CANADA

PROVINCE OF NOVA SCOTIA

IN THE PROVINCIAL COURT

[Cite as: R. v. Young, 2001 NSPC 22]

HER MAJESTY THE QUEEN

versus

BRENDA YOUNG

ADMISSIBILITY OF STATEMENTS

DECISION

Before: **The Honourable A. Peter Ross, JPC**

Ms. Darlene MacRury, for the Prosecution

Mr. William Burchell, Q.C., for the Defence

Decision: **September 25, 2001**

Sydney, Nova Scotia

[1] Brenda Young has been charged with welfare fraud. An important part of the Crown's case is an oral and written admission given to an official in the Family Benefits Program. She revealed, through her statement, that the father of her dependent children was living with her during some portion of the time she received assistance. This fact would contradict declarations she made previously to the Department and disentitle her to the benefits she had received. A *voir dire* was held to determine the admissibility of the statements .

[2] Defence has argued that the statements should be excluded on one or more of the following grounds:

1. As an involuntary confession given under duress or threat to a person in authority;

2. Under s. 24(2) of the Charter because of the failure to advise the defendant of her s.10(b) rights at a time when she was under detention; and

3. Under s. 24(1) of the Charter because the statements were statutorily compelled in violation of s. 7.

BACKGROUND

[3] The defendant is a thirty-four year old mother of two children, ages 10 and 13. She received financial support from the provincial Department of Community Services for approximately ten years under the Family Benefits Program. To demonstrate need and entitlement to such benefits for her and her dependent children she provided information at various times to a case worker, most recently on May the 4th, 1998. She declared that there were three persons residing in the household. However, because she had recently

moved into new premises, and declared that the father of her children, one Lorne Jessome was now also her landlord, a review was commenced by the case worker. This review, and an anonymous complaint led to the file being referred to an Eligibility Review Officer. She examined the case worker's findings. She also had access to banking documentation through a standard release of information form by which Ms. Young permitted the Department to check banking and other financial records which would otherwise be private. When these records showed some financial interdependence between the defendant and Mr. Jessome, the officer contacted the defendant and requested an interview. When confronted with the banking records and the suspicions of the officer, Ms. Young admitted to cohabiting with Mr. Jessome during the time she was receiving benefits. If this were so, she had misrepresented her living situation and was not eligible to receive such benefits.

FAMILY BENEFITS ACT and REGULATIONS

[4] The Family Benefits Act states that its purpose is to provide assistance to persons or families in need where the cause is of a prolonged nature. "Family Benefits" and "Benefits" are defined to mean assistance granted on the basis of need. S. 5(3) states that a woman with a dependent child is eligible to apply for Family Benefits on her own behalf and on behalf of the child if she no longer cohabits with her husband and he does not provide her with the monetary requirements for regularly recurring needs. An officer of the Department has certain of the powers and duties of the Director. This appears to include the power given in s. 7 to determine that an applicant is not eligible to receive Family Benefits and to discontinue or suspend benefits where a recipient fails to provide information required to determine initial or continuing eligibility. S. 13 makes an offence of knowingly obtaining benefits that a person is not eligible for, and of making a false

statement in an application. S. 14 of the Act says that Family Benefits may be suspended or discontinued if the recipient fails to comply with any requirement under the Act or Regulations. One such requirement is contained in s. 14(3) of the Schedule B Regulations which states that a recipient of benefits shall advise the Director of any changes in her circumstances relating to, among other things, cohabitation, immediately upon the occurrence of the change. Under s. 15 of the Regulations a recipient may be required to provide evidence under oath to establish the proof of any relevant fact. The Regulations define "cohabit" as living together with another person as husband and wife, and further state that cohabitation shall be deemed to occur where a man and woman share the same address and living accommodation. S. 5 of the Regulations also speaks to eligibility of a woman with a dependent child to apply for benefits, provided the woman no longer cohabits with her husband and he does not provide her with the monetary requirements for regularly recurring needs. S. 12 requires an applicant to furnish proof of cohabitation, a continuing obligation during any time in which the recipient is in receipt of benefits, under s. 12A(1). Once again, s. 12A(3) permits the Director to refuse to continue benefits where a recipient refuses to provide information concerning proof of cohabitation. S. 21(1) says that the Director shall not grant benefits for an out of wedlock child where the mother is cohabiting with a male person. Finally, s. 44(1) of the Regulations states that the income of a recipient is deemed to include the income of a person cohabiting with the recipient.

