

IN THE SUPREME COURT OF NOVA SCOTIA  
**Citation:** *Nova Scotia (Community Services) v. P.S.* 2006 NSSC 81

**Date:** 03/24/2006  
**Docket:** S.H. No. 252888  
**Registry:** Halifax

**Between:**

The Department of Community Services

Applicant

v.

P.S.

Respondent

**Judge:**

Associate Chief Justice Deborah K. Smith

**Heard:**

November 30, 2005 in Halifax, Nova Scotia

**Counsel:**

Terry D. Potter for the Applicant  
P.S., Self-represented

**By the Court:**

[1] This case involves an application by the Department of Community Services for an Order in the nature of *certiorari* quashing a decision of the Social Assistance Appeal Board rendered June 6<sup>th</sup>, 2005.

**BACKGROUND**

[2] A.S. is a fifteen year old child who has had longstanding learning difficulties in school. In May of 2004, the Halifax Regional School Board conducted a psychological assessment of A.S. This assessment found, *inter alia*, that A.S. had a low average range of abilities, his phonological skills were weaker than one would expect for a child his age and grade level and he lacked oral reading fluency. Attention difficulties were also identified. The psychologist that assessed A.S. made a number of recommendations including a referral to a pediatrician or attention specialist, a speech language evaluation and an auditory processing examination through Nova Scotia Hearing and Speech. The assessor further indicated:

Continuation of resource support is very important. Because of [A.S.'s] difficulties with phonological awareness, further support would be beneficial. Depending on the resources of the school or his parents, he might benefit from a hands-on approach

designed to build these skills. A number of private clinics, such as Nova Read and Spell Read Canada, offer very well respected programs designed to build Phonological awareness. The Earobics program is also a computer program designed to build phonological skills. This is a good program for older students and those students who do not like to draw attention to their learning difficulties ...

[3] On January 31<sup>st</sup>, 2005, A.S.'s pediatrician wrote a letter indicating that A.S. would benefit from an intensive structured program such as SpellRead to help with his phonologic awareness and reading skills. Thereafter, A.S.'s mother, P.S., (the Respondent to this Application) set out to obtain funding for this program.

[4] The Respondent, P.S., is a recipient of social assistance benefits under the *Employment Support and Income Assistance Act* (the "**Act**"). In the spring of 2005, P.S. contacted her income assistance caseworker asking for assistance with the cost of the SpellRead program for her son as well as assistance with the cost of transportation to and from the program. She presented her application as a "special needs" request under the *Act*.

[5] The full name of the *Act* in question is "An Act to Encourage the Attainment of Independence and Self-Sufficiency through Employment Support and Income Assistance". Section 2 of the said *Act* states that the purpose of the *Act* "is to provide for the assistance of persons in need and, in particular, to facilitate their

movement toward independence and self-sufficiency.” Section 3 of the *Act* (the interpretation section) contains the following provisions:

**3** In this Act,

- (a) ‘assistance’ means the provision of money, goods or services to a person in need for
  - (i) basic needs, including food, clothing, shelter, fuel, utilities and personal requirements,
  - (ii) *special needs*,
  - (iii) employment services.

.....

- (g) ‘person in need’ means a person whose requirements for basic needs, *special needs* and employment services *as prescribed in the regulations* exceed the income, assets and other resources available to that person as determined pursuant to the regulations. 2000, c. 27, s. 3.

[Emphasis Added]

[6] Section 2(ab) of the *Employment Support and Income Assistance Act* Regulations defines “special need” as follows:

**2(ab)** ‘special need’ means a need for

- (i) an item or service with respect to
  - (A) dental care,

- (B) optical care,
  - (C) funeral arrangements,
  - (D) special diet,
  - (E) transportation, child care,
  - (F) implementation of an employment plan, or
- (ii) another item or service that is in the opinion of a caseworker essential for an applicant, recipient, spouse or dependent child,

but does not include an item or service that is insured under Provincial insured health services programs or otherwise funded by government.

