**NOVA SCOTIA COURT OF APPEAL**
**Citation:** ***Robinson v. Nova Scotia Power Inc.***, 2012 NSCA 93

**Date:** 20120905
**Docket:** CA 371423
**Registry:** Halifax

**Between:**

Lorraine Robinson

Appellant

v.

Nova Scotia Power Incorporated
Attorney General of Nova Scotia
Nova Scotia Utility and Review Board

Respondents

**Judges:** Saunders, Fichaud and Bryson, JJ.A.

**Appeal Heard:** June 5, 2012, in Halifax, Nova Scotia

**Held:** Appeal dismissed per reasons for judgment of Saunders, J.A.; Fichaud and Bryson, JJ.A. concurring.

**Counsel:** Claire McNeil and Crystle Hug (Third Year Law Student), for the appellant
Colin J. Clarke and Alison Bird, for the respondent, Nova Scotia Power Incorporated
Edward A. Gores, Q.C., for the respondent, Attorney General of Nova Scotia not participating
Bruce Outhouse, Q.C., for the respondent, Nova Scotia Utility and Review Board not participating

**Reasons for Judgment:**

[1] This appeal involves a dispute between Ms. Robinson and Nova Scotia Power Incorporated ("NSPI") over her responsibility to pay outstanding debts.

[2] In a decision dated November 3, 2011, and supplemental reasons dated November 25, 2011, the Nova Scotia Utility and Review Board dismissed an appeal launched by Ms. Robinson concerning the payment of arrears on certain customer accounts rendered by NSPI.

[3] The Board affirmed an earlier decision of NSPI's Dispute Resolution Officer ("DRO") and found that the utility had properly applied its own statutory regulations when considering the appellant's request for electric service.

[4] Ms. Robinson appeals the Board's decision saying it erred in interpreting and applying Section 2.1 of the Regulations. She asks that the Board's decision be quashed and that she not be obliged to pay arrears on an account she says was incurred by another individual and which relates to electricity service for which she did not derive any benefit.

[5] For the reasons that follow I would dismiss the appeal.

**Background**

[6] Ms. Robinson and Mr. Clyde Hogan have lived together since November, 2010. They also co-habited from November, 2005 until May, 2006.

[7] When they moved into new accommodations in 2005 a new account was opened. Arrears from an old account were transferred into this new account. Over the course of the next few months further arrears were accumulated, before Ms. Robinson and Mr. Hogan parted company. When they resumed living together at a new address in November, 2010, arrangements to repay the outstanding arrears were requested before electric service was resumed. Protests by Ms. Robinson led to the entire matter being thoroughly reviewed by the utility's DRO. He concluded that the appellant had negotiated and accepted the terms of an agreement with NSPI, the effect of which was to consolidate all of the outstanding arrears, for

which she was liable as a customer and consumer of electricity supplied to the premises.

[8] In a letter to the Board dated July 22, 2011, the appellant's legal counsel with Dalhousie Legal Aid Service ("DLAS") launched an appeal from the DRO's decision. Ms. Robinson said a portion of the debt was the responsibility of Mr. Hogan because it represented arrears he had incurred *before* they moved in together. It is that argument which is central to the issues on appeal.

[9] To understand the appellant's complaint it is necessary to provide some context and chronology. These details are neatly contained in the Board's factual findings which are not challenged on appeal. In her decision, Commissioner Roberta J. Clarke, Q.C. declared:

> According to the information received by the Board, the history of this matter includes details of the living arrangements between Lorraine Robinson and her sometimes partner, Clyde Hogan and various NSPI accounts held by them, summarized as follows:
>
> - Account #1: Clyde Hogan incurred arrears of $1127.63 on account #574081-6 from July 1989 to July 1992.
>
> - Account #2: Lorraine Robinson incurred arrears of $376.37 on account # 1249018-1 between January 2004 and December 2004.
>
> - Account #3: In November 2005, Ms. Robinson and Mr. Hogan moved in together at a new address and Mr. Hogan opened a new account #1369295-9. The arrears from account 1 were transferred to this new account. During the ensuing period to May 2006, an additional $396.60 of arrears was accumulated. At that time, Ms. Robinson and Mr. Hogan parted company.
>
> - Account #4: In November 2010, Ms. Robinson and Mr. Hogan again moved in together at a new address where they still live. This time, Ms. Robinson requested electricity service from NSPI. Responding to an NSPI question, Ms. Robinson answered that Mr. Hogan was also a signatory to the apartment lease agreement. NSPI advised Ms. Robinson of the arrears on accounts #2 and #3 and indicated it would not provide service until the arrears were cleared.

