SUPREME COURT OF NOVA SCOTIA

Citation: *Sparks v. Nova Scotia (Assistance Appeal Board)l*, 2016 NSSC 201

Date: 2016-08-03
Docket: *HFX*, No. 449041
Registry: Halifax

Between:

Brenton Sparks

Applicant

v.

Assistance Appeal Board (Nova Scotia) and the Department of Community Services (Nova Scotia)

Respondents

Judge: The Honourable Justice Arthur J. LeBlanc

Heard: June 6, 2016, in Halifax, Nova Scotia

Counsel: Vincent Calderhead, for the Applicant
Sheldon Choo, for the Respondent

By the Court:

[1] In November 2015, the Department of Community Services determined that Brenton Sparks had unreasonably refused to participate in employment services offered by the Department. As a consequence, the Department suspended, for a period of six weeks, Mr. Sparks' and his family's social assistance benefits. The Assistance Appeal Board upheld the decision.

[2] Mr. Sparks has applied for judicial review of the Board's decision. He submits that the Department and the Board erred in three ways, because:

1. He did not unreasonably refuse to participate in employment services;
2. The Department and the Board did not have the authority to suspend his family's social assistance; and
3. The Department and the Board did not have the authority to impose a suspension period of six weeks.

[3] Mr. Sparks seeks an order in the nature of *certiorari* quashing the decision of the Appeal Board, a declaration that the Board erred in upholding the suspension of assistance for Mr. Sparks' spouse and children, and a declaration that the Board erred in upholding the suspension of assistance for a period of six weeks.

Background

[4] At the relevant times, Mr. Sparks lived with his spouse and three daughters in East Preston, Nova Scotia. He and his family began receiving income assistance in the Fall of 2014. In July 2015, Mr. Sparks' caseworker contacted Mr. Sparks and asked him to participate in employment services.

[5] The Department of Community Services provides a variety of services and programs designed to help assistance recipients become self-sufficient and less dependent on public assistance: *Employment Support and Income Assistance Act*, S.N.S. 2000, c. 27, s. 6(1). Employment services are a component of this programming. These services are, in essence, designed to help recipients become employable and employed. When a recipient is asked to participate in employment services, this is mandatory. A recipient that unreasonably refuses to participate in employment services will be ineligible to continue to receive assistance: *Employment Support and Income Assistance Regulations*, N.S. Reg. 25/2001, s. 20(1)(b).

[6] Further to his caseworker's request that he participate in employment services, Mr. Sparks attended a meeting with the Department on July 14, 2015, where he completed a form titled Understanding of Participation in Employment Focused Activities. This document directed Mr. Sparks to attend an orientation session.

[7] Mr. Sparks attended the required orientation session on August 17, 2015. He completed two questionnaires, one titled "Employment Services Review" and one titled "Am I Ready?". The assessments indicated that Mr. Sparks was ready to become employed. He then completed and signed a document titled "Orientation – Next Steps for… Client Name: Brenton Sparks" (the "August Action Plan"). The August Action Plan directed Mr. Sparks to contact a provider of the Assisted Job Search (AJS) Pilot program, which he did, and an appointment was scheduled with Cole Harbour Place Job Search Services (JSS) for August 27, 2015.

[8] Mr. Sparks attended the appointment on August 27, 2015, and met with Lena McClure, a JSS counsellor. During that meeting, Mr. Sparks told Ms. McClure that he wanted to become self-employed. He indicated that he had begun working on a business plan. Ms. McClure emphasized that her role, as mandated by the Department, was to help Mr. Sparks find a job.

[9] Following that initial meeting, Ms. McClure made a number of attempts to reach out to Mr. Sparks to schedule a second meeting. A second meeting was ultimately scheduled for September 28, 2015. However, in advance of that meeting, Mr. Sparks advised JSS that he would not be available because he had a meeting with a financial services provider to discuss a business loan. The meeting was rescheduled for on or around October 8, 2015. Mr. Sparks did not show up.

[10] On October 13, 2015, Mr. Sparks emailed Pamela Smiley, his caseworker at the Department, to request a meeting to discuss his business idea. Mr. Sparks did not mention the missed meeting of October 8, 2015. Ms. Smiley told him that a meeting could not be scheduled because he had not been complying with his employment plan, and therefore, the Department had to look into whether he was eligible to continue to receive assistance.

[11] The Department came to its decision on October 23, 2015. The Department found that Mr. Sparks had unreasonably refused to participate in employment services, and as of December 1, 2015, Mr. Sparks would be deemed ineligible for a period of six weeks per Policy 5.17.4. That day, a Notice of Ineligibility was mailed to Mr. Sparks.

[12] Mr. Sparks' assistance was suspended on December 1, 2015. On December 2, 2015, Mr. Sparks advised JSS that he had missed the October 8 meeting because he and his daughter had been involved in an accident and they were at the hospital.

Procedural History

[13] Mr. Sparks appealed the Department's decision to suspend his assistance. The first step of the appeal, an administrative review, was performed by Casework Supervisor, Diane Wanderer. Ms. Wanderer confirmed the Department's decision, finding that Mr. Sparks had "refused to meet with JSS". Ms. Wanderer found that Mr. Sparks "did not follow through with the employment plan which was to participate in a job search through Job Search Services".

