Legal Costs*, setting out the principles and approach that I intended to apply.

The purpose of funding is to permit a party to adequately represent its interests at the Inquiry. In considering applications, I indicated that I would apply the following general principles:

- this Inquiry is an inquisitorial, and not adversarial, proceeding, and the scope of legal counsel for parties and witnesses is thereby limited;
- it is not in the public interest to have open-ended funding of legal costs. The taxpayers of Nova Scotia have a right to expect a principled approach to the spending of their money;
- recommendations for funding will only be made in circumstances in which legal representation is considered by the Commissioner to be necessary and there are no other means by which such legal representation can be funded adequately, or in such other particular circumstances as I, in my discretion, deem appropriate;
- funding for legal representation is not for the purpose of indemnifying applicants for all of the legal costs they incur; and
- all legal counsel will be expected to work in a cost-effective manner, avoiding both unnecessary duplication and work not reasonably necessary to the representation of their clients.

In making this ruling, I have applied those general principles. I am also mindful of the particular circumstances of each of the applicants, which I have considered along with evidence of whether they have means other than through public monies by which their legal representation may be funded, and the applicants' particular requests.

The scope of the funding I recommend relates to the payment of parties' legal counsel and reasonable disbursements in relation to

the work of counsel. I will leave it to the Minister of Justice to specify to the parties which expenses will be paid, and at what rate. Funding, as recommended by me, includes only legal work done after June 29, 2005, when this Commission was established.

In the Commission's Guidelines for Recommendations for Funding for Legal Costs, I have indicated that accounts paid from public funds should be subject to assessment. In guideline 5(j), I note that the Minister of Justice may refer any particular account to me for my review if the account appears inconsistent with the guidelines or my recommendation for funding. I do not expect that, in the ordinary course, Commission counsel or staff will assess parties' accounts as they are rendered. If the Minister of Justice accepts my recommendations, I expect parties will render accounts to him.

Counsel will recognize the degree of trust inherent in this procedure and are expected to be careful and fair in their billings, the accuracy of which may be judged by reference to my ruling on standing respecting the parties' interests, my recommendations for funding, the Commission's Guidelines and the record of proceedings.

#### ***B. Decisions on Applications for Recommendations for Funding***

Only four of those who applied for standing also applied for a recommendation for public funding of legal costs. I have made recommendations for funding of legal costs for each of the four applicants, for the reasons that follow. The parties are to follow all of the *Guidelines for Recommendations for Funding for Legal Costs*, subject to my specific direction as to exceptions.

Some of the guidelines bear repeating here:

- usually, no more than one counsel should receive funding for any one hearing day;
- parties' counsel will only receive funding for attendance at hearings in which their interest is directly engaged;
- legal work should include reasonable time for preparation by counsel in addition to attendance at hearings; and

- counsel should take all steps possible to work in a cost-effective and efficient manner, and to avoid duplication of legal work.

### 1. *The Young Person*

I am satisfied that the young person meets the criteria for funding and he would not otherwise be able to participate without such funding. Therefore, I recommend funding for his senior counsel, Warren Zimmer, in accordance with the *Guidelines*, at the level of \$165 per hour. I understand that junior counsel, Cameron MacKeen, will assist Mr. Zimmer with preparation and may attend if Mr. Zimmer is not available. I recommend funding for Mr. MacKeen at the rate of \$75 per hour.

### 2. *William Fergusson, Q.C.*

I am satisfied that Mr. Fergusson meets the criteria for funding. I am also mindful of the circumstances in which he has sought legal counsel independent from his employer, the Public Prosecution Service of Nova Scotia (through the Attorney General), because of his particular, individual involvement in this matter. I am considering those particular circumstances in making this award of funding.

Therefore, I recommend funding for his senior counsel, David Bright, Q.C., in accordance with the *Guidelines*, at the level of \$165 per hour. I understand that junior counsel, Jan Murray, will assist Mr. Bright with preparation and may attend if Mr. Bright is not available. I recommend funding for Ms. Murray at the rate of \$60 per hour.

### 3. *Leonard MacKay*

For the same reasons as for Mr. Fergusson, I am satisfied that Mr. MacKay meets the criteria for funding.

Therefore, I recommend public funding for his counsel, Mark Knox, in accordance with the *Guidelines*, at the level of \$150 per hour. I would encourage Mr. MacKay to identify a junior counsel to assist Mr. Knox, who may be funded at the appropriate level.