Ms. Robinson cleared the arrears ($376.37) on account #2 and with guidance from NSPI wrote and faxed a letter to NSPI in which she took responsibility for account #3, paid $200.00 towards that account and its balance ($1324.23) was transferred to account #4.

Ms. Robinson and NSPI agreed on a payment arrangement which would retire the arrears over the ensuing 12 month period. Ms. Robinson was unable to meet the payment schedule, resulting in a disconnect notice from NSPI.

The chronology of subsequent events is summarized as follows (all dates are year 2011):

- January 25: Trevor Zinck (MLA, North Dartmouth) on Ms. Robinson's behalf notified the DRO of the dispute. The DRO confirmed the dispute with Ms. Robinson later that same day.

- January 27: The DRO issued his final decision which included a 14 day hold on disconnection of service on the condition that Ms. Robinson comply with a new schedule of payments specified in the decision.

- February 11: Based on a concern that the decision may not have reached Ms. Robinson, the DRO re-issued it with a new effective date.

- May 2: The DRO received a voice message from DLAS which indicated they had been contacted by Ms. Robinson to see if they could help her.

- May 17: The DRO issued a revised decision, again putting a hold on service disconnection pending Ms. Robinson's compliance with a new specified payment schedule.

- July 2011: DLAS contacted the Department of Community Services ("DCS") on Ms. Robinson's behalf.

- DCS paid the account #4 arrears, as a loan, which Ms. Robinson is required to pay back to DCS, at a rate of $45.00 per month.

- July 22: DLAS filed a request to appeal the DRO Decision, resulting in the chain of correspondence detailed above.

## 2.0 DRO DECISION

As the Board understands it, the essence of Ms. Robinson's dispute with NSPI was that:

1) She should not have been held responsible for the arrears of $1127.63 on account #1 which were incurred by Mr. Hogan before they moved in together.

2) When applying for service at her current address, after discussion with NSPI customer service, Ms. Robinson concluded that she would only be provided service if she agreed to take responsibility for all the arrears, both hers and Mr. Hogan's.

In his decision, the DRO specified a payment schedule which included repayment of all of the arrears, but observed that, if Ms. Robinson chose to pursue court action, there was a possibility that the outcome could be exemption from the debt amount of $1127.63. As noted above, the arrears were subsequently paid in full and to the Board's knowledge, court action has not been initiated.

## 3.0 APPEAL OF DRO DECISION

In its August 4, 2011 filing, DLAS noted the following grounds for the appeal:

1. The DRO erred by finding that NSPI is permitted to require Ms. Robinson to agree to pay, as condition of service, a debt for which she is not responsible for under The Nova Scotia Power Inv. [sic] Tariffs and Regulations and the Nova Scotia Public Utilities Act.

2. Alternatively, if an agreement was reached between Ms. Robinson and NSPI within the bounds of the Act and Regulations, then the agreement is invalid because NSPI unduly influenced Ms. Robinson.

This is further supported in the affidavit by Lorraine Robinson dated August 19, 2011, paragraph 17:

17 The arrears that are in dispute in this application are arrears that Mr. Hogan accumulated before November 2005, when we lived together for the first time. I am advised by Mr. Hogan and do verily believe that he was living with someone else at that time. I do not feel that I should have been required to pay the debt owing to NSPI by Mr. Hogan and a third party. I do not think it was fair that

> NSPI required me to pay these arrears as a condition of providing electricity service.
>
> ...
>
> DLAS said that Ms. Robinson paid (or agreed to pay) the arrears of $1127.63 under a mistaken belief that NSPI's Regulations required her to do so to obtain service and thus the agreement is not valid.
>
> DLAS alternatively argued that the agreement was "... invalid because NSPI unduly influenced Ms. Robinson to enter into the agreement." Although, in its letter of July 22, 2011, DLAS referred to "duress", it is not mentioned in later submissions.

[10] Based on the record and the way the case was argued before the Board, there were three principal questions facing the Commissioner. First, was there an agreement between Ms. Robinson and NSPI with respect to payment of the arrears? Second, if there were such an agreement, should it be set aside because NSPI exerted undue influence upon Ms. Robinson in order to obtain it? Third, did NSPI comply with its own regulations when dealing with the appellant?

[11] The Board answered all three questions in favour of the utility. It said NSPI's dealings with the appellant were always fair and appropriate. The Board found no evidence to support the appellant's complaint that she had been subjected to undue influence or duress during her contact with the utility's officials. The Board said NSPSI's decision to refuse to provide electric service to the appellant until arrangements were made to pay off the outstanding arrears was justified and in compliance with the utility's mandate under the Regulations.