[14] Next, Mr. Sparks requested an appeal hearing. The Assistance Appeal Board heard Mr. Sparks' appeal on February 4, 2016. By decision dated February 9, 2016, the Board dismissed the appeal. The Board explained that while it is admirable that Mr. Sparks wants to become self-employed, his employability assessment indicated that he was a strong candidate for paid employment, and this was the most reasonable option for Mr. Sparks to soon become self-sufficient. The Board found that Mr. Sparks did not complete the requisite 90-day Assisted Job Search Program, and "[i]t's quite apparent the appellant had no desire to participate in the services to help him attach to the workforce as per Regulation 17 and 18." Therefore, the Board concluded, he and his spouse and dependents became ineligible, pursuant to s. 20(1)(b) of the *Regulations*, to continue to receive assistance. The Board noted that there was no reason why Mr. Sparks could not have participated in the job search program while also pursuing self-employment.

[15] Finally, the Board found that s. 20(1)(b) of the *Regulations* and Policy 5.17.4 authorized the Department to impose a six-week suspension.

Standard of Review

[16] The "standard of review analysis" for judicial review was set out by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 [*Dunsmuir*]. There are two standards of review: correctness and reasonableness. Deciding which one applies to a particular issue involves two steps:

> 62 … First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of defence to be accorded with regard to a

> particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[17] Regarding the second step, the majority explained:

> 64 The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case.

[18] Nova Scotia courts have, on a number of occasions, performed the standard of review analysis in the context of appeals from the Assistance Appeal Board. From those decisions, I extract the following.

[19] First, the *Employment Support and Income Assistance Act* contains no privative clause, which suggests a lower degree of deference: *Savary v. Nova Scotia (Community Services)*, 2009 NSSC 123, [2009] N.S.J. No. 234 at para. 10 [*Savary*].

[20] Second, the purpose of the *Act* is to provide assistance to people in need. It is policy-oriented: *Willis v. Nova Scotia (Department of Community Services)*, 2007 NSSC 274, [2007] N.S.J. No. 391 at para. 25 [*Willis*]. However, the purpose of the appeals process is to adjudicate the entitlement of persons to assistance: *Legere v. Nova Scotia (Department of Community Services)*, 2010 NSSC 67, [2010] N.S.J. No. 84 at para. 14 [*Legere*]. All in all, the purpose of the *Act* is not, on its own, a strong indicator one way or the other with respect to the appropriate standard of review: *Savary, supra* at para. 11.

[21] Turning to the expertise of the tribunal, on the one hand Board members are not required to have legal training or any other specialized training (see s. 4 of the *Regulations*). This is to be contrasted with the courts, for which legislative interpretation is their "daily work": *Legere* at para. 15. This suggests less deference on questions of law. On the other hand, the social assistance program is a discrete and special administrative regime in which the Board can be assumed to have some measure of proficiency. The Board is very familiar with the *Act*, *Regulations* and related matters: *Bresson v. Nova Scotia (Department of Community Services)*, 2016 NSSC 64, [2016] N.S.J. No. 83 at para. 46 [*Bresson*].

[22] Thus, as has been found in previous cases, these first three factors do not strongly point towards one standard of review or the other. The deciding factor will therefore be the nature of the question at issue.

[23] Whether Mr. Sparks unreasonably refused to participate in employment services involves interpreting and applying the *Act* and the *Regulations*. The basic facts are not in dispute. In *Willis* at paras. 27-28, I held that questions of interpretation of the *Act* and *Regulations* demand a standard of correctness. However, our Court of Appeal has since determined that a reasonableness standard applies. In *Nova Scotia (Department of Community Services) v. McIntyre*, 2012 NSCA 106, [2012] N.S.J. No. 521 [*McIntyre*], Fichaud J.A. said:

> 22 I disagree that an administrative tribunal's interpretation of its home legislation generally attracts a correctness standard of review. In *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2011] 3 S.C.R. 471, Justices LeBel and Cromwell for the Court said:
>
> > 24 ... In substance, if the issue relates to the interpretation and application of its own statute, is within its expertise and does not raise issues of general legal importance, the standard of reasonableness will generally apply and the Tribunal will be entitled to deference.
>
> In Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, [2011] 3 S.C.R. 654, Justice Rothstein for the majority said:
>
> > [30] The narrow question in this case is: Did the inquiry automatically terminate as a result of the Commissioner extending the 90-day period only after the expiry of that period? This question involves the interpretation of s. 50(5) *PIPA*, a provision of the Commissioner's home statute. There is authority that "[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity" (*Dunsmuir*, [2008] 1 S.C.R. 190, at para. 54; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at para. 28, per Fish J.). This principle applies unless the interpretation of the home statute falls into one of the categories of questions to which the correctness standard continues to apply, i.e., "constitutional questions, questions of law that are of central importance to the legal system as a whole and that are outside the adjudicator's expertise, ... '[q]uestions regarding the jurisdictional lines between two or more competing specialized tribunals' [and] true questions of jurisdiction or vires" (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at para. 18, per LeBel and Cromwell JJ., citing *Dunsmuir*, at paras. 58, 60-61).
>
> To similar effect *Celgene*, para. 34.

