IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ntibarimungu v. British Columbia (Social Development),* 2012 BCSC 1625

Date: 20120911
Docket: S122370
Registry: Vancouver

Between:

Frederic Ntibarimungu

Petitioner

And:

The Minister of Social Development,

British Columbia (Employment and Assistance Appeal Tribunal)

Respondents

Before: The Honourable Mr. Justice Abrioux

Oral Reasons for Judgment

Appearing on his own behalf:	F. Ntibarimungu
Counsel for the Respondent, The Minister of Social Development:	J. Walters
Counsel for the Respondent, Employment and Assistance Appeal Tribunal:	A.R. Westmacott
Place and Date of Hearing:	Vancouver, B.C. September 6, 2012
Place and Date of Judgment:	Vancouver, B.C. September 11, 2012

I INTRODUCTION

[1] **THE COURT:** The petitioner seeks judicial review of a decision (the "Decision") of the Employment

and Assistance Appeal Tribunal (the “Tribunal”), made March 21, 2012.

[2] The Decision upheld a reconsideration by the Ministry of Social Development (the “Ministry”) which found the petitioner ineligible for income assistance from October 1 to December 31, 2011. This was on the basis the petitioner was a full-time student enrolled in a funded program during this period, within the meaning of s. 16(1) of the *Employment and Assistance Regulation*, B.C. Reg. 263/2002 [*EA Regulation*].

[3] Prior to the hearing of the petition, I canvassed with the petitioner his right to have counsel represent him. I was advised by counsel for the Minister that arrangements had been made for the petitioner to have access to counsel, both with respect to seeking indigent status and to review the record which was before the Tribunal. The petitioner advised me he had decided not to seek indigent status and to proceed with this application acting on his own behalf.

[4] The parties agreed that the Tribunal should be added as a party to the proceeding and that the name of the respondent The Ministry of Housing and Development be changed to the Minister of Social Development. Accordingly, I made orders to that effect.

II BACKGROUND

[5] I will now review the pertinent facts.

[6] The petitioner has, amongst other qualifications, a master's degree in finance. Prior to the fall of 2011, he had been on income assistance since late November 2007. He had been classified as a person with persistent multiple barriers to employment (a “PPMB”). In August 2011, he applied for and was admitted to the British Columbia Institute of Technology (“BCIT”) in its business information technology management program, which commenced on September 3, 2011.

[7] On October 15, 2011, an investigative officer with the Ministry reviewed the petitioner's file. On October 26, 2011, the petitioner advised the Ministry that he had been attending BCIT since September 2011, but had not yet received his student loan funding. The Ministry asked the petitioner to submit confirmation of his course load, and advised he would not be eligible for income assistance if he were enrolled as a full-time student.

[8] On November 1, 2011, the Ministry advised the petitioner he was no longer eligible for income assistance because he was enrolled as a full-time student.

[9] That same day, the petitioner filed a request for reconsideration of the Ministry's decision to deny him income assistance. On November 22, 2011, the reconsideration adjudicator confirmed the decision to deny the petitioner's request.

[10] The petitioner filed a notice of appeal with the Tribunal on February 21, 2012, seeking to challenge the reconsideration decision made by the Ministry. He attached a copy of the first page of his revised notification of assessment from StudentAid BC, dated November 21, 2011, confirming his eligibility to receive $4,274, an

email exchange with StudentAid BC, and a letter he had written to the Ministry regarding his notice of appeal.

[11] On March 9, 2012, the petitioner filed another copy of his revised notification of assessment from StudentAid BC, this time including the back page and his examination schedule for December 2011.

[12] The appeal proceeded by way of oral hearing on March 21, 2012, before a two-member panel of the Tribunal. The Tribunal concluded the Ministry decision to deny the petitioner funding for the months of October, November, and December 2011 under s. 16(1) of the *EA Regulation* was reasonably supported by the evidence.

III THE PARTIES' POSITIONS

[13] The petitioner's position is that the Tribunal failed to give proper consideration to the StudentAid BC policy manual, which he alleges was in force during the fall months of 2011. The policy manual was not an exhibit before the Tribunal and, accordingly, not part of its record.

[14] He also sought to have introduced into evidence before the Tribunal the second page of a document entitled "StudentAid BC, Revised Notice of Assessment", dated November 21, 2011. The panel did not admit this document into evidence on the grounds it was not before the Minister when the reconsideration appealed from was made. The document provided in part:

> As an income assistance recipient, you are eligible to receive educational costs only. Your living expenses will be covered by the B.C. Ministry of Social Development.