FROM THE TESTIMONY OF ERIC CAVERZAN

[5] Eric Caverzan was the defendant's case worker. He visited her twice at her home at Ocean Street, Sydney Mines: in August of 1996 and May of 1998. On each occasion he helped her fill out a prescribed form in which Ms. Young disclosed her sources of

income, and the number of persons residing with her. He advised her, and the form states, that she was required to report any changes in her circumstances, including change regarding cohabitation, immediately upon the occurrence of same. The form refers to s. 13 of the Family Benefits Act, the offence of knowingly obtaining benefits for which a person is not eligible, and also mentions that the Criminal Code allows a person to be prosecuted for the offence of obtaining benefits by making a fraudulent statement.

[6] In 1998 Mr. Caverzan's interest was piqued by the fact that Ms. Young showed the father of her children as her landlord, and thus a person to whom she was paying rent. It struck the case worker as odd that an estranged partner would erect a new home and then rent it to the recipient. Nevertheless, Ms. Young assured him that Mr. Jessome resided not with her but with his mother in the house next door. For this reason Mr. Caverzan put this file aside for "eligibility review". Under such a process a more detailed check is made of financial records, fuel and power bills, etc. However, the review was not undertaken until some months later when an anonymous complaint was made to the Department.

[7] It was not Mr. Caverzan's responsibility to decide on prosecutions.

THE TESTIMONY OF CYNTHIA BOUTILIER

[8] Ms. Boutilier was the Eligibility Review Officer who investigated the file of Brenda Young. The file had been referred to her for review by Mr. Caverzan, and as well she took an anonymous complaint in the fall of 1998 concerning the defendant. She began her investigations in February of 1999. On February the 9th she made phone contact with the defendant. She introduced herself and stated that the reason for her call was an allegation of possible cohabitation with Mr. Jessome. Ms. Boutilier suggested that they meet either at the North Sydney office or at Ms. Young's house. Ms. Young preferred to come to the

office and so a meeting was scheduled for the following day, February the 10th. Ms. Young did not voice any objections or concerns.

[9] Ms. Young presented by herself at the meeting, which was conducted in an interview room at the Department's office in North Sydney. Once again Ms. Boutilier explained her position in the Department and the concerns she had concerning possible cohabitation. Initially Ms. Young denied that she was cohabiting. Ms. Boutilier then presented her with certain documentation, including copies of joint banking arrangements and various chattel mortgages signed by both she and Mr. Jessome. She asked Ms. Young if these were indeed her signatures. At this point the defendant became upset, and Ms. Boutilier fetched some Kleenex. Ms. Young then admitted she had lived with Mr. Jessome for a couple of years; later, she said that she had been living with him since she moved to Ocean Street in 1991. Once these oral admissions were made, a statement was taken on a form prescribed for use by the Department. This statement, given under oath, states that Lorne Jessome is the father of the defendant's children, and had always lived with her while she resided at Ocean Street, Sydney Mines. She said she was willing to repay all monies back when possible. The form contains standard wording that the statements concern eligibility and "could be used in court proceedings". The form also states that the statement "was given voluntarily and freely".

[10] Ms. Boutilier has authority to make certain recommendations on case files, including termination of benefits, recovery of overpayment, and legal action. Here she recommended the latter and the file was "referred to Halifax". From the later testimony of Constable MacIsaac, it appears this generated a joint letter from the Deputy Minister of Community Services and the Deputy Minister of Justice to the Chief of the Cape Breton

Regional Police, recommending a police investigation for a violation of both the Family Benefits Act and the Criminal Code.

[11] Constable MacIsaace was assigned the investigation. It was his evidence that the Department preferred a Criminal Code prosecution for restitution purposes, although the decision on which basis to proceed was left to the investigators.

