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

**Citation:** *Nova Scotia (Community Services) v. Birth Registration # 2016-02-002781*, 2017 NSSC 27

**Date:** 20170202
**Docket:** SFHCFSA 102013
**Registry:** Halifax

**Between:**

Nova Scotia (Community Services)

Applicant

and

Birth Registration # 2016-02-002781

Respondent

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**Judge:** The Honourable Associate Chief Justice Lawrence I. O'Neil

**Heard:** January 10, 2017 at Halifax, Nova Scotia

**Issues:** 1. Do one or more constitutional questions arise from the 'adoption' provisions of the *Children and Family Services Act*, S.N.S., 1990 c.5?

2. If so, should notice of a constitutional question(s) be given to the Attorney General of Nova Scotia?

**Summary:** Sections of the *Children and Services Act,* S.N.S. 1990 c.5 provide for adoption procedures to be followed. The statute creates different processes, notice and consent requirements that may be impacted by whether a child is legitimate or not; whether the father is married to the child's mother or not and by whether the father lives with the child's mother *inter alia*.

The questions that arise relate to whether the distinctions are a violation of the legal rights of the child or the father in some circumstances and the questions also relate to whether the distinctions are a violation of the equality rights of the child or the

father in some circumstances.

The Court held that notice of constitutional question should be given to the Attorney General of Nova Scotia and outlined the questions.

The Court released an earlier decision, 2017 NSSC 296 that provides further background.

**Keywords:** adoption; service; notice of adoption; parent; legal rights; equality rights; Charter of Rights and Freedoms

**Legislation:** *Children and Family Services Act*, S.N.S.1990 c.5
*Constitutional Questions Act*, RSNS 1989, c.89
*Charter of Rights and Freedoms; Constitution Act* 1982

**Cases Considered:**
- *Nova Scotia (Community Services) v. T.G.*, 2012 NSCA 19
- *D.B.S.*, 2006 SCC 37
- *Kerr v. Baranow*, 2011 SCC 10
- *New Brunswick (Minister of Health) v. G.(J.)*, 1999 3 SCR 46
- *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315
- *J.T. v. Manager of Child, Youth and Family Services, Zone E v. D.L.*, 2015 NLCA 55

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

> Section 94(1) provides:
>
> "No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or relative of the child."

**Judge:** Associate Chief Justice Lawrence I. O'Neil

**Heard:** January 10, 2017 in Halifax, Nova Scotia

**Written Decision:** February 2, 2017

**Counsel:** Peter McVey, QC
Judith A. Schoen

**By the Court**:

## Introduction

[1] This is a follow up to the Court's earlier decision in the same matter, 2016 NSSC 296 and further to the Court having advised the parties by e-mail dated January 17, 2017 that Notice of a Constitutional question(s) would be given to the Attorney General of Nova Scotia. This is background to the decision to provide the subject Notice to the Attorney General.

[2] In its first decision, the Court expressed concern that the application to support the adoption of a child did not address the issue of what knowledge, if any, the child's biological father had of the proposed adoption or even of the existence of the child subject to the application. The Minister takes the view that the biological father was not a parent as defined by s.67(1)(f) of the *Children and Family Services Act*, S.N.S. 1990 c.5 and therefore not entitled to notice.

[3] That provision provides:

> 67(1) In this Section and Sections 68 to 87,
>
> (f) "parent" of a child means
>
> (i) the mother of the child,
>
> (ii) the father of the child where the child is a legitimate or legitimated child,
>
> (iii) an individual having custody of the child,
>
> (iv) an individual who, during the twelve months before proceedings for adoption are commenced, has stood in loco parentis to the child
>
> (v) an individual who, under a written agreement or a court order, is required to provide support for the child or has a right of access to the child and has, at any time during the two years before proceedings for adoption are commenced, provided support for the child or exercised a right of access,

> (vi) an individual who has acknowledged paternity of the child and who
>
> > (A) has an application before a court respecting custody, support or access for the child at the time proceedings for adoption are commenced, or
> >
> > (B) has provided support for or has exercised access to the child at any time during the two years before proceedings for adoption are commenced,
>
> but does not include a foster parent.