#### 4. McEvoy family members

On the basis of the information before me, I am satisfied that the McEvoy family members meet the criteria for funding, and they would not otherwise be able to participate without such funding.

The family has suffered a personal loss as a result of Theresa McEvoy's tragic death. Family members were instrumental in the calling for this public inquiry and have an interest in all aspects of the Commission's mandate. I note their counsel's argument that the public officials, law enforcement and government bodies will have their full legal fees paid by the public. In the interest of fairness, the family should be in a position to have their interests adequately represented during the work of the Commission.

The McEvoy family submitted, and I agree, that they should not have to incur a financial loss by participating in the work of the Commission. Their particular circumstances are such that full indemnity of their legal costs is appropriate.

The Commission's *Guidelines* note that, as a general principle, funding for legal representation is not for the purpose of indemnifying applicants for all of the legal costs they incur. The chart of hourly rates in guideline 5(b) reflects only that partial indemnity. Because of this, I will not require the family's counsel to adhere to those hourly rates.

The family's counsel indicated that the family had negotiated an hourly rate with him of \$250. I believe that rate to be too high in the circumstances, given the public nature of this inquiry. Their counsel should be paid at a reasonable rate, one comparable to the maximum paid by the Government of Nova Scotia when it retains senior outside counsel, which I understand to be in the range of \$200 per hour.

I acknowledge that two of the family's lawyers are senior. Therefore, I recommend that the family's senior counsel be paid at that maximum level of remuneration. I recognize that this rate may not be what these lawyers charge individual or corporate clients



involved in civil litigation or other private legal matters, and is less than the negotiated rate with the family. However, given the public nature of this inquiry and the fact that the taxpayers of Nova Scotia will pay the legal costs, I feel that is a reasonable rate of remuneration in the circumstances. In the interest of the public, I ought not to recommend a rate in excess of that. There may be lengthy attendances at the hearings, in preparation, and for a significant duration. There is no question that even at this lower rate the family's legal fees will be significant.

I am prepared to make a further exception to the *Guidelines*, by recommending the funding of two senior counsel, Hugh Wright and Danny Graham, and one junior counsel, Julia Clark, for the family. I understand that Mr. Graham will primarily advise the family on issues relating to criminal law and youth justice issues. This will allow the family to adequately prepare and be involved in all aspects of the work of the Commission.

I would expect the family's counsel in all other respects to follow the *Guidelines* in preparing their legal accounts.

Therefore, I recommend public funding for Mr. Wright and Mr. Graham at the level of \$200 per hour. I recommend funding for Ms. Clark at the rate of \$100 per hour.

The McEvoy family has made other submissions relating to costs, and I make the following comments on three issues raised:

- I recognize that there are 24 family members, and I have granted consolidated standing to them. The family has suggested that representing such a large group will require additional effort on behalf of legal counsel to ensure adequate communication. I was encouraged to learn from their counsel that they have formed a "committee" of three family members to facilitate giving instructions to their lawyers. It appears to me that the family committee will also be able to assist with communication, and as such it is unlikely that there will be additional legal costs related to communication.

- I am not inclined to grant the family's request to cover the travel expenses of one of Ms. McEvoy's sons to attend public hearings. I am confident that with communication from the family's counsel and other family members, along with the detailed information, including transcripts, that will be posted on the Commission's website, he will be able to follow the evidence as the Commission's work continues.
- I am also not inclined to have public funds pay for the preparation of expert reports by the family or other parties. I would encourage parties' counsel to suggest to Commission Counsel any areas in which expert assistance may be required. If expert assistance is seen to be necessary, any related fees may be covered directly by the Commission.

I appreciated the assurances that Mr. Wright provided during the oral hearings that the family's counsel is taking all reasonable steps to avoid unnecessary duplication and to encourage efficiency in providing legal counsel. I have every reason to believe that their accounts rendered to the Minister of Justice for payment from public funds will reflect those assurances. As I noted during the oral hearings, I am sympathetic to the family's position, and am pleased that they will be in a position to play such an active part of the work of the Commission.

### ***C. Summary***

I have granted standing to eight parties and made recommendations for public funding of legal costs for four of those parties. I encourage counsel for the parties to work with Commission Counsel to carefully assess where the interests, perspectives and expertise of their clients coincide with those of other parties, and, where possible, to work together with a view to avoiding duplication in the questioning of any witnesses or in any submissions that may be made.