[12] Now, on appeal to this Court, the appellant says the Board erred in its interpretation of the Regulations and was wrong to conclude that there was any enforceable "agreement" between the parties whereby Ms. Robinson accepted responsibility for arrears she says belong to Mr. Hogan.

**Issue**

[13] Ms. Robinson states a single ground in her notice of appeal:

> The Nova Scotia Utility and Review Board erred by unreasonably and incorrectly interpreting Section 2.1 of the *Nova Scotia Power Regulations*.

[14] By framing the issue this way the appellant chooses to straddle two distinct standards of review by implying that a standard of correctness is engaged or alternatively, one of reasonableness.

[15] In this the parties do not agree. The appellant says this dispute calls for an interpretation of Section 2.1 of the Regulations which amounts to a pure question of law, reviewable on a standard of correctness. The utility, on the other hand, says the Board's interpretation of Section 2.1 of the Regulations falls squarely within the Board's mandate and expertise. The dispute enabled the Board to exercise its authority to interpret legislation closely connected to its statutory function in circumstances where it has acquired a unique and specialized knowledge. As such, the Board's interpretation of NSPI's regulations is entitled to deference and subject to judicial review on a standard of reasonableness.

**Standard of Review**

[16] I accept the respondent's position. The authorities relied upon by the appellant are out of step with recent jurisprudence of the Supreme Court of Canada that has re-defined the standard of review analysis in appeals from administrative tribunals.

[17] A customary starting point in the standard of review analysis is to consider the relevant legislative scheme in which the tribunal conducts its work. NSPI is a public utility, tightly regulated by the Nova Scotia Utility and Review Board pursuant to the **Public Utilities Act**, R.S.N.S. 1989, c. 380. The Board enjoys broad powers in the execution of its vast legislative mandate and its home statute is given a liberal construction and interpretation to accomplish those objectives (s. 116). The Board may make recommendations concerning changes in the law which will, in the Board's judgment, protect the interests of the public and the utility (s. 21). The NSPI regulations must be approved by the Board (s. 65). The Board has the power to investigate customer complaints and inquire into any alleged violation of the Regulations (s. 47).

[18] Keeping this generous statutory matrix in mind, a useful next step is to isolate the threshold grounds of appeal permitted by the tribunal's home statute (**Canada (Citizenship and Immigration) v. Khosa**, 2003 SCC 12. Sections 26 and 30(1) of the **Utility and Review Board Act**, S.N.S. 1992, c. 11 state that the Board's findings of fact made within its jurisdiction are "binding and conclusive" and that an appeal lies to this Court only on questions of jurisdiction or law.

[19] At the appeal hearing in this Court, counsel for Ms. Robinson conceded that they were not challenging any of the factual findings made by the Board. Nor could she. Rather, the argument was that the Board misinterpreted the Regulations when applying the Regulations to the facts. Her "agreement" with NSPI was said to be invalid because it was "*ultra vires*" the Regulations and therefore of no force or effect.

[20] This represents a subtle but important shift from the way in which the case was first argued before the Board. There, Ms. Robinson said her agreement with the utility was invalid because NSPI exerted undue influence upon her in order to get it. The Board rejected that argument after finding no evidence at all to support it. In further submissions addressed by the Board in its supplemental reasons, and which were repeated in oral argument before this Court, the appellant took a different tack saying the agreement ought to be set aside for being "inconsistent" with the Regulations. Many of the same complaints of "duress", "unfair treatment", and "undue influence" were repeated even though those same allegations had been rejected by the Board and were not appealed to this Court. I will say more about that later in these reasons.

[21] From **Dunsmuir v. New Brunswick**, 2008 SCC 9 and subsequent cases such as **Khosa**, **supra**; **Smith v. Alliance Pipeline Ltd.**, 2011 SCC 7; and **Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)**, 2011 SCC 62, we now have a much clearer understanding of the line that is intended to separate issues which are said to be reviewable for either "correctness" or "reasonableness". For example, from **Smith v. Alliance Pipeline**, **supra**, we know that a standard of correctness will be applied to:

i. a constitutional issue;

ii. a question of general law that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise;

iii. the drawing of jurisdictional lines between two or more competing specialized tribunals; and

iv. a true question of jurisdiction or *vires*.

[22] Whereas a standard of reasonableness will normally be the governing standard where the question:

i. relates to the interpretation of a tribunal's enabling (or home) statute or to statutes closely connected to its function with which it will have particular familiarity;

ii. raises issues of fact, discretion, or policy; or

iii. involves inextricably intertwined legal and factual issues.

