SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. T.P.S.*, 2019 NSSC 48

Date: 20190208
Docket: CRBW474100
Registry: Bridgewater

Between:

Her Majesty the Queen

v.

T.P.S.

LIBRARY HEADING

Restriction on Publication: S. 486.4 and of the *Criminal Code of Canada*

Judge:	The Honourable Justice Mona Lynch
Heard:	January 31, 2019 and February 1 and 4, 2019 in Bridgewater, Nova Scotia
Written Decision:	February 8, 2019
Subject:	State-funded counsel for complainant in a s. 276 application
Summary:	Amendments to the *Criminal Code* provide the complainant the right to appear, make submissions, and to be represented by counsel at stage two of a s. 276 application. There is currently no program in place in Nova Scotia to provide state-funded counsel to the complainant in such circumstances.
Issues:	Should the court order state-funded counsel for the complainant in the s. 276 application?

Result: State-funded counsel shall be provided to represent the complainant for the s. 276 application.

SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. T.P.S.*, 2019 NSSC 48

Date: 20190208
Docket: CRBW-474100
Registry: Bridgewater

Between:

Her Majesty the Queen

v.

T.P.S.

Restriction on Publication: S. 486.4 of the *Criminal Code of Canada*

Judge:	The Honourable Justice Mona Lynch
Heard:	January 31, 2019 and February 1 and 4, 2019, in Bridgewater, Nova Scotia
Counsel:	Sharon Goodwin, for the Crown Scott Brownell, for the Accused Adam Norton, for the Attorney General of Nova Scotia

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

By the Court:

Background:

[1] The accused is charged with: sexual assault contrary to s. 271 of the *Criminal Code*; invitation to sexual touching, contrary to s. 152; being in a position of trust or authority invitation to sexual touching contrary to s. 153(b); and touching for a sexual purpose contrary to s. 151. All the offences are alleged to have occurred between January 1, 1999 and December 31, 2004. The complainant is currently 23 years of age and was between the ages of three and eight when the offences are alleged to have occurred.

[2] The accused has made an application under s. 276 of the *Criminal Code* to adduce evidence that the complainant has engaged in sexual activity other than the sexual activity that forms the subject-matter of the charge.

[3] On the date scheduled to hear the s. 276 application, counsel for the Crown and Defence agreed that the matter should be adjourned. Amendments made to the *Crimnal Code* which came into effect on December 13, 2018 allow the complainant to appear, make submissions and be represented by counsel at a s. 276 admissibility hearing.

[4] A program, PRISO, run through the Victim Services Division of the Nova Scotia Department of Justice provides counsel to complainants in sexual offences where there is an application under s. 278 of the *Criminal Code* for access to records containing the complainant's personal information.

[5] Counsel for the Attorney General (AG) of Nova Scotia was present, in relation to a s. 278 application, to represent the record holders, the Department of Community Services. Counsel for the AG made enquires of the PRISO program to determine whether counsel would be provided to the complainant for the s. 276 application. After speaking with Victims Services, Counsel for the AG informed the court, that, at the present time, the program does not provide counsel to complainants for s. 276 applications, but counsel would be provided to the complainant for the s. 278 application. Counsel for the AG also made enquires to Nova Scotia Legal Aid and was told that there are discussions ongoing between the Nova Scotia Department of Justice and Nova Scotia Legal Aid to determine if a program will be instituted to provide counsel to complainants for s. 276 applications.

[6] There is currently no program in Nova Scotia that will provide state-funded counsel to the complainant in this case for the s. 276 application.

[7] Crown counsel spoke to the complainant who indicated that she wishes to participate in the s. 276 application. The complainant also provided information that she earns minimum wage working for 36 hours a week at a fast food establishment.

[8] Crown Counsel asked the court to make an order for state-funded counsel for the complainant in the s.276 application.

Issues:

[9] Should the court order state-funded counsel for the complainant in the s. 276 application?