I thank counsel for their useful submissions, and I trust that the co-operation between the parties' counsel and Commission Counsel will continue.

### **3. Supplementary Ruling on Funding, November 18, 2005**

On October 27, 2005, I issued my decision on applications for standing before the Commission of Inquiry and made recommendations to the Minister of Justice for public funding of some parties' legal costs.

In my decision, I granted standing to Leonard MacKay and recommended that he receive funding for his legal costs in accordance with the Commission's *Guidelines for Recommendations for Funding of Legal Costs*. In my decision, I stated on page 7:

For the same reasons as for Mr. Fergusson, I am satisfied that Mr. MacKay meets the criteria for funding.

Therefore, I recommend public funding for his counsel, Mark Knox, in accordance with the *Guidelines*, at the level of \$150 per hour. I would encourage Mr. MacKay to identify a junior counsel to assist Mr. Knox, who may be funded at the appropriate level.

In response to the invitation in my decision, Mr. McKay has now identified a junior counsel, Kelly Serbu of Wheeler Serbu. I understand that Mr. Serbu will assist Mr. Knox with his preparation and may attend if Mr. Knox is not available. I am prepared to grant this request, and considering Mr. Serbu's seniority at the bar and in accordance with the *Guidelines*, I recommend to the Minister of Justice that Mr. MacKay receive public funding for Mr. Serbu at the rate of \$105 per hour.

#### 4. Supplementary Ruling on Funding, February 13, 2006

On October 27, 2005, I issued my decision on applications for standing before the Commission of Inquiry and made recommendations to the Minister of Justice for public funding of some parties' legal costs. In my decision, I granted standing to the family of Theresa McEvoy, and recommended that they receive funding for their legal costs in accordance with the Commission's *Guidelines for Recommendations for Funding of Legal Costs* and on the basis of the specific terms set out in my decision.

In a letter dated January 23, 2006, the family's main counsel, Hugh Wright, made a supplemental request on their behalf for a change in their funding arrangements. Mr. Wright explained that since my October 27 decision, one of the approved counsel, Danny Graham, has been appointed to another significant role such that he will now have limited involvement in the family's representation before this inquiry. Instead of putting forward another lawyer to take Mr. Graham's place, the family has instead requested funding for the payment of a litigation paralegal to assist with electronic document handling at an hourly rate of \$75, and articulated clerks at a rate of \$60 to assist with document organization and preparation for witnesses.

I am prepared to grant this request in the circumstances. I will expect that the fees associated with these activities will be reasonable, and consistent with the primary role of Commission counsel, rather than parties' counsel, in adducing evidence from witnesses. Further, I expect that any paralegal hourly fees associated with document software and file loading will be minimal, since the Commission has handled the scanning, coding, preparation and distribution of the documents in electronic form.

## 5. Statement regarding Confidentiality Provisions under the *Youth Criminal Justice Act*, January 16, 2006

The confidentiality of youth court proceedings and of youth in trouble with the law is a central part of Canada's youth criminal justice system.

With few exceptions, information that would lead to the identity of a young person involved in criminal proceedings is protected from publication. The rationale is that publication of the name of a young person could impede his rehabilitation efforts and negatively affect him.

As the Supreme Court of Canada has recognized, the non-publication and restrictions on disclosing information and youth records are designed to “maximize the chances of rehabilitation for a young offender” (Lamer C. J. in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835).

### **The legislation's framework**

Part 6 of the *Youth Criminal Justice Act* sets out a framework to protect information about young persons who have been dealt with under the legislation. This framework essentially serves three purposes:

1. It provides for strict limitations on the publication of information about young persons, as offenders or as witnesses or victims of youth crime;
2. It specifies what records must or may be kept by officials about the young persons who have been dealt with under the legislation; and
3. It governs access to and disclosure of information in those records by officials and professionals when necessary for their duties or functions under the law.

The first purpose—protection of identity of young persons—and the third purpose—access to and disclosure of information—are relevant to the work of this Inquiry. Let me address both of these points,

and provide some logistical guidance as our public hearings get under way.

### **Protection of identity of young persons**

First, the publication of identifying information.