[23] These same principles were recently affirmed by the Court in **Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association**, 2011 SCC 61. There, Rothstein, J., for the majority, determined that there should be a presumption of deference where a tribunal is interpreting its home statute or a statute closely related to its mandate:

> [34] ... it is sufficient in these reasons to say that, unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by the tribunal of "its own statute or statutes closely connected to its function, with which it will have particular familiarity" should be presumed to be a question of statutory interpretation subject to deference on judicial review.

[24] In previous decisions of this Court we have held that questions of law under s. 30(1) of the **Utility and Review Board Act** are reviewable on a standard of reasonableness. For example, in **Halifax (Regional Municipality) v. United Gulf Developments Ltd.**, 2009 NSCA 78, we said the Board is an expert tribunal entitled to deference on questions of law that fall within its expertise. We said the

same thing in **Nova Scotia (Assessment) v. Van Driel**, 2010 NSCA 87, when the matter in dispute involves the interpretation and application of one of the Board's home statutes.

[25] The issues in this case obliged Commissioner Clarke to interpret regulations passed pursuant to one of its close-to-home statutes and to apply those regulations to circumstances found to exist on the evidence. Specifically, the dispute concerned the interpretation of s. 2.1 of the NSPI Regulations as it relates to the utility's authority to supply electricity, and its responsibility to track and collect arrears.

[26] The Board has been given statutory authority to both approve the regulations and to ensure the utility's compliance with them. In my opinion the Board has acquired a well-developed understanding and familiarity with the practical impact and statutory objectives surrounding the utility's regulations. Thus, the Board enjoys a unique and specialized knowledge of the regulations and the context in which they operate. Nothing in this case raises any issues of central importance to the legal system. To the extent that the interpretative exercise required the consideration of general legal principles, it fell within the specific context of the Board's jurisdiction over the NSPI Regulations. All of this leads me to conclude that the dispute in this case falls squarely within the Board's wheelhouse such that its decision is entitled to deference and should be reviewed on a standard of reasonableness.

[27] In applying that standard to the Board's decision in this case the observations of Justice Abella in **Newfoundland and Labrador Nurses' Union**, **supra**, are apt, repeating the Court's directions in **Dunsmuir**:

> [11] ...certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. …(Emphasis in original)

See also **Archibald v. Nova Scotia (Utility and Review Board)**, 2010 NSCA 27; and **Halifax (Regional Municipality) v. Anglican Diocesan Centre Corporation**, 2010 NSCA 38. I will now apply those principles to my review of the Board's decision.

**Analysis**

[28] In my respectful opinion, Commissioner Clarke's very thoughtful and comprehensive reasons carefully addressed and reasonably disposed of each of the appellant's submissions.

[29] As mentioned, Ms. Robinson first claimed that she had never agreed to anything, but that if she had, it was because she had no choice. Her complaint was dismissed. The Board was satisfied that the appellant had freely entered into a settlement agreement with the utility to dispose of all outstanding arrears. In its decision the Board states:

> Ms. Robinson and NSPI agreed on a payment arrangement which would retire the arrears. . . Ms. Robinson was unable to meet the payment schedule, resulting in a disconnect notice from NSPI. ...
>
> It is clear from NSPI's records as provided to the DRO that Ms. Robinson was dealing in February 2006, with account #3 and reached a settlement agreement which included the arrears of $1127.63 (from Account #1).
>
> Ms. Robinson's Affidavit includes no reference to her involvement with account #3, and DLAS makes no mention of the 2006 agreement.
>
> The Board finds that Ms. Robinson incurred liability for the account #1 arrears in February, 2006, as part of account #3 and as a result, NSPI was entitled to seek payment under Regulation 2 before providing electric service in 2010. There is no evidence before the Board on which to conclude otherwise. ...
>
> The Board finds that this characterization omits the crucial fact that Ms. Robinson had already assumed responsibility for account #1 in her dealings with NSPI for account #3 in February, 2006. Given the history of the accounts, and the arrears, NSPI's willingness to forgo a security deposit appears quite lenient to the Board. Ms. Robinson was not "unduly disadvantaged" in the circumstances.

> The Board finds that Ms. Robinson did nothing more in November, 2010, than confirm what she had done in February, 2006. That agreement to pay account #3, including the account #1 arrears, is not statute barred. There is nothing in the evidence on which the Board could find the February, 2006 agreement invalid. ...

