NOVA SCOTIA COURT OF APPEAL

Citation: *Sparks v. Nova Scotia (Assistance Appeal Board)*, 2017 NSCA 82

Date: 20171108
Docket: CA 454879
Registry: Halifax

Between:

Brenton Sparks

Appellant

v.

Assistance Appeal Board (Nova Scotia) and the Department of Community Services (Nova Scotia)

Respondents

and

Rosemary Sparks, Rosemary Sparks as Guardian *Ad Litem* for Jeannine MacDonald, Tiauna Sparks and Angelica Sparks, and Women's Legal Education and Action Fund Inc. (LEAF)

Intervenors

Judges:	MacDonald, C.J.N.S; Saunders and Van den Eynden, JJ.A.
Appeal Heard:	May 31, 2017, in Halifax, Nova Scotia
Held:	Appeal allowed with costs, per reasons for judgment of MacDonald, C.J.N.S.; Saunders and Van den Eynden, JJ.A. concurring.
Counsel:	Vincent Calderhead, for the appellant Sheldon Choo, for the respondent Department of Community Services (Nova Scotia) Claire McNeil, for the intervenors

Reasons for judgment:

[1] Consider this scenario: a Nova Scotia family, living in poverty, receives monthly income assistance from the Province. The amount is calculated according to the size of the family. In this scenario, it is a father, mother, and three children. The benefit arrives by way of one cheque, payable to the father. The father fails to make sufficient efforts to secure employment and consequently entitlement is suspended. Does this mean that the entire family allotment is to be suspended or just that portion designated for the father? In other words, should the innocent wife and children be penalized for the father's misdeeds? That is the sole issue in this appeal.

BACKGROUND

[2] The facts are straightforward. In 2015, the appellant, Brenton Sparks, and his wife, the intervenor Rosemary Sparks, were living in the African Nova Scotian community of East Preston with their three daughters, then aged 13, 9, and 8. The family had been receiving income assistance since the Fall of 2014. The one cheque, payable to Mr. Sparks, had three components: (a) a personal allowance to Mr. Sparks; (b) another to Ms. Sparks; and (c) a shelter allowance based upon the size of the family, including children.

[3] In July of 2015, Mr. Sparks was contacted by his caseworker requesting him to participate in an employment services program. This was part of the Province's goal to promote economic self-sufficiency for clients. Mr. Sparks indicated an intention to start his own business. His caseworker did not object but urged him to seek employment in the meantime.

[4] Mr. Sparks did not follow up to his caseworker's satisfaction. This resulted in a six-week suspension of the family's benefits.

[5] Without the benefit of counsel, Mr. Sparks engaged the internal review process, which ultimately led to his unsuccessful appeal before the respondent Assistance Appeal Board.

[6] Mr. Sparks then retained counsel and asked the Supreme Court of Nova Scotia to review the Board's decision. He argued that it was unreasonable for the Board to: (a) find his job search efforts to be inadequate; (b) impose a six-week

suspension; and (c) suspend the entire payment, as opposed to only that portion designated to him personally.

[7] Justice Arthur J. LeBlanc of the Supreme Court of Nova Scotia (as he then was) dismissed Mr. Sparks' motion, upholding all aspects of the Board's decision (2016 NSSC 201).

[8] Although maintaining that his efforts were reasonable, Mr. Sparks accepts the suspension for that part of the payment designated for him personally. However, he challenges the disqualification for those portions representing his wife's personal allowance and the family's shelter allowance. Ms. Sparks (on her own behalf and on behalf of her children) and the Women's Legal Education and Action Fund ("LEAF"), as intervenors, support his position.

ANALYSIS

[9] As I will explain, it is the decision of the Assistance Appeal Board that is under scrutiny in this appeal. As a specialized tribunal, with experience in interpreting the relevant assistance provisions, the Board's decisions are entitled to deference. This means that the courts will defer provided the decision is *reasonable*. See *Nova Scotia (Department of Community Services) v. McIntyre*, 2012 NSCA 106 at ¶ 22 to 24.

[10] The reviewing judge recognized this:

> [24] …Thus, the question of whether the Department's and the Board's determination that Mr. Sparks unreasonably refused to participate in employment services is to be reviewed on a standard of reasonableness. This is consistent with the Supreme Court of Canada's finding in *Dunsmuir* that questions of mixed law and fact attract a reasonableness standard.
>
> [25] Determining whether the Department and the Board had the authority to suspend Mr. Sparks' family members' benefits is a question of statutory interpretation that must also attract a standard of review of reasonableness.

