

NOVA SCOTIA COURT OF APPEAL
Cite as: Doiron v. Duplisea, 1998 NSCA 134

Chipman, Hallett and Freeman, JJ.A.

BETWEEN:

MARGARET DOIRON

Appellant

)
)
) Jamie S. Campbell
) for the Appellant
)
)

- and -

JEAN DUPLISEA, JOAN GLODE,
 NORMAN DOUCET, LINDA SMITH,
 EVERETT HARRIS and CORINNE
 SPARKS, acting as the Board of
 Examiners pursuant to the *Social Workers*
Act, S.N.S. 1993, c. 12

Respondents

)
) Alan J. Stern, Q.C.
) for the Respondents
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) Appeal Heard:
) June 2, 1998
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) Judgment Delivered:
) June 25, 1998
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THE COURT:

The appeal is allowed with costs as per reasons for judgment of
 Chipman, J.A.; Hallet, J.A. concurring and Freeman, J.A., concurring
 by separate reasons.

CHIPMAN, J.A.:

This is an appeal from a decision of Associate Chief Justice Kennedy dismissing an application in the nature of **certiorari** to quash a decision of the respondents (the Board) denying the appellant's application for a review of a decision of the Board's Registrar refusing to register the appellant as a member of the Nova Scotia Association of Social Workers (the Association).

The **Social Workers Act**, S.N.S. 1993, c. 12 (the **Act**) came into force on April 1, 1994, and repealed the **Social Workers Act**, R.S.N.S. 1989, c. 434 (the former **Act**).

The **Act** provided for the continuance of the Association, its Council, and the Board which were constituted or continued by the former **Act**. The objects of the Association are set out in s. 5(1) of the **Act** and may be broadly summarized as being to regulate and govern the practice and profession of social work in the public interest. The Board, by s. 19, has the duty of examining persons seeking to be registered as social workers, candidates, and those engaging in private practice:

19 The Board shall examine persons seeking to be registered as social workers or social worker candidates and social workers seeking to engage in private practice.

Names of persons approved for registration by the Board are entered in the Register of Social Workers.

The general provision applicable to persons seeking registration is s. 22(2) of the **Act**:

22 (2) The Board shall register any person who

(a) has obtained a doctoral or master's degree in social work, or a graduate-level diploma in social work, from an approved faculty of social work and

(i) has completed two years of experience that, in the opinion of the Board, demonstrates competence in the field of social work,

(ii) has passed the examinations required by the Board,

(iii) has filed with the Board proof as prescribed by the regulations, and

(iv) has paid the prescribed fees;

(b) has obtained a bachelor's degree in social work from an approved faculty of social work and

(i) has, subsequent to obtaining the degree, completed at least three years of experience that, in the opinion of the Board, demonstrates competence in the field of social work,

(ii) has passed the examinations required by the Board,

(iii) has filed with the Board proof as prescribed by the regulations, and

(iv) has paid the prescribed fees; or

(c) is a registered member in good standing of an association of social workers approved by the Council.

A “grandparenting” arrangement for registration of existing practitioners of social work is provided for in s. 23(1) of the **Act**:

23 (1) Within twelve months after the coming into force of this Act, persons who

(a) practice social work in the Province; and

(b) are of good character,

and who wish to become members of the Association shall, upon application in writing to the Registrar accompanied by payment of the appropriate registration fee, be registered with the Board, and otherwise such persons are required to qualify as members as provided pursuant to subsection (2) of Section 22.

Persons already registered as social workers under the former **Act** are grandparented by s. 23(2).

Section 25 of the **Act** sets out grounds for refusal to register:

25 (1) Notwithstanding Sections 22 and 23, the Board may refuse to register, upon investigation by the Registrar, an applicant who, in the opinion of the Board,

(a) has obtained or attempted to obtain registration pursuant to this Act by fraud or misrepresentation;

(b) has violated the Code of Ethics;

(c) has been convicted of an offence pursuant to this Act;

(d) has been found guilty of

conduct that is, in the opinion of the Board, conduct unbecoming of a registered social worker or registered social worker candidate;

(e) displays incompetence in the practice of social work; or

(f) has failed to renew registration through non-payment of the prescribed fees.

(2) The Board shall inform the applicant, in writing, of its refusal to register the applicant.

(3) An applicant who has been refused registration may apply to the Board, within thirty days from the date of written receipt of the refusal, for a review by the Board of its decision, by providing to the Registrar a notice in writing indicating the grounds for the review.

(4) The Board shall, in every review hearing, give an opportunity to the applicant to be heard, to present evidence and to make representation.

(5) The Board shall confirm or vary the decision reviewed and shall give reasons for its decision.

The appellant, a Community Care Worker employed by the City of Dartmouth applied to the Registrar for registration under s. 23(1) and was refused by letter dated May 23, 1995. She then applied to the Board pursuant to s. 25(3) for review. She filed written material and appeared before the Board at an oral hearing. The Board, by written decision dated March 3, 1997, disallowed the application.

In dismissing the appellant's application to the Supreme Court, Associate Chief Justice Kennedy observed that **certiorari** lies in three instances: (a) jurisdictional error; (b) failure of natural justice; and (c) error in law on the face of the record. He dealt with four issues raised:

(1) He rejected the appellant's argument that an application under s. 23(2) could only be refused on the bases set out in s. 25 of the **Act**. His view was that on an application for "grandparenting" under s. 23(1) somebody must be able to test the applicant's assertions. Otherwise, an absurdity would result. Section 19 required the Board to examine persons seeking to be registered as social workers and this involved those such as the appellant applying under s. 23(1).