These strong findings were affirmed in the Board's supplemental reasons dated November 25, 2011, when Commissioner Clarke stated:

> The Appellant has offered no evidence about the February, 2006, agreement to pay the arrears on account #3, which included the account #1 arrears. ...

[30] These findings are fully supported in the record and present no avenue for appeal. If the appellant were serious in her assertion that there was never any agreement between the parties, she should have presented evidence to that effect. Having failed to do so she cannot seriously suggest, on this record, that the DRO and the Board were wrong to conclude otherwise.

[31] The appellant's fallback position was to suggest that she was treated unfairly and fell victim to improper influence at the hands of the utility. In her submissions before the Board Ms. Robinson argued "alternatively" that:

> ... if an agreement was reached between Ms. Robinson and NSPI ... the agreement is invalid because NSPI unduly influenced Ms. Robinson.

[32] The Board rejected that submission. In her reasons, Commissioner Clarke said:

> **5.2 Undue Influence**
>
> DLAS argued that the November, 2010 agreement should be set aside as it was the product of undue influence exercised upon Ms. Robinson by NSPI. The Board has considered the test set out in *Geffen* which has been adopted in numerous cases in Nova Scotia.
>
> The Board acknowledges that Ms. Robinson was required to deal with the only source of electricity service available to her. In this regard, she is in the same relationship with NSPI as most of the population of Nova Scotia. It is for this reason that NSPI is required to have Regulations which govern its dealings with its

customers. These Regulations are approved by the Board. The Board considers there is nothing unfair in Regulation 2.1 itself.

DLAS characterized the nature of the transaction as follows:

> The nature of the transaction was simple. NSPI saw an opportunity to collect on an overdue account. Ms. Robinson wanted electricity. She was living with Clyde Hogan, the debtor of the overdue account. NSPI wanted Ms. Robinson to pay Mr. Hogan's debt. Ms. Robinson agreed to incur the debt, an amount far exceeding her monthly income, and, in return, Ms. Robinson was provided with electricity. NSPI claims that the bargain was fair because Ms. Robinson did not have to pay a security deposit. But if the required security deposit was conservatively estimated at $300, how does that equate to about $1100? No one of "full, free and informed thought" could come up with an equation to make that appear as a good deal. Indeed, it was an unfair deal from which Ms. Robinson was "unduly disadvantaged" and from which NSPI "unduly benefited."
>
> [DLAS Submission August 19, 2011, para. 30]

The Board finds that this characterization omits the crucial fact that Ms. Robinson had already assumed responsibility for account #1 in her dealings with NSPI for account #3 in February, 2006. Given the history of the accounts, and the arrears, NSPI's willingness to forgo a security deposit appears quite lenient to the Board. Ms. Robinson was not "unduly disadvantaged" in the circumstances.

The Board finds that Ms. Robinson did nothing more in November, 2010, than confirm what she had done in February, 2006. That agreement to pay account #3, including the account #1 arrears, is not statute barred. There is nothing in the evidence on which the Board could find the February, 2006 agreement invalid.

DLAS suggests that NSPI ought to have recommended that Ms. Robinson obtain independent advice. Showing that a party may have had the opportunity to obtain such advice is only one way in which a presumption of undue influence may be rebutted. While the Board has not made a finding that undue influence was exerted on the customer in this matter, the Board observes that such an obligation is not included in the Regulations.

## 6.0 BOARD DECISION

> As noted above, it is the Board's view that NSPI properly applied Regulation 2.1 when considering Ms. Robinson's November, 2010 request for service. With this service request and in the establishment and operation of the previous accounts, NSPI had opportunities, under the Regulations, to refuse or disconnect service, or require a security deposit, but chose not to do so. The Board observes that NSPI has been fair in its dealings with Ms. Robinson (and Mr. Hogan). The Board is not persuaded that undue influence should be presumed in the circumstances of this matter.
>
> The appeal is therefore dismissed.

[33] This same issue was reconsidered by the Board in its supplemental reasons dated November 25, 2011. There the Commissioner said:

> The Board notes that Counsel for the Appellant points to paragraphs 8, 10, 11 and 13 of Ms. Robinson's Affidavit of August 19, 2011, as evidence of undue influence. With respect, the Board does not agree. Paragraphs 8, 10, and 11 do not disclose that any undue influence was exercised by NSPI.
>
> Additionally, Ms. Robinson states in her Affidavit:
>
> > 13. Ms. Parsons did not suggest that I seek independent advice regarding this transaction, nor did Ms. Parsons advise me of the relevant regulations. I have a high school degree but no other education.
>
> The Board is satisfied from the Affidavit that both the service representative of NSPI, and Ms. Parsons, advised the Appellant of the requirement to pay the arrears.
>
> Counsel for Ms. Robinson says that NSPI did not "recommend she obtain independent legal advice concerning her liability or the legality of the contract." The Board does not consider that NSPI is required to make such a recommendation when a person contacts the company to be supplied with electrical service. There is no requirement to this effect in the Regulations, which NSPI is obliged to follow.
>
> The Board confirms the findings in its November 3 decision that the presumption of undue influence is not raised in the circumstances of this matter.
>
> The Board finds that NSPI followed the Board-approved Regulations.