> 23 The Board's interpretation and application of the *Employment Support and Income Assistance Act*, and the regulations and policies under that Act -- the Board's home legislation -- would be entitled to deference, meaning a reasonableness standard, subject to the exceptions mentioned in these passages from Canadian Human Rights Commission and Alberta Teachers' Association. Here, there is no constitutional issue, conflict or overlap between two tribunals, or issue of jurisdiction or vires. Had Ms. McIntyre submitted that the regulations were ultra vires the Act, that issue would be of central legal importance, not within the particular institutional expertise of the Board, and would be subject to correctness review. Ms. McIntyre does not suggest that the regulations are ultra vires. Her submissions are purely interpretive.
>
> 24 In the judicial review of the Board's decision, the reviewing court's standard to the Board's application of the Board's home legislation is reasonableness.

[24] This Court adopted this approach in *Worth v. Nova Scotia (Community Services)*, 2014 NSSC 366, [2014] N.S.J. No. 533 at para. 10, and more recently, in *Bresson*, *supra* at para. 16. Thus, the question of whether the Department's and the Board's determination that Mr. Sparks unreasonably refused to participate in employment services is to be reviewed on a standard of reasonableness. This is consistent with the Supreme Court of Canada's finding in *Dunsmuir* that questions of mixed law and fact attract a reasonableness standard.

[25] Determining whether the Department and the Board had the authority to suspend Mr. Sparks' family members' benefits is a question of statutory interpretation that must also attract a standard of review of reasonableness.

[26] In *Dunsmuir*, *supra*, the Supreme Court of Canada described the reasonableness standard as follows:

> 47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[27] In *Jivalian v. Nova Scotia (Department of Community Services)*, 2013 NSCA 2, [2013] N.S.J. No. 2, per Fichaud J.A., leave to appeal to S.C.C. refused [2013] S.C.C.A. No. 83 [*Jivalian*], our Court of Appeal explained:

> 15 Reasonableness is neither mechanical acclamation of the tribunal's conclusion nor a euphemism for the court to impose its own view. Rather the reviewing court shows respect for the Legislature's choice of a decision maker, by analysing that tribunal's reasons to determine whether the result, factually and legally, occupies the range of possible outcomes. …

[28] Most recently, in *Bresson*, *supra* at para. 18, Murray J. held that reasonableness:

> … means the Court does not readily accept the tribunal's decision or necessarily impose its own view. Rather, the reviewing court shows respect for the Legislature's choice of a decision maker, by analyzing that tribunal's reasons to determine whether the result, factually and legally, occupies a range of possible outcomes.

[29] And further:

> 44 The real question for this court is, was the Appeal Board's decision reasonable? The reasonable standard is one of deference. Whether or not a reviewing court agrees with it or whether or not a reviewing court thinks it is correct, is not the test. In those instances the decision stands as long as it meets the test of reasonableness.
>
> …
>
> 48 The question is does the Board's decision fall within the range of acceptable outcomes which are factually and legally defensible?
>
> 49 Applying the reasonableness standard, deferential as it is, it should be predicated on facts that are reasonably supported by the evidence and reliable for the purpose of reaching the ultimate decision.

[30] Murray J. went on to reiterate that a component of the reasonableness test is whether there is a "justifiable, intelligible and transparent" reasoning path throughout the tribunal's decision. "What this means," Murray J. explained, "is whether the reviewing court can understand why the tribunal made its decision" (para. 54).

[31] The final question, whether the Department and the Board had the authority to impose a six-week suspension, comes down to which legislation to apply and whether to apply a directive or policy. This issue is reviewable on a correctness

standard: *Nova Scotia (Department of Community Services) v. E.M.*, 2011 NSSC 12, [2011] N.S.J. No. 11 at para. 13 [*E.M.*].

[32] Regarding correctness, in *Dunsmuir, supra* at para. 50, the Supreme Court of Canada said:

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

Issue 1: Was the Board's Finding that Mr. Sparks Unreasonably Refused to Participate in Employment Services Reasonable?

[33] Mr. Sparks argues that the Department's and the Board's finding that he unreasonably refused to participate in employment services was unreasonable because the Department and the Board based their decisions on the August Action Plan, which he complied with. Alternatively, the Department and the Board must have looked beyond the August Action Plan, after having indicated otherwise, which was unreasonable for them to do.

[34] I therefore need to determine whether Mr. Sparks is correct in saying that the Department and the Board based their decisions entirely on the August Action Plan, and if so, whether it was reasonable for the Board to conclude that he refused to comply with the demands set out therein.

[35] The first question is significant because the August Action Plan is not the only agreement that Mr. Sparks entered with the Department. When Mr. Sparks attended his first meeting with the Department on July 14, 2015, he signed a document titled Understanding of Participation in Employment Focused Activities (the "July Agreement"). The July Agreement is much more detailed than the August Action Plan, but if the Department and the Board confined their analysis to the August Action Plan, then the July Agreement is not directly relevant.