(2) He rejected the appellant's argument that the Board erred in law in its interpretation of the definition of social work in s. 5(2) of the **Act**. The Board found that the appellant's job function involved relatively mechanical application of standardized forms and the application of established policies, without involving the level of independent decision making or analysis which is central to the concept of social work contemplated in s. 5(2) of the **Act**. Associate Chief Justice Kennedy considered the Board's interpretation of that section reasonable and correct.

(3) He rejected the appellant's argument that the Board's decision was based on findings of fact not supported by the evidence.

(4) He rejected the appellant's submission that the Board erred by entering into areas of inquiry not required or authorized by the **Act**. He relied largely on the provisions of s. 19 of the **Act**.

On this appeal, the appellant raises the same points. In my analysis, I will not deal with them **seriatim**, but in applying what I consider the appropriate standard of review and testing the Board's decision accordingly, the salient points raised and argued by

counsel will be addressed.

Standard of Review:

This was not dealt with at any length by counsel in the argument. Counsel referred to **Pezim v. British Columbia (Superintendent of Brokers)**, [1994] 2 S.C.R. 557 and **Canada (Director of Investigation and Research Competition Act v. Southam Inc.**, [1997] 1 S.C.R. 748. These cases dealt with statutory appeals. The jurisdiction of a court hearing such an appeal is broader than the jurisdiction of a court on judicial review. This proceeding is by way of **certiorari**, not by way of statutory appeal. The court's powers on **certiorari** were discussed extensively by Estey, J. (dissenting in part) in **Douglas Aircraft Co. of Canada v. McConnell**, [1980] 1 S.C.R. 245 at p. 264 **et seq** and summarized by Collier, J. in **Bala v. Minister of Employment and Immigration** (1988), 20 F.T.R. 155 (Fed. Ct. T.D.) at p. 157:

At the outset, I point out this is not an appeal, or a review of the evidence. In certiorari, it is not for the court to review the merits of an administrative decision. A decision may be quashed for excess or lack of jurisdiction, error of law, and breach of the rules of natural justice, including breach of a duty of fairness. (See **Halsbury's Laws of England**, (4th Ed.), volume 1, paragraph 147 and **Toor et al. v. Minister of Employment and Immigration** (1987), 9 F.T.R. 292 (Dubé, J.)).

There is no issue here of breach of the rules of natural justice. Errors of law and jurisdiction have been alleged.

Jurisdiction of the Board:

On consideration, but not without some concern, I accept the view of Associate Chief Justice Kennedy that grounds to refuse registration of applicants under s. 23(1) of the **Act** are not restricted to those set out in s. 25. Was it the intent of the Legislature that applicants for grandparenting would undergo no scrutiny other than that prescribed in s. 25? My colleague Freeman, J.A. advances a strong argument for so saying. The Legislature has not taken the care to make its intention as clear as it could have done, but reading the **Act** as a whole and keeping in mind its purpose to provide for the regulation of the profession, I cannot think that it was intended that the Board and/or the Registrar must accept for grandparenting any applicant who, without more, states that he or she practice social work in the Province, is of good character and pays a fee. It is implicit in a scheme for professional self-government that some body or tribunal other than the courts must make adjudications of this nature and I am prepared to read s. 19 as broad enough to include applicants for grandparenting as well as “regular” applicants for admission to the profession under s. 22(2).

I am quick to point out, however, that in exercising its jurisdiction to register members, the Board must deal with two distinct classes of applicants:

(1) Those who seek registration as “any person” under s. 22(2). Such a person must present specific academic qualifications, pass examinations, have experience that, in the opinion of the Board, demonstrates competence in the field of social work and file with the Board proof of these things as prescribed by the regulations. An alternative for such applicants is membership in an approved association of social workers. A fee must also be paid in all cases.

(2) Those who seek registration under s. 23(1). They need not meet such onerous requirements. Apart from payment of the fee and proof of good character, all the applicant need show is that he/she practices “social work in the Province”. Critical to being able to meet this lower standard is that the application be made within 12 months after the coming into force of the **Act** on April 1, 1994.

A review of the legislative history shows that there is good reason for such a grandparenting provision.

Under the former **Act**, anybody could practice social work in the Province without registration with the Association. The need to register only arose if a person wished to use a designation conveying the impression that he/she was registered under the former

Act:

14 (1) No person shall, unless he is a registered social worker, use the designation “registered social worker” or any abbreviation of such designation or any suffix or prefix or any word or words indicative of such designation or in any manner seek to convey the impression that he is a registered social worker.

Under the **Act** a person not registered cannot practice as a social worker or hold himself/herself out as such a practitioner:

55 (1) Except as provided in this Act or the by-laws, a person not registered to practice as a social worker pursuant to this Act, or whose registration is revoked or suspended, and who

(a) practices as a social worker;

(b) uses the title of social worker or registered social worker, or makes use of any abbreviation of such title, or any name, title or designation

which may lead to the belief that the person is a social worker;

(c) advertises or in any way or by any means represents the person as a social worker;

(d) acts or represents the person in such manner as to lead to the belief that the person is authorized to fill the office of or to act as a social worker; or

(e) engages in private practice as a social worker without approval of the Board in accordance with the regulations,

commits an offence and is liable upon summary conviction for the first offence to a fine of not less than five hundred dollars and not more than two thousand dollars and costs, and for any subsequent offence to a fine of not less than one thousand dollars and to a term of imprisonment of not more than six months, or both, and upon failure to pay a fine, to imprisonment for a term of not more than six months.