[15] The petitioner alleges this document confirmed there was an agreement in place as between the Ministries of Advanced Education and Social Development, as set out in the StudentAid BC policy manual. It should be noted, the policy manual is produced by the Ministry of Advanced Education, not the Ministry of Social Development. Although the policy manual did not form part of the record before the Tribunal, I did admit it into evidence in these proceedings, since it formed the basis of the petitioner's principal submission.

[16] The policy manual at pages 113 to 115 deals with BC Employment and Assistance recipients. It refers to an "interface policy" and is to the effect it automatically applies when the student indicates receipt of income assistance or disability benefits of $1,500 or more during the study period.

[17] The petitioner submits the interface policy "makes the bridge" between the Ministries of Advanced Education and Social Development. The petitioner advised the Tribunal, and I quote from its decision:

> . . . that he was frustrated and confused by the legislation, referring to information he received from StudentAid BC indicating he could receive both student loans and income assistance. The appellant told the panel that the ministry should have the information from StudentAid BC at the time it made the reconsideration decision.

[18] The petitioner alleges that although he was a full-time student, he was still entitled to receive income assistance benefits from the Ministry. The fact he was denied those benefits for the months of October through December 2011 resulted in extreme hardship in that he was unable to properly feed himself. He also had a diabetic condition which was known to the Ministry. His health suffered, and as a result he performed

very poorly at BCIT. He alleges the Ministry acted with hate and discrimination against him, which now entitles him to recover aggravated damages.

[19] In support of his allegations of discrimination, the petitioner seeks to have admitted into evidence an affidavit sworn September 4, 2012. This affidavit, being Affidavit Number 2, refers to a series of events which commenced in 2004, ending in 2008, and which related to his employment as a teacher in British Columbia. It concludes:

> For all showed above, and from what I lived and observed, there must be a propaganda of hate and discrimination lagging behind my back and making my employability or anything susceptible to work on my favor problematical.

[20] He then alleges the respondents' acts are contrary to the Canadian Constitution, namely, the *Charter of Rights and Freedoms*.

[21] The respondents' position is that the petitioner's situation was governed by s. 16(1) of the *EA Regulation*. It provides:

> Effect of family unit including full-time student
>
> 16 (1) A family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student
>
> > (a) in a funded program of studies, or
> >
> > (b) in an unfunded program of studies without the prior approval of the minister.

[22] Section 1(1) of the *EA Regulation* contains the following definitions:

> "full-time student" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);
>
> "funded program of studies" means a program of studies for which student financial assistance may be provided to a student enrolled in it;

[23] Section 2(1) of the *Canada Student Financial Assistance Regulations*, SOR/95-329, defines full-time student in subparagraph (a)(ii) as follows:

> "full-time student" means a person
>
> (a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute
>
> > (i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or
> >
> > (ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,

[24] The petitioner's situation is governed by subparagraph (a)(ii).

[25] Reduced to its essentials, the respondents' submission is that s. 16(1) of the *EA Regulation* is clear. The petitioner, having the status of a full-time student enrolled in a funded program for the months of October to December 2011, was not entitled to receive income assistance. There is no discretion available to the

Ministry. The denial of income assistance by the Ministry was reasonable. The Tribunal's decision could not be said to be patently unreasonable. Accordingly the petition should be dismissed.

[26] Section 8 to Schedule B of the *EA Regulation* does provide the Minister with the discretion to exempt education-related unearned income for certain students. This section, however, does not apply to the petitioner.

[27] In their submissions, the respondents did address the issue of the policy manual. They submitted there was no agreement between the Ministries of Advanced Education and Social Development. The statement in the revised notice of assessment from StudentAid BC referred to above could not amount to an agreement as between the Ministries. Furthermore, when considered in its entire context, the interface policy could only apply to persons with disabilities.

[28] The respondents also submit that separate legislation has been enacted which pertains to those individuals with disabilities, being the *Employment and Assistance for Persons with Disabilities Act*, S.B.C. 2002, c. 41 [*EAPDA*], and the *Employment and Assistance for Persons with Disabilities Regulation,* B.C. Reg. 265/2002. Although the petitioner had received a PPMB designation, this did not constitute a designation as a "person with disabilities" for the purposes of s. 2 of the *EAPDA*.

IV DISCUSSION

A. The Tribunal's Decision

[29] Pursuant to s. 24(1) of the *Employment and Assistance Act*, S.B.C. 2002, c. 40 [*EA Act*], on an appeal to the Tribunal from a decision of the Minister, the Tribunal must determine whether the decision is: (a) reasonably supported by the evidence; or (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The applicable enactment here is s. 16(1) of the *EA Regulation*, which I referred to above.

B. Judicial Review

[30] Section 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*], provides the standard of review of a tribunal, such as the one whose decision is before me:

> 58 (1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
>
> > (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
> >
> > (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
> >
> > (c) for all matters other than those identified in paragraphs (a) and (b), the standard of

review to be applied to the tribunal's decision is correctness.

