

Date: 2011 01 05
Docket: S-I-CV 2010 000 186

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

GREG MCMEEKIN

Applicant

-and-

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

Respondent

MEMORANDUM OF JUDGMENT

[1] This is the third in a series of judicial review applications brought by this self-represented Applicant arising out of the termination of his social assistance benefits in August 2009.

[2] The Court's decisions on the earlier applications can be found at 2010 NWTSC 27 and 2010 NWTSC 56.

[3] For background and context of the within judicial review application, I summarize here the previous proceedings before tribunals under the *Social Assistance Act* and in this Court.

[4] The Applicant has a hearing disability and has been a recipient of income assistance since 2003. In 2009 his Client Services Officer (CSO) noted that the Applicant had not filed income tax returns for the previous six years, and wrote to the Applicant on several occasions advising him that his eligibility for income assistance could be jeopardized if he did not file those income tax returns. The

Income Assistance Regulations require recipients of income assistance to, *inter alia*, provide information regarding his/her financial resources and his/her eligibility for accessing any and all financial benefits. Those Regulations also provide, in s.16(1)(a.1) that income assistance shall be terminated where the recipient refuses or neglects to utilize all financial resources that may be available to him. In the context of income tax returns, the rationale is that by filing those returns, the recipient of income assistance may become entitled to certain rebates such as the GST tax credit.

[5] The Applicant refused to comply with the CSO's demand that he file income tax returns. On August 20, 2009, the Applicant's income assistance was terminated, the CSO citing s.16(1)(a.1) of the Regulations as the reason for termination:

- s.16(1) Every officer *shall* terminate assistance to a recipient ... where ...
 - (a.1) the recipient refuses or neglects to utilize all the financial resources that he or she may access including but not limited to employment, unemployment or disability benefits... (emphasis added)

[6] On August 25, 2009 the Applicant appealed the termination of his income assistance. The "first level of appeal" was heard by a tribunal entitled Administrative Review Group on October 14, 2009. The CSO's decision to terminate income assistance was upheld.

[7] The Applicant appealed that decision to the second level of appeal, being the Social Assistance Appeal Board (the Board). The Board held a hearing in Hay River on November 27, 2009. The Board concluded that the provisions of s.16(1)(a.1) of the Income Assistance Regulations had been correctly interpreted and applied by the CSO, and it affirmed the CSO's decision to terminate the Applicant's income assistance.

[8] The Applicant then launched an application for judicial review in this Court, i.e., judicial review of the Board's decision of November 27, 2009. In Reasons for Judgment filed March 29, 2010, Vertes J., found "no error of law in the Board's decision to uphold the officer's termination of assistance". However, Vertes J. held that the tribunal that had heard the first level of statutory appeal in October 2009 had not been properly constituted, and that subsequent proceedings were a

nullity. In the result, he quashed the Board's decision of November 27, 2009, and remitted the Applicant's appeal to a properly constituted social assistance appeal committee (first level of appeal) for re-hearing.

[9] At a meeting of a properly constituted social assistance appeal committee on May 12, 2010, the Applicant's appeal of the CSO's decision of August 2009 terminating income assistance was re-heard. The appeal committee upheld the CSO's termination of income assistance in a decision dated May 17, 2010.

[10] On May 25, the Applicant appealed the latter decision to the Social Assistance Appeal Board (second level of appeal).

[11] On June 10, 2010, the Applicant also filed a judicial review application in this Court, seeking judicial review of the social assistance appeal committee decision of May 17, 2010 upholding the CSO's decision.

[12] The (second) judicial review application was heard by Vertes J. who issued a Memorandum of Judgment on July 6, 2010. On that application the Applicant submitted that the members of the social assistance appeal committee of May 12, 2010 were biased. Vertes J. carefully considered that submission and rejected it. As to the whole of the Applicant's judicial review application, he concluded that the social assistance appeal committee, "made no jurisdictional error and no error of law", and dismissed the judicial review application.

