IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Watts v. British Columbia (Social Development and Social Innovation),* 2014 BCSC 1085

Date: 20140617
Docket: S138699
Registry: Vancouver

Between:

John Watts

Petitioner

And

Minister of Social Development and Social Innovation

Respondent

Before: The Honourable Madam Justice Fleming

Reasons for Judgment

Counsel for the Petitioner:	K.F Milne
Counsel for the Respondent:	K. Evans
Counsel for the Employment & Assistance Appeal Tribunal:	A.R. Westmacott, Q.C.
Place and Date of Trial/Hearing:	Vancouver, B.C. May 30, 2014
Place and Date of Judgment:	Vancouver, B.C. June 17, 2014

[1] The petitioner seeks judicial review of a decision of the Employment and Assistance Appeal Tribunal ("Tribunal") confirming a reconsideration decision by the Minister for Social Development and Social Innovation (the "Minister") that found the petitioner not eligible for a moving cost supplement provided for in s. 55 of the *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002 (the "*EAPWD Regulation*"). The petitioner argues the Tribunal's interpretation of s. 55(2)(a) of the *EAPWD Regulation,* which forms the basis for its decision, was patently unreasonable.

Facts

[2] There is no dispute about the facts of this matter. The submissions of the parties describe them as follows.

[3] The petitioner and his wife are both designated as persons with disabilities pursuant to s. 2 of the *Employment and Assistance For Persons With Disabilities Act*, S.B.C. 2002, c. 41 (the "*EAPWD Act*"). They receive monthly disability assistance of approximately $1519 and also are permitted to retain $1,600 in earned income per month, pursuant to s. 3(3)(b) of Schedule B of the *EAPWD Regulation*.

[4] The petitioner is disabled by severe psoriatic arthritis that prevented him from working for almost five years. In August 2012, he moved to Summerland BC from Vancouver for employment at a Super 8 Motel in West Kelowna. His wife remained in Vancouver. The petitioner found the drier climate significantly improved his health. He was able to work more than before because of increased mobility and decreased pain. In October 2012 he quit his job but quickly found another one as an online sales technician for Rogers Communication in West Kelowna. The new job was expected to provide a starting wage of $10.50 per hour for up to 40 hours per week.

[5] On November 23, 2012, the petitioner applied for a moving cost supplement under s. 55(2) of the *EAPWD Regulation* to assist with the cost of moving his wife from Vancouver to West Kelowna. On November 26, 2012 the Minister denied his application. On December 3, 2012 the petitioner requested that the Minister reconsider the denial of his application. On December 24, 2012, the Minister issued a reconsideration decision confirming he was not eligible for a moving cost supplement, and provided reasons, which read in part:

> You have not demonstrated that you require a moving supplement to move anywhere in Canada to confirmed employment that would significantly promote the financial independence of your family unit. Progression toward financial independence can be gauged by the reduction of reliance upon disability assistance. The minister notes your statement that your monthly earned income before deductions will be $1680.00 and after eight weeks will be increased to $1812.00. Under schedule B section 2 payroll deductions made for specified amounts (such as Income Tax, EI, CPP, etc) are not included as earned income that must be subtracted from your disability assistance. Under Schedule B section 3 as a family unit of two adults who each have the PWD designation, you are eligible for a $1600.00 earned income exemption. Therefore, the information you have provided does not establish that your employment will result in a significant reduction of your reliance on disability assistance. Furthermore, the minister notes you moved to Westbank prior to obtaining the employment in question and you were therefore not required to move in order to begin your employment.

[6] The petitioner then filed a notice of appeal with the Tribunal on January 7, 2013. The appeal proceeded by way of oral hearing on January 28, 2013. The Tribunal upheld the Minister's decision.

[7] On April 12, 2013 the petitioner applied for judicial review. The parties agreed to remit the matter back before a newly constituted panel of the Tribunal.

[8] The second oral hearing before the Tribunal occurred on September 3, 2013, after receiving further written submissions and materials from the petitioner. At the hearing the petitioner argued the Minister's interpretation of s. 55(2)(a) in the reconsideration decision was unreasonable based on a plain reading of the words of the provision, the context of the *EAPWD Regulation* as a whole, and particularly s. 54.1 of that regulation which also deals with confirmed employment and provides for a job supplement on more expressly narrow eligibility criteria.

[9] On September 24, 2013, the Tribunal again upheld the Minister's decision, confirming the Minister had reasonably concluded the petitioner was not eligible for the moving cost supplement. It is this decision that is the subject of the present judicial review application.