[11] Since this Court's role is to "step into the shoes" of the reviewing judge (*Nova Scotia (Minister of Agriculture) v. Millet*, 2017 NSCA 2 at ¶ 41), it falls to us to now consider the reasonableness of the Board's decision.

[12] A Board decision will be reasonable when: (a) the decision-making process was justified, transparent, and intelligible; and (b) the result falls within a range of acceptable outcomes. The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 explains:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: 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. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] Guided by *Dunsmuir*, I will now consider: (a) the Board's decision-making process; and (b) whether its decision "falls within a range of possible, acceptable outcomes".

The Board's Decision-Making Process

[14] For one very good reason, the Board's decision-making process cannot be faulted. This is because it was never asked to address the issue in this appeal. Before the Board, Mr. Sparks simply maintained that he had presented a legitimate employment plan which the Department should have accepted. As such, he argued there was no breach. The parameters of any potential suspension did not appear to be on anyone's radar.

[15] At the same time, one can hardly fault Mr. Sparks as he tried to navigate the process without counsel. Further, we understand that recipients are rarely represented before the Board.

[16] Therefore, on the issue it was asked to address, the Board's decision-making process was justified, transparent, and intelligible. I would not interfere on this aspect of the *Dunsmuir* test.

Did the Decision Fall Within the Range of Acceptable Outcomes?

[17] On the other hand, this decision in my view falls outside "the range of possible, acceptable outcomes". Simply put, denying innocent people, living in poverty, the funds they need for financial survival cannot be sustained by any reasonable interpretation of the governing legislation. I say this for the following reasons.

[18] The applicable statute is the *Employment Support and Income Assistance Act*, S.N.S. 2000, c. 27. The provision authorizing Mr. Sparks' disqualification is actually one of the *Act's* regulations:

> **Refusal to accept employment**
>
> **20 (1)** An applicant or recipient is not eligible to receive or to continue to receive assistance where the applicant or recipient, or the spouse of the applicant or recipient unreasonably refuses
>
> (a) to accept employment, where suitable employment is available;
>
> (b) to participate in employment services that are part of an employment plan; or
>
> (c) to engage in an approved educational program that is part of an employment plan, where an appropriate approved educational program is available.

[19] The fundamental question in this appeal therefore becomes – who is rendered ineligible as a result of Mr. Sparks' inaction? According to s. 20(1)'s opening phrase that would have to be either an "applicant" or "recipient". They are defined simplistically:

> 2 In these regulations
>
> …
>
> (c) "applicant" means a person who applies for assistance;
>
> …
>
> (z) "recipient" means a person who is receiving assistance;

[20] Mr. Sparks is the only potential "applicant" and his ineligibility is no longer being challenged. So we are left with the meaning of "recipient". Specifically, who becomes an ineligible "recipient" for the purposes of s. 20(1)? The provision is not clear, with each of the parties proposing a different interpretation.

[21] For example, the respondent Department insists that an ineligible "recipient" captures not just Mr. Sparks but his entire family.

[22] However, the appellant suggests that "recipient" simply means the payee. In this case, Mr. Sparks is the payee. So under that interpretation, only his portion would be deducted.

[23] The intervenor offers a third option; namely that "recipient", in the context of this provision, simply targets the defaulting party. As I will explain, in my view, that is the only reasonable interpretation. I reach this conclusion by first articulating and then applying the relevant principles of statutory interpretation.

The Relevant Principles of Statutory Interpretation

[24] The Supreme Court of Canada has reminded us time and time again that we are to take a pragmatic approach to statutory interpretation. Our approach must be both purposive and contextual. For example, in *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42 at ¶ 26 Justice Iacobucci describes this "modern approach":

> [26] In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: see, for example, *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536, at p. 578, *per* Estey J.; *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3, at p. 17; *Rizzo& Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Gladue*, [1999] 1 S.C.R. 688, at para. 25; *R. v. Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65, at para. 26; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 33, *per* McLachlin C.J.; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 27. I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s.12 of the *Interpretation Act*, R.S.C. 1985, c. I-21 , which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

[25] See also *Rizzo & Rizzo Shoes*, [1998] S.C.J. No. 2; *Wilson v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47; *R. v. Alex*, 2017 SCC 37, per Moldaver, J. at para. 24; *B.C. Freedom of Information and Privacy Assn. v. British Columbia (Attorney General)*, 2017 SCC 6.