[13] Concurrently the Applicant advanced his statutory appeal (second level) to the Social Assistance Appeal Board. A hearing was convened on July 14, 2010. At the opening of the hearing the Applicant questioned the impartiality of individual Board members. In the result the Board adjourned the hearing until some new Board members could be appointed.

[14] On October 14, 2010 a fresh hearing of the Board was convened, comprised of members Gazina Chan (Chair), Grant Puziuk and Margaret Peterson. The hearing commenced, again, with the Applicant questioning the impartiality of each of the three sitting members of the Board. He asserted that any person who is in receipt of funds, as wages or otherwise, directly or indirectly, from the GNWT was in a position of conflict of interest and could not serve as a member of the Social Assistance Appeal Board. He submitted that, "the GNWT has a habit of

influencing the people that sit on these boards. So I have a right to establish whether or not any of these Board members ... have received any kind of funding or wages or so on and so forth...”. In any event, the hearing continued on the merits, the Board heard all of the Applicant’s submissions on his specific appeal and also on several extraneous matters.

[15] The Board issued its decision on October 26, 2010 (it is this decision which is the subject of the within, third judicial review application). The Board ruled that the CSO had correctly applied s.16(1)(a.1) of the Regulations in August 2009 in terminating the Applicant’s income assistance.

[16] The foregoing, then, summarizes the “vertical” aspect of tribunal and Court processes leading up to the within, third, judicial review application.

[17] There also exists some “lateral” context.

[18] On May 26, 2010 the Applicant commenced a civil lawsuit (CV 2010-093) against the Respondent by filing a Statement of Claim in this Court in which document he sought damages in excess of \$9,000,000.00 on various grounds, all arising from his interaction with departmental officials under the income assistance program. On November 9, 2010 the Court granted the Defendant’s application for summary judgment, and dismissed that lawsuit on the basis that it contained no merit and had no chance of success. Some of the relief sought in the Applicant’s failed civil lawsuit is also included by the Applicant in the present judicial review application.

[19] On July 30, 2010 the Applicant filed a Notice of Appeal in the Court of Appeal of the NWT, appealing the decision of Vertes J. of July 6, 2010 (the second judicial review application). See Court file No. AP 2010-011.

[20] On December 14, 2010 the Applicant filed a Notice of Appeal in the Court of Appeal of the NWT, appealing this Court’s decision of November 9, 2010 dismissing the Applicant’s civil lawsuit in CV 2010-093. See Court file No. AP 2010-016.

[21] I turn now to the particular matter which is before this Court for judicial review, which is the October 26, 2010 decision of the Social Assistance Appeal

Board to uphold the CSO's decision of August 2009 terminating the Applicant's income assistance.

[22] In launching this judicial review application, the Applicant filed two documents on November 12, 2010 - an Originating Notice and an affidavit sworn by the Applicant. The affidavit document contains no factual allegations, merely submissions and arguments similar to those contained in the Originating Notice, and is thus mis-labelled as "affidavit".

[23] As this Applicant has been advised in previous decisions of this Court referred to earlier, the Court's role on judicial review applications is limited.

[24] In careful consideration of the convoluted contents of the Originating Notice, I glean two specific claims being made by the Applicant:

- (1) there exists a reasonable apprehension of bias on the part of the members of the Board who heard the Applicant's appeal on October 14, 2010.
- (2) The Board made an error of law in upholding the CSO's termination of income assistance.

[25] Apprehension of bias: The Applicant provides no evidence or factual allegations against specific members of the Board which heard his appeal on October 14, 2010. Thus there is no factual foundation upon which a reasonable, right-minded and informed person might hold a reasonable apprehension of bias on the part of one or more of these Board members. See *Committee for Justice and Liberty v. National Energy Board* [1978] 1 S.C.R.369.