It is not surprising that, in the face of such sweeping changes coming into force on April 1, 1994, there is a provision in the **Act** to preserve the livelihood of those already practicing social work provided they could also meet the requirements of good character and payment of the fee.

Clearly, the jurisdiction of the Board in considering an applicant under s. 23(1) is much more limited than it is in considering an applicant under s. 22(2). Its mandate is simple. It is confined, for the purposes of this case, to determine whether the applicant practiced social work in the Province. Nothing more and nothing less. Where, as here, there is no challenge to the applicant's competence or integrity (s. 25(1)(a)(e)), it cannot inquire into the applicant's expertise in the practice carried on by the applicant. It is simply

a determination of whether the applicant did, in fact, so practice.

Exercise of the Board's Jurisdiction:

The practice of social work is defined in s. 5(2) of the **Act**:

5 (2) For the purpose of this Act, the practice of social work is the assessment, remediation and prevention of social problems and the enhancement of social functioning of individuals, families, groups and communities by means of

(a) the provision of direct counselling services within an established relationship between a social worker and a client;

(b) the development, promotion and delivery of human-service programs; or

(c) the development and promotion of social policies aimed at improving social conditions and promoting social equality, including that done in collaboration with communities,

and which requires the application of specialized knowledge, values and skills in the field of social work.

The interpretation of this section and the finding of facts to which the section must be applied are functions of the Board. We must not interfere unless the Board erred in law or exceeded its jurisdiction. The Board must determine whether the applicant was engaged in the assessment, remediation and prevention of social problems and the enhancement of social functioning of individuals, families, groups and communities by the means set out in the legislation. To meet the definition, it is sufficient if the applicant meets any one of the three enumerated means requiring the application of specialized knowledge,

values and skills in the field of social work.

The Association provided the appellant with a form making reference to s. 23(1) of the **Act**. The appellant completed this by providing data respecting her formal education and professional experience, together with the names of two registered social workers as references. Additional supporting documentation included a detailed c.v., a job description of her then present position as a Community Care Worker with the Department of Social Services, City of Dartmouth, references completed on forms of the Association by the two social worker referees and a number of statements on behalf of the appellant by other social workers. The supporting material numbered some 53 pages and nine social workers endorsed the applicant's qualities in social work and/or addressing problems encountered by persons in functioning in society.

Following the submission of this material, the appellant attended before the Board on September 14, 1996 and made an oral presentation. By its written decision dated March 3, 1997, the Board found that the appellant was not at the time of her application "using the specialized knowledge, values and skills of social work in the context of her role and position" as a Community Care Worker. Registration in the Association was declined.

Before addressing the Board's reasons, I will give a brief summary of the appellant's education, employment history and job functions as a Community Care Worker.

The appellant received a Bachelor of Secretarial Science from Mount Saint Vincent University in 1987. She was employed by the City of Dartmouth until 1990 as a secretary and then became a social service worker with the City. From September, 1990, until the time of her application, she was a Community Care Worker with the City. Subsequent to her application to the Board, she became a Community Case Worker III with

the Department of Community Services of the Province, carrying out essentially the same job functions.

The appellant had outside community involvement with Al-Anon, and participated in the Parent Counsellor Program carried on by the Children Aid Society and Family Services of Colchester County in which she resides. As a counsellor she provided therapeutic support for troubled youths placed in her home. Three social workers with the program wrote letters of support praising her skills in dealing with these troubled young people.

I will make further reference to the appellant's duties as a Community Care Worker in the course of analyzing the Board's decision. The following is a brief summary of her responsibilities as such.

Clients are persons with various handicaps, both mental and physical. Many are elderly or suffer from the aftermath of head injuries. Upon referral to community care, the appellant's responsibility is to make an assessment of the client to develop a care plan. The assessment addresses the client's physical and mental conditions, family and community support systems and financial means. The appellant must then develop a care plan to enhance the social functioning of the individual. This involves contact with one or more of a number of individuals, groups or organizations that provide support to persons with physical and mental problems. Many of these are professionals in various disciplines. The appellant develops and promotes the delivery of services and develops policies to improve social conditions of the clients. Workers must have a specialized knowledge base, including the many resources which may be tapped to address a particular problem. Services provided are designed to provide supports to facilitate the disabled to function as

independently as possible in the community.

Thomas Currie, R.S.W., Manager of the Department of Community Care, summarized the appellant's duties in response to the Association's request for a description of her work in relation to the criteria stated under s. 5(2) of the **Act**:

Ms. Doiron carries a caseload of 100 elderly and physically disabled clients. She receives referrals for assistance, assesses clients needs, and provides direct counselling to clients and family in the development of appropriate care plan. She arranges for the provision of in home supports such as nursing, personal care, homemaker, medical equipment and supplies on going case management and liaison with other professionals involved in each case. She also arranges admissions to Homes for the Aged/Nursing Homes when required.

Elizabeth Nickerson, R.S.W., Director of Social Work at Oceanview Manor answered the same questions as follows:

Community care workers work closely with families dealing with the decision to place a relative in long term care. They often provide counselling in many areas i.e. grief & loss, and are on the front line in the community and follow clients through the system from homecare & long term care.

The Board's decision commenced by referring to the appellant's oral presentation and presentation of additional information concerning her employment responsibilities. The Board continued:

- . . . Ms. Doiron assisted in the co-ordination of services available to mentally challenged persons in a non-hospital setting. Ms. Doiron performed some assessment with clients, family and other professionals and helped co-ordinate in the remediation of a clients' problems, including assistance in dealing with the provision of municipal social assistance. It is the conclusion of the Board that much of the assessment role performed by Ms. Doiron involved a relatively mechanical application of standardized forms and application of established policies for referral to other agencies.