Legislation:

[10] There have been recent amendments to the *Criminal Code* sections dealing with s. 276 and s. 278 applications. The relevant sections now read:

> **276(1) Evidence of complainant's sexual activity**
>
> In proceedings in respect of an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant
>
> (a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or;
>
> (b) is less worthy of belief.
>
> **276(2) Conditions for admissibility**
>
> In proceedings in respect of an offence referred to in subsection (1), evidence shall not be adduced by or on behalf of the accused that the complainant has engaged in sexual activity other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person, unless the judge, provincial court judge or justice determines, in accordance with the procedures set out in sections 278.93 and 278.94, that the evidence
>
> (a) is not being adduced for the purpose of supporting an inference described in subsection (1);
>
> (b) is relevant to an issue at trial; and
>
> (c) is of specific instances of sexual activity; and

(d) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

276(3) Factors that judge must consider

In determining whether evidence is admissible under subsection (2), the judge, provincial court judge or justice shall take into account

(a) the interests of justice, including the right of the accused to make a full answer and defence;

(b) society's interest in encouraging the reporting of sexual assault offences;

(c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;

(d) the need to remove from the fact-finding process any discriminatory belief or bias;

(e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;

(f) the potential prejudice to the complainant's personal dignity and right of privacy;

(g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and

(h) any other factor that the judge, provincial court judge or justice considers relevant.

276(4) Interpretation

For the purpose of this section, "sexual activity" includes any communication made for a sexual purpose or whose content is of a sexual nature.

Sections 276.1 to 276.5 were repealed.

278.93(1) Application for hearing — sections 276 and 278.92

Application may be made to the judge, provincial court judge or justice by or on behalf of the accused for a hearing under section 278.94 to determine whether evidence is admissible under subsection 276(2) or 278.92(2).

278.93(2) Form and content of application

An application referred to in subsection (1) must be made in writing, setting out detailed particulars of the evidence that the accused seeks to adduce and the relevance of that evidence to an issue at trial, and a copy of the application must be given to the prosecutor and to the clerk of the court.

278.93(3) Jury and public excluded

The judge, provincial court judge or justice shall consider the application with the jury and the public excluded.

278.93(4) Judge may decide to hold hearing

If the judge, provincial court judge or justice is satisfied that the application was made in accordance with subsection (2), that a copy of the application was given to the prosecutor and to the clerk of the court at least seven days previously, or any shorter interval that the judge, provincial court judge or justice may allow in the interests of justice and that the evidence sought to be adduced is capable of being admissible under subsection 276(2), the judge, provincial court judge or justice shall grant the application and hold a hearing under section 278.94 to determine whether the evidence is admissible under subsection 276(2) or 278.92(2).

278.94(1) Hearing — jury and public excluded

The jury and the public shall be excluded from a hearing to determine whether evidence is admissible under subsection 276(2) or 278.92(2).

278.94(2) Complainant not compellable

The complainant is not a compellable witness at the hearing but may appear and make submissions.

278.94(3) Right to counsel

The judge shall, as soon as feasible, inform the complainant who participates in the hearing of their right to be represented by counsel.

278.94(4) Judge's determination and reasons

At the conclusion of the hearing, the judge, provincial court judge or justice shall determine whether the evidence, or any part of it, is admissible under subsection 276(2) or 278.92(2) and shall provide reasons for that determination, and

> (a) if not all of the evidence is to be admitted, the reasons must state the part of the evidence that is to be admitted;
>
> (b) the reasons must state the factors referred to in subsection 276(3) or 278.92(3) that affected the determination; and
>
> (c) if all or any part of the evidence is to be admitted, the reasons must state the manner in which that evidence is expected to be relevant to an issue at trial.

278.94(5) Record of reasons

The reasons provided under subsection (4) shall be entered in the record of the proceedings or, if the proceedings are not recorded, shall be provided in writing.