[12] At the time she requested the interview, Ms. Boutilier knew that Lorne Jessome was the property owner, that he had co-signed various banking documents with the defendant, that there was an allegation of wrong doing from an anonymous caller, and that the case worker had decided that the file merited further review.

[13] Her testimony further suggests that she would have recommended termination of benefits even if the defendant had not admitted to the cohabitation. At the point when the defendant "broke down", she told her it was "best to be open with the Department". There was no caution given in the form commonly used by the police. Nor was there any advisement of any right to legal counsel.

[14] Ms. Boutilier presented as a very competent and composed person, and did not appear confrontational by nature, although there certainly was a confrontation of sorts during the interview. She did not agree with the suggestions, though, that she got "more aggressive" with the defendant after her initial denial. She said the defendant did not seem anxious or hesitant and appeared to be of average intelligence.

TESTIMONY OF BRENDA YOUNG

[15] Brenda Young is thirty-four years old, with Grade 7 education and some experience working at the Alder Point Fish Plant. She has two dependent children and became legally married to Lorne Jessome on August the 26th, 2000.

[16] Her testimony conforms in most respects to that of Ms. Boutilier. She confirmed the phone call on February the 9th, understanding that Ms. Boutilier was "an investigator" who would like to meet with her at the North Sydney office. This was Ms. Young's preferred location, rather than her own house. She felt she had to go to the interview otherwise he cheque might be cut off. She drove herself to the office and waited briefly in the lobby before Ms. Boutilier invited her into the interview room. Initially she was told of an anonymous call which stated that she and Mr. Jessome were living together. This she denied. She was then presented with the financial records in the possession of Ms. Boutilier. She was asked why they had both signed all these papers if they were not living together. At this point Ms. Young began to cry and after composing herself admitted to cohabitation. She says she made this admission because she was afraid and because she had been told that they might be able to apply as a family for benefits under a different program. She says she "thought I would be getting myself out of a problem". She says she trusted Ms. Boutilier. When she signed the statement, she understood she would be paying the money back. At some point she says that she was advised of possible fraud charges.

[17] Ms. Young acknowledged in cross examination that she understood her obligations to disclose true and accurate information in her statements to the case worker. She also acknowledged knowing that she had a responsibility to report any changes in her circumstances. She said when the review officer called she felt there was something

wrong. She confirmed that it was her choice to go to the office rather than have the officer come to her home as there would be more privacy at the office than at the house. She does not recall Ms. Boutilier saying explicitly that the interview "must" occur. When presented with the forms Ms. Young had no difficulty reading same aloud from the witness box, though she was unsure what the reference to the Criminal Code might mean.

DISCUSSION OF THE ISSUES

[18] As an initial comment, I recognize that some of the analysis is cast as though the admission given by the defendant is true. At various times, therefore, the defendant may be posited as dishonest, deliberately withholding information, etc.. While this may be necessary for discussion purposes in the *voir dire*, I have not lost sight of the fact that Ms. Young is presumed innocent and that without the statement the Crown will bear the burden of proving, by other admissible evidence, each element of the offence beyond a reasonable doubt.

S. 10(b) Rights

[19] While defence has argued that Ms. Young was detained within the meaning of s. 10(b) of the Charter I would not characterize her status at the Department's office on February the 10th as "detention". Applying some of the factors set out in R. v. Morin [1987] O.J. No. 794 (C.A.), I note that Ms. Boutilier did not say that the interview was mandatory. The defendant was given the choice of having the interview at either the office or at her own home. Ms. Young was not escorted to the interview by anyone in authority and left on

her own when it was over. While Ms. Boutilier likely believed she had the grounds to terminate the claim even before the interview occurred, and had the power to recommend a possible prosecution, she herself was not a police investigator and it is not clear that she had already decided that an offence under the Criminal Code had been committed. While the defendant was confronted with evidence pointing to her guilt, it would appear that she was free to leave the room at anytime, although that choice, in her mind, might have certain adverse consequences. While there is an undoubtedly an underlying sense of compulsion emanating from the statute and her financial dependence, I do not see her interview as a detention within the meaning of s. 10(b) requiring that she be advised of her right to seek and instruct counsel without delay.