[26] This approach also applies when, like here, the subject provision is a regulation. Ruth Sullivan in *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis, 2014) makes this point:

> **§13.18** ***Interpretation of regulations***. It is well-established that delegated legislation, like Acts of the legislature, must be interpreted in accordance with Driedger's modern principle. Generally speaking, the rules governing the meaning of statutory texts and the types of analysis relied on by interpreters to determine legislative intent apply equally to regulations. There are some differences, however. As explained by Binnie J. and Bastarache J. in *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, regulations must be read in the context of their enabling Act, having regard to the language and purpose of the Act in general and more particularly the language and purpose of the relevant enabling provisions. Regulations are normally made to complete and implement the statutory scheme and that scheme therefore constitutes a necessary context in which regulations must be read.
>
> [Citations omitted]

[27] As well, Section 9(5) of the Nova Scotia *Interpretation Act*, R.S., c. 235, s. 1 holds that all enactments shall be deemed remedial, and interpreted to insure the attainment of their objects by considering among other matters:

> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;
>
> (c) the mischief to be remedied;
>
> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;
>
> (f) the consequences of a particular interpretation; and
>
> (g) the history of legislation on the subject.

[28] Then, if after applying a purposive and contextual approach, we are left with an ambiguity, we turn to other interpretative aids. Justice Iacobucci explains in *Bell ExpressVu Ltd. Partnership v. Rex*:

> 28 Other principles of interpretation - such as the strict construction of penal statutes and the "*Charter* values" presumption - only receive application where there is ambiguity as to the meaning of a provision. (On strict construction, see: *Marcotte v. Canada (Deputy Attorney General)* (1974), [1976] 1 S.C.R. 108 (S.C.C.), at p. 115, *per* Dickson J. (as he then was); *R. v. Goulis* (1981), 33 O.R. (2d) 55 (Ont. C.A.), at pp. 59-60; *R. v. Hasselwander*, [1993] 2 S.C.R. 398 (S.C.C.), at p. 413; *R. v. Russell*, [2001] 2 S.C.R. 804, 2001 SCC 53 (S.C.C.), at para. 46. I shall discuss the "*Charter* values" principle later in these reasons.)

[29] See also *R. v. C.(L.)*, 2012 NSCA 107 at ¶ 41-43.

[30] As Justice Iacobucci adds, a provision will be ambiguous when, after a contextual and purposive analysis, we are left with two plausible meanings, both consistent with the legislation's intention. It is only then would we resort to other interpretative aids:

> 29 What, then, in law is an ambiguity? To answer, an ambiguity must be "real" (*Marcotte*, *supra*, at p. 115). The words of the provision must be "reasonably capable of more than one meaning" (*Westminster Bank Ltd. v. Zang* (1965), [1966] A.C. 182 (U.K. H.L.), at p. 222, *per* Lord Reid). By necessity, however, one must consider the "entire context" of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.'s statement in *Canadian Oxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743 (S.C.C.), at para. 14, is apposite: "It is only when genuine ambiguity arises between two or more plausible readings, *each equally in accordance with the intentions of the statute*, that the courts need to resort to external interpretive aids" (emphasis added), to which I would add, "including other principles of interpretation".
>
> 30 For this reason, ambiguity cannot reside in the mere fact that several courts — or, for that matter, several doctrinal writers — have come to differing conclusions on the interpretation of a given provision. Just as it would be improper for one to engage in a preliminary tallying of the number of decisions supporting competing interpretations and then apply that which receives the "higher score", it is not appropriate to take as one's starting point the premise that differing interpretations reveal an ambiguity. It is necessary, in every case, for the court charged with interpreting a provision to undertake the contextual and purposive approach set out by Driedger, and *thereafter* to determine if "the words are ambiguous enough to induce two people to spend good money in backing two opposing views as to their meaning" (*Willis*, *supra*, at pp. 4-5).

[31] All that said, at the end of the day, we should interpret legislation in a manner that is both reasonable and just. Ruth Sullivan in *Sullivan on the Construction of Statutes*, *supra*, explains at §2.9:

> At the end of the day, after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. **An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just.**
>
> [Emphasis added]

[32] This passage has been recently endorsed by a majority of the Supreme Court of Canada in *R. v. Alex*, 2017 SCC 37 at ¶ 32. I will discuss this approach in more detail later as it will figure prominently in my ultimate decision.

