Crozier v. *GNWT et al*, 2006 NWTSC 05

Date: 2006 01 26
Docket: S-0001-CV-2005000332

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CULLEN MICHAEL CROZIER

Applicant

- and -

GOVERNMENT OF THE NORTHWEST TERRITORIES
MINISTER OF EDUCATION, CULTURE AND EMPLOYMENT

Respondents

- and -

NWT STUDENT FINANCIAL ASSISTANCE APPEAL BOARD

Respondents

Application for judicial review of a decision of the Northwest Territories Student Financial Assistance Appeal Board.

Heard at Yellowknife, NT on January 18, 2006.

Reasons filed: January 26, 2006

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A. SCHULER

Patrick Crozier appearing as agent for the Applicant

Counsel for the Defendants: Karen Lajoie

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REASONS FOR JUDGMENT

[1] The Applicant seeking judicial review is a university student who has recently commenced his fifth semester at university. The Respondent Government of the Northwest Territories Minister of Education, Culture and Employment (the "GNWT") delivers the Northwest Territories Student Financial Assistance Program, which provides funding assistance to eligible residents of the Northwest Territories attending post-secondary institutions.

[2] The Respondent NWT Student Financial Assistance Appeal Board ("the Board") is established under s. 8.2 of the *Student Financial Assistance Act*, R.S.N.W.T. 1988, c. S-14. It hears appeals from reviews of decisions relating to the refusal of student financial assistance. Section 8.3(3) of the *Act* provides that the decision of the Board is final.

[3] There is no dispute about the facts. The Applicant received student financial assistance during the fall (September through December) 2004 and winter (January through April) 2005 semesters. He did not meet the relevant academic requirements during the fall 2004 semester, as a result of which the GNWT, by letter dated August 24, 2005, suspended his funding effective December 22, 2004 for a period of one year, pursuant to s. 36(10) of the *Student Financial Assistance Regulations,* R.R.N.W.T. 1990, c. S-20, made under the *Act*.

[4] On September 1, 2005, the GNWT issued an invoice to the Applicant for repayment of the funding he received for the winter 2005 semester. The Applicant made suitable arrangements to pay the invoice.

[5] During the winter 2005 semester, the Applicant met the academic requirements for student financial assistance. It is his position that he qualified for reinstatement for student financial assistance. He was refused reinstatement and he appealed the refusal. His appeal eventually came before the Board, which ruled as follows:

> The appeal board finds that there was evidence that the student received student financial assistance for the winter semester of 2005. Accordingly, s.s. 36(13)(b) of the regulations is not applicable to exempt the student from s.s. 36(10) of the regulations.
> ...

[6] The Applicant seeks judicial review of the Board's decision.

[7] The relevant provisions of the *Regulations* are as follows:

> 36.(4) A student is not eligible for student financial assistance for a semester unless in respect of the previous semester, if any,
>
> > (a) he or she has been credited by the approved institution with having passed the relevant part of his or her program of studies that is applicable to that previous semester, or unless his or her performance during the semester has been certified by the Deputy Minister to be adequate to warrant continuation of the student financial assistance; and
> >
> > (b) he or she has demonstrated to the satisfaction of the Deputy Minister, that he or she is willing and able to

> discharge the responsibilities of managing the student financial assistance.
>
> 36. (10) A person who is ineligible for student financial assistance under subsection (4) is not eligible to receive student financial assistance for a period of 12 consecutive months commencing on the day on which he or she becomes ineligible to receive student financial assistance under subsection (4).
>
> 36. (13) Subsections (10) to (12) do not apply to
> ...
>
> (b) a person who, after he or she becomes ineligible for student financial assistance, is credited by an approved institution with passing, during a semester for which he or she does not receive student financial assistance,
>
> (ii) a percentage of a full course load of studies at a post-secondary level that is equal to or greater than the applicable percentage of a full course load of studies that the person would have been required to take during the semester in order to be a full-time student under these regulations and receive student financial assistance;

[8] The Applicant's argument before the Board and this Court was that because he was invoiced for repayment of the student financial assistance he received for the winter 2005 semester, s. 36(13)(b) of the *Regulations* operates to exempt him from s. 36(10) so that he was no longer ineligible to receive student financial assistance after the winter 2005 semester.

[9] The GNWT took no position and offered no argument on the merits of this application. The Board itself declined to take a position on the merits, relying on *Baffin Plumbing & Heating Ltd. v. Labour Standards Board and the Labour Standards Officer*, [1993] N.W.T.J. No. 111 (S.C.). Its submission is simply that it acted within its jurisdiction in interpreting the *Act* and the *Regulations* and that its decision is not reviewable except on a standard of patent unreasonableness.

[10] In my view there are two approaches that can be taken to the Board's decision.

[11] First, it is impossible to determine from the Board's written decision whether the Board considered the invoice sent by the GNWT to the Applicant, claiming back the funding he received for the winter 2005 semester. The invoice is critical to the Applicant's argument that the winter 2005 semester was a semester for which he did not receive student financial assistance, thus bringing him within the exemption in s. 36(13)(b).