> Therefore, the Board, having considered all of the submissions of the parties, hereby confirms the decision originally made on November 3, 2011, which dismissed the appeal.

[34] These strong findings by the Board rejecting the appellant's complaints of duress and undue influence, were not appealed. Consequently, I will ignore the appellant's attempts at the hearing in this Court to characterize her dealings with NSPI as having been "threatened" or "forced to pay". These aspersions are no longer relevant and have no bearing on the appellant's final submission that her agreement with the utility is "inconsistent" with the Regulations and should be set aside on that basis. This takes me to the third question addressed by the Board which was whether NSPI complied with its own Regulations in its dealings with Ms. Robinson.

[35] I would reduce the variety of points and issues raised by the appellant in support of this submission to three principal arguments. First, she says NSPI operates as a highly regulated monopoly which exists for the benefit of consumers like herself who expect to be treated fairly. By "refusing" to supply electricity service unless she first "agreed" to repay a debt she says was incurred by Mr. Hogan, NSPI breached its own Regulations. Put another way, the utility had no authority under its own Regulations to refuse to supply electricity service to the appellant unless she first agreed to repay a debt incurred by someone else. Second, she argues that the Regulations are "designed to ensure" that only "those persons who *benefit* from electricity service, are liable to pay for that service". Ms. Robinson says she did not benefit from the electricity service that resulted in Mr. Hogan's debt to NSPI because she was not living in the same premises at the time such service was provided. Thus, she says the Board's interpretation of the Regulations which upheld NSPI's actions is unreasonable in that it ignores the Board's own jurisprudence and produces a result contrary to the values and objectives the legislation is intended to protect. Third, the appellant says the effect of the Board's decision is to hold her responsible for Mr. Hogan's debts and flies in the face of recognized family law principles with respect to the liability of common law spouses for debts of one another. To quote from the appellant's factum:

> NSPI, with the Board's consent through its decision, took advantage of the fact that Ms. Robinson and Mr. Hogan were in a relationship by placing the burden of

> Mr. Hogan's debt onto Ms. Robinson as a condition of receiving electricity, an arrears – recovery tactic that would never be attempted or condoned had they simply been roommates.

[36] Before addressing the appellant's arguments I will set out the relevant portions of the Regulation:

> **2.1 APPLICATION FOR ELECTRIC SERVICE**
>
> The Company shall only supply electric service to a Customer who is the owner, or occupant, of premises for which electric service is required. The supply of such electric service shall be in accordance with these Regulations, and at such Rates as may be applicable, from time to time.
>
> **RESIDENTIAL ELECTRIC SERVICE CUSTOMERS**
>
> Before supplying electric service to a Residential Customer, the Company may require the owner or occupant of the premises to complete an Electric Service Contract. If such person refuses to complete the Electric Service Contract, the Company may refuse to supply electric service to the premises or may discontinue the supply of electric service to the premises.
>
> The Company may also refuse to provide electric service to the premises if:
>
> (a) the person applying for electric service has an outstanding electric service account and satisfactory arrangements for settlement have not been made, or
>
> (b) the person applying is an agent for another person, and that other person has an outstanding electric service account and satisfactory arrangements for settlement have not been made, or
>
> (c) an occupant of the premises has an outstanding account incurred when occupying any premises at the same time as the person applying for service and satisfactory arrangements for settlement have not been made.
>
> ...

**2.2 AGREEMENT**

An Agreement is deemed to exist between a customer and the Company for the supply of electric power and energy at appropriate rates and payment therefore in accordance with these regulations by virtue of:

(a) the customer applying and receiving approval for electric service; or

(b) the customer consuming or paying for electric service from a date that the customer who is a party to an agreement pursuant to clause (a) (the customer of record) moves out of the premises, in which case the customer of record shall remain jointly and severally liable for the electric service account up to the date the Company is notified that the customer of record wishes to terminate the supply of electric service to the customer.