Applying the Relevant Principles of Statutory Interpretation

[33] Having articulated the appropriate principles, I must now apply them to s. 20(1). Specifically, by applying the modern approach to interpretation, I will first consider whether the provision is ambiguous. If I find that it is, I will then determine its appropriate meaning, with the help of other interpretative aids.

Is s. 20(1) Ambiguous?

[34] In my view, a contextual and purposive analysis confirms that this provision is indeed ambiguous.

[35] Consider first a contextual analysis. As Ruth Sullivan explains in *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016) at p. 40, this involves a two-pronged approach. We look first at the words under review within the context of their immediate provision (s. 20(1)) and then in the context of the entire legislative scheme:

> The meaning of a legislative text is determined by analyzing the words to be interpreted in context. Words are analyzed in their immediate context by focusing on the specific provision in which the words appear and attempting to understand the reasons why the legislature has chosen this combination of words, this structure, this punctuation, and so on. Words are also analyzed in larger contexts by comparing the wording of the provision to be interpreted with the wording of provisions elsewhere in the same Act or other Acts and by considering the role of the provision in the scheme to which it belongs.

[36] Turning to the immediate context, here again are the relevant portions of the subject provision:

> **Refusal to accept employment**
>
> **20 (1)** An applicant or recipient is not eligible to receive or to continue to receive assistance where the applicant or recipient, or the spouse of the applicant or recipient unreasonably refuses
>
> …
>
> (b) to participate in employment services that are part of an employment plan; or…

[37] There is nothing in this provision to help me understand the meaning of "recipient". For example, the fact it is used alongside "applicant" indicates that a recipient can include someone who has not filled out the formal application. Yet, the person applying would surely be a recipient. So these two terms cannot be mutually exclusive. Looking at this provision in isolation, I am no further ahead.

[38] Then when considering the impugned provision in the context of the entire *Act*, the confusion continues. Here we see "recipient" used inconsistently throughout the *Act*, regulations and supporting policies. Sometimes the term denotes a person in need who applies for assistance on his or her own behalf (and, whose application, in turn, triggers a needs assessment of his or her family members) and sometimes as a payee or a representative for the entire family unit.

[39] By way of further background, the *Employment Support and Income Assistance Act* was introduced as Bill No. 62 in the Legislature on October 26th, 2000. It can be said to be a piece of watershed legislation. It replaced the *Family Benefits Act* and most provisions of the *Social Assistance Act*. Notwithstanding its lofty title, the legislation contains a mere 29 sections. The substantive mechanisms are not contained within the legislation; rather, they emerge in the regulations and to a lesser extent the policies.

[40] When the Bill was introduced in the Legislature, it was subject to much criticism. Of considerable complaint and worry was the absence of draft regulations. A hoist motion to suspend the reading of the Bill for six months (to permit time for the regulations to be tabled and to then allow time for examination and debate) was made, but defeated by the majority government. The chief complaints were obfuscation due to the absence of the regulations; pandering to anti-welfare sentiments; and a lack of attention paid to affected communities

(including women, single mothers, African Nova Scotians, and off-Reserve Aboriginal people) and rural populations where job prospects were dim.

[41] To conclude my contextual analysis, a "recipient" read in its immediate and broader context in the *ESIA Act* and *Regulations*, appears on its surface to be ambiguous.

[42] This takes me to my purposive analysis where I try to discern the Legislature's intent. Again, there is a lack of clarity. For example, the *Act's* stated purpose is twofold – to provide assistance and to promote self-sufficiency:

> **Purpose of Act**
>
> **2** The purpose of this Act is to provide for the assistance of persons in need and, in particular, to facilitate their movement toward independence and self-sufficiency.

[43] The *Act's* preamble is also equivocal:

> WHEREAS independence and self-sufficiency, including economic security through opportunities for employment, are fundamental to an acceptable quality of life in Nova Scotia;
>
> AND WHEREAS individuals, government and the private sector share responsibility for economic security;
>
> AND WHEREAS some Nova Scotians require help to develop skills and abilities that will enable them to participate as fully in the economy and in their communities so far as it is reasonable for them to do;
>
> AND WHEREAS the Government of Nova Scotia recognizes that the provision of assistance to and in respect of persons in need and the prevention and removal of the causes of poverty and dependence on public assistance are the concern of all Nova Scotians;
>
> AND WHEREAS it is necessary that income assistance be combined with other forms of assistance to provide effectively for Nova Scotians in need;
>
> AND WHEREAS employment support and income assistance must be effective, efficient, integrated, co-ordinated and financially and administratively accountable:

[44] In *Clyke v. Nova Scotia (Minister of Community Services)*, 2005 NSCA 3, this Court acknowledged the *Act's* dual purpose:

> 28 The *ESIA Act*'s purpose is not just to provide financial assistance to persons in need. It assists persons in need to the point of self-sufficiency. It obligates the Minister to provide employment services to help persons in need to achieve self-sufficiency. The *ESIA Act* contemplates that, at the point of self-sufficiency, the individual no longer needs assistance. […]
>
> 29 The enactment of the *ESIA Act* introduced a ministerial statutory duty to provide employment services which would assist persons in need to become employable. The *ESIA Act*, s. 2, added a statutory goal that persons in need achieve "movement toward economic independence and self-sufficiency". The *ESIA Act* contemplates that, when the individual passes the goal line of economic independence and self-sufficiency, the financial assistance will cease. This inheres in the terms "independence" and "self-sufficiency."

[45] Furthermore, these purposes are competing, thereby adding to the uncertainty.

[46] Interestingly, the *Act's* long title seems to place more emphasis on promoting independence – *An Act to Encourage the Attainment of Independence and Self-sufficiency through Employment Support and Income Assistance.*

[47] Of course, a title is not determinative of an act's true purpose. Instead it must be considered along with all the other elements of legislative context, which may or may not demonstrate legislative intent pointing in the same direction. See: *Committee for the Commonwealth of Canada v. Canada*, [1991] S.C.J. No. 3, [1991] 1 S.C.R. 139 (S.C.C.) at ¶ 34 and *Temelini v. Ontario Provincial Police (Commissioner)*, [1999] O.J. No. 1876, 174 D.L.R. (4th) 418 (Ont. C.A.) at ¶ 53.

[48] In any event, the *Act's* mixed purpose does nothing to assist us in interpreting s. 20(1). In short, my contextual and purposive analysis leaves a genuine ambiguity. I will, therefore, have to resort to other interpretive aids.

Other Interpretive Aids

[49] Firstly, while the appellant has not raised a formal *Charter* challenge, we should nonetheless interpret ambiguous legislation in a manner that best reflects its values. See *R. v. Mabior*, [2012] SCC 47 at ¶ 22 and 45. While the appellant and intervenors have highlighted several *Charter* values at play in this appeal, I will refer to only one, namely equality. Here, the respondent's proposed interpretation would see a mother and children punished for the shortcomings of the husband (and father). As the intervenors explain, such an interpretation raises the spectre of gender inequality:

42. Such an interpretation also ignores the gendered dimensions of the social context of the *ESIA Regulations* and the particular impact of the Board's interpretive approach on women and children who depend on the ESIA regime for assistance.

43. In *Moge*, the term "feminisation of poverty" served as a touchstone in deciding how the spousal support criteria in the *Divorce Act* should be construed. Justice L'Heureux-Dubé ruled that the objective of "self-sufficiency" in that legislation had to be interpreted within a social context in which women and children were disproportionately economically disadvantaged:

> That Parliament could not have meant to institutionalize the ethos of deemed self-sufficiency is also apparent from an examination of the social context in which support orders are made. In Canada, the feminization of poverty is an entrenched social phenomenon. Between 1971 and 1986 the percentage of poor women found among all women in this country more than doubled. During the same period the percentage of poor among all men climbed by 24 per cent. The results were such that by 1986, 16 percent of all women in this country were considered poor.

44. In her subsequent decision in *Willick*, Justice L'Heureux-Dubé ruled that the legislature must be deemed to be aware of the historical and social context in which it operates, and that the interpretation of legislative purpose requires sensitivity to the social realities of those affected. This includes the power to take judicial notice of reliable social research and socio-economic data.

45. Courts have taken judicial notice of the feminisation of poverty in interpreting legislation addressing family law, as well as bankruptcy provisions.