[12] If the Board did not consider the invoice, it ignored relevant evidence and thereby exceeded its jurisdiction, which would entitle this Court to quash its decision and remit the matter back to the Board for a rehearing. In my view, however, nothing would be gained by sending this matter back for a rehearing since the issue involves statutory interpretation as set out below.

[13] The second approach is to consider that since the invoice is and was the Applicant's entire argument, the Board must have taken it into account in reaching its decision. The issue then becomes the standard this Court should use in reviewing that decision. The standard of review depends on the application of a pragmatic and functional analysis: *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982. That analysis requires a consideration of the purpose of the legislation and the Board's role, the presence or absence of a privative clause, the Board's expertise and the nature of the question the Board considered.

[14] The purpose of the *Student Financial Assistance Act* and the *Regulations* made under it is to provide financial assistance in the form mainly of grants, scholarships and loans to university and college students who are residents of the Northwest Territories. The *Regulations* set out the types and conditions of financial assistance and the eligibility requirements. Applications for student financial assistance are submitted to the Deputy Minister of Education. An applicant may request a review of the Deputy Minister's decision, in which case a designated employee of the Department of Education conducts that review. The outcome of the review may be appealed by the applicant to the Student Financial Assistance Appeal Board.

[15] The Board is the final level of appeal in the statutory scheme. Section 8.3(3) of the *Act*, which provides that decisions of the Board are final, does not purport to preclude judicial review by a Court as some privative clauses do. I would therefore view it as a weak privative clause.

[16] The question before the Board, and now before this Court, is one of mixed fact and law. It requires a determination as to whether the facts bring the Applicant within the exemption provided by s. 36(13)(b). It also requires that the statutory provisions be interpreted. Members of the Board are appointed from the public at large and the statute does not require that they have any particular expertise, nor is there any suggestion that the Board has any expertise in statutory interpretation. Therefore, the Board is to be accorded a low level of deference when it comes to the legal significance of the facts and the question whether the exemption applies.

[17] Having weighed all the above factors, I conclude that the applicable standard of review for the Board's decision is correctness.

[18] The accepted current approach to statutory interpretation is set out in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27: 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 the legislature.

[19] Section 10 of the *Interpretation Act*, R.S.N.W.T. 1988, c. I-8 is also relevant in this context, as it provides that every enactment shall be construed as being remedial and be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[20] In addition, since the *Student Financial Assistance Act* confers a benefit, it and its regulations should be treated in a broad and generous manner: *Rizzo*, *supra*.

[21] The *Student Financial Assistance Act* has as its main object the provision of financial assistance to students. It sets out the parameters for the provision of such assistance, such as the requirement that a student maintain a certain level of academic achievement in order to continue receiving assistance. Sections 36(10) and 36(13)(b) of the *Regulations* contemplate that a student who has become ineligible for funding for 12 consecutive months due to inadequate academic achievement can regain eligibility during the 12 months by attaining the prescribed level of achievement during a semester for which he or she does not receive student financial assistance. In my view, a fair, large and liberal construction and interpretation of the provisions consistent with the objects of the legislation requires that where a student is obligated to repay, and makes arrangements to repay, the financial assistance received for a semester, he or she is not treated as having received student financial assistance in that semester.

[22] In considering s. 36(13)(b), one cannot look simply at whether assistance was received at some point. The real question must be whether, in the end, the student gets the benefit of student financial assistance for the semester in question. In my view, where the receipt of student financial assistance is "undone" by a subsequent transaction such as occurred here, the student cannot be said to have received the assistance and therefore s. 36(13)(b) does apply to exempt him from s. 36(10) of the *Regulations*.

[23] An analogy can be made to sections 36(5) and 37(2) of the *Regulations*, which together provide that where a student is required to refund student financial assistance for a semester on withdrawing from studies prematurely and the student makes that refund, he or she shall not be treated as having received student financial assistance in respect of the relevant semester. It would be an unreasonable result that a student who receives financial assistance but then is required to refund it after withdrawing from and not completing studies is not, upon making the refund, treated as having received student financial assistance, but a student in the Applicant's position is treated as having received the assistance. The mere fact that the *Regulations* treat students who have to repay funding on withdrawing from a semester as not having received financial assistance but do not expressly provide the same treatment to students in the Applicant's position does not, in my view, indicate a legislative intention to make the s. 36(13)(b) exemption inapplicable to the latter students.

[24] Accordingly, I find that the Board erred in deciding that the Applicant did not come within the exemption in s. 36(13)(b) of the *Regulations*.

[25] If I am wrong about the standard of review, I would consider that the Board's conclusion that the Applicant is not entitled to the s.36(13)(b) exemption is patently unreasonable.

[26] The Board's decision is therefore quashed and a declaration will issue that s. 36(13)(b) is applicable to exempt the Applicant from s. 36(10) of the *Regulations.*

V.A. Schuler
J.S.C.

Dated at Yellowknife, NT, this
26th day of January 2006

Patrick Crozier appearing as agent for the Applicant

Counsel for the Defendants: Karen Lajoie

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