The Board then referred to ss. 23(1) and 5(2) of the **Act** and concluded that the appellant's employment did not require or involve an application of specialized social work, knowledge, values and skills. The Board noted that specialized knowledge, values and skills in the field of social work are not defined in the **Act**. It referred to extracts from a publication to the Canadian Association of Social Workers. The appellant's written presentation included extracts from the same publication. The Board continued:

It is the opinion of the Board that not all direct counselling or development, promotion and delivery of human services programs or all development and promotion of social policies involve the application of specialized social work knowledge, values and skills. In view of the definition of the practice of social work in section 5(2) of the Act it is apparent that not every individual working within the wide-range of settings of social work as identified in the heading under "The Practice of Social Work" above, will be properly characterized as being involved in the practice of social work.

This is a reasonable conclusion, as is the following statement of the Board:

It is the Board's opinion that specialized social work knowledge, values and skills involve the professional application of particular skills including direct intervention strategies, planning and developing programs for the provision of direct social services, an application of social case work and group work theory and techniques, an application of concepts and techniques of social planning and community organization theory.

The Board was also of the opinion that to involve the application of specialized knowledge, values and skills in the field of social work, a position requires a significant component of independent analysis and decision making. There is, it is said, a distinction between the administering of a program for provision of human services as opposed to the planning and development of such programs. The Board was of the opinion

that the appellant's duties involved tasks based on an application of standardized procedures and forms without involving the level of independent decision making or analysis which is central to the application of specialized social work knowledge, values and skills. It continued:

The Board also finds that Ms. Doiron in response to inquiries from the Board was unable to demonstrate an understanding of certain theoretical bases of social work. Further, the Board finds that Ms. Doiron in the performance of her employment tasks did not demonstrate that such tasks involved the knowledge of, use of, and application of theoretical underpinnings of the field of social work.

Apart from the Board's reliance upon the appellant's response to inquiries, it had nothing before it to contradict the extensive documentary case presented by the appellant. The Board clearly relied on what it perceived to be the appellant's inability to demonstrate an understanding of certain theoretical bases of social work. With respect, it was not the Board's function to determine her level of expertise, but only to determine if she practiced social work. The conclusion of the Board was that her duties "did not involve the knowledge of, use of, and application of theoretical underpinnings of the field of social work" could only have been based on their opinion of her expertise as demonstrated in her oral presentation and/or upon the documentary evidence before it which is also before us.

To the extent that the Board reached its decision on the basis of the appellant's expertise as revealed by her oral presentation, it exceeded its mandate. The assessment of the appellant's skills is not the issue as would be the case in the examination of an applicant for registration pursuant to s. 22.

Nor was the Board's decision supported by the documentary evidence submitted by the appellant - the only evidence which was before it.

The assessment component of the appellant's job clearly involves independent decision-making which has to be done in response to the myriad of special circumstances presented by her many clients. Every case is of necessity unique. So too the consequent development of a care plan requires decision making. The development of social policies in connection with such care plans is also a part of her work.

A job description preface respecting the appellant's work was signed by two registered social workers (not her two referees) and her casework supervisor. It referred to the assessment and remediation functions of the appellant's work. The latter involves promoting policy and services among other professions and services. It is primarily due to persons such as the appellant that individuals with mental disabilities have the option to live in the community in the Small Options residential setting. Community careworkers have been advocating the licensing of such facilities. The job description notes that the Maritime School of Social Workers has utilized the community care program by making placement there a required component for students seeking degrees in social work.

The Board's conclusion that the appellant's work does not require the application of specialized knowledge, values and skills in the field of social work is contrary to the uncontradicted documentary evidence submitted on her behalf and the statements on her behalf by various social workers. Such conclusion could only be derived from the Board's conclusion based on her oral presentation that she is "unable to demonstrate an understanding of certain theoretical bases of social work". There is nothing else in the record which contradicts or qualifies the appellant's written submission. The documentary material before the Board sheds no light on its conclusion that the appellant did not demonstrate that her duties "involved the knowledge of, use of and application of

theoretical underpinnings of the field of social work". These words do not constitute the test of what is social work within the meaning of s. 5(2) of the **Act**.

The Board erred in wandering away from its statutory guidelines and in substituting a standard of its own relating to theoretical knowledge of social work.

The Board also erred in its conclusion that the appellant did not employ independent analysis in decision making but engaged in a mechanical application of standardized procedures and forms and the application of established policies. It ignored the uncontradicted evidence on the record showing that the appellant did employ independent analysis and decision making. This was basic to her duties of assessment of cases presented to her and the development of remediation plans for each individual as well as the development of policies for remediation plans in general.

In summary, the Board reached its decision by a process of ignoring relevant evidence before it, engaging in an inquiry beyond its mandate and applying a test referable to theoretical knowledge which was inappropriate in determining the question posed by the statute - whether the appellant practiced social work as defined in s. 5(2) thereof. In so doing, it erred in jurisdiction and erred in law on the face of the record.

I would allow the appeal. The appellant has asked the Court to set aside the decision of Associate Chief Justice Kennedy and inferentially the Board's order which I would do. The appellant has not brought **mandamus** ordering that the appellant be registered. The appellant has asked for a declaration that the appellant is entitled to be registered as a licensed member of the Nova Scotia Association of Social Workers pursuant to s. 23(1) of the **Act**, and I would grant such a declaration. If the appellant were

refused registration upon request, then following a demand, **mandamus** could be sought.