[26] The Respondent, for its part, has put evidence before the Court on this application to the effect that none of the three Board members who heard the appeal are employed by the GNWT. Their individual resumes have been provided to the Court, and there is nothing in any of those resumes that would, in itself, attract even a suspicion of partiality or bias.

[27] The Applicant's submission on partiality is in general terms, i.e., that any person who is in receipt of funds from GNWT is therefore in a position of conflict

of interest and cannot serve on the Board. This general submission is insufficient to discharge the onus upon the Applicant to prove a reasonable apprehension of bias on a balance of probabilities, an onus that was explained to this Applicant by Vertes J. in his Memorandum of Judgment of July 6, 2010:

“This test recognizes that the grounds for apprehension must be substantial. There must be a probability or reasoned suspicion of biased appraisal and judgment, unintended though it may be. This is to be determined on an objective, rational and informed basis. A mere suspicion of bias is not sufficient; there must be some factual basis to sustain the allegation. The party alleging bias has the onus of proving it on a balance of probabilities. And, it is important to reiterate that the test is not whether a party to the proceeding (such as the applicant) would apprehend bias but whether the reasonable and informed member of the public would apprehend it.”

2010 NWTSC 56, at para 15.

[28] Although an allegation of bias is a jurisdictional issue within the scope of judicial review, I find on the material before the Court there is simply no merit to the Applicant’s submission on reasonable apprehension of bias.

[29] An error of law in upholding the termination of income assistance: This Applicant made this same argument before Vertes J. on the first judicial review application. For reasons given, Vertes J. found “no error of law in the Board’s decision to uphold the officer’s termination of assistance”. 2010 NWTSC27 at paras 14 to 17. Even if that specific finding is considered *obiter* (as Vertes J. granted the judicial review application on other grounds) I would adopt the reasons and the conclusion for purposes of the within application. For certainty, I find no error of law in the October 26, 2010 decision of the Social Assistance Appeal Board to uphold the CSO’s termination of income assistance in August 2009, for reasons set forth at paragraphs 14 to 17 of 2010 NWTSC 27.

[30] Any other “grounds” that might be gleaned from the Originating Notice are not properly within the scope of judicial review of the Board’s decision, for example, whether government ought to administer its disability benefits programs and income assistance programs together or separately, and whether lottery winnings ought to be taxable, or deductible from social assistance benefits.

[31] Much of the Applicant’s oral submissions to the Court on the hearing of the within (third) judicial review application were extraneous to the matter before the

Court and consisted of either, a) a rant against government policies, or b) self-aggrandizing statements that he was not involved in these appeals and litigation for himself but rather for all NWT residents.

[32] Many of the matters raised by the Applicant on the within application are repetitive of arguments made by him in his earlier appearances before this Court, and which have been adjudicated upon, in the decisions referred to earlier in this Memorandum. To raise them again constitutes an abuse of the Court's process.

[33] On the record before the Court on this application, I note that notwithstanding the official termination of the Applicant's income assistance, the department has provided the Applicant with *ex gratia* payments pending the consideration of his various appeals and Court applications. I also note that the Applicant returned a number of these cheques, in amounts totalling in excess of \$8,000.00 stating to the department that the cheques were being returned as not being "full payments".

[34] I also note indications in the record that the Applicant, in the past, in explaining his failure to file income tax returns, pleads he has insufficient financial resources to retain an accountant's services to prepare the tax returns. In all of the circumstances, including the content of the Applicant's submissions before this Court, I find that the Applicant's refusal to provide copies of income tax returns, as requested by his CSO, is not founded in impecuniosity but rather (for him) in principle.

[35] For these reasons, the application for judicial review is dismissed. The Respondent shall have its costs taxed in column 6.

Richard J.,
JSC

Dated this 05 day of January 2011

The Applicant represented himself

Counsel for the Respondent: William Rouse

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MEMORANDUM OF JUDGMENT OF THE
HONOURABLE JUSTICE J.E. RICHARD