(3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

[31] The role of the court on judicial review is to supervise a jurisdiction exercised by an inferior statutory tribunal. In other words, to ensure that the tribunal acted within the jurisdiction bestowed upon it by the legislature: see *Lang v. British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244 at paras. 22 - 24, and also *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9 at para. 28.

[32] The role of the court on judicial review is not to hear new evidence or argument or to decide or redecide the case. Its role is to ensure that the Tribunal first of all acted within its jurisdiction by deciding what it was directed to decide by its constituent legislation, and secondly, did not lose jurisdiction by failing to provide a fair hearing or by rendering a decision outside the degree of deference owed by the reviewing court.

[33] The legislation and the authorities make it clear that the court's authority to grant relief on judicial review is discretionary. The analysis is a two-step process: first, the court must determine whether the error resulted in a substantial wrong or miscarriage of justice; secondly, if and only if the court concludes that there was such a substantial wrong or miscarriage, then the court must craft a remedy which guides the tribunal to the proper exercise of the jurisdiction given to it: see *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, s. 9; *Homex Realty v. Wyoming*, [1980] 2 S.C.R. 1011; *Dennis v. British Columbia (Superintendent of Motor Vehicles)*, 2000 BCCA 653; and *Matous v. British Columbia (Superintendent of Motor Vehicles),* 2005 BCCA 151.

[34] In British Columbia, the legislature has established the appropriate standard of review for specified tribunals by the *ATA*. As a result of s. 19.1 of the *EA Act*, the *ATA* applies to the Tribunal. Section 58 of the *ATA* establishes the standard of review. There is a privative clause in the *EA Act*, being s. 24(6) and (7), and accordingly the standard of review of the Tribunal on findings of fact or law or an exercise of discretion is “patent unreasonableness”.

[35] It is not for this court on judicial review to reweigh the evidence or substitute its findings of fact for those of the Tribunal on appeal or those of the Ministry on reconsideration. The main issue is whether the Tribunal's findings of fact or law or an act of discretion were patently unreasonable: see the *ATA*, s. 58(2)(a).

[36] In *Sahyoun v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2012 BCSC 1306, Stromberg-Stein J. stated:

[34] The applicable standards of review of the Tribunal’s decision, having regard to s. 58 of the

Administrative Tribunals Act . . . is patent unreasonableness with respect to the Tribunal's findings of fact or law or an exercise of discretion in respect of matters over which the Tribunal has exclusive jurisdiction, and fairness with respect to the application of common law rules of natural justice and procedural fairness . . .

[35] Patently unreasonable means not just unsupported by reasons that are capable of withstanding a probing examination, but openly, evidently and clearly unreasonable or irrational: *Gichuru v. Palmar Properties Inc.*, 2011 BCSC 827 at para. 34.

[37] In *Arbic v. British Columbia (Ministry of Housing and Social Development)*, 2011 BCSC 410, Bracken J. referred to several authorities in which the concept of patent unreasonableness has been considered:

[23] The standard of patent unreasonableness imposes a limit on the court's ability to interfere with the decision of an administrative tribunal. In *Canada (AG) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941 at paras. 44 - 46, the test was described as being "clearly irrational". It has also been described as "not in accordance with reason", *Centre communautaire juridique de l'Estrie v. Sherbroke (City)*, [1996] 3 S.C.R. 84, paras. 9 - 12; amounting to a "fraud on the law or a deliberate refusal to comply with it", *Syndicat des employès de production du Quèbec et de l'Acadie v. Canada Labour Relations Board*, [1984] 2 S.C.R. 412; and where "the result … almost borders on the absurd", *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, [2004] 1 S.C.R. 609, para. 18. Finally, in *Viking Logistics v. British Columbia (Workers' Compensation Board)*, [2010] B.C.J. No. 1874, the court held that the patent unreasonable standard requires the greatest deference to the decision under review.

[38] Insofar as reviews of findings of fact on a standard of patent unreasonableness, the British Columbia Court of Appeal has stated in *Manz v. Sundher*, 2009 BCCA 92:

[39] The standard of review was that of patently unreasonable. When applied to findings of fact or law the *Administrative Tribunals Act* does not define that term. (Section 58(2)(a) refers to a finding of fact or law or an exercise of discretion, but s. 58(3) is said to apply only to discretionary decisions). Accordingly, the well understood meaning of that phrase in relation to factual matters applies, is as described in *Speckling*:

[37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable. That is not the case here.