I would award the appellant the costs of this appeal and of the application before Associate Chief Justice Kennedy in the total amount of \$3,500.00, plus disbursements to be taxed.

Chipman, J.A.

Concurred in:

Hallett, J.A.

FREEMAN, J.A.:

The **Social Workers Act**, S.N.S. 1993, c. 12, which became effective April 1, 1994, restricts the practice of social work in Nova Scotia to members of the Nova Scotia Association of Social Workers, who are registered under the **Act** as “Registered Social Worker” or “Social Worker Candidate”.

The previous **Act** had provided for registration of qualified persons and restricted use of the designation “registered social worker.” But, unlike the new **Act**, it did not limit the practice of social work to persons enjoying that designation. The new **Act** makes it a summary conviction offence for a person to practice as a social worker who is not registered to do so.

The new **Act** therefore has the potential of making it unlawful for persons lacking the designation to continue working at their previous employment, if their occupation is found to constitute the practice of social work. To remedy this, s. 23 of the statute created a grandparent procedure and a twelve-month window when persons practicing social work could become registered.

The present appeal involves the rejection of an application under that provision. If the Board of Examiners under the **Act** was justified in examining the Appellant’s qualifications for registration under s. 23, I agree with Justice Chipman’s reasoning that in the manner it did so, it erred in jurisdiction and law on the face of the

record. I concur in his result and adopt his more comprehensive statement of the facts. My concern, however, is that the Board exceeded its jurisdiction in a more fundamental manner by going behind the face of the s. 23 application.

Section 23 provides:

Application for membership by existing practitioners

23 (1) Within twelve months after the coming into force of this Act, persons who

- (a) practice social work in the Province; and
- (b) are of good character,

and who wish to become members of the Association shall, upon application in writing to the Registrar accompanied by payment of the appropriate registration fee, be registered with the Board, and otherwise such persons are required to qualify as members as provided pursuant to subsection (2) of Section 22.

Existing registrations preserved

(2) A person who is registered as a social worker immediately before the coming into force of this **Act** is deemed to be registered as a social worker pursuant to this **Act**, subject to the disciplinary proceedings pursuant to this **Act** and subject to payment of the prescribed fees pursuant to this Act

The “otherwise” in s. 23 refers to what has been established as the standard procedure for registration under s. 22 of the **Act**, which clearly involves the Board of Examiners. The Board of Examiners consists of seven social workers appointed by the Council of the Association and three persons appointed by the Governor in Council, one of whom is elected Registrar. Section 22 provides:

Register of Social Workers

22 (1) The Board shall maintain a Register of Social Workers in which shall be entered the name of any person approved by the Board for

registration.

Criteria for registration

(2) The Board shall register any person who

(a) has obtained a doctoral or master's degree in social work, or a graduate-level diploma in social work, from an approved faculty of social work, and

(i) has completed two years of experience that, in the opinion of the Board, demonstrates competence in the field of social work,

(ii) has passed the examinations required by the Board,

(iii) has filed with the Board proof as prescribed by the regulations, and

(iv) has paid the prescribed fees;

(b) has obtained a bachelor's degree in social work from an approved faculty of social work and

(i) has, subsequent to obtaining the degree, completed at least three years of experience that, in the opinion of the Board, demonstrates competence in the field of social work,

(ii) has passed the examinations required by the Board,

(iii) has filed with the Board proof as prescribed by the regulations, and

(iv) has paid the prescribed fees; or

(c) is a registered member in good standing of an association of social workers approved by the Council.

Effective date of clauses (2)(a) and (b)

(3) Clauses (a) and (b) of subsection (2) are effective twelve months after this Section comes into force. 1993, c. 12, s. 22.

In applications under s. 22 the Board, in examining persons seeking to be registered as social workers and candidates, is called upon to exercise discretionary powers and, in particular, to form opinions as to the value of the experience of candidates for registration. The present question involves the lesser role of the Board under s. 23.

The issue in this appeal is whether the Board under s. 23 had jurisdiction to refuse to register the appellant, Margaret-Ann Dorion, who presented an application in writing to the Registrar within the relevant time frame containing evidence that she was a person of good character who practiced social work in the province. In particular, she has appealed the dismissal of her application for judicial review and a remedy by way of certiorari and declaration following the Registrar's rejection of her application for registration under s. 23(1) and a rehearing under s. 25.

Ms. Dorion completed an application on a Nova Scotia Association of Social Workers' form for registration under s. 23(1) dated November 30, 1994, well within the twelve month period, paid the required fee, and filed it with evidence of her degree in secretarial science and her completion of courses in the Psychology of Aging and Health Care and Long Term Planning from Mount St. Vincent University, as well as proof of her

employment as a Community Care Worker and, in accordance with the form, letters from registered social workers that she was indeed practicing social work. That is, she appeared to meet all of the requirements of s. 23.

Under the former statute these qualifications would not have entitled her to the designation Registered Social Worker, but little turned on it. She was still entitled to perform the tasks and exercise the skills of a Community Care Worker, whatever those tasks and skills entailed. Even if the work she did met the definition of social work in the **Act**, she broke no law. It is her position that her job involves the practice of social work as it is defined in the present **Act**. If she is practicing social work without being registered as a social worker, she is breaking the law and could be charged under s. 55(2)(a).