[7] Section 24 of the said Regulations sets out the information that an applicant must supply when requesting assistance for a special need. It reads as follows:

### **Special Needs**

#### **Information to be provided**

**24(1)** An applicant or recipient may request assistance for an item of special need, and the applicant or recipient shall provide the following information, where applicable, to a caseworker to support the request:

- (a) an explanation as to why the special need is required;
- (b) a description of the special need;
- (c) any documentation from professionals supporting the special need;
- (d) the cost of the special need;
- (e) the resources or alternatives that have been investigated with respect to obtaining the special need from other sources;
- (f) where the cost of the special need exceeds \$200, estimates for the cost of the special need from 2 separate providers; and
- (g) an invoice or receipt for the item of special need.

(2) An applicant or recipient may request assistance for an item of special need in accordance with subsection (1) either before or after the purchase of the item of special need.

[8] P.S.'s request for funding for a special need was not approved and P.S. requested that this decision be reviewed. An Administrative Reviewer reviewed the decision and also denied the request for funding indicating that the "special need" that was being claimed was an educational cost and was not related to employment or employment related activity. P.S. then requested an appeal before the Social Assistance Appeal Board (the "Board"). This appeal was heard on June 6, 2005. That same day the Board rendered a decision allowing the appeal. Included in the decision is the following:

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Finding of Facts

Under Transportation Special needs

Section 29, 'In determining eligibility it says actual transportation costs up to \$150. per month, where costs are req'd for employment or the preservation of health & safety of the dependent child.'

From the Children & Family Services Regulation it is..

37(1) 'For the purpose of Sect. 18 of the Act a child has special needs if the child has a need that is related to or caused by a behavioural, emotional, physical, mental or other handicap or disorder.'

In ESIA Act a special need is "a need for an item or service that is in the opinion of a caseworker essential for an applicant, recipient, spouse or dependent child.

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Reasons (Quote relevant sections of Employment Support and Income Assistance Act, Regulations or Policy and indicate how they relate to the issues and the facts)

Transportation Spec. Needs - Sect. 29  
Child. & Family Services Regulation 37  
ESIA special needs definition

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[9] Attached to the decision is the following written note:

#141172

June 6, 2005

Decision re [P.S.] -

I am prepared to rule against the decision of the Dept. of C.S. re [P.S.].

I recommend that the transportation costs of \$80.00/month be covered retro-active and that 75% of the cost of the Spell Read Program be covered.

Original signed by  
[N.K.]

[10] The reference to "Section 29" in the decision appears to be a reference to s. 29 of the *Employment Support and Income Assistance Act* Regulations which read as

follows:

### **Allowances and Expenses**

#### **Expenses to be considered in determining eligibility**

**29(1)** In determining initial eligibility for assistance, a caseworker shall include

- (a) expenses as prescribed in these regulations for basic needs and special needs;
- (b) actual transportation costs up to \$150 per month, where the costs are required for employment or the preservation of health or safety of the applicant or spouse or dependent child of the applicant; and

**Clause 29(1)(b) amended: O.I.C. 2001-338, N.S. Reg. 91/2001**

- (c) actual child care costs up to \$400 per month, where the costs are related to employment or are required for the preservation of health or safety of the applicant or spouse of dependent child of the applicant,

**Clause 29(1)(c) amended: O.I.C. 2001-338, N.S. Reg. 91/2001**

in the calculation of the budget deficit of an applicant.

[11] The Applicant seeks to quash the decision of the Board submitting that the Board erred by (i) failing to make any findings of fact or provide reasons for its decision and (ii) by failing to consider the proper provisions of the *Employment Support and Income Assistance Act* in assessing the Respondent's request for funding and by improperly applying provisions of the *Children and Family Services Act* Regulations relating to special needs when considering the appeal. The Applicant further submits that the Board's decision fails to give any indication whether it turned its mind to the requirements set out in s. 24(1) of the *Employment Support and*



*Income Assistance Act* Regulations when considering the appeal and suggests that based on the record that is available, one cannot be certain whether the Respondent complied with the requirements of Regulation 24(1) in her application for a special need.