Voluntariness

[20] The standard "confession rule" examines what sort of influence interrogators use to obtain a statement. It is concerned with police tactics, threats, promises and inducements and whether the will of the subject was overborne by such conduct. Such cases as R. v. S.(R.J.) and R. v. White, discussed next under a different heading, speak to "voluntariness" in a different, perhaps more abstract, sense.

[21] While there was "compulsion" of a sort operating on the defendant at the time the statements were given, this emanates from the statute and her financial dependence. Whether Ms. Young's statements were truly "voluntary" cannot be answered completely by reference to the "confession rule". Nevertheless, judging by the considerations normally given to a confession rule analysis it appears the statements of the defendant were the product of an operating mind, given willingly, and not as a result of or as a product of any

threats, promises or inducements. In making this determination, I have regard to the conduct of the Eligibility Review Officer herself, and not the underlying statutory regime and the thoughts engendered by it in the mind of the defendant. I conclude from the evidence that Ms. Boutilier was calm and measured in her approach with the defendant, and while she undoubtedly confronted her with evidence of possible misdoing, becoming more insistent at that juncture in the interview, nothing in her words or actions deprived the defendant of her ability to edit her thoughts from the investigator. While it is not abundantly clear whether there were assurances given that the defendant could, despite her admission of ineligibility for Family Benefits, apply for an receive benefits under another program, I would not regard such a comment as a "*quid pro quo*" which operated on the mind of the defendant in such a way as to elicit the admission. It seems more likely to be words of assurance given after the oral statement, if not after both. According to the defendant she was told that "Lorne Jessome and I could apply as a family". There is no evidence that this is not true.

[22] I find that Ms. Boutilier was a "person in authority" as that term is defined in the case law. However, applying the modern formulation of the confession rule as set out in a line of cases beginning with Ibrahim and ending, most recently, with Oickle, I find that the Crown has met the burden of proving the voluntariness of the statement beyond a reasonable doubt. In arriving at this conclusion I have compared the conduct, actions, words and deportment of Ms. Boutilier in the instant case with that of the police in cases such as Reashore and others where a confession has been excluded as a result of the oppressive conduct of the interrogators.

Were the Statements Compelled by Statute?

[23] The lead case on whether statements made under statutory compulsion violate an accused's right to protection against self incrimination is R. v. White [1999] 135 C.C.C.(3d) 257. It begins from the precept that the principle against self incrimination is a principle of fundamental justice under s. 7 of the Charter. Where an accused's liberty interest is engaged, as it is where a person is facing a criminal prosecution, and where the accused is able to establish on a balance of probabilities that a statement was compelled by statute, then the trial court is obliged to determine whether the possible deprivation of the accused's liberty resulting from admission of the statements would occur in accordance with that principle of fundamental justice. At p. 275 the Supreme Court states that

> "The principle against self-incrimination is an over arching principle within our criminal justice system, from which a number of specific common law and Charter rules emanate, such as the confessions rule and the right to silence, among many others."

The principle is said to have at least two key purposes,

> "Namely, to protect against unreliable confessions, and to protect against abuses of power by the state. There is both an individual and societal interest in achieving both of these protections. Both protections are linked to the value placed by Canadian society upon individual privacy, personal autonomy and dignity."

[24] The Court referred to its decision in R. v. Jones [1994] 89 C.C.C.(3d) 353 where the principle against self-incrimination was described as "a general organizing principle of criminal law". Further, the Court stated

> "Any state action that coerces an individual to furnish evidence against herself in a proceeding in which the individual and the state are adversaries violates the principle against self-incrimination. Coercion, it should be noted, means the denial of free and informed consent."

As discussed above there is obvious overlap with the confession rule, but the latter

primarily focuses on the actions of individual interrogators, whereas the line of cases culminating in White deals with legislated compulsion.

[25] It is important to note that the issue in White, as in the present case, is whether the admission into evidence in the criminal trial of statements allegedly made under compulsion of statute should be permitted. Other uses of the statements outside the context of a criminal proceeding, including use by the Department in recovery of overpayments, might be allowed regardless of the outcome of this hearing.