[36] Ms. Smiley's case notes indicate that on October 23, 2015, the Department determined that Mr. Sparks "will be made ineligible as per ESIA Policy 5.17.4 Refusal to Participate in Employability Activities, Employability Assessment, Job Search and Employment Action Plan." There is no direct reference to either the

July Agreement or the August Action Plan. However, the letter sent to Mr. Sparks on that same day states in part:

> Your Income Assistance payments will be discontinued effective December, 2015 because because [*sic*] you did not follow through with your Assisted Job Search as agreed upon when you attended ESIA Orientation on August 17, 2015 (ESIA Policy 5.17.4 Refusal to Participate in Employability Activities, Employability Assessment, Job Search and an Employment Action Plan).

[37] Thus, the letter indicates that the Department based its decision to suspend Mr. Sparks' assistance on his failure to comply with the August Action Plan. But in upholding the decision, the Administrative Review Report explains:

> On October 23rd, 2015, the Department made you ineligible for IA because you did not contact Job Search Services following your initial meeting on August 27th, 2015, as per the employment plan.
>
> …
>
> Employment Support and Income Assistance (ESIA) regulations requires the Department impose ineligibility for a period of six weeks when a client refuses to participate in employment related assessments and activities.
>
> The Department made you ineligible because you did not follow through with the employment plan which was to participate in a job search through Job Search Services who would provide oversight and guidance during this process. You met with JSS once, did not register with the program, and did not respond when JSS staff attempted to contact you. Instead you refused to meet with JSS and continued to follow a self-employment plan which was not supported by the Department …
>
> [Emphasis added]

[38] Thus, the Administrative Review Report, like Ms. Smiley's case notes, makes no direct reference to either agreement.

[39] In the Board's decision, Board Member Ian Gulliver mentions the July Agreement, but he simply says, "[T]his form indicated the appellant was to attend an orientation session which he did within the 30 days required." The decision goes on to state:

> … When the appellant signed the Action Plan on August 17, 2015 he agreed to participate in a 90 day Job Search Services plan, however from August 27, to December 2, 2015 (95 days) the appellant only met with his councillor the one time at the initial meeting on August 27, 2015. It's quite apparent the appellant had no desire to participate in the services to help him attach to the workforce as

> per Regulation 17 and 18. When and [*sic*] applicant is not in compliance with Regulation 17 and 18 Regulation 20(1) states … [text of *Regulation* omitted].
>
> The board finds that the appellant could have continued to pursue his self-employment as well as to work with the Job Search Services agency to attach him to the work force and it was unreasonable not to do so. Policy 5.17.4 allows for the department to impose a six week disqualification of assistance when a recipient fails to participate.

[40] I find that the Board relied on the August Action Plan in applying s. 20(1)(b) to suspend Mr. Sparks' benefits. This was a reasonable interpretation of s. 20(1)(b), which states:

> 20 (1) An applicant or recipient is not eligible to receive or to continue to receive assistance where the applicant or recipient, or the spouse of the applicant or recipient unreasonably refuses
>
> …
>
> (b) to participate in employment services that are part of an employment plan; …

[41] This means benefits can be suspended under s. 20(1)(b) only where a recipient fails to comply with an obligation that is set out in his or her employment plan. "Employment plan" is defined in the *Regulations*:

> 2 In these regulations
>
> …
>
> (n) "employment plan" means a plan that is developed in conjunction with an employability assessment and that establishes the goals of a recipient or a spouse of a recipient in respect of
>
> (i) participation in employment services,
>
> (ii) participation in an approved educational program, and
>
> (iii) employment;

[42] It was reasonable for the Board to find that the August Action Plan was part of Mr. Sparks' "employment plan", particularly because the August Action Plan was developed in conjunction with an employability assessment, i.e. the "Am I Ready?" questionnaire.

[43] So was it reasonable for the Board to find that Mr. Sparks had refused to comply? As set out above, on Mr. Sparks' August Action Plan, only one item was checked off: the Assisted Job Search (AJS) Pilot. That paragraph provides:

> **Assisted Job Search Pilot (AJS)**
>
> I agree to be referred to Job Search Cole Harbour Place (service provider) with the AJS Pilot, and understand that I need to contact them within three business days to set up an appointment. I have reviewed and understand the AJS Important Information for the ESIA Client Sheet.

[44] Mr. Sparks argues this required him to do two things:

1. To agree to be referred to Job Search Cole Harbour Place; and
2. To contact Job Search Cole Harbour Place within three business days to set up an appointment.

[45] Mr. Sparks therefore takes the position that he was not actually required to follow through with the AJS Pilot program, and once he agreed to be referred the Cole Harbour Place JSS and contacted them within three business days, he was done. He did not need to show up to that appointment, cooperate with or remain in contact with the JSS counsellor, or take further steps towards finding a job.

[46] The August Action Plan represents an agreement between Mr. Sparks and the Department. The basic rule of contract interpretation was set out by the Supreme Court of Canada in *Eli Lilly and Co. v. Novopharm Ltd.*, [1998] S.C.J. No. 59 at para. 54:

> The contractual intent of the parties is to be determined by reference to the words they used in drafting the document, possibly read in light of the surrounding circumstances which were prevalent at the time. Evidence of one party's subjective intention has no independent place in this determination.