### ANALYSIS

[12] The initial issue to be dealt with in this application is whether the Board erred by failing to make findings of fact and failing to give reasons for its decision.

### THE POSITIONS OF THE PARTIES

[13] The Applicant submits that the Board had an obligation to make findings of fact and to provide reasons for its decision and further submits that the decision that was rendered failed to comply with both of these requirements. The Applicant refers to s. 13 of the *Employment Support and Income Assistance Act* which deals with the powers and duties of the Social Assistance Appeal Board and has also referred to the Court of Appeal decision in **Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board)**, [1997] N.S.J. No. 103. That case involved a tribunal that was not

required by statute to provide reasons for its decision. Nevertheless, the Nova Scotia Court of Appeal concluded that there was an implied duty on the Board to furnish reasons for its decision and that breach of this duty, in the circumstances of that case, constituted a breach of the rules of natural justice. Chipman, J.A., writing for the Court, noted that reasons are not always required to be given by an administrative tribunal but went on to say at ¶ 52:

I am satisfied that courts can and should require written reasons from a Tribunal wherever there are substantial issues to be resolved. How can the court determine the existence of a rational basis for the decision of the Tribunal if it does not know how the Tribunal arrived at the result? If the determination of the reasonableness of a tribunal's decision can only be made by considering 'the reasoning underlying it' and these reasons are not obvious from a review of the issues and the record, written reasons are necessary. Failure of a tribunal to do so in such cases makes its decision a patently unreasonable decision which will be set aside. The disappointed litigant and the reviewing court must know the process followed by a Tribunal in order to see, in the case of the litigant, if a review should be sought, and in the case of the court whether interference with the decision is warranted.

[14] The Applicant has also referred the Court to the case of **MacDonald v. Demont**, [2001] N.S.J. No. 135 (N.S.C.A.).

[15] The Respondent replies that it is apparent from reading the Board's "brief reasons for decision" that it accepted the evidence that the Respondent presented and that it arrived at its decision as a result of having made factual findings. The

Respondent submits that the record provides further background and context to the decision and notes that certain facts are set out in the portion of the decision entitled “What are the arguments put forth by the appellant?” The Respondent suggests that it is clear that the Board accepted the facts that had been presented to it in coming to its decision. Further, the Respondent submits that in light of the “summary and informal nature” of these proceedings the adequacy of the Board’s findings ought not to be held to a standard of legal perfection. At ¶47 of the Respondent’s brief she submits that “the Board’s factual findings and reasons were, at the very least, minimally adequate in dealing with the case before it.”

[16] The Respondent has referred the Court to the case of **Fairmount Developments Inc. v. Nova Scotia (Minister of Environment and Labour)**, [2004] N.S.J. No. 251 (S.C.) in support of its position. That case involved an appeal of a decision of the Minister of the Environment and Labour in which the Minister provided a brief one sentence reason for his decision. Coughlan, J. noted that while in certain circumstances there is a duty to provide reasons for a decision, in the circumstances of that case, he found that the reasons given were sufficient when earlier correspondence in the file was considered.

## THE COURT'S FINDINGS

[17] While the **Future Inns** decision, *supra*, is instructive on the issue of the Board's obligation to provide reasons for its decision, in my view it is not necessary to rely on this case in order to determine this application.

[18] Section 13 of the *Employment Support and Income Assistance Act* sets out the powers and duties of an appeal board hearing an appeal and states:

### **Powers and duties of appeal board**

**13 (1)** An appeal board shall hear an appeal *in camera*, permitting access only to a representative of the Minister, the appellant, the appellant's counsel or agent and such other persons as the board may determine.

**(2)** **The board shall determine the facts and whether the decision made, on the basis of the facts found by the board, is in compliance with this Act and the regulations.**

**(3)** Where the board determines that the decision is contrary to this Act and the regulations, the board shall vary or reverse the decision in accordance with this Act and the regulations.