[26] In White the Supreme Court emphasized the importance of context. No absolute protection is given to an accused against all uses of information that have been compelled by statute. The Court must conduct

> "...a concrete and contextual analysis of the circumstances in order to determine whether the principle against self-incrimination is actually engaged on the facts".

A s. 7 analysis involves a balance, with the principle against self-incrimination being interpreted in light of other societal interests. In White, and presumably any criminal prosecution, one competing principle is this: in a search for the truth relevant evidence should be available to the trier of fact. In some contexts, the importance of this principle will outweigh factors which would protect an individual against statutory compulsion. Such was the case R. v. Fitzpatrick [1995] 102 C.C.C.(3d) 144, a case involving the admission into evidence of hail reports and fishing logs required by regulation from participants in the commercial fishery. In White, the Court referred to four main factors which tipped the balance in favor of admissibility. These were:

1. the lack of real coercion by the state in obtaining the statements;
2. the lack of an adversarial relationship between the accused and the state at the time

the statements were obtained;

3. the absence of an increased risk of unreliable confessions as a result of the statutory compulsion; and

4. the absence of an increased risk of abuses of power by the state as a result of the statutory compulsion.

The facts in White was contrasted with those in Fitzpatrick with the above factors in mind. In similar fashion, it is instructive to compare the instant case with that of White, although I recognize that decisions such as this involve the application of principle, not merely a comparison of features.

Comparison of White with the present case

[27] In White, the accused was found to have an honest and reasonable belief that she was required to report the circumstances of a motor vehicle accident pursuant to the provincial Motor Vehicle Act. As did Ms. White, Ms. Young in the present case believed that on the occurrence of a certain event (cohabitation/motor vehicle accident) she was under a legal duty to report it. Although Ms. Young could not testify as explicitly as Ms. White that she was cognizant of the particular legislation, I would infer from the evidence that she held a belief, both subjectively honest and objectively reasonable, that there was a legal obligation on her to report such an event and to disclose such information to officials from the Department at their request. In the instant case there is, in addition to the simple legislative requirement, the additional compelling circumstance arising from the investigator's power to cut off her means of support. In White, the accused self-reported the wrong doing - the authorities did not expressly request a statement, at least at the outset. In the present case, Ms. Young did not report the alleged wrong doing; rather, the

investigator initiated contact with her and expressly requested that she give a statement about her cohabitation with Mr. Jessome. In White, the accused dealt directly with a police officer, face to face, a fact which the Court noted might be somewhat daunting to an individual, and might constitute an extreme imbalance of power. In the present case, Ms Young spoke not to a police officer conducting a criminal investigation but rather to an Eligibility Review Officer. At the same time, Ms. Young may have felt more pressure from Ms. Boutilier than she would from a police officer, for Ms. Boutilier had the power to suspend her family benefits and thus her means of supporting herself and her children, a power that a police officer would not possess.

[28] I find that the defendant has met the onus of establishing on a balance of probabilities that the statements in question were compelled. The defendant bears the additional onus of establishing that this constituted an infringement of her s. 7 *Charter* rights.

[29] Following the release of the Supreme Court's decision in White, case commentators anticipated challenges in the context of the income reporting requirements for welfare recipients. However, counsel did not cite any such cases, and my own (possibly feeble) research efforts have uncovered but one decision since the Supreme Court's judgement in White. This is the case of R. v. D'Amour [2000] O.J. No. 5122. There, Epstein, J. considered the admissibility at trial of certain documentation relating to the accused's financial situation which were provided to the Metropolitan Toronto Social Services Branch by the accused as a low income single mother under the Family Benefits Act. An analysis was conducted on both s. 7 and s. 8 *Charter* grounds. In dealing with the s. 7 issue, which is most pertinent here, the Justice summarizes the governing law very well:

> "The principle against self-incrimination flows from the acknowledgment that the individual is sovereign and proper rules of battle between government and individual require that the individual not be conscripted to defeat himself. Any state action that coerces an individual to furnish evidence against him or her in a proceeding in which the individual and the state are adversaries violates the principle against self-incrimination. As important as the principle is, it does not provide absolute protection for an accused against all uses of information that has been compelled by statute or otherwise. In other words, the protection is contextually sensitive. It is the balancing of principle that occurs under s. 7 of the Charter that lends significance to a given factual context in determining whether the principle against self-incrimination has been violated."

