

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *McIntyre v. Nova Scotia (Community Services)*, 2012 NSCA 106

**Date:** 20121002

**Docket:** CA 370045

**Registry:** Halifax

**Between:**

Sally McIntyre

Appellant

v.

Department of Community Services (Nova Scotia)

Respondent

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**Judge:** The Honourable Justice Joel E. Fichaud

**Appeal Heard:** September 20, 2012, in Halifax, Nova Scotia

**Subject:** Recovery of Overpayment of Social Assistance

**Summary:** The Department of Community Services sought recovery of what the Department viewed as an overpayment of social assistance paid to Ms. McIntyre. The overpayment resulted from a retroactive Canada Pension Plan disability award to Ms. McIntyre's husband, Mr. Leblanc. The Assistance Appeal Board held that the overpayment recovery was capped at six months under s. 14(3) of the *Employment Support and Income Assistance Act*, S.N.S. 2000, c. 27. On judicial review, the Supreme Court of Nova Scotia set aside the Board's calculation of the quantum. The judge held that, by s. 14(4) of the *Act*, the recoverable overpayment was not capped at six months. Ms. McIntyre appealed to the Court of Appeal, and argued that there was no "overpayment" under the definition in the *Act*. She submitted that the CPP payment to her husband was not pertinent to determine whether social assistance was overpaid to her.

**Issue:** Was there an “overpayment” under s. 3(f) of the *Act*? If so, did the Supreme Court judge err in overturning the Board’s calculation of the recoverable quantum?

**Result:** The *Act* and the *Regulations* under the *Act* “deemed” the amount paid to a spouse, Mr. Leblanc, to be “chargeable income” of the social assistance recipient, Ms. McIntyre. There was an “overpayment”. The Supreme Court judge did not err in her decision that the Board’s quantum should be overturned. The Board’s calculation of the quantum, without regard to s. 14(4), offended the reasonableness standard of review. The Court of Appeal dismissed the appeal without costs.

**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 16 pages.**