[47] The Supreme Court of Canada expanded on the use of "surrounding circumstances" in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] S.C.J. No. 53:

> 47 … [T]he interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding" [citations omitted]. To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

> No contracts are made in a vacuum: there is always a setting in which they have to be placed... . In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.
>
> (*Reardon Smith Line*, at p. 574, per Lord Wilberforce)

48 The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement [citations omitted]. As stated by Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*, [1998] 1 All E.R. 98 (H.L.):

> The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. [p. 115]

[48] Accordingly, I am to examine the words of the August Action Plan, considered in the context of the document as a whole, giving those words their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time.

[49] In addition to the "Assisted Job Search (AJS) Pilot" paragraph, I am mindful of the document's title, which is "Orientation – Next Steps for… Client Name: Brenton Sparks". The words "Next Steps" indicate that the steps outlined therein are part of a larger plan; several steps may have preceded, and several steps may follow. In other words, the check-marked "steps" are not held out as an exhaustive list of what will be required of the recipient.

[50] Further, in consideration of the entire context of the document, the only reasonable interpretation is that the items with checkboxes are actions items in and of themselves. For example, where "Assisted Job Search (AJS) Pilot" is checked off, this indicates that the recipient must participate in the AJS Pilot program. The text printed underneath simply provides additional details about how to get started. Interpreting the document in the way advanced by Mr. Sparks, i.e. so that the text printed underneath comprises the action items and the recipient is not required to do anything further, would result in an absurdity: the recipient would be required to agree to be referred to an AJS Pilot service provider, and to contact them within three business days to set up an appointment, but the recipient would not need to actually attend that appointment or do anything further.

[51] I note that the AJS Pilot paragraph further provides, "I have reviewed and understand the AJS Important Information for the ESIA Client Sheet." It would have been helpful to have a copy of these materials. However, they were not provided and I cannot consider them.

[52] In conclusion, I find that the August Action Plan required Mr. Sparks to participate in the AJS Pilot program. He was to contact the Cole Harbour Place JSS to schedule an appointment, but his obligations did not end there. He had to show up to that appointment, and he had to cooperate with the counsellor in determining how to proceed. At a minimum, Mr. Sparks had to advise his caseworker *in advance* of any changes to his plan, or *immediately* of anything that may affect his participation in the program. He could not unilaterally decide to stop participating and expect that there would be no consequences. After all, the August Action Plan clearly provided that "Participating in your next steps is mandatory. Failure to participate *will* impact your ongoing eligibility for Income Assistance."

[53] If, as Mr. Sparks argues, he did not decide to stop participating in the AJS Pilot program but merely failed to attend the October 8 meeting because of an accident, he had an obligation to *immediately* advise his caseworker of this. Despite communicating with the Department several times over the next few weeks, which included the Department raising its concern that Mr. Sparks may be deemed ineligible for refusing the participate in employment services, Mr. Sparks did not advise the Department of his reason for having missed the October 8 meeting until nearly two months later.

[54] Mr. Sparks argues that a "refusal" necessitates a clear understanding of expectations, and a deliberate "flouting" of those expectations: *R. v. Docherty*, [1989] 2 S.C.R. 941 at para. 14. Accordingly, he says, we need to examine whether he clearly understood what was being asked of him. I have found that the Department and the Board relied on the August Action Plan in reaching their decisions, but if, as Mr. Sparks argues, we are to consider his subjective understanding, I can look beyond that document. In other words, the August Action Plan required Mr. Sparks to participate in the AJS Pilot program, and in determining what Mr. Sparks must have understood that to mean, I can look at all of the surrounding circumstances. This is where the July Agreement becomes significant. It reads as follows:

> **2 Discuss your responsibilities**

> I understand that if I am eligible under the Employment Support and Income Assistance (ESIA) Program, I will be required to:
>
> - Participate in job search activity and/or employment readiness activity with the N.S. Department of Community Services (DCS) and/or an organization approved by DCS that provides these services in my community.
> - Attend regular scheduled appointments with my Caseworker.
> - Contact my Caseworker if my situation changes and I am unable to participate in job search activity.
>
> **3 Summarize your initial employment action plan**
>
> I understand that, as a result of the employability screening questions, the first step in my action plan will be to participate in …

[55] This section then contains three items with checkboxes. On the July Agreement for Mr. Sparks, all three items are checked off, meaning that Mr. Sparks agreed to participate in:

> - Job search activity for a period of up to three months with DCS and/or an organization approved by DCS that provides these services in my community
> - Employment readiness assessment with DCS
> - Services provided for EI eligible recipients from an organization approved by DCS

[56] Next, under the heading "Details", the following handwritten note appears:

> Will attend an ESIA Orientation Session within 30 days or by August 13, 2015. If I do not attend within 30 days or by August 13, 2015, my file will be ineligible for 6 weeks.

[57] Finally, the following statement appears, followed by Mr. Sparks' and Ms. Smiley's signatures dated July 14, 2015:

> **4 Sign understanding**
>
> I understand that failure to participate in job search activity and/or employment readiness activity may impact my eligibility to receive income assistance resulting in the closure of my ESIA file.

[58] For Mr. Sparks to say that he had no idea that by agreeing to participate in the AJS Pilot program, as confirmed by the August Action Plan, he would be

required to do no more than agree to a referral and schedule an appointment, is untenable.