46. In *Willick*, Justice L'Heureux-Dubé took note of the disproportionate impact of poverty on women and children in construing legislation affecting their right to child support payments:

> By the remarks above, I do not mean to say that a judge's power to take notice of social authority relevant to legal interpretation should be untrammelled. I share my colleague's concern that this power be exercised prudently by judges and that, where feasible, the parties should be accorded the opportunity to comment if the matter is susceptible to dispute. I do not feel that such cautions should preclude me in the present case, however, from taking note of two general facts which are, in my opinion, totally beyond dispute – the significant level of poverty amongst children in single parent families and the failure of courts to contemplate hidden costs in their calculation of child support awards. Drawing upon these factors should not be taken to imply that the context itself determines this Court's decision as to the law. Rather, contemplation of these factors ensures that this Court's decisions will address and interpret the law placed within its social context. This approach was most recently endorsed in *Marzetti v. Marzetti*, 1994 CanLII 50 (SCC), [1994] 2 S.C.R. 765, by

> Iacobucci J., speaking for this Court, who considered social reality to be relevant to his interpretation of a provision of the *Bankruptcy Act* (at p. 801):
>
> > Moreover, there are related public policy goals to consider. As recently recognized by L'Heureux-Dubé J. in *Moge v. Moge*, 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813, 'there is no doubt that divorce and its economic effects' (p. 854) are playing a role in the 'feminization of poverty' (p. 853). A statutory interpretation which might help defeat this role is to be preferred over one which does not. [Emphasis added.]
>
> I most heartily agree.
>
> 47. The *ESIA* is the primary legislation by which the Nova Scotia government provides for the alleviation of poverty through the provision of social assistance to persons in need and thus fulfills its international commitment to social and economic rights. Particularly given this context, the disadvantage and disproportionate impact of poverty on women and children continue to form the relevant social context for the interpretation of the statute.
>
> 48. The reasoning of the Court in *Moge*, which rejected 'economic self-sufficiency' as the sole or even the predominant objective of the legislation, given the disproportionate impact of poverty on women and children, has strong resonance in this case.

[50] In a similar vein, we should interpret ambiguous legislation in a manner that is consistent with Canada's (more specifically Nova Scotia's) international human rights obligations. See *R. v. Appulonappa*, 2015 SCC 59 at ¶ 40.

[51] Here, the appellant succinctly sets out some of the relevant international obligations in its factum:

> 76. Canada is under an obligation to provide social assistance to all persons in need under international human rights law to which it is a party. Prior to Canada's ratification of the *International Covenant on Economic, Social and Cultural Rights ('ICESCR')*, the Province of Nova Scotia, along with the other provinces, endorsed Canada's accession to the treaty.
>
> 77. As a State party to the *ICESCR, Canada* is under an obligation at international law to guarantee that 'everyone' enjoys the right to social security and the right to an adequate standard of living… Moreover, the UN Committee on Economic, Social and Cultural Rights has issued a General Comment (i.e., an interpretive direction for State parties clarifying their obligations under the Covenant) making clear that the rights, such as that to social security (art. 9) and the right to an adequate standard of living (art. 11) cannot be differentially/discriminatorily protected on the basis of one's 'family status'.

> 78. Similarly, under the *Convention on the Rights of the Child*, Canada has committed itself to ensuring that every child enjoys 'the right to benefit from social security'.[44] …settled jurisprudence urges courts, where possible, to adopt interpretations that are consistent with Canada's human rights treaty obligations.

[52] Perhaps MacTavish J., in *Canadian Doctors for Refugee Care v. Canada (Attorney General)*, 2014 FC 651, said it best when she considered the denial of health benefits for refugee children:

> [659] As was noted earlier in discussing Canada's international obligations, Canada has recognized its obligations with respect to children, most particularly in the *Convention on the Rights of the Child*. While this Convention has not been incorporated into Canadian law, the respondents accept that it is nevertheless a valuable interpretive aid in determining whether there has been a breach of the Charter.
>
> [660] It will also be recalled that article 6, paragraph 2 of the *Convention on the Rights of the Child* requires Canada to act in the best interests of children, and codifies its obligation as a signatory to ensure to the maximum extent possible, the survival and development of children. The treatment of children described in the preceding paragraphs does not, in my view, conform to this standard.
>
> [661] Moreover, Canada's own domestic law recognizes that the best interests of children should always be taken into account, and contemplates the exercise of *parens patriae* jurisdiction where necessary to ensure that the interests of children are protected. In *Baker*, above, the Supreme Court of Canada recognized that the interests and needs of children, including non-citizen children, are important factors that must be given substantial weight, as they are central humanitarian and compassionate values in Canadian society: at paragraphs 67 and 70.
>
> [662] I have not, however, been directed by the respondents to *any* evidence that would show that *any* consideration was given by the Governor in Council as to the impact that the 2012 cuts to the IFHP would have on the lives of children affected by the changes.
>
> [663] I fully accept that amongst those who arrive here ostensibly seeking the protection of Canada there will inevitably be some who are not refugees at all, but economic migrants who are attempting to use the refugee system as a back door into this country. There will be others who file refugee claims in an attempt to achieve family reunification in Canada.
>
> [664] **Be that as it may, it is surely antithetical to the values of our Canadian society to visit the sins of parents on their innocent children.**
>
> [Emphasis added]