In D'Amour, it was found that the agency had no strong suspicions of fraud at the time that it obtained the relevant information. No criminal process was involved or even contemplated and there was no adversarial interest when the information was first provided. While the request from the case worker which resulted in the statement was prompted by a concern over undeclared income, the request was made for the sole purpose of determining eligibility. A number of levels of review were conducted before an evaluation and decision was taken to proceed criminally, involving an Eligibility Review Team, a Fraud Control Unit, and then a Special Review Committee, involving police and Crown prosecutors. The transference of the accused's personal financial information from the agency to the police was alleged to constitute a s. 8 *Charter* breach and the use of the statement in the trial to constitute a s. 7 breach . The Court found a breach of neither.

[30] Any other cases I have located have considered the issue in quite a different context. I refer to some of them here, though none are distinctly on point. R. v. Ling [2000] BCJ No. 2082 (Q.L.)(B.C.C.A.) Is one of the many cases dealing with this s. 7 issue in the context of an income tax prosecution. In R. v. Wilder (2000) 142 C.C.C. (3d) 418 (B.C.C.A.) Income tax records generated by the Defendant to take advantage of a tax

credit scheme, and documents generated by auditors' demands were ruled admissible. In R. v. Jarvis (2000) 149 C.C.C. (3d) 498 (Alta. C.A.) statements to tax auditors, who were found to have the predominant purpose of compelling evidence from the defendant to support a criminal charge, were excluded as being taken in violation of s. 7.

[31] R. v. Taylor [2001] B.C.J. No. 801 concerns the powers of conservation officers to stop and question hunters. R. v. Gill [1999] S.J. NO. 734 (Q.B.) deals with statements by a parolee to his parole officer about events (an alleged robbery) during a time when he was unlawfully at large from a half-way house. R. v. Ormstead 1998 Carswell Ont. No. 4431 concerns a nurse's obligation to report medication error to her hospital, and talk to the coroner, where she later was charged with criminal negligence. R. v. Syed 2000 Carswell Ont. 3291 (CA) deals with statements to an adjuster investigating a fire insurance claim.

[32] Two Nova Scotia cases are somewhat on point. In R. v. Beals (1991) 68 N.S.R. (2d) 277, anticipating White, the Nova Scotia County Court excluded a compelled statement taken by an unemployment insurance investigator. While the present case may differ from Beals in that there is no offence per se for failing to respond to the investigator's questions, Ms. Young nevertheless faced a penalty should she decline to be interviewed. Mr. Beals may have faced a fine or imprisonment; Ms. Young and her children may have faced impoverishment.

[33] In R. v. Diggs 123 N.S.R. (2d) 34 (PC) the Unemployment Insurance Commission was investigating "a prior period of time when the defendant had apparently received unemployment insurance benefits". There is no indication that at the time of the interview (done by request not demand) the investigator possessed the same leverage as did Ms. Boutilier here, that being the power to terminate the defendant's means of support.

[34] The D'Amour decision would be more on point if the statement sought to be adduced by the Crown were the financial statement given to the case worker Eric Caverzan on May 4th, 1998. However, at the time Ms. Young gave her oral and written statement to the Eligibility Review Officer, Ms. Boutilier, on February the 10th, 1999 there was an adversarial nature in the relationship which was absent in her dealings with Mr. Caverzan. This is a point the Supreme Court of Canada has emphasized, and is a significant distinguishing feature with D'Amour. While the case worker conducted a periodic review of Ms. Young's circumstances under the authority of the Family Benefits Act, this was done on a scheduled basis by a person familiar to Ms. Young. Presumably a case worker would provide assistance and support to his clients. Cynthia Boutilier, on the other hand, was unfamiliar to the defendant and conducted an unscheduled interview with her. As an Eligibility Review Officer she described herself as being a part of the revenue recovery operations in the Department of Community Services. The interviews by Mr. Caverzan were conducted in the Young household, using standard forms and a more casual approach. The interview conducted by Ms. Boutilier was done at the Departmental offices and utilized a more formal and focused approach. While Mr. Caverzan felt there were features of the case which merited further scrutiny, he did not have the very strong level of suspicion that Ms. Boutilier possessed when she conducted her interview with the defendant. The meetings with Mr. Caverzan were non-confrontational, whereas Ms. Boutilier confronted the defendant directly with documentation which suggested wrong doing on her part. Mr. Caverzan had no prior information regarding cohabitation. Ms. Boutilier had prior information in her possession collected from financial institutions, as well as an anonymous complaint and the concerns regarding the unusual landlord relationship

identified by the case worker.