[59] In conclusion, the Board's finding that Mr. Sparks "had no desire to participate in the services to help him attach to the workforce" falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. It was reasonable for the Department and the Board to conclude that Mr. Sparks' failure to show up to the October 8 meeting, together with his failure to immediately—or within any reasonable amount of time—notify either his counsellor or his caseworker, demonstrated a refusal to comply with the August Action Plan, amounting to a refusal to participate within the meaning of s. 20(1)(b) of the *Regulations*.

Issue 2: Was it Reasonable for the Department and the Board to Conclude That They Had the Authority to Suspend Mr. Sparks' Family Members' Assistance?

[60] Mr. Sparks says that even if there were grounds to suspend his income assistance, this did not give the Department and the Board the authority to suspend his spouse and his children's assistance payments. In other words, Mr. Sparks argues that his spouse and children ought to have continued to receive their assistance, notwithstanding any unreasonable refusal to participate in employment services on his part.

[61] In support of this argument, Mr. Sparks relies on the wording of s. 20(1) of the *Regulations*:

> 20 (1) An applicant or recipient is not eligible to receive or to continue to receive assistance where the applicant or recipient, or the spouse of the applicant or recipient unreasonably refuses
>
> …
>
> (b) to participate in employment services that are part of an employment plan;

[62] Mr. Sparks' counsel says this section "clearly specifies that, upon a failure to, *inter alia*, 'participate in employment services', assistance for the person who failed to participate can be terminated." "However," counsel for Mr. Sparks continues, "it does NOT provide that that assistance for the person's spouse and their dependent children can also be terminated."

[63] Mr. Sparks' argument is premised on two assumptions: first, that he does not receive assistance for or on behalf of his family members, but rather, they receive assistance in their own right; and second, that his family members' assistance payments are separate or distinguishable from his own assistance payments.

[64] However, if Mr. Sparks' spouse and children do not receive assistance in their own right, but only through Mr. Sparks, Mr. Sparks' ineligibility would have the effect of cutting off not only his own assistance, but also the assistance he receives on behalf of his family members. The result would be the same if Mr. Sparks' family members do not receive separate or distinguishable payments.

[65] So do Mr. Sparks' family members receive benefits in their own right, or does Mr. Sparks receive benefits on their behalf? This is a question of statutory interpretation. The principles to be applied are well settled. The basic rule of statutory interpretation is that "the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada Inc., 2014) at 7.

[66] A "recipient" is defined in the *Regulations* as "a person who is receiving assistance" and as stated, s. 20(1) provides that a recipient will become ineligible "to receive or to continue to receive assistance". Thus, the word "receive" is an important one.

[67] The *Oxford English Dictionary*, 2nd ed. (1989), provides the following principal definition of the verb "to receive":

> To take in one's hand, or into one's possession (something held out or offered by another); to take delivery of (a thing) from another, either for oneself or for a third party.
>
> [Emphasis added]

[68] This definition was cited with approval (albeit in different contexts) in *Gold v. Rosenberg*, [1997] 3 S.C.R. 767, and *William Neilson Ltd. v. Teamsters, Local 647 (Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees) (Paid Holidays Grievance)*, [2000] O.L.A.A. No. 495 at para. 8. The word "receive" therefore includes circumstances where a person takes into one's possession a thing for the benefit of another.

[69] In addition, the *Act* and *Regulations*, when reviewed in their entirety, reveal a social assistance scheme whereby a single family member will typically apply for and receive assistance for the benefit of the family. For example, the *Regulations* provide that children cannot typically receive assistance (see s. 14(1)). Further, s. 31 of the *Regulations* provides that a recipient "shall be allowed" a shelter allowance, together with "a personal allowance for each of (i) the applicant or recipient, (ii) the spouse of the applicant or recipient, and (iii) each dependent child of the applicant or recipient who is 18 years of age or older." The shelter allowance is not paid on a piecemeal basis, but rather, as a lump sum that increases based on family size (see Appendix "A").

[70] I am also guided by the wording of ss. 15(4) and 16 of the *Regulations*:

> 15 (4) A caseworker shall increase, reduce, discontinue or suspend assistance to a recipient where there is a change in the circumstances of the recipient or person on whose behalf assistance is being provided to the recipient that relates to the recipient's eligibility for assistance.
>
> [Emphasis added]

[71] Section 16 speaks of discontinuing assistance "paid on behalf of a dependent child" in certain circumstances, such as where the child attains 19 years of age.

[72] Regarding the intention of Parliament, Mr. Sparks notes that the Canadian *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, provides, "Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to … providing essential public services of reasonable quality to all Canadians."

[73] As to the purpose of the *Act*, Mr. Sparks relies on *Nova Scotia (Department of Community Services) v. Cleary*, 2011 NSSC 451, [2011] N.S.J. No. 652, wherein Rosinski J. stated at para. 86:

> The reality is that the *ESIA Act* and Regulations are intended to provide assistance to those in need. To otherwise interpret these sections would defeat that intention by slavish adherence to a strict interpretation which is unwarranted.