[53] As well, we should interpret ambiguous social welfare legislation in a manner that benefits the claimants; in this case the mother and children. Again, I refer to *Sullivan on the Construction of Statutes, supra*, beginning at p. 509:

> **§15.59** ***Governing principle***. Social welfare legislation is to be liberally construed so as to advance the benevolent purpose of the legislation. If reasonable doubts or ambiguities arise, they are to be resolved in favour of the claimant. By providing benefits to the community or to groups in the community, social welfare legislature [*sic*] achieves a fairer allocation of social goods and may improve the health, security or dignity of targeted members of the community. The courts' primary concern is ensuring that the intended benefits are received.
>
> **§15.60** This "favour the claimant" principle was first asserted by the Supreme Court of Canada in *Abrahams v. Canada (Attorney General)* [[1983] S.C.J. No. 2]. The issue in the case was whether the appellant was entitled to benefits under the *Unemployment Insurance Act.* Wilson J. wrote:
>
> > Since the overall purpose of the Act is to make benefits available to the unemployed, I would favour a liberal interpretation of the re-entitlement provisions. I think any doubt arising from the difficulties of the language should be resolved in favour of the claimant. …
>
> Since *Abrahams* was decided, the notion that social welfare legislation is to receive a liberal construction has become firmly established.
>
> [Citations omitted]

See also *Cape Breton Development Corp. v. Morrison Estate*, 2003 NSCA 103 at ¶ 36.

[54] All three of these aids therefore urge an interpretation favouring Ms. Sparks and her children.

[55] Furthermore, "at the end of the day" this interpretation, as Ruth Sullivan reminds us, reflects what is "reasonable and just". For example, consider which of the three interpretations advanced by the parties is, at the end of the day, reasonable and just.

Ineligible "Recipient" Includes the Entire Family

[56] This is the Department's proposed interpretation. I refer to its factum:

> 68. There is a consequence to not participating in the employment activities required under *ESIA Regulations* 17-20. Each regulation places an onus on both the recipient and the spouse of the recipient to participate. Failure of one to

> participate in the required activities can impact the eligibility of the other. Spouses are specifically mentioned in each of the employment regulations. It does not only mention recipients. This is consistent across each of the *ESIA Regulations* concerning employment. And if both parents are ineligible then the children are conversely not eligible either pursuant to *Regulation* 14 (1).
>
> 69. In this situation Mr. Sparks was the recipient, and received assistance on behalf of the Intervenors. Upon his unreasonable refusal to participate he was ineligible pursuant to *Regulation* 20(1)(b) and could not receive assistance. If the Intervenor, Ms. Sparks, were permitted to apply for herself for assistance upon the suspension of Mr. Sparks' assistance, she would be not be eligible, as *Regulation* 20(1)(b) expressly states that the applicant or recipient shall not be eligible to receive or to continue to receive assistance where the spouse of the applicant or recipient has unreasonably refused to participate in employment services that are part of an employment plan. There is no other interpretation that works harmoniously with the entire scheme of the Act.

[57] Respectfully, I find this interpretation to be both unreasonable and unjust. It would see innocent spouses and children, with little or no control over the situation, punished for the misdeeds of another.

[58] Furthermore, this punishment (and it is nothing short of punishment) visits those who are most vulnerable: those living in poverty. Nor can it be reasonably denied that these allowances represent the bare minimum needed to survive financially.

[59] That said, I understand that recipients should be encouraged to pursue all reasonable measures to achieve self-sufficiency. But surely those consequences should target only those needing the incentive and not innocent victims who happen to be under the same roof as the defaulting recipient. There is nothing to suggest that Ms. Sparks had any control over Mr. Sparks' efforts. Surely the children did not.