[35] Two important factors have been noted, namely, the degree of coercion by the state and the presence or absence of an adversarial relationship with the accused at the time the statements were obtained. A consideration of Ms. Young's changing circumstances reveals a heightening of both of these factors over the relevant time period. In 1996 there was a routine review with the case worker, with no special attention or suspicion given to her case. In 1998 the routine review resulted in the case worker having some concerns and putting the file aside for additional check up and review. In 1999 an anonymous complaint is received by the Eligibility Review Officer, who further follows up on the review recommended by the case worker. Later the file is referred to higher officials in the Department in Halifax, and a letter issues from the Deputy Ministers of Community Service and Justice to the Chief of the Regional Police Service. Police commence a criminal investigation, following which charges are laid against Ms. Boutilier and she is brought to trial. In contrast with D'Amour the statement in issue was taken at a juncture when a Departmental official with the power to recommend a criminal investigation was actively considering such a course of action. I would expect that when this file was handed to the police, they regarded the investigation was essentially complete, with background information, documentation, financial records, and a sworn confession from Ms. Young. It seems clear that in any case where the Department refers a matter such as this to the police, a criminal investigation will be conducted. That is, a decision to proceed to collect overpayments by non-criminal procedures is made within the Department, and the input of the Eligibility Review Officer is critical.

[36] Granting limited use immunity to such confessions may, in some future cases,

necessitate the pursuit of other evidence by the police. The role of others may have to be explored, neighbors and relatives interviewed, banking records procured, etc. Some such evidence may be hard to come by, but a broader investigation might also bear fruit and may, in a given case, address the potential fraud, more fully.

[37] Submissions were made about whether a standard police caution ought to have been given by Ms. Boutilier prior to taking the defendant's statement. I do not think the inclusion of such a caution would affect the outcome here on the issue of admissibility. Prefacing the statement with a phrase such as "you are not obliged to say anything..." would merely highlight the tension between opposing principals. The right to remain silent would seem to be rather hollow, the choice not to cooperate a very difficult one to make, given the investigator's power to remove from a welfare recipient what may well be her only means of support.

[38] I am aware that there are strong arguments in favor of allowing the Crown to use Ms. Young's confession to convict her of the alleged fraud. To begin with, this appears to be a particularly glaring instance of welfare fraud. Not only was another individual apparently living with Ms. Young, but he was, while part of this family unit, collecting as landlord, that portion of the benefits allocated to Ms. Young for her rent. One is mindful that the government uses coercion and compulsion to collect taxes, thus providing the funds which are used to assist persons in financial distress such as Ms. Young. Where a recipient is thought to be abusing this system, in essence defrauding the taxpayers, should some degree of coercion and compulsion not be permissible vis-a-vis the beneficiary of the government's taxing powers? Does the criminal law not exist to deter and denounce cheating and give support to those who are honest? Should the Courts exclude such

confessions from the evidence available to the Crown and risk undermining the prosecution of a serious crime of this nature?

[39] In White, the Supreme Court of Canada spoke of the conflict between two principles, the principle against self incrimination and the principle that in a search for the truth, relevant evidence should be available to the trier of fact. This same tension exists here. Additionally, one might sense a tension between the self incrimination principle and two others. First, in a taxpayer-funded system of income support, where the public, through its elected representatives, create system of support for the disadvantaged in society, one sense a corresponding obligation on a recipient of such welfare to be truthful in the reporting of his or her personal circumstances. In support of this theory of mutual obligation, the **Criminal Code** makes possible prosecutions and penal sanctions as a deterrent to cheating and encouragement to honesty. Secondly, it may thus be said that a tension exists between the self incrimination principle and the principle of equality. The Family Benefits Act of Nova Scotia, and statutes like it, seek to advance the principle of equality in society. By giving disadvantaged persons in genuine need, some greater measure of economic security and opportunity. Again, in theory, the criminal law exists as an instrument to encourage honesty from those who benefit from the principle of equality, and to uphold the integrity of the income support system. Absent the confidence of the general public in such systems, they may lose the very support necessary for their maintenance.