[4] At paragraph 12, the Court identified the issue before it as follows:

> [12] The issue for the court at this juncture of the process is whether notice of this proceeding must be provided to the child's father or whether these circumstances require an explanation for why notice to the father has or has not been provided. Notice of this proceeding would, at a minimum, provide an opportunity for a father to establish that he is a parent. Is it illogical to assert that a father who may not be aware his child has been born is not a parent because he has not paid child support or visited the child, for example? Is this circular reasoning?

[5] Counsel for the Minister confirmed an interest in appearing in response to the Court's invitation to do so as contemplated by s.4 of the *CFSA*.

[6] Subsequently, the Court directed the following communication to the Minister's counsel and counsel for the Applicants on Monday, January 9, 2017:

> Counsel, I am out of the office today and, as you know, due to a personal circumstance, have been for the past week.
>
> I have had the opportunity to study the material provided by you and thank you for the same.
>
> I note from Mr. McVey's submission he is not authorized to speak to certain constitutional questions that may be alive in this matter. For that reason, I propose to provide formal notice of the same as contemplated by s. 10 of the *Constitutional Questions Act,* RSNS 1989, c. 89 and consistent with R 31.19 or an analogous direction.

> I will hear you tomorrow on this proposed course of action if you wish to make a submission in opposition to proceeding in this way. If tomorrow is too early for you to be prepared to do so, I will provide additional time. Should I then decide to provide notice I suggest all arguments be on the same day. For rescheduling purposes I will free time on my docket to hear the matter when all counsel are prepared and available should the matter not proceed tomorrow. Subject to the foregoing I do not anticipate a significant delay.
>
> Finally, if you know you will not be opposing notice to the Attorney General please advise today. This will impact on preparation for tomorrow's appearance. Please have your calendars available tomorrow for reference if necessary.

[7] On January 10, 2017 both counsel appeared and asked that the Court not provide notice of a constitutional question. The exchanges between the Court and counsel form part of the record.

[8] The Minister's counsel cautioned the Court against initiating the process under the *Constitutional Questions Act,* RSNS 1989, c.89 on its own motion and described what it viewed as practical obstacles for the Court should it do so. Counsel also expressed concern about the delay in concluding the adoption application process initially brought before the Court, which will be occasioned by a notice of constitutional question.

[9] The Minister's counsel also advised the Court it would seek to become a party as provided by s.77 of the *Children and Family Services Act*, S.N.S. 1990, c.5; the '*CFSA*'. The Court will consider the Minister's request and whether it is within the scope of s.77 of the *CFSA* in these circumstances.

[10] Counsel for the Minister explained that the practice at the Department of Justice is to have separate counsel address any constitutional arguments solely.

**Background**

[11] Several legal routes may underlie an application to adopt a child. In its earlier decision referenced above, the Court reviewed the route followed by the application before the court; it is an application pursuant to an agreement to place a child for adoption. I will not restate my earlier description of the statutory scheme governing that process.

[12] The court's obligations *inter alia*; when presented with an adoption application are provided by s.78 of the *CFSA*:

> Adoption order
>
> 78 (1) Where the court is satisfied
>
> (a) as to the ages and identities of the parties;
>
> (b) that every person whose consent is necessary and has not been dispensed with has given consent freely, understanding its nature and effect and, in the case of a parent, understanding that its effect is to deprive the parent permanently of all parental rights; and
>
> (c) that the adoption is proper and in the best interests of the person to be adopted,
>
> the court shall make an order granting the application to adopt.
>
> (2) The court, by an order for adoption, may order such change of name of the person adopted as the applicant requests, or may order that the name of the person adopted shall not be changed by the adoption.
>
> (3) Unless the court otherwise orders, the surname of an adopted person shall be the surname of the person who adopts that person.
>
> (4) Where an adoption order is granted in respect to a child who is or may be an Indian child, the Minister shall be so advised by the court and the Minister shall forward notification of the adoption of the Indian child in such form as may be prescribed, to the federal Department of Indian and Northern Affairs and to the MicMac Family and Children's Services of Nova Scotia.
>
> (5) Subject to subsection (6), where an order for adoption is made in respect of a child, any order for access to the child ceases to exist.
>
> (6) Where an order for adoption is made in respect of a child, the court may, where it is in the best interests of the child, continue or vary an order for access or an access provision of an agreement that is registered as an order under the Maintenance and Custody Act in respect of that child. 1990, c. 5, s. 78; 2005, c. 15, s. 6.