[60] Sadly, poverty affects many citizens of our communities, no matter what their race or personal circumstances. I am mindful of the intervenors' submissions that the Board's decision in this case may weigh heavily on this family, considering they are members of a racialized community. I refer to their factum (with footnotes in brackets):

> 49. Poverty rates for racialized families are three times higher than non-racialized families, with 19.8 percent of racialized families living in poverty compared to 6.4 percent of non-racialized families. [Indigenous women and racialized women experience much greater rates of poverty; 37% of First Nations

> women (off reserve) and 28% of racialized women. Vivian O'Donnell & Susan Wallace, *Women in Canada: A gender Based Statistical Report First Nations, Métis and Inuit Women,* Statistic Canada, Catalogue No 89-503-X (July 2011), online: http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf See also Tina Chu and Hélène Maheux, *Women in Canada: A Gender Based Statistical Report Visible Minority Women,* Statistics Canada, Catalogue No 89-503-X (July 2011), online: http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11527-eng.pdf. Block, Sheila and Grace-Edward Galabuzi *Canada's Colour Coded Labour Market: The Gap for Racialized Workers.* (Toronto: Wellesley Institute, 2011)]
>
> 50. In a recent report on Canada's compliance with its international human rights obligations, the United Nations Human Rights Committee noted that persistent income inequalities between men and women are particularly pronounced in Nova Scotia, and disproportionately affect 'low income women, minority and Indigenous women'. [Human Rights Committee, *Concluding Observations,* CCPR/CO/Can/6, August 15, 2015.]

[61] In my respectful view, neither the Legislature (nor the Executive Council in passing the regulation) would want to see these consequences visited upon Ms. Sparks and her children.

Ineligible "Recipient" Means the Payee on the Cheque

[62] Nor, in my view, would it be just to interpret "recipient" as the payee on the monthly cheque. This was the position advanced by Mr. Sparks and on the facts of this case I can understand his motivations. He was the payee, meaning only his portion should have been suspended. However, I agree with the Department that, in certain situations, this interpretation could lead to an unjust result. This is because ineligibility is also triggered by the inaction of recipient's spouse. Here, I endorse the Department's reasoning in its factum:.

> 70. The Appellant argues that the only reasonable interpretation is that the recipient means only the payee in this context. This is not consistent with the rest of the *Act*. If, for example, the spouse unreasonably refused to participate, if the spouse was not the "payee", then the spouse who refused could potentially continue to receive assistance while the recipient who was the payee was made ineligible. This result is contrary to the wording and intention of the *Act*.

Ineligible "Recipient" Means the Defaulting Party

[63] This takes me to the third interpretation, an ineligible recipient means only the defaulting party. In my view, that represents the only reasonable and just

solution. Only those at fault will be punished. Furthermore, the goal of promoting independence and economic self-sufficiency will hit its target. In other words, the spectre of ineligibility will threaten only those able to prevent it.

[64] Therefore, while the language of this provision may allow for three possible interpretations, only one is reasonable and just. As Moldaver J. observes in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, this is to be expected from time to time:

> [38] It will not always be the case that a particular provision permits multiple reasonable interpretations. Where the ordinary tools of statutory interpretation lead to a single reasonable interpretation and the administrative decision maker adopts a different interpretation, its interpretation will necessarily be unreasonable - no degree of deference can justify its acceptance; see, e.g., *Dunsmuir*, at para. 75; *Mowat*, at para. 34. In those cases, the "range of reasonable outcomes" (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 4) will necessarily be limited to a single reasonable interpretation - and the administrative decision maker must adopt it.

[65] In conclusion, the Board's decision falls outside the range of acceptable outcomes, thereby rendering it unreasonable. Only Mr. Sparks' personal allowance should have been suspended. As Mr. Sparks notes in his factum, this could have been a straightforward calculation:

> 73. In fact, because all components of social assistance budget calculations are based on specific provisions of the *Regulations*, if the appellant, (Mr. Sparks) was found to be ineligible and simply dropped from the budget calculation, it can be calculated immediately and with precision what entitlement would remain for his spouse and three children. Specifically, it would mean deleting the amount representing Mr. Sparks' 'Personal Allowance' (which, at that point in time, was $255/mo.) from the family's monthly entitlement. Next, because the Shelter Allowance reaches its maximum ($620/mo.) at a family size of three *or more*, dropping Mr. Sparks from the budget calculation would leave the Shelter Allowance for his spouse and the three children unaffected). In sum, deleting Mr. Sparks from the monthly assistance calculation would mean a net monthly reduction of $255.

DISPOSITION

[66] I would allow the appeal from the judgment of the Supreme Court and quash the Board's suspension as it applies to the intervenor Rosemary Sparks' personal allowance and the family's shelter allowance. I also would order the respondent Department to pay to Mr. Sparks costs on the appeal of $2,000 (inclusive of disbursements).

MacDonald, C.J.N.S.

Concurred in:

Saunders, J.A.

Van den Eynden, J.A.