The primary definition of the practice of social work contained in the **Act** is in Section 5(2), which provides:

(2) For the purpose of this **Act**, the practice of social work is the assessment, remediation and prevention of social problems and the enhancement of social functioning of individuals, families, groups and communities by means of

(a) the provision of direct counselling services within an established relationship between a social worker and a client;

(b) the development, promotion and delivery of human-service programs; or

(c) the development and promotion of social policies aimed at improving social conditions and promoting social equality, including that done in collaboration with communities,

and which requires the application of specialized knowledge, values and skills in the field of social work. 1993, c. 12, s. 5.

Section 5 must be read in light of s. 55 which lists behavior unlawful for a person not registered as a social worker:

Offence and penalty

55 (1) Except as provided in this **Act** or the by-laws, a person not registered to practice as a social worker pursuant to this **Act**, or whose registration is revoked or suspended, and who

(a) practices as a social worker;

(b) uses the title of social worker or registered social worker, or makes use of any abbreviation of such title, or any name, title or designation which may lead to the belief that the person is a social worker;

(c) advertises or in any way or by any means represents the person as a social worker;

(d) acts or represents the person in such manner as to lead to the belief that the person is authorized to fill the office of or to act as a social worker; or

(e) engages in private practice as a social worker without approval of the Board in accordance with the regulations,

commits an offence and is liable upon summary conviction for the first offence to a fine of not less than five hundred dollars and not more than two thousand dollars and costs, and for any subsequent offence to a fine of not less than one thousand dollars and to a term of imprisonment of not more than six months, or both, and upon failure to pay a fine, to imprisonment for a term of not more than six months.

Ms. Dorion's application for registration as a social worker was refused by the Registrar. Her letter stated that "your current employment does not meet the requirements of the definition of the practice of social work under the Act."

A subsequent letter from the Registrar stated:

On behalf of the Board of Examiners, I acknowledge receipt on June 23, 1995, of your request for a review by the Board of Examiners of the decision refusing your registration in accordance with the **Social Workers Act**.

The review process is set out in Sections 25(3), (4) and (5) of the **Social Workers Act**. It is your option to proceed by way of written submissions, oral presentation or both. . . . If your actual employment responsibilities differ from those identified in any job description filed as part of your application then you should ensure that your actual tasks and responsibilities are clearly identified for the benefit of the Board.

Section 25 provides:

Grounds for Refusal to Register

25 (1) Notwithstanding Sections 22 and 23, the Board may refuse to register, upon investigation by the Registrar, an applicant who, in the opinion of the Board,

- (a) has obtained or attempted to obtain registration pursuant to this Act by fraud or misrepresentation;
- (b) has violated the Code of Ethics;
- (c) has been convicted of an offence pursuant to this Act;
- (d) has been found guilty of conduct that is, in the opinion of the Board, conduct unbecoming of a registered social worker or registered social worker candidate;
- (e) displays incompetence in the practice of social work; or
- (f) has failed to renew registration through non-payment of the prescribed fees.

Notice to applicant of refusal

(2) The Board shall inform the applicant, in writing, of its refusal to register the applicant.

Application for review

(3) An applicant who has been refused registration may apply to the Board, within thirty days from the date of written receipt of the refusal, for a review by the Board of its decision, by providing to the Registrar a notice in writing indicating the grounds for the review.

Rights of applicant on review

(4) The Board shall, in every review hearing, give an opportunity to the applicant to be heard, to present evidence and to make representation.

Duty of Board on review

(5) The Board shall confirm or vary the decision reviewed and shall give reasons for its decision. 1993, c. 12, s. 25.

A review under s. 25 would appear to be limited to a refusal of registration for the grounds set out in s. 25. No other grounds for refusing registration are set out in the Act. Section 23 does not provide for a refusal of registration if the work done by the applicant does not, in the opinion of the Board, meet the definition in s. 5. It does not, in fact, appear to provide the Board with discretion nor scope for expression of its opinion. The language of s. 23 is strongly mandatory, and the use of “notwithstanding” in s. 25 is significant.

In my view registration under s. 23 was intended to be straightforward during a restricted time period because the broad definition of social work in s. 5, read together with s. 55(1)(a), does not contemplate the existence of a category of social service workers other than registered social workers. Section 19 authorizes the Board to be the body which examines those seeking registration, but it does not contain language making examination mandatory in every instance. An interpretation that s. 19 required the examination of s. 23 applicants is not only unnecessary but would be inconsistent with the purpose of s. 23 and

the language expressing it. The approval of the Board required in s. 22(1) for those whose names are to be entered in the register does not clothe the Board with a distinct discretionary power to refuse its approval to those otherwise entitled to registration under ss. 22 and 23.

In any event, Ms. Dorion filed extensive documentation in support of her review application, including a “job description preface” signed not only by herself, but endorsed by two casework supervisors and the Acting District Manager for the Department of Community Services, describing her work as a Community Care Worker or C.C.W. In a paragraph summarizing a detailed explanation of her functions she stated:

Through capable assessments by the C.C.W. and the resulting remediation of social problems via development and delivery of services provided by Community Care, prevention of social problems and enhancement of social functions occur.

She went on:

. . . I must have the knowledge of human behaviour, sociology, social policy and programs available, government legislation (Canada Assistance Act, Hospitals Act, Adult Protection Act, etc.) and other related issues. Not only a knowledge of these areas is required to do the job capably, but the knowledge must be communicated in a way that is understandable to our clients, agencies/professions, and the community.

The result is a high degree of professionalism amongst C.C.W.'s

. . .