[11] For s. 278 applications there is a specific provision for service of the application on the complainant and others:

278.3(5) Service of application and subpoena

The accused shall serve the application on the prosecutor, on the person who has possession or control of the record, on the complainant or witness, as the case

> may be, and on any other person to whom, to the knowledge of the accused, the record relates, at least 60 days before the hearing referred to in subsection 278.4(1) or any shorter interval that the judge may allow in the interests of justice. The accused shall also serve a subpoena issued under Part XXII in Form 16.1 on the person who has possession or control of the record at the same time as the application is served.

For s. 276 applications there is no corresponding provision for service of the application on the complainant.

Positions of the Parties:

[12] The Crown is asking that I make an order for state-funded counsel to be provided to the complainant using the inherent jurisdiction of the Supreme Court of Nova Scotia. The complainant has a right to counsel for the s. 276 application, she does not have the means to hire counsel, and the complainant's privacy interest can be affected by the decision. The only way to make the complainant's right to counsel a meaningful right is for state-funded counsel to be ordered.

[13] Counsel for the accused is not taking a position.

[14] Counsel for the AG suggests that the *Criminal Code* does not provide for state-funded counsel as it does in s. 684 for appeals and it is not a situation such as in the *R. v. Rowbotham*, 1988 25 O.A.C. 321 (C.A.) case where the accused's s. 7 and 11(d) *Charter* rights were in play.

Analysis:

Interests at stake:

[15] Counsel for the AG submitted that the consideration in this case were not like the considerations in *Rowbotham* where the accused's s. 7 and 11(d) *Charter* rights were being considered. This submission does not consider the balancing of the accused's rights and the complainant's rights. Along with s. 7 and 11(d), there are s. 8 and s. 15 rights in play in a s. 276 application.

[16] In *R. v. Mills*, [1999] 3 S.C.R. 668, the court discussed the tensions among the principles of full answer and defence, liberty, privacy and equality and found that no single principle is absolute and capable of trumping the others. Conflicting *Charter* principles require a balance to be achieved that respects both sets of rights. It is important to interpret rights in a contextual manner looking at the particular circumstances (para. 61). While *Mills* was dealing with records under s. 278, some

of their comments about privacy – the right to be free from intrusion or interference; privacy is at the heart of liberty in a modern state – are relevant to this case (para. 79). The court in *Mills* noted that privacy concerns are at their strongest in the context of information about one's lifestyle, intimate relations…(para. 80). The court quoted *R. v. Plant*, [1993] 3 S.C.R. 281 at p. 293:

> In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the *Charter* should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the lifestyle and personal choices of the individual. [Emphasis added.]

[17] In relation to *Charter* equality rights, the court in *Mills* said at para. 90:

> 90 Equality concerns must also inform the contextual circumstances in which the rights of full answer and defence and privacy will come into play. In this respect, an appreciation of myths and stereotypes in the context of sexual violence is essential to delineate properly the boundaries of full answer and defence. As we have already discussed, the right to make full answer and defence does not include the right to information that would only distort the truth-seeking goal of the trial process…
>
> The accused is not permitted to "whack the complainant" through the use of stereotypes regarding victims of sexual assault.

[18] The discussion regarding balancing of rights was summarized in *Mills* at paragraph 94:

> 94 In summary, the following broad considerations apply to the definition of the rights at stake in this appeal. The right of the accused to make full answer and defence is a core principle of fundamental justice, but it does not automatically entitle the accused to gain access to information contained in the private records of complainants and witnesses. Rather, the scope of the right to make full answer and defence must be determined in light of privacy and equality rights of complainants and witnesses. It is clear that the right to full answer and defence is not engaged where the accused seeks information that will only serve to distort the truth-seeking purpose of a trial, and in such a situation, privacy and equality rights are paramount. On the other hand, where the information contained in a record directly bears on the right to make full answer and defence, privacy rights must yield to the need to avoid convicting the innocent. Most cases, however, will not be so clear, and in assessing applications for production, courts must determine the weight to be granted to the interests protected by privacy and full answer and defence in the particular circumstances of each case. Full answer and defence will be more centrally implicated where the information contained in a record is part of the case

