

NOVA SCOTIA COURT OF APPEAL

Citation: Clyke v. Nova Scotia (Community Services), 2005 NSCA 3

Date: 20050105

Docket: CA 222431

Registry: Halifax

Between:

Shaunderay Clyke

Appellant

v.

Minister of Community Services

Respondent

Judge: The Honourable Justice Fichaud

Appeal Heard: November 29, 2004

Subject: *Delegated legislation - Charter of Rights, s. 15*

Summary: Appellant's benefits under the *Employment Support and Income Assistance Act*, S.N.S. 2000, c. 27, were cancelled when she entered a university program exceeding two years. Regulation 67(1) under the *Act* permitted the Minister to terminate benefits for persons in post secondary programs exceeding two years unless the person was funded under the Canada-NS EAPD Program.

Issues:

1. Was Regulation 67(1) *ultra vires* the *Act*?
2. Did Regulation 67(1) violate s. 15 or the *Charter*?

Result: Regulation 67(1) was *intra vires* the *Act*. The *Act* authorized regulations re: eligibility. The distinction in the Regulation was incidental to the *Act*'s purposes. The Regulation did not violate s. 15 of the *Charter*. The EAPD Program was an affirmative action program for the disabled. A law which incorporates such a program does not violate s. 15 of the *Charter*.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 17 pages.