All this combines to require that as a C.C.W. I am required to be a skilled social service worker who must be able to guide and empower the client to make required decisions on sound reasonable grounds . . .

Ms. Dorion's presentation included an able legal memorandum stressing the mandatory character of s. 23 and noting that the factors which would justify refusal under s. 25(1) were not present. It asserted:

The Board does not have jurisdiction under s. 23(1) to make a determination of whether the applicant is or is not practising social work or whether the applicant is or is not of good character. The Board's jurisdiction in these areas arises under s 25(1). The applicant has provided completed forms as required by the Nova Scotia Association of Social Workers with respect to confirmation of employment. The applicant has also submitted two references on the form provided by the Nova Scotia Association of Social Workers. The reference is signed by a registered social worker. The guide to completing the reference states:

The Board of Examiners will rely on your opinion and knowledge of the applicant's character and competence to perform the work of a social worker as defined by Section 5(2) of the Act. . . . Indicate how the work this person does meets the definition of social work practice Section 5(2) and your opinion of the person's ability and competence to do the work.

It would appear from this passage and from the documents on file that the Board had developed a practice involving forms and procedure for receiving evidence under s. 23. However, the **Act** contemplates that such evidence would be governed by regulations made by the Council of the association, which consists of the table officers, members elected under the by-laws, and the Chair of the Board of Examiners. Section 20 provides:

Regulations by Council

20 The Council may make regulations

- (a) prescribing the proofs to be furnished as to education, good character and experience;
- (b) prescribing the subjects for examination of candidates for registration as social workers;
- (c) relating to examinations and the duties and functions of examiners;
- (d) respecting matters relating to applications, complaints or discipline;
- (e) respecting professional development;
- (f) respecting such other matters as the Council considers necessary or
- (g) respecting the re-instatement of members of the Association;
- (h) respecting temporary registration;
- (i) respecting the resignation of members of the Association. 1993, c. 12, s. 20.

There was no evidence before the court that the Council had passed any such regulations. In that event applicants for registration under s. 23 were entitled to rely on the sufficiency of the practice developed by the Board. It is clear that Ms. Dorion did so.

In a decision released after a review hearing September 14, 1996, Ms. Dorion was advised:

“It is the conclusion of the Board that much of the assessment role performed by Ms. Dorion involved a relatively mechanical application of standardized forms and application of established policies for referral to other agencies.

At her review hearing, Ms. Dorion did not demonstrate that she engages in the practice of social work using the specialized knowledge, values and skill as defined in the *Social Workers Act*. Section 23(1) and 5(2) of the *Social Workers Act* requires that the Board consider if the job or tasks undertaken by an appellant require the application of specialized knowledge, values and skills in

the field of social work. Although the Board recognized the importance of the tasks undertaken by Ms. Dorion, the Board finds on all the evidence before it, that the Appellant's employment did not require or involve an application of specialized social work knowledge, values and skills.

Specialized knowledge, values and skills in the field of social work are not defined in the Social Workers Act. . . .

The Board then set out to remedy this deficiency by drawing up its own definition from guidance published by the Canadian Association of Social Workers and consisting largely of lists of categories of activities covered by the social work umbrella. It concludes on that point:

It is apparent that not every individual working within the wide-range of settings of social work as identified in the heading under "The Practice of Social Work" above, will be properly characterized as being involved in the practice of social work.

It is the Board's opinion that specialized social work knowledge, values and skills involve the professional application of particular skills including direct intervention strategies, planning and developing programs for the provision of direct social services, an application of social case work and group work therapy and techniques, an application of concepts and techniques of social planning and community organization theory.

The problem with such a vague approach is that "specialized knowledge" can be made to mean anything the Board wants it to mean, giving the Board unlimited discretion as a gatekeeper under s. 23. This does not appear to have been the intention of the legislature, and conflicts with the mandatory language of the section.

The Board's decision continued:

Further, in determining whether an applicant was involved in the practice of social work for the purpose of considering a grandparenting application under Section 23 (1) of the Act, the Board is further of the opinion that the Board must inquire as to the job or tasks an applicant undertakes and whether that job or tasks require the application of specialized knowledge, values and skills in the field of social work.

In this case, it is the opinion of the Board that Ms. Dorion's position as well as the tasks performed by her involve tasks based significantly on an application of standardized procedures and forms and/or application of tasks without involving the level of independent decision making or analysis which is central to an application of specialized social work knowledge, values and skills.

The Board also finds that Ms. Dorion in response to inquiries from the Board was unable to demonstrate an understanding of certain theoretical bases of social work. Further, the Board finds that Ms. Dorion in the performance of her employment tasks did not demonstrate that such tasks involve the knowledge of, use of, and application of theoretical underpinnings of the field of social work.

With respect to the "inquiries from the Board" Ms. Dorion's counsel pointed out there was no need for her to have attended on the review hearing, and some applications were granted on written applications without personal contact with the Board.

Associate Chief Justice Kennedy remarked in his decision upholding the Board:

Clearly much of the applicant's unhappiness with and concern about the Board's decision in her case stems from the fact that a co-worker, performing the same job description as a Community case worker with the City of Dartmouth, was registered as a social worker by the Board.

This person too had made a 'grandparent' application, was denied membership and sought a review under s. 25(3) of the Act. . . .

It is trite to say, that two persons doing the same job may have different levels of expertise.

The applicant's concern is understandable,

however, the result does not suggest error on the part of the Board.

Finally, I am satisfied that the process here was fair.