Sub-section 110(1) of the YCJA prohibits the publication of identifying information about youths involved in the justice system, although the media can and do publish information about youths involved in the justice system without naming them or otherwise identifying them. The following subsections provide some important exceptions that would allow the media to name or otherwise identify youths who are being dealt with under the act.

Of importance in this case, under subsection 110(2)(a), the publication of identifying information is permitted “in a case where the information relates to a young person who has received an adult sentence.”

The young person, AB, who was charged with criminal offences arising from his operation of the stolen car that struck and killed Theresa McEvoy was sentenced as an adult last Wednesday. The media have reported widely his name and identity. I do not need to make any direction on that issue. We will use his name in the course of these public proceedings. In the event that his situation changes—by the order of a youth court judge, for example—we will change our approach as appropriate.

For the moment, for publication of the Inquiry transcripts on the Commission’s website, we will continue to use Mr. B’s initials and will remove any identifying information.

In the course of these hearings, there may be mention of names of other young persons that continue to be subject to the restrictions of publication under the act. Even if their names are mentioned during the testimony or submissions before me, in all public documents (including transcripts), we will use only their initials. And,

the media should note that there is a ban on publication of their names or any other identifying information.

### **Access to and disclosure of documents**

Second, let me turn to media and public access to documents before the Inquiry.

Sections 113 to 129 of the YCJA govern the records relating to young offenders kept by the police, youth justice courts, probation offices and correctional services, as well as records of other agencies to the extent that they are related to the youth justice court process. These provisions restrict access to records and control their disclosure. These restrictions remain in place, even for young persons who have received an adult sentence.

Because of the nature and scope of this Commission of Inquiry, it has been important for us to review numerous documents, including many that are subject to the YCJA restrictions.

In sub-section 119(1), the act carefully restricts the classes of persons who may have access to these kinds of records. There is a provision in subsection 119(1)(r) that “a person or class of persons designated by order of the Lieutenant Governor in Council [that is, the Cabinet of Nova Scotia]” may be granted access to certain of those documents “for a purpose and to the extent specified in the order.”

The Order in Council of June 29, 2005, which appointed me as Commissioner, designated me and Commission counsel as persons who could access YCJA records, “for the purposes of conducting the inquiry.” An amended Order in Council, dated December 15, 2005, also designated parties granted standing before the Commission and their legal counsel access to those same documents “for the purpose of the inquiry.”

These Orders have enabled us to share with the parties the relevant documents disclosed during the pre-hearing investigation stage of this Inquiry.

As I have advised all counsel, I am treating all of the documents disclosed, including those subject to the YCJA, as admissible and admitted. Even if a witness does not speak to a particular document, I will be able to review in making findings or considering appropriate recommendations, if any.

In a few moments, after he makes his opening statement, Mr. Messenger will enter those documents as exhibits before this Inquiry. Usually, in keeping with the public and open nature of a Commission like this one, exhibits that are entered are available for review by the public and the media. Because of the circumstances and subject matter of this Inquiry, that cannot be the situation here.

Documents may be put to a witness or referred to by counsel, but a copy of those documents subject to the act will not be available for public review. They will not be posted on the Commission's website.

The purpose and provisions of the YCJA prohibit this.

And we have amended the Commission's Rules of Procedure to further clarify this point. Our Rule 30 has been added to as follows:

*Documents received by the Commission that are subject to sections 114, 115 and 116 of the YCJA, even if they are entered as exhibits or referred to by a witness or legal counsel during the public hearings, shall continue to be treated a confidential. Such documents shall not be made available for review at any time by anyone not authorized by the Order in Council.*

For documents that are not subject to those restrictions, members of the media or the public may make a request of Commission staff for access to a copy of a document, and we will do our best to make that material available.



## 6. Supplementary Ruling on Standing (Oral), May 16, 2006

### COMMISSIONER:

Before we go on, counsel, I've had a request from Ian Pickard for—to be granted standing on behalf of the Halifax Regional School Board, and he acknowledges in his request that he's beyond the time that was set for making an application for standing, but he does feel that the Board has a substantial and direct interest in the subject matter of the Inquiry and he also indicates that he believes its submissions will be helpful to the Commission. So I am granting him standing. I'm granting the School Board standing, and [the School Board is] not interested in examining the witnesses. It's merely to look at the evidence that we have and submit a brief at the appropriate time. So the Board is granted standing for that purpose.