V APPLICATION OF LEGAL PRINCIPLES TO THIS CASE

[39] The Tribunal concluded that the Ministry's decision to deny the petitioner income assistance for the period in question pursuant to s. 16(1) of the *EA Regulation* was reasonably supported by the evidence. In particular, the panel noted:

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of November 22, 2011, denying the appellant income assistance for the months of October, November and December 2011 under s. 16 of the EAR on the basis that the appellant was enrolled as a full-time student from September 6 through December 21, 2011.

Section 1 of the EAR states that the definition of "funded program of studies" means a "program of studies, for which student financial assistance may be provided to a student enrolled in it" and that the definition of "full-time student" has the same meaning as in the Canada Student Financial Assistance Regulations. Subsection 16(1)(a) of the EAR provides that a family unit is not eligible for

> income assistance for the period described in subsection (2) if a recipient is enrolled as a full-time student in 8 funded program of studies.

[40] The Decision then refers to subsection 16(2) of the *EA* Regulation and continues in the following terms:

> At the hearing, the appellant told the panel that he was frustrated and confused by the legislation. . .
>
> The ministry's position is that the denial of income assistance was reasonable. The ministry says that the appellant was enrolled in a full-time funded program of studies from September 6 through December 2011 and that under section 16 of the EAR, he cannot receive income assistance during this period. The ministry confirmed that the information presented by the appellant from StudentAid BC was not before the ministry at the time of the reconsideration decision.
>
> The panel finds that the appellant was enrolled as a full-time student at a post-secondary institution from September 6, 2011 through December 31, 2011 and that he received some funding from StudentAid BC during this time. Accordingly, the panel finds that the ministry's decision to deny the appellant income assistance for the months of October, November and December 2011 under section 16 of the EAR on the basis that he was a full-time student in a funded program of studies is reasonably supported by the evidence. The panel confirms the reconsideration decision.

[41] The Tribunal's own statutory role was limited to reviewing the reasonableness of the Ministry's reconsideration. That is, whether the decision was reasonably supported by the evidence and whether s. 16(1) of the *EA Regulation* was reasonably applied. The petitioner admitted he was enrolled as a full-time student in a funded program, and his exams were to take place in December 2011. The Tribunal found he was so enrolled and that he received some financial assistance through student loans for tuition and books for that period.

[42] This key finding of fact was amply supported by the evidence. The only real issue, accordingly, is whether it was patently unreasonable for the Tribunal not to consider either the second page of the revised notice of assessment issued by StudentAid BC, or the StudentAid BC policy manual. Unlike this proceeding, however, the petitioner did not seek to have the manual introduced as evidence before the Tribunal.

[43] In my view, it was not patently unreasonable for the Tribunal to have proceeded as it did in reaching its conclusion. The fact that a student aid officer indicated to the petitioner his living expenses would be paid by the Ministry of Social Development can in no way bind a different ministry. In addition, such an assertion would be contrary to s. 16(1) of the *EA Regulation*. The policy manual cannot supersede the provisions of the applicable legislative provision: see *Gallant v. Canada*, 2012 TCC 119 at paras. 17 - 18.

[44] In the Decision, the Tribunal set out the relevant facts and considered them within the relevant legislation and the *EA Regulation*. It conducted a fair hearing and reviewed the reasonableness of the Ministry's reconsideration and found it to be reasonable.

[45] I conclude the Decision was not patently unreasonable, nor was there any jurisdictional error.

[46] I now turn to the claim for aggravated damages based on the allegations of discrimination and *Charter* rights violations.

[47] First of all, the petitioner cannot, in my view, seek aggravated damages within the context of this judicial review proceeding. This relief is beyond that set out in Rule 2-1 of the *Supreme Court Civil Rules* and of s. 2 of the *Judicial Review Procedure Act*. In any event, there is no evidence which would substantiate such an allegation. The petitioner's Affidavit Number 2 is of no assistance. It applies to alleged events which occurred well before the fall of 2011, none of which involved either the Ministry or the members of the Tribunal.

[48] The petitioner's allegation that his perception he had been discriminated by others well before the fall of 2011 proved the Ministry of Social Development and the Tribunal had acted in a similar vein, borders on the scandalous.

[49] There is also the allegation that the Ministry's refusal to pay income assistance caused the petitioner not to complete or fail his courses at BCIT. This must be viewed within the context of the petitioner's evidence that after he received $2,500 from StudentAid BC, he cashed the cheque and then lost his wallet containing all the funds.

[50] In conclusion, the petition is dismissed. My findings with respect to the claim for aggravated damages could result in an award of special costs, since the petitioner's conduct in that regard is worthy of rebuke. Under the circumstances, and in particular the fact the petitioner was self-represented and may not have been aware of the consequences of making such unfounded yet serious allegations, I would nonetheless have awarded costs to the respondents assessed at Scale B.

[51] I have now been advised by counsel the Respondents are not seeking costs.

“Abrioux J.”