[13] The effect of an adoption order is prescribed by s.80 of the *CFSA*:

> Effect of adoption order
>
> 80 (1) For all purposes, upon the adoption order being made,
>
> > (a) the adopted person becomes the child of the adopting parents and the adopting parents become the father and mother of the adopted person as if the adopted person had been born in lawful wedlock to the adopting parents; and
> >
> > (b) except as provided in subsection (4) of Section 72, the adopted person ceases to be the child of the persons who were the adopted person's father and mother before the adoption order was made and those persons cease to be the parents of the adopted person, and any care and custody or right of custody of the adopted person ceases.
>
> (2) The relationship to one another of all persons, whether the adopted person, the adopting parents, the kindred of the adopting parents, the father and mother before the making of the adoption order, the kindred of those parents and the father and mother or any other person, shall be determined in accordance with subsection (1).
>
> (3) Subsections (1) and (2) do not apply for the purpose of the laws relating to incest and prohibited degrees of kindred for marriage to remove any person from a relationship in consanguinity that, but for this Section, would have existed.
>
> (4) In any enactment, conveyance, trust, settlement, devise, bequest or other instrument, "child" or "issue" or the equivalent of either includes an adopted child unless the contrary plainly appears by the terms of the enactment or instrument.

[14] Returning to the issue of delay in concluding an adoption process as a basis for this Court not inquiring as to the circumstances of the subject child, I observe that delay is often unavoidable and is often contemplated by the legislation itself.

[15] For example, a person aggrieved by an order for adoption may appeal within thirty days of the order (s.83(1) of the *CFSA*) and when aggrieved by an order for adoption made without notice ‘to the person hereunder’ may within one year after the date of the order apply to the issuing Court to set aside the order (s.83(2) of the *CFSA*).

[16] Section 83 of the *CFSA* provides:

> Appeal from or application to set aside adoption order
>
> 83 (1) A person aggrieved by an order for adoption made by the court may appeal therefrom to the Nova Scotia Court of Appeal within thirty days of the order.
>
> (2) A person aggrieved by an order for adoption made without notice to the person hereunder may within one year after the date of the order apply to the court to set aside the order and, if, upon such application, the court is satisfied that
>
> > (a) the written consent of such person for the adoption was obtained by fraud, duress or oppressive or unfair means of any kind;
> >
> > (b) the person is a person whose written consent was required pursuant to subsection (3) of Section 74 and was not obtained, dispensed with or deemed to have been given pursuant to subsection (3) of Section 75; or
> >
> > (c) the person is a parent who was entitled to enter into an adoption agreement pursuant to Section 68 and who did not enter into such an agreement,
>
> and the court considers it appropriate to set aside its order, the order may be set aside and, where the order is set aside, the court may make an order for custody or access in the best interests of the child.
>
> (3) A person under the age of majority whose adoption is sought may appeal by the person's guardian ad litem but no bond shall be required or costs awarded against a person who acts as a guardian ad litem.

[17] In the case of *Nova Scotia (Community Services) v. T.G.*, 2012 NSCA 19, the Minister sought and obtained permission to remove a child from a foster home one day before the child's second birthday, after the child had resided with the foster parent for almost two years and despite the desire of the foster parent to adopt the child.

**The Question(s)**

[18] The Court is not a litigant as that language is used in R.31.19. Nevertheless, the spirit of the direction of R.31.19 has guided the Court in preparation of this decision.

[19] The Court has decided to provide Notice of a Constitutional Questions and this background to assist the Attorney General and potentially expedite the

preparation and scheduling of a hearing relevant to the questions posed. The questions to be answered arise from an interpretation and application of section 7 and 15 of the *Canadian Charter of Rights and Freedoms*.