The applicant was heard. She had the opportunity to appear before the Board, to produce her evidence, to demonstrate her knowledge, to make her argument that she was practising social work. The same process that brought her co-worker a successful conclusion.

There was no jurisdictional error, failure of natural justice or error in law demonstrated by the applicant in this matter.

The Board of Examiners are empowered under the *Act* to determine who is “practising social work” in this Province. It is in the best position to do so. I will not be interfering with its decision in this matter.

With the greatest of respect for Associate Chief Justice Kennedy’s reasoning, I am concerned that the Board assumed a jurisdiction the statute did not give it and arrived at a result which cannot be upheld. It applied standards appropriate to a s. 22 application to a person claiming entitlement to registration under the grandparenting provision.

The major concern of the legislature in enacting s. 23 must have been to blunt the adverse effects of s. 55, which makes illegal what had previously been lawful, the practice of social work by persons lacking the designation “registered social worker.” The standard for registration under s. 23 must necessarily have been intended to be low so persons who had previously practiced social work, or something they considered in good faith to be social work, could become registered and avoid the risk of breaking the law. That would explain the use of mandatory language in s. 23. The Board needs no discretion under that section because it has discretion to apply the safeguards in under s. 25, which

identifies persons whom the legislature considers should be refused registration. A person applying in bad faith for registration under s. 23 would be refused for fraud, unbecoming conduct, incompetence or for want of evidence of good character. In my view the Board is without jurisdiction to expand upon the grounds for refusal in s. 25. Upon paying the fee, persons contemplated for grandparenting under s. 23 needed only to present an application in writing in a form acceptable to the Registrar (in the absence of proofs established by regulation of the Council). If registration was not to be refused under s. 25, it should have been granted to persons applying in as an administrative act similar to renewing a driver's license.

In my view the Board exceeded its jurisdiction in attempting to exercise its discretion to refuse registration of persons applying under s. 23 on the grounds expressed in its decision. Even under s. 22(2), the Board's discretion is to be exercised in determining whether applicants meet the rigorous standards of that section but once they are found to have done so, the Board has no discretion to refuse registration for grounds other than those in s. 25.

Section 22 (2) is the standard or usual way for a person to become a registered social worker; s. 23 is the exception. Persons of good character practising social work who, within twelve months after the coming into force of the **Act**, apply in writing to the registrar and pay the required fee "**shall . . . be registered**" under s. 23(1). ". . . **[O]therwise** such persons are required to qualify as members as provided pursuant to

subsection (2) of Section 22.” [Emphasis added.] In the context of the section, “otherwise” would appear to relate primarily to applying within the time restriction.

It appears that the Board’s function under s. 22(2) is quasi-judicial and the Registrar’s function under s. 23 is administrative. Little turns on this distinction if my view of the Board’s lack of discretion under s. 23 is correct. The Registrar’s function under s. 23 is to carry out the policy of the legislature to facilitate the one-time-only registration of persons with grandfather rights to practice social work in the era created by the new **Act**.

Even if it was entitled to exercise its opinion as to what constituted the practice of social work by s. 23 applicants, the standard the Board adopted was inappropriate. The Board’s interpretation of “specialized knowledge, values and skills” in s. 5(2) is vague and uncertain. The test must be found by interpreting s. 5(2) in light of s. 55, and in particular s. 55(1)(a). The practice of social work would therefore be what a criminal court could reasonably consider to be the practice of social work by a person charged with an offence under s. 55(1)(a).

If Ms. Dorion had been so charged, it is unlikely she could have effectively defended herself by asserting she lacked an understanding of certain theoretical bases of social work, or that what she was doing lacked independent decision making or analysis. Even if such a defence succeeded, Ms. Dorion would be constantly in danger of drifting across the line into illegality in her workplace as her knowledge and skills increased, for then she could no longer rely on a lack of specialized knowledge as a defence. Such an

absurdity was surely not intended by the legislature.

In Ms. Dorion's application she was at pains to point out she fulfilled the main requirements of the s. 5(2) definition: "the practice of social work is the assessment, remediation and prevention of social problems and the enhancement of social functioning of individual families, groups and communities" by various means. The means most applicable to her appears to be "delivery of human-service programs" in s. 5(2)(b). If any substantial importance was intended to attach to the remaining requirement for "the application of specialized knowledge, values and skills," it is a deficiency in the **Act** not to include a definition. The legislature may not have considered these words to be of determinative importance, but they must have meaning. The words would be redundant if they did not mean something more than the minimum degree of practical knowledge, values and skills necessary to deliver human service programs in the remediation of social problems and the enhancement of social functioning. There is nothing in the **Act** to establish a higher threshold. Therefore, "specialized knowledge, values and skills" must be considered to mean knowledge, values and skills in any degree greater than the minimum degree I have just mentioned. Ms. Dorion's applications disclose specialized knowledge, values and skills in the field of social work well in excess of that standard. She practiced social work within the meaning of s. 23.

The Registrar erred in exceeding her jurisdiction by refusing to register Ms. Dorion as a social worker for grounds not set out in s. 25. The Board's decision following

the review hearing compounded the error; it exceeded its jurisdiction in exercising its discretion to refuse Ms. Dorion registration and in applying a wrong standard. The Chambers judge erred in upholding the Board and refusing certiorari.

I would allow the appeal from his judgment and grant an order in the nature of certiorari quashing the decisions of the Registrar and the Board. Ms. Dorion has applied for a declaratory judgment rather than mandamus. I would declare that she be approved for registration under the **Act** and that she be entitled to have her name entered in the Register of Social Workers.

Freeman, J.A.