**6.5 PAYMENT AGREEMENT**

(1) In those cases where the customer does not dispute liability for the amount in arrears, or where the Company and the customer arrive at a settlement of the dispute, the Company may, if the customer is unable to pay the amount in arrears, permit the customer to pay the full amount over a period of time.

...

[37] I will now address each of the appellant's three principal arguments.

[38] Ms. Robinson's first complaint is that she had no choice but to deal with NSPI to obtain electricity and that "forcing" her to accept responsibility for Mr. Hogan's arrears before agreeing to supply electric service amounted to a breach of the utility's own regulations. I cannot agree.

[39] While it is undoubtedly true that NSPI holds a monopoly in the supply of electricity to consumers in Nova Scotia, it is also true that its actions are highly regulated. While NSPI was obliged to treat the appellant fairly, the utility was also expected to be fair to all of its customers. Included within its mandate is the responsibility to collect overdue accounts. This is clearly implied by Regulation 2.1 where the Legislature has given the utility full authority to refuse to supply or

to discontinue the supply of electric service in circumstances where arrears are shown to exist. The reason is obvious. A failure by one consumer to honour outstanding accounts places the burden upon the backs of other consumers who struggle to keep their accounts current. People and businesses who pay their power bills on time expect NSPI to collect on arrears, thus recouping what is owed and keeping costs down for everybody. This reality was recognized by Commissioner Clarke when she said:

> The Board acknowledges that Ms. Robinson was required to deal with the only source of electricity available to her. In this regard, she is in the same relationship with NSPI as most of the population of Nova Scotia. It is for this reason that NSPI is required to have Regulations which govern its dealings with its customers. These Regulations are approved by the Board. The Board considers there is nothing unfair in Regulation 2.1 itself.

[40] I would therefore dismiss this argument by the appellant.

[41] Next, the appellant complains that the Board's interpretation of Regulation 2.1 contradicts the Board's own jurisprudence by failing to recognize that the appellant did not "benefit" from the electricity service that resulted in the unpaid account. Accordingly she says she should not have been held liable to pay for it.

[42] To support this argument the appellant relies heavily upon the Board's November 23, 1983 decision, *Board of Commissioners of the Public Utilities in the Matter of the Public Utilities Act* and *In the Matter of an Application of Nova Scotia Power Corporation for the Approval of its Rules and Regulations* P-855. She says the Board approved the adoption of Regulation 2.1 on the principle that anyone who "consumes" electricity is liable to pay for it. She bases this assertion on certain words lifted from the Board's 1983 decision where, after setting out various hypothetical scenarios, the Board observed:

> The Applicant attempts to solve the problem of liability for payment by making anyone that "consumes" electricity liable to pay for it.

[43] With respect, this quotation is taken out of context and does not stand for the proposition advanced by the appellant. It merely sets up the Board's consideration of various arguments and counter-arguments posed by interested parties granted

standing to make representations. A careful reading of the 1983 decision also confirms that the quotation in fact refers to Section 2.2 and not 2.1which is the provision under consideration in this appeal.

[44] There are other reasons why the appellant's reliance upon the Board's decision almost 30 years ago is misplaced. First, as Mr. Clarke indicated in his able submissions on behalf of NSPI, the 1983 decision did not address the text of the particular Regulation under review in this case, which was passed subsequently. Further, in this case the Board found as a fact that Ms. Robinson freely and independently concluded an agreement with NSPI to settle all outstanding arrears. That critical factor did not arise in the 1983 decision which arose as a kind of reference to the Board to obtain its considered opinion and approval of its Rules and Regulations. Finally, and more fundamentally, neither the 1983 decision nor the language of Section 2.1 itself contains a requirement that the applicant must have benefitted from prior electric service in order for the utility to be justified in refusing to provide electricity. Section 2.1 does not use the term "benefit", "consume", or any similar language, whereas Section 2.2 expressly refers to a person "consuming" electricity. I agree with counsel for NSPI that if Section 2.1 had been intended to only permit the utility to decline service and collect arrears in circumstances where the applicant had personally consumed or benefited from electricity, such a requirement would have been explicitly stated.

[45] In her decision Commissioner Clarke found that NSPI was justified in refusing to provide service based on each and every subsection (a), (b) and (c) of Regulation 2.1.

[46] Subsection 2.1(a) authorizes the utility to refuse to provide electric service to the premises if

> (a) the person applying for electric service has an outstanding electric service account and satisfactory arrangements for settlement have not been made.

With respect to that provision, Commissioner Clarke found:

> It is clear from NSPI's records as provided to the DRO that Ms. Robinson was dealing in February 2006, with account #3 and reached a settlement agreement which included the arrears of $1127.63 (from Account #1)...

