

NOVA SCOTIA COURT OF APPEAL

**Citation: *Nova Scotia (Community Services) v. Brenna*,
2006 NSCA 8**

Date: 20060118

Docket: CA 247979

Registry: Halifax

Between:

Anthony Brenna

Appellant

v.

Her Majesty the Queen in Right of the
Province of Nova Scotia, as represented by
the Minister of Community Services

Respondent

Judges: MacDonald, C.J.N.S.; Cromwell and Saunders, JJ.A.

Appeal Heard: January 18, 2006, Halifax, Nova Scotia

Written Judgment: January 18, 2006

Held: **Appeal dismissed per oral reasons for judgment of
Cromwell, J.A.; MacDonald, C.J.N.S. and Saunders,
J.A. concurring.**

Counsel: Graham Steele, for the appellant
Terry Potter, for the respondent

Reasons for judgment:

[1] This is an appeal from an order of Edwards, J. which quashed a decision of the Assistance Appeal Board and remitted the matter to a differently constituted Board for re-hearing.

[2] While we do not accept the judge's reasons for his decision, we agree with his result. I should add that we have had submissions and authorities drawn to our attention which were not before the judge.

[3] The issue before the Board was whether the Department had been justified in discontinuing Mr. Brenna's benefits and finding an overpayment on either of two bases: (i) that he failed to disclose his ownership of certain real property; and, (ii) that he had refused to provide additional financial information or a proper authorization for the Department to obtain it when such had been demanded. The Board's obligation was to "... determine the facts and whether the decision made, on the basis of the facts found by the board, [was] in compliance with ...[the Act] ...": s. 13(2) **Employment Support and Income Assistance Act**, S.N.S. 2000, c. 27. Where the Board determines that the decision is contrary to the **Act** and the regulations, it is to vary or reverse the decision in accordance with the **Act** and the regulations: s. 13(3).

[4] It is apparent from the reasons of the Board that it failed both to make critical findings of fact and to reach conclusions about how the **Act** ought to be applied to the facts. It did not make a finding as to whether Mr. Brenna failed to disclose his ownership of property or whether he had failed to provide financial information when it was demanded. It did not determine whether the decision was contrary to the **Act** and the regulations. The Board thus, in our view, failed fundamentally to discharge the tasks assigned to it under ss. 13(2) and 13(3) of the **Act**. On any standard of review, that is a reversible error. The appellant says in his factum that the test on judicial review is whether the tribunal did its job. In this case, the Board did not do the job assigned to it by the **Act**.

[5] The appeal is dismissed without costs. As Edwards, J. ordered, the matter will be remitted to the Board, differently constituted, for a new hearing.

Cromwell, J.A.

Concurred in:

MacDonald, C.J.N.S.

Saunders, J.A.