[20] Sections 7 and 15 of the *Charter of Rights and Freedoms; Constitution Act* provide:

> * * * *
>
> Legal Rights
>
> Life, liberty and security of person
>
> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
>
> * * * *
>
> Equality Rights
>
> Equality before and under law and equal protection and benefit of law
>
> 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> Affirmative action programs
>
> (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[21] For purposes of adoption, s.67(1)(f)(i) and (ii) treat the mother and father of a child differently and it treats legitimate and illegitimate children differently:

> Interpretation of Sections 67 to 87
>
> 67 (1) In this Section and Sections 68 to 87,

> (f) "parent" of a child means
>
> (i) the mother of the child,
>
> (ii) the father of the child where the child is a legitimate or legitimated child,

**Legal Rights**

[22] Is the distinction between the biological mother and the biological father when defining 'parent' a violation of the child's constitutionally enshrined legal rights; the right to life, liberty and security of the person as guaranteed by s.7 of the *Charter of Rights and Freedoms*?

[23] Is the distinction between the biological mother and the biological father when defining ‘parent’ a violation of the father's constitutionally enshrined legal rights; the right to life, liberty and security of the person as guaranteed by s.7 of the Charter of Rights and Freedoms?

**Equality Rights**

[24] Is the distinction between legitimate and illegitimate children a violation of the child's constitutionally enshrined equality rights? Does the distinction offend the child's right to equality before and under law and equal protection and benefit of the law as guaranteed by the *Charter of Rights and Freedoms*?

[25] Is the distinction between the fathers of legitimate and the fathers of illegitimate children a breach of the equality rights guaranteed by s.15 of the *Charter of Rights and Freedoms*? Does the distinction offend the father's right to equality before and under the law and equal protection and benefit of the law?

**Related Questions**

[26] Is there an obligation on the Minister to provide an opportunity for a person 'possibly aggrieved' (see the language of s.83(1) of the *CFSA*) to make the case that she/he is a parent?

[27] Is there an obligation on the Minister? the Court? or both? to inquire whether notice of the proposed agreement to place a child for adoption has been provided to a 'possibly aggrieved' individual?

[28] Is there an obligation on the Court to require sworn evidence that notice of the application to adopt has been given to a possibly aggrieved individual?

> 1. Are the following provisions of the *CFSA* impacted by conclusions in response to the earlier questions. The list is not meant to be exhaustive:
>
> (i) definition of parent, s.3(1)(f);
>
> (ii) parent's agreement to place a child for adoption, s.68(3);
>
> (iii) return of a child to a parent, s.68(6);

[29] Writing for the majority in *D.B.S.*, 2006 SCC 37, Justice Bastarache at paragraphs 36-37 commented on the responsibility that accrues to parents upon the birth of a child:

> 36 It is trite to declare that the mere fact of parentage places great responsibility upon parents. Upon the birth of a child, parents are immediately placed in the roles of guardians and providers. As La Forest J. wrote in M. (K.) v. M. (H.), 1992 CanLII 31 (SCC), [1992] 3 S.C.R. 6, at p. 62, it is "[f]or obvious reasons [that] society has imposed upon parents the obligation to care for, protect and rear their children."
>
> 37 The parent-child relationship engages not only moral obligations, but legal ones as well. Canadians will be familiar with these legal obligations as they have come to be refined, quantified and amplified through contemporary legislative enactments. But the notion of child support, as a basic obligation of parents, is in no way a recent concept. In 1896, P. B. Mignault wrote that [translation] "[t]he principal effect of the recognition, whether voluntary or forced, of illegitimate children is the claim to maintenance it gives the children against their fathers and mothers" (Le droit civil canadien, t. 2, 1896, at p. 138). The obligation of support was thus seen to arise automatically, upon birth; in one 1879 case, this meant that a child support award that included a period pre-dating the institution of the mother's action was confirmed on appeal: see Poissant v. Barrette (1879), 3 L.N. 12. And in one Ontario case, where the legal foundation for compensating someone who took care of another person's child was questioned, the moral obligation to support the child was still given legal recognition: Childs v. Forfar (1921), 51 O.L.R. 210 (S.C., App. Div.). Middleton J. explained his reasoning in these terms:

> While it is the law that there is no civil obligation on the part of a parent to maintain his infant child (Bazeley v. Forder, L.R. 3 Q.B. 559), his undoubted moral obligation to do so makes it very easy to find an implied promise to remunerate any person who, at his request or with his knowledge, undertakes to discharge this moral obligation for him: Latimer v. Hill, 1916 CanLII 542 (ON CA), 35 O.L.R. 36, 26 D.L.R. 800, 36 O.L.R. 321, 30 D.L.R. 660. [p. 217]

[30] Justice Cromwell described the relationship between a parent and a child which arises upon the birth of the child as a fiduciary one. (*Kerr v. Baranow*, 2011 SCC 10 at paragraph 208).