**(4) A decision of the board shall contain the facts found by the board, a statement of the issue in the appeal, the applicable provisions of this Act and the regulations and a statement of the reasons for the board's decision. 2000, c. 27, s. 13.**  
[Emphasis Added]

[19] This provision places an obligation on the Social Assistance Appeal Board to determine the facts of the case and decide, on the basis of those facts, whether the decision being appealed is in compliance with the *Employment Support and Income Assistance Act* and its Regulations. Further, the decision which is released by the Board must contain the facts as found by the Board and, *inter alia*, the reasons for the Board's decision.

[20] In my view, the Board in this case failed to adequately state its findings of fact relating to this matter and failed to adequately provide the reasons for its decision. While it is arguable that the Board must have accepted the facts presented by the Respondent, nevertheless, the Board failed to refer to its factual findings as required by the legislation. Further, while certain legislation was referred to in the portion of the decision entitled "Reasons" (including a section of the *Children and Family Services Act* Regulations) no reasons were given for the decision. As a result, the Board failed to carry out the requirements of s. 13 of the *Act* and the decision should be quashed.

[21] The effect of a failure to make findings of fact by the Social Assistance Appeal Board was dealt with in the recent Nova Scotia Court of Appeal case of **Nova Scotia (Department of Community Services) v. Brenna**, 2006 NSCA 8. In that case, Cromwell, J.A. stated at ¶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.....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.....***

[Emphasis added]

[22] The effect of a Board's failure to give reasons for its decision when required by statute to do so was dealt with by this Court in **Hoar v. d'Eon et al.** S.H. No. 128698 (unreported August 14, 1996). In that case, Cacchione, J. stated at p. 3 of his decision:

**Without reasons, the applicants are left to wonder where they fell short in their applications.** The Board's position is opened to being viewed as capricious and arbitrary, especially given that some applicants working in the same office and doing the same work as others were registered and others were not. **There were no reasons given or any attempts made to tie in the conclusion with any of the evidence presented to the Board of Examiners.** The decisions do not deal with the issues raised by the applicants, but simply conclude that the work that they performed was not social work. **These decisions do not analyse the evidence nor do they relay the evidence presented to the applicable law.** No where in these decisions does the Board state what specialized knowledge, values and skills consist of, nor why the individual applicants failed to meet that standard. **As I see it, the**

**decision is nothing more than a conclusion. The Board is required to give reasons and it has not done so.**

[Emphasis added]

[23] In that case, Justice Cacchione granted the application for *certiorari* and remitted the matter back to the Board for a rehearing.

[24] A similar result was reached in **White v. Nova Scotia Assn. of Social Workers**, [1997] N.S.J. No. 200 (S.C.) where Tidman, J. granted an Order in the nature of *certiorari* quashing a decision of the Board of Examiners of the Association of Social Workers for failing to give adequate reasons for its decision when required by statute to do so.

[25] In my view, on any standard of review, the failure of the Social Assistance Appeal Board to adequately state its findings of fact and to provide reasons for its decision in the face of a statutory obligation to do so is a reversible error.

[26] The decision in **Fairmount Developments Inc. v. Nova Scotia (Minister of Environment and Labour)**, *supra*, does not alter my view in this regard. The legislation that was being considered in that case (the *Environment Act*) does not

require that the Minister make findings of fact or give reasons for his/her decision when considering an appeal. In contrast, the *Employment Support and Income Assistance Act* specifically requires that a decision of the Social Assistance Appeal Board shall contain the facts as found by the Board and the reasons for the Board's decision.

[27] As I have concluded that the Board's decision should be quashed it is not necessary for me to deal with the other issues raised on this application.

[28] The application for an Order in the nature of *certiorari* quashing the decision of the Social Assistance Appeal Board rendered on June 6<sup>th</sup>, 2005 is hereby granted and the matter is remitted back to the Board for a rehearing before a differently constituted Board.

Deborah K. Smith  
Associate Chief Justice