> to meet or where its potential probative value is high. A complainant's privacy interest is very high where the confidential information contained in a record concerns the complainant's personal identity or where the confidentiality of the record is vital to protect a therapeutic relationship.
>
> [Emphasis Added]

[19] In *R. v. Osolin*, [1993] 4S.C.R. 595 at p. 669 Cory J. says:

> …We have seen that the accused's rights to a fair trial and to cross-examine are protected by the common law and given constitutional sanctity by ss. 7 and 11 (*d*). However in the context of sexual assault the rights of the complainant cannot be completely overlooked. The provisions of ss. 15 and 28 of the *Charter* guaranteeing equality to men and women, although not determinative should be taken into account in determining the reasonable limitations that should be placed upon the cross-examination of a complainant. It is only right that reasonable limitations be placed upon such cross-examination. A complainant should not be unduly harassed and pilloried to the extent of becoming a victim of an insensitive judicial system. Yet a fair balance must be achieved so that the limitations on the cross-examination of complainants in sexual assault cases do not interfere with the right of the accused to a fair trial.

[20] The quotes from the Supreme Court of Canada make it clear that, unlike in *Rowbotham,* there are more than the rights and interests of the accused to consider. The complainant is entitled to have her rights and interests considered when a court is considering an application under s. 276 or s. 278.

[21] The court in *Mills* was dealing with competing interests. Here, there is little competition between interests or rights of the accused and the complainant. The accused's s. 7 and 11(d) rights would not be infringed by the complainant having counsel to protect her interests. On the other hand, the complainant's interests would not be protected if she was unable to be represented by counsel to make submissions regarding her privacy rights and personal dignity.

Inherent Jurisdiction:

[22] Crown counsel asks for an order for state-funded counsel for the complainant pursuant to the inherent jurisdiction of a superior court. The inherent jurisdiction was discussed in *R. v. Caron* 2011 SCC 5:

> [6] As a general rule, of course, it is for Parliament and the provincial legislatures to determine if and how public monies will be used to fund litigation against the Crown, but it has sometimes fallen to the courts to make such determinations. To promote trial fairness in criminal prosecutions, for instance, the

courts have in narrow circumstances been prepared to order a stay of proceedings unless the Crown funded an accused in whole or in part: *R. v. Rowbotham* [cites omitted] In the civil context, *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71,[2003] 3 S.C.R. 371, extended the class of civil cases for which public funding on an interim basis could be ordered to include "special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate" (para. 36). *Okanagan* was based on the strong public interest in obtaining a ruling on a legal issue of exceptional importance that not only transcended the interest of the parties but also would, in the absence of public funding, have failed to proceed to a resolution, creating an injustice. In *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2, [2007] 1 S.C.R. 38 ("*Little Sisters (No. 2)*"), the majority affirmed that

> the injustice that would arise if the application is not granted must relate both to the individual applicant and to the public at large. This means that a litigant whose case, however compelling it may be, is of interest only to the litigant will be denied an advance costs award. It does not mean, however, that every case of interest to the public will satisfy the test. [para. 39]
>
> **…**

[24] The inherent jurisdiction of the provincial superior courts, is broadly defined as "a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so": I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 *Curr. Legal Probs.* 23, at p. 51. These powers are derived "not from any statute or rule of law, but from the very nature of the court as a superior court of law" (Jacob, at p. 27) to enable "the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner" (p. 28). In equally broad language Lamer C.J., citing the Jacob analysis with approval (*MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, at paras. 29-30), referred to "those powers which are essential to the administration of justice and the maintenance of the rule of law", at para. 38..

[25] One of the earliest manifestations of the superior court's inherent jurisdiction was the appointment of counsel to represent impecunious litigants *in forma pauperis* (W. S. Holdsworth, *A History of English Law*, vol. IV (3rd ed. 1945), at p. 538, and G. O. Morgan and H. Davey, *A Treatise on Costs in Chancery* (1865), at p. 268).