> The Board finds that Ms. Robinson incurred liability for the account #1 arrears in February, 2006 as part of account #3 and as a result, NSPI was entitled to seek payment under Regulation 2 before providing electric service in 2010. There is no evidence before the Board on which to conclude otherwise. ...
>
> In the view of the Board, NSPI also could have relied on Regulation 2.1(a) to refuse service, since Ms. Robinson's agreement of February, 2006 was in default.

[47] Subsection (b) entitled the utility to decline service if:

> (b) the person applying is an agent for another person, and that other person has an outstanding electric service account and satisfactory arrangements for settlement have not been made.

With respect to this subsection Commissioner Clarke found:

> NSPI also argued that Regulation 2.1(b) was applicable, because Ms. Robinson, in November, 2010, was acting, not only on her own behalf, but also for Mr. Hogan and, in that sense, she was a "person applying as an agent for another person". DLAS was silent regarding 2.1(b). The Board notes that, while "agent" is not defined in the Regulations, it is the Board's view that Ms. Robinson can be considered an agent for Mr. Hogan in these circumstances, as she was in February, 2006. The point becomes moot in any case, given that NSPI was in a position to apply Regulation 2.1(c) as discussed in the preceding paragraphs.

[48] On this record it seems perfectly reasonable to me for the Board to have concluded that by arranging the settlement agreement in 2006 at a time when she and Mr. Hogan were living together, she was acting both personally and as agent for him. Thus she incurred liability for him, and in her own right. At the time the settlement agreement was concluded they were living together and Mr. Hogan had an outstanding electric service account.

[49] Finally, subsection 2.1(c) entitles the utility to decline to provide electric service where:

> (c) an occupant of the premises has an outstanding account incurred when occupying any premises at the same time as the person applying for service and satisfactory arrangements for settlement have not been made.

With respect to that provision Commissioner Clarke found:

> Further, when Ms. Robinson requested service at the current address, Mr. Hogan was an "occupant of the premise" who had "an outstanding account incurred when occupying any premise at the same time as the person applying for service." When Ms. Robinson applied for service under account #4, NSPI was legitimately entitled to apply Regulation 2.1(c).
>
> Black's Law Dictionary 9th ed. (2009) defines "incur" as "to suffer or bring on oneself (a liability or expenses)". Mr. Hogan incurred the liability for account #1 as part of account #3 when he and Ms. Robinson were residing together when that account was opened. Ms. Robinson incurred liability for that account in her agreement with NSPI in February, 2006.

[50] In any event, and quite apart from the settlement agreement made in 2006, by requesting electric service in November, 2010, to premises she shared with Mr. Hogan, the appellant incurred the outstanding arrears. She received a benefit — electricity. So did Mr. Hogan. He received a further benefit in being able to forgo having to negotiate any new arrangement with NSPI, whereby he might have been obliged to pay arrears, or renegotiate a new deal. NSPI also waived a security deposit which the Board found to be "quite lenient". The appellant and Mr. Hogan managed to avoid all of that by Ms. Robinson establishing the new account as she did in November, 2010.

[51] After carefully considering the record, I am satisfied that the Board's analysis and disposition with respect to each of the conditions under Regulation 2.1 were reasonable. I am not persuaded that the Board's ruling in this case was prompted by an unreasonable interpretation of the Regulations, or produced a result which is inconsistent with the values and objectives the legislation is intended to protect. On the contrary, I am satisfied that the Board's decision falls well within a range of acceptable and rational solutions. In terms of justification, transparency and intelligibility, the Board's analysis, expression of reasons, and outcome all meet the reasonableness standard of review. Accordingly, the Board did not err in finding that NSPI's actions complied with the Regulations.

[52] Finally, I see no merit to the appellant's complaint that NSPI's conduct and the Board's decision "violated family law principles". On the evidence, the parties had not lived together long enough to create a common law relationship. There is

no principle of family law that a person cannot freely enter into a contract and be responsible for a co-habitant's debts, irrespective of common law status. In any event, this dispute is subject to recognized principles of contract law and agency. A valid settlement agreement was reached. Ms. Robinson voluntarily assumed liability for Mr. Hogan's arrears.

**Conclusion**

[53] For all of these reasons I would dismiss the appeal. The Board's decision that NSPI treated the appellant fairly and fulfilled its responsibilities under its Regulations was reasonable. There is nothing here to warrant our intervention.

[54] Under the circumstances I would decline to award costs.

Saunders, J.A.

Concurred in:

Fichaud, J.A.

Bryson, J.A.