[74] I agree that a slavish adherence to a strict interpretation of the *Act* and *Regulations* would be inappropriate. But I cannot overlook the *Act*'s full purpose:

> 2 The purpose of this Act is to provide for the assistance of persons in need and, in particular, to facilitate their movement toward independence and self-sufficiency.
>
> [Emphasis added]

[75] The legislation aims to help recipients meet their basic needs, but it also aims to help them move towards economic self-sufficiency. As a means of achieving this goal, the legislation requires assistance recipients to demonstrate a commitment to becoming employable and employed. A recipient who fails to demonstrate this commitment, within the legislation's parameters, risks losing their entitlement to assistance. It would not be inconsistent with this object or scheme to find that the recipient risks losing their entitlement to assistance for not just themselves, but also for their family.

[76] Having considered the words of the *Act* and the *Regulations* in their entire context, in their grammatical and ordinary sense harmoniously with the scheme and object of the *Act*, I find that Mr. Sparks was receiving assistance on behalf of his spouse and children. Mr. Sparks' spouse and children were not themselves receiving assistance, at least not directly from the Department. Thus, if Mr. Sparks became ineligible to continue to receive assistance, he could not continue to receive *any* assistance, whether for himself or for his spouse and children.

[77] I have not been provided with any cases demonstrating that a recipient's family members may continue to receive assistance where the recipient has become ineligible. In fact, Mr. Sparks' counsel in his brief cited (for a different proposition) a 1987 decision of this Court, *Blackburn v. Nova Scotia (Social Assistance Appeal Board)* (1987), 80 N.S.R. (2d) 30, [1987] N.S.J. No. 180 (S.C.(T.D.)). The *Blackburn* decision shows that, contrary to Mr. Sparks assertion, the "sins" of the recipient can indeed be visited upon the recipient's family members. The recipient was a mother of two children. She was receiving family benefits under the former *Family Benefits Act*, S.N.S. 1977, c. 8, as an "unmarried mother". The recipient's benefits were cut off when it was determined that she was cohabiting with the father of one of her children. The decision was quashed on judicial review because there was insufficient evidence of cohabitation, but the takeaway is that the children did not continue to receive assistance when their mother was deemed ineligible. Rather, the entire family's assistance was cut off. Kelly J. stated, "For the Department to take the drastic action of removing essential support for a person in need of benefits and her two children, they must have reasonably clear evidence of such cohabitation" [Emphasis added].

[78] In conclusion, in each family, there is typically only one recipient. That person receives assistance for the benefit of the household. The amount of assistance paid to the recipient is based on many factors, including whether the recipient has a spouse and children. It cannot be said that separate amounts are paid for each individual. In addition to supporting the conclusion that a recipient receives assistance on behalf of family members, this also makes it difficult or impossible to determine what portion of the payments is attributable to each person. Mr. Sparks provides no suggestion as to how this ought to be calculated. To suggest that the assistance payments for his spouse and children should have continued is both a misinterpretation and an oversimplification of the assistance scheme set out in the *Act* and *Regulations*.

Issue 3: Did the Department and the Board Have the Authority to Impose a Six-Week Suspension of Assistance?

[79] The Department found, and the Board agreed, that it had authority to impose a six-week suspension pursuant to Policy 5.17.4. Mr. Sparks says departmental policies are of no legal effect. Thus, Mr. Sparks argues, because the *Act* and the *Regulations* are silent on the issue of duration of ineligibility, the Department was without legal authority to suspend Mr. Sparks' assistance, and it acted arbitrarily.

[80] The *Act* itself does not address unreasonable refusals to participate in employment services. It simply provides that:

> 7 (2) Persons assisting the Minister in the administration of this Act shall
>
> …
>
> (b) in accordance with this Act and the regulations,
>
> …
>
> (vi) from time to time review the assistance provided to a recipient, and in particular whether any conditions imposed have been met, and promptly advise the recipient of any changes in eligibility …

[81] That a recipient who unreasonably refuses to participate in employment services "is not eligible … to continue to receive assistance" first appears in the *Regulations* at s. 20(1). The *Regulations* further provide that a caseworker may suspend assistance to a recipient "where there is a change in the circumstances of the recipient or person on whose behalf assistance is being provided to the recipient that relates to the recipient's eligibility for assistance" (s. 15(4)). The Regulations do not, however, specify a six-week suspension for a refusal to

participate. A six-week suspension appears only once in the *Regulations*, as a consequence for quitting or getting fired from a job (see s. 21).

[82] As stated, the Department and the Board rely on Policy 5.17.4, which provides:

> **5.17.4 Policy: Refusal to Participate in Employability Activities, Employability Assessment, Job Search and an Employment Action Plan**
>
> An applicant/recipient and spouse are not eligible to receive or continue to receive Employment Support and Income Assistance when an applicant/recipient and/or spouse unreasonably refuse to:
>
> 1. participate in an employability assessment, when required,
>
> 2. participate in the development of an employment action plan,
>
> 3. participate in employment, where suitable employment is available,
>
> 4. participate in job search and/or employability activities,
>
> 5. participate in an approved educational program when it is part of an employment action plan.
>
> An applicant/recipient and/or spouse is required to provide a reasonable explanation for their refusal to participate and if unable to do so, may be ineligible for assistance for a period of six (6) weeks, beginning with the next service period.
>
> An applicant/recipient and/or spouse is required to contact a caseworker with a reason or explanation as to why they did not participate.
>
> A review of the employability screening questions, the employability assessment and/or the employment action plan will assist in the determination of eligibility for ongoing benefits.