[31] The parental interest in raising and caring for a child was commented upon in *New Brunswick (Minister of Health) v. G.(J.)*, 1999 3 SCR 46 at paragraph 61:

> 61 I have little doubt that state removal of a child from parental custody pursuant to the state's parens patriae jurisdiction constitutes a serious interference with the psychological integrity of the parent. The parental interest in raising and caring for a child is, as La Forest J. held in B. (R.), supra, at para. 83, "an individual interest of fundamental importance in our society". Besides the obvious distress arising from the loss of companionship of the child, direct state interference with the parent-child relationship, through a procedure in which the relationship is subject to state inspection and review, is a gross intrusion into a private and intimate sphere. Further, the parent is often stigmatized as "unfit" when relieved of custody. As an individual's status as a parent is often fundamental to personal identity, the stigma and distress resulting from a loss of parental status is a particularly serious consequence of the state's conduct.

[32] Earlier in *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 the Court emphasized there are two fundamental principles at stake in child protection matters; principles that protect a child's right to life and to health and provide for fair procedures. At page 374 Justice La Forest stated:

> Page 374
>
> reference to the conflicting s. 15 and s. 27 rights of others.
>
> Once it is decided that the parents have a liberty interest, further balancing of parents' and children's rights should be done in the course of determining whether state interference conforms to the principles of fundamental justice, rather than when defining the scope of the liberty interest. Even assuming that the rights of children can qualify the liberty interest of their parents, that interest exists

> nonetheless. In the case at bar, the application of the Act deprived the appellants of their right to decide which medical treatment should be administered to their infant. In so doing, the Act has infringed upon the parental "liberty" protected in s. 7 of the Charter. I now propose to determine whether this deprivation was made in accordance with the principles of fundamental justice.
>
> Principles of Fundamental Justice
>
> This Court has on different occasions stated that the principles of fundamental justice are to be found in the basic tenets and principles of our judicial system, as well as in the other components of our legal system; see Re B.C. Motor Vehicle Act, supra; R. v. Beare, supra. The state's interest in legislating in matters affecting children has a long-standing history. In R. v. Jones, supra, for example, I acknowledged the compelling interest of the province in maintaining the quality of education. More particularly, the common law has long recognized the power of the state to intervene to protect children whose lives are in jeopardy and to promote their well-being, basing such intervention on its parens patriae jurisdiction; see, for example, Hepton v. Maat, supra; E. (Mrs.) v. Eve, 1986 CanLII 36 (SCC), [1986] 2 S.C.R. 388. The protection of a child's right to life and to health, when it becomes necessary to do so, is a basic tenet of our legal system, and legislation to that end accords with the principles of fundamental justice, so long, of course, as it also meets the requirements of fair procedure. Section 19 of the Act is but one of the numerous legislative expressions of the parens patriae power. It contemplates different situations where state intervention is mandated in order to ensure the protection

[33] Green, C.J.N.L. in a recent decision, *J.T. v. Manager of Child, Youth and Family Services, Zone E v. D.L.*, 2015 NLCA 55 was called upon to comment on the intersection of the Court's *parens patriae* jurisdiction; the Court's mandate to make decisions in the best interests of child(ren) the subject of litigation before it; and the principles of fundamental justice as they apply to children.

[34] It is a matter of interest that the Newfoundland Court of Appeal permitted the appellant to argue *Charter of Rights and Freedoms* issues, for the first time. The Court then proceeded to consider the constitutional issue presented. The issues were concisely stated by the Court at paragraphs 6 and 7:

> [6] That leaves for consideration the issue of whether section 32(6)(a) of the Children and Youth Care and Protection Act, which mandates that a continuous custody order "shall not contain conditions", violates the Charter's guarantee in section 7 that a person cannot be deprived of the right to life, liberty and security of the person except in accordance with the principles of fundamental justice.