…

[30] Of course the very plenitude of this inherent jurisdiction requires that it be exercised sparingly and with caution.

…

[32] The Crown argues that even if the making of such an interim costs order could *in theory* fall within the inherent jurisdiction of the superior court, such jurisdiction has been taken away by statutory costs provisions. In this respect the Crown relies on the *Provincial Offences Procedure Act*, R.S.A. 2000, c. P-34, and the *Criminal Code*, R.S.C. 1985, c. C-46, ss. 809 and 840, which provides for example $4 a day for witnesses. The Crown argues that while not expressly limited, the inherent jurisdiction of the Court of Queen's Bench is *implicitly* ousted by these enactments. However on this point, as well, the Jacob analysis is helpful:

> . . . the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or by rule of court, so long as it can do so without contravening any statutory provision. [Emphasis added; p. 24.]

I agree with Jacob on this point as well.

[23] The Nova Scotia Court of Appeal considered inherent jurisdiction in **Smith v. Lord,** 2013 NSCA 34:

[24] Chief Justice MacDonald in **Central Halifax Community Association** v**. Halifax (Regional Municipality)**, 2007 NSCA 39 provided the following definition of inherent jurisdiction:

> **34** Every superior court in this country has a residual discretion to control its process in order to prevent abuse. Procedural rules, however well intentioned, cannot be seen to stand in the way of basic fairness. This overriding judicial discretion is commonly referred to as the court's inherent jurisdiction. It is a jurisdiction sourced independently from any rule of court or statute. ...

[25] In his seminal article, IH Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 Current Legal Problems 23 Jacob defined the inherent jurisdiction of the court as:

> ... the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them. (Emphasis mine)

[26] In **Goodwin** v**. Rodgerson**, 2002 NSCA 137, this Court is unequivocal:

> 17 The inherent jurisdiction of the court has been described as a vague concept and one difficult to pin down. It is a doctrine which has received little by way of analysis, but there is no question it is a power which a superior trial court enjoys to be used where it is just and equitable to do so. ... (Emphasis mine)

[27] Inherent jurisdiction is a highly flexible tool. As Master Jacob said at p. 23:

> ...[I]t "may be invoked in an apparently inexhaustible variety of circumstances and may be exercised in different ways. This peculiar concept is indeed so amorphous and ubiquitous and so pervasive in its operation that it seems to defy the challenge to determine its quality and to establish its limits. (Emphasis mine)
>
> [28] The scope of inherent jurisdiction was discussed in **Halifax (Regional Municipality) v. Ofume**, 2003 NSCA 110, where Saunders, J.A. delineated the scope of inherent jurisdiction broadly to encompass judicial actions that further the goals of "effectiveness", "efficiency" and "fairness":…

[24] I must consider whether the appointment of state-funded counsel for the complainant in a s. 276 application is needed to promote trial fairness, whether there is a strong public interest requiring such an order, whether it is just or equitable to make such an order. I must exercise the inherent jurisdiction with caution and not contravene any statutory authority.

[25] If the complainant does not have counsel, her interests will not be fully before the court. Crown counsel cannot substitute as counsel for the complainant, that is not the role of the Crown. The accused has counsel and his interests will be before the court. It would be an injustice to this complainant and to all complainants if they are unable to exercise their right to be represented by counsel to protect their privacy and personal dignity. It is fair and just that the complainant be represented by counsel to protect her privacy and equality interests and rights.

Statutory Provisions:

[26] There is a two-stage procedure to determine whether evidence can be adduced that the complainant engaged in sexual activity, other than the sexual activity that forms the subject-matter or the charge. The first stage under s. 278.93(4) requires the judge to be satisfied that the application was properly made and served and that the evidence sought to be adduced is capable of being admissible under s. 276(2). If that test is met, the judge shall grant the application to hold a hearing (stage two) to determine whether the evidence is admissible under s. 278.94.