[40] The statement in issue suggests that Mr. Jessome was living with Ms. Young at the time she initially applied for benefits, or in the early stages of such. Ms. Young thus would be required to disclose this fact on her initial application, on any subsequent declarations,

and indeed at the very time such cohabitation may have commenced. As discussed, there was an adversarial aspect to the relationship between Ms. Young and the Department at the time she gave the statement in issue which did not exist at these earlier stages. It might be said that Ms. Young herself caused the relationship to turn adversarial, and is thus responsible for the context in which the statement was given.

[41] More generally however, it cannot be said that persons applying for social assistance have much of a choice. An application for benefits involves a conscious act to ask the government for help, both financial need and dependent children, are very compelling circumstances. Even in the particular case, assuming that Mr. Jessome lived with Ms. Young from the outset, there may still have been some legitimate need for welfare assistance, albeit at a different level than was granted.

[42] The obligation to disclose very personal and private information is built into the process at the very beginning. This in itself is perfectly reasonable. The Department can refuse benefits unless an applicant supplies the requested information. If cohabitation existed then, or thereafter, Ms. Young must be taken to know of the obligation which arises to report it. Nevertheless, I am obliged to consider the significance of the adversarial nature of the relationship between Ms. Young and the Department at the time the investigator requested an interview. The importance of this feature is emphasized in many decisions of the Supreme Court of Canada including White, R. v. S.(R.J.) and Branch. If Ms. Young refused to be interviewed, she may well have been cut off from her benefits. S. 12A(3) of the **Regulations**, for one, points to this possibility. Hence it appears that Ms. Young, at the time of the interview, held an honest, reasonable and quite likely correct view that if she did not give the requested statement, she would lose her means of support.

While there may have been some room for "choice", as there was when she initially applied for benefits, that room may be small indeed for a person in financial need, particularly one with dependent children.

[43] In other words, there is a significant power imbalance in the relationship between the state and the typical welfare recipient. When an adversarial attitude is adopted in this context of dependency, it may well be entitled to even more significance than it would receive in other dealings between the individual and the state.

[44] While the foregoing constitutes the primary reason why I am inclined, on the basis of the Supreme Court of Canada's judgements, to conclude that Ms. Young's statements are inadmissible, an additional factor, mentioned in White, relates to the prospects for unreliable confessions in such cases.

[45] A factor mentioned in White is the prospect of any unreliable confession resulting from the statutory compulsion. It appears that the incentive to falsify a required statement is greater in the present case than in Fitzpatrick. I am thus drawing the same distinction here as was drawn in White. Consideration of the evidence supports the proposition that Ms. Young was more likely to reveal the truth (less likely to lie) if there were no thought of criminal charges on her mind. She gave a statement to Ms. Boutilier yet declined to give a statement to the police. This gives some support for the proposition that the granting of limited use immunity to such statements would encourage candor in the exchange of information between welfare recipients and those who administer the system. I note that Ms. Young's statement includes "I am willing to re-pay all monies back when it is possible". This may be some indication of what was on her mind, as distinct from the possibility of a criminal charge when she gave her statement to Ms. Boutilier.

[46] Repaying the money may well be what is in store for Ms. Young. Be that as it may, I have come to the conclusion not only that Ms. Young's admission was compelled by the statute, but further, that to admit it in evidence against her at her trial, with the possible outcomes that might entail, would violate the principle against self-incrimination. This being a fundamental principle enshrined in the Charter by s. 7, this use of the admission would constitute a violation of Ms. Young's Charter rights. Accordingly, exclusion of the statements is granted, as a remedy, under s. 24(1) of the Charter.

Dated at Sydney, this 25th day of September, A.D., 2001.

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A. Peter Ross, Provincial Court Judge