> [7] The jurisprudence of the Supreme Court of Canada requires a two-step analysis in deciding whether there is a violation of section 7: (1) whether there is an infringement of the right to life, liberty or security of the person; and (2), if so, whether the infringement is contrary to the principles of fundamental justice. See Winnipeg Child & Family Services (Central Area) v. W. (K.L.), 2000 SCC 48 (CanLII), [2000] 2 S.C.R. 519, per L'Heureux-Dubé J. at paragraph 70.

[35] At paragraph 38-39, Chief Justice Green wrote:

> [38] The Supreme Court has already determined that the right of the state to intervene in the parent-child relationship to protect the child's life and health accords with the principles of fundamental justice "provided that there is a fair procedure for making this determination" (G.(J.), per Lamer C.J.C. at paragraph 70). In this case, the legislature has mandated a procedure for reviewing and authorizing state intervention by providing that the court may make the decision authorizing state intervention but only where such a decision is in the best interests of the child. A parent or child facing state intervention is entitled, as a matter of fairness, to have that determination made. If the court is prevented from doing so, a determination will be made that does not ensure that the parent and child are dealt with according to law, that is, in a manner that fully respects the best interests of the child. To do so in these circumstances is to violate the principles of fundamental justice so long as the legislation gives to the court the authority to make the best interest determination.
>
> [39] The matter can also be put another way. In Canada (Attorney General) v. Bedford, 2013 SCC 72 (CanLII), [2013] 3 S.C.R. 1101 and Carter v. Canada (Attorney General), 2015 SCC 5 (CanLII), [2015] 1 S.C.R. 33, the Court reiterated that laws that are "arbitrary, overbroad or having effects that are grossly disproportionate to the legislative goal" (Bedford, paragraph 105) violate the principles of fundamental justice. In Bedford, McLachlin C.J.C. explained that the "evil" of the absence of a connection between the infringement of rights and what the law seeks to achieve is addressed by the norms against arbitrariness and overbreadth (paragraph 108). In Carter, an arbitrary law was described as one that is not capable of fulfilling its objectives (paragraph 83) and a law that is overbroad is one that takes away rights in a way that generally supports the object of the law but "goes too far by denying the rights of some individuals in a way that bears no relation to the object" (paragraph 85). The Court in Carter also observed that:
>
> > [85] ... A law that is drawn broadly to target conduct that bears no relation to its purpose "in order to make enforcement more practical" may therefore be overbroad (see Bedford, at para. 113)

[36] When considering whether the violation of s.7 rights could be saved by s.1 of the Charter, he observed the following at paragraph 48-49:

> [48] In my view, the infringement of Ms. T.'s and the children's rights under section 7 is not saved by section 1 of the Charter. To be saved under section 1, it must be shown that the provision has a pressing and substantial objective and that the means are proportional to that object: Carter, paragraph 94. As noted in Carter, the circumstances where a person's section 7 rights can be overridden by operation of section 1 will be rare because section 7 rights are fundamental and laws that violate them are by their nature inherently flawed.
>
> [49] It is sufficient for the current analysis to say, based on the foregoing discussion, that the means chosen to achieve the objective of ensuring effectiveness and efficiency of decision-making by the manager after a continuous custody order has been made (removing the ability to make an access order as part of a continuous custody determination) are not proportional to achieving that objective, as they fundamentally alter the exercise of the state's parens patriae jurisdiction by allowing for decisions (by the court) that may not be in accordance with the underlying purpose of that jurisdiction, namely, acting in the best interests of the child. Furthermore, the minimal gain in efficient and expeditious dealing with post-order matters is outweighed by the substantial negative impact on parents and children in cases such as the present.

[37] As counsel are also aware, there are a number of Supreme Court decisions discussing equality rights. The state's contrasting treatment of persons having different genders and the state's different treatment of individuals based on attribute(s) that are irrelevant to the state's decision to do so has given rise to litigation. I need not review them at this juncture of the process.

[38] The foregoing is notice of Constitutional Questions to the Attorney General of Nova Scotia as contemplated by legislation and the Rules of the Court.

[39] A copy of this decision will be entrusted to Mr. McVey for deliver to Mr. Edward Gores, Q.C., counsel for the Attorney General. The Court scheduling office will be in communication with all counsel to schedule a Conference at which time filing deadlines and a plan forward will be confirmed.

O'Neil, ACJ