[83] So were the Department and the Board entitled to rely on this departmental policy? In *Savary*, *supra*, the Department and the Board held that certain funds being received by an assistance recipient were "assets" rather than "income", because she used the funds to pay off debt. This made her ineligible to continue to receive assistance. On judicial review, the recipient argued that nothing in the legislation precluded a recipient from using funds to repay debts. In response, the Board pointed to a departmental policy. Murphy J. found that although a departmental policy does not have the force of law, the Department can rely on a policy as long as it is within the bounds of the *Act* and the *Regulations*, i.e. it is not too broad and outside the scope of the legislation, and it is not otherwise "unauthorized" (paras. 27-28).

[84] Murphy J. touched on this principle again in *E.M.*, *supra*. An assistance recipient sought increased payments. The Department denied her request, but the Board allowed the appeal, finding that a departmental policy allowed for the recipient's payments to be increased, and a "directive could not overrule policies or regulations" (para. 4). The Department applied for judicial review, arguing that the Board erred in finding that the directive could not displace a policy. Applying a standard of review of correctness, Murphy J. rejected the Department's submission that the policy upon which the Board relied was overridden or superseded by a subsequent directive.

[85] The Department further argued that the Board erred in failing to identify the legislation upon which its decision was based. Again, Murphy J. rejected this submission, finding that the Board had referenced the relevant policy sections, and further:

> 21 I have rejected the appellant's submission that the policy upon which the Appeal Board relied was overridden or superseded by a subsequent directive (Issue (1)). The applicant does not otherwise suggest that the published policy was *ultra vires*, or that the Department personnel were not expected to adhere to it. The Department's authority to implement policy was not an issue before the Appeal Board, and it was not necessary when rendering its decision that the Board examine the Employment Support and Income Assistance Act and Regulation 26 to trace the policy's origin. It can be assumed that the applicant knows the basis for its published policies, and no prejudice arises when the Board does not identify authority to support implementation. It was sufficient for the Appeal Board to identify the sections of the Direct Family Services policy upon which it based its decision.
>
> 22 I am satisfied that the Board identified the authority under which it was dealing with the appeal. The appeal did not involve the direct interpretation of a provision of an Act or regulation, but was concerned with a Departmental policy, which the Board identified. I am not satisfied that the Board was incorrect on this ground.

[86] In conclusion, Murphy J. found that the Board had not erred, and he dismissed the Board's application for judicial review.

[87] Mr. Sparks refers to the Court of Appeal's more recent decision in *Jivalian*, *supra*. The recipient was receiving income assistance from the Department as well as a caregiver allowance from the Department of Health. The Department classified the caregiver allowance as income. This had the effect of reducing the amount of assistance payable to the recipient. Citing *McIntyre*, *supra*, the Court of

Appeal applied a standard of reasonableness and upheld the decision, finding that the *Regulations* supported the Board's classification of the caregiver allowance as income.

[88] The Court of Appeal went on to address, as an aside, the Department's argument that its interpretation was supported by two departmental policies. Fichaud J.A. addressed this argument as follows:

> 31 I agree with Mr. Calderhead's submissions respecting the legal effect of Policies 5.7.1 and 5.7.2. Section 21 of the *Act* authorizes the Governor in Council to enact Regulations. But nothing in the *Act* enables Departmental employees to create Policies that have the effect of law. There is no enabling provision such as, for instance, s. 183 of the *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, that expressly authorizes "policies", apart from regulations, and provides that those policies shall have legal effect. It may be administratively convenient that the Department of Community Services operate with consistent standards, termed "policies". But those Policies are not legislative instruments, and have no legal effect, either before the Board or in court. The legal issues on this appeal should be determined based on the interpretation of the *Act* and *Regulations*, not the Policies.

[89] Leave to appeal to the Supreme Court of Canada was denied.

[90] I am bound by the Court of Appeal's finding that a departmental policy such as Policy 5.17.4 does not "have the effect of law". But does it follow that the Department can never rely on a policy as a basis for a decision? I think not. As Murphy J. found in *Savary*, *supra*, the Department cannot rely on a policy that is "unauthorized by the relevant legislation", i.e. it is "too broad and outside the scope of" the legislation (see paras. 27-28). But the applicant in that case had not established that the policy was unauthorized by the *Act* or the *Regulations*. Therefore, Murphy J. found, the Board was entitled to rely on it. In *E.M.*, *supra*, the applicant had not challenged the Department's authority to implement the policy, and therefore, Murphy J. was satisfied that the Department and the Board properly relied on it in coming to its decision on refusing the recipient's request for increased funding.

[91] I reach the same conclusions here. Mr. Sparks does not suggest that Policy 5.17.4 is *ultra vires* or otherwise unauthorized by the *Act* or the *Regulations*. I therefore find that while the Policy may not have the force of law, the Department and the Board were entitled to use it to guide them when deciding the appropriate consequence of Mr. Sparks' refusal to participate in employment services.

Therefore, they were correct in imposing a six-week suspension of benefits in the circumstances of this case.

Conclusion

[92] For these reasons, Mr. Sparks' application for judicial review is dismissed. The Respondents did not seek costs, and accordingly, there will be no order for costs.

A. LeBlanc, J.