[27] Although the complainant has rights at stage two of a s. 276 determination, the *Criminal Code* contains no provision for the complainant to be served with the application. Also, the provisions do not provide that the complainant has any right to be heard or represented at the first stage of a s. 276 determination.

[28] Section 278.94(2) provides the complainant with the right to appear and make submissions at a hearing to determine admissibility (stage two). Section 278.94(3)

requires the judge to, as soon as feasible, inform the complainant who participates in the hearing of their right to be represented by counsel.

[29] The Legislative Summary of Bill C-51 reads at paragraph 2.2.3.2:

> Moreover, new section 278.94(3) for the first time gives any participating complainant a right to be represented by counsel in rape shield proceedings and requires that the judge inform complainants of this right as soon as feasible
>
> (*Legislative Summary of Bill C-51* (Library of Parliament, October 1, 2018, revised December 18, 2018) Publication No. 42-1-C51-E

[30] Counsel for the AG pointed to s. 684 of the *Criminal Code* as giving express power to order state-funded counsel. While I agree that s. 684 gives that power for an appellant, state funded counsel is regularly appointed pursuant to the principles in *Rowbotham.* There is nothing in the *Criminal Code* that permits the making of the order requested, nor is there anything which prohibits the making of such an order. No statutory provision would be contravened by making an order for state-funded counsel for the complainant.

[31] For the complainant's right to participate in the hearing and to make submissions to be a meaningful right, she requires counsel offer advice and make submissions to protect her interests and rights. Her privacy rights and personal dignity could be prejudiced without counsel.

[32] The complainant is a young adult earning minimum wage whose right to counsel will be an unfulfilled without an order for state-funded counsel. She does not have the means to retain counsel.

[33] The complainant has said that she wants to participate in the s. 276 proceeding. At the present time it is unknown whether the application will pass the stage one threshold and go to the stage two admissibility hearing where the complainant has the right to participate and has a right to counsel. While the complainant does not have a right to participate in stage one of the process, in reality the two stages are frequently held on the same date with the admissibility hearing following immediately after the stage one determination. Delaying the complainant's right to counsel would prolong proceedings when a s. 276 application is made. The stage one determination would have to be made and then the matter adjourned for the complainant to obtain counsel, instruct counsel and for counsel to prepare submissions.

[34] Unlike in *R. v. Boyle*, 2019 ONCJ 11, there has been no submission made that the accused's rights would be harmed by the complainant receiving the application and supporting evidence prior to the stage one proceeding. If the evidence is found not to meet the threshold at stage one the evidence cannot be adduced at trial. If the evidence is found to meet the threshold at stage one, a hearing is held to determine the admissibility of the evidence and the complainant must be served with the application. I do not see a danger or threat to the ability of the accused to make full answer and defence because the complainant has the details of the application prior to the stage one determination.

[35] For s. 278 applications, the amendments to the *Criminal Code* require that the application be served on the complainant at least 60 days before the hearing. Providing complainants with at least 60 days or some lesser amount of time to retain counsel, instruct counsel and be prepared for the hearing between stage one and stage two would cause delays in trials. Such delay would be contrary to the Supreme Court of Canada's direction to trial judges to minimize delay and to implement more efficient procedures and scheduling practices (*R. v. Cody*, 2017 SCC 31, paras. 37-39).

Therefore, the complainant must have counsel prior to stage one of the s. 276 application. The complainant must receive the application to have a meaningful right to counsel (*Boyle*, supra para. 43).

Conclusion:

[36] The complainant shall be represented by state-funded counsel for the s. 276 hearing on admissibility of the evidence. If counsel cannot be provided through the provincial legal aid program, the fees and disbursements of counsel for the complainant will be paid by the Attorney General of Nova Scotia.

[37] The complainant must be served with the s. 276 application 60 days prior to the date of the hearing.

Lynch, J.