The Legislative Scheme

[10] As set out in the submissions of the Tribunal, the *Employment and Assistance Act*, S.B.C. 2002, c. 40 (the "*EA Act*"), the *EAPWD Act*, and their regulations create a comprehensive legislative scheme governing the Minister's administration of "income assistance", "disability assistance", "supplements" and "hardship assistance" in the province. The Minister may provide disability assistance to a person designated as a person with disability pursuant to s. 2 of the *EAPWD Act* (a "PWD"). A family unit is eligible for disability assistance, which includes an amount for shelter and support, provided the family unit includes a person designated as a PWD.

[11] Part 5 of the *EAPWD Regulation* sets out approximately 27 different categories of non-medical supplements and 29 categories of health-related supplements that may be available to recipients of disability benefits. Each category of supplement has its own specific eligibility criteria and restrictions.

[12] Moving supplements are governed by s. 55 of the *EAPWD Regulation*, which also includes supplements for transportation and living costs. There are five circumstances in which the Minister may provide a supplement for moving costs outlined in section 55(2):

> (2) Subject to subsections (3) and (4), the minster may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance with one or more of the following:
>
> (a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to being that employment;
>
> (b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;
>
> (c) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area because the family unit's rented residential accommodation is being sold or demolished and a notice to vacate has been given, or has been condemned;
>
> (d) moving costs required to move within a municipality or unincorporated area to an adjacent municipality or unincorporated area if the family unit's shelter costs would be significantly reduced as a result of the move;
>
> (e) moving costs required to move to another area of British Columbia to avoid an imminent threat to the physical safety of any person in the family unit …

[13] Section 55(3) provides that a moving supplement is only available under this section if:

> (a) there are no resources available to the family unity to cover the costs for which the supplement may be provided, and
>
> (b) a recipient in the family unit receives the minister's approval before incurring those costs.

[14] Section 55(4)(a) sets out further limits on the provision of a moving supplement:

> (4) A supplement may be provided under this section only to assist with
>
> (a) the cost of the least expensive appropriate mode of moving or transportation …

[15] Like s. 55(2)(a), s. 54.1 also provides for a supplement to recipients who have confirmed employment. It reads:

> 54.1 The minister may provide a supplement of up to a maximum of $1 000 to or for a family unit that is eligible for disability assistance or hardship assistance if
>
> (a) a recipient in the family unit obtains confirmed employment that, in the opinion of the minister, will enable the family unit to become independent of disability assistance or hardship assistance,
>
> (b) in the opinion of the minister, requires transportation, clothing, tools or other employment-related items in order to commence the employment, and
>
> (c) there are no resources available to the family unit to cover the cost.

[16] The Minister's decisions about assistance and supplements are subject to an applicant's right to seek reconsideration by the Minister and then an appeal of the reconsideration decision to the Tribunal, as set out in Part 3 of the *EAPWD Act* and s. 19 of the *EA Act*, respectively. Appeals to the Tribunal are heard by oral hearing or, with the written consent of the parties, by written hearing. They proceed based on the information and records that were before the Minister when the decision being appealed was made, and oral and written testimony in support of the information and records (s. 22 of the *EA Act*).

[17] Section 24 of the *EA Act* sets out the test to be applied by the Tribunal on an appeal of a reconsideration decision:

> 24(1) After holding a hearing required under section 22(3), the panel must determine whether the decision being appealed is, as applicable,
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> (a) reasonably supported by the evidence, or
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> (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

[18] The Tribunal must provide a decision in writing that either confirms or rescinds the reconsideration decision (s. 24(2)-(3) of the *EA Act*).

The Tribunal's Decision

[19] In its decision, the Tribunal identified the issue on appeal as the reasonableness of the Minister's reconsideration decision of December 24, 2012 which found the petitioner ineligible for a supplement for moving costs under s. 55 of the *EAPWD Regulation*. The Tribunal set out a summary of the evidence, the relevant legislation, the positions of the petitioner and the Minister, and its reasons for decision. The Tribunal concluded the Minister's decision was reasonable after finding that the petitioner had met three of the four criteria for a moving supplement under s. 55(2)(a).

[20] The reasons for the decision stated in part:

> Section 55(2)(a) - There are four elements to this provision. The first is that the proposed move must be to "*anywhere in Canada.*" There is no dispute that Community C is within Canada, so the panel finds that the first element is satisfied.
>
> The second element is that "*a recipient in the family unit is not working but has arranged confirmed employment*". At the time the appellant requested the moving supplement and received the original denial, he had confirmed employment as an online customer care professional, evidenced by the offer of employment dated October 31, 2012. The evidence shows the appellant was not working at the time as his employment with the hotel had ended on October 12, 2012, and his new employment would not commence until December 10, 2012. Accordingly, the panel finds the second element is satisfied.
>
> The third element is that the confirmed employment "*would significantly promote the financial independence of the family unit*." In the panel's view, section 55(2)(a) must be read harmoniously with section 54.1, having regard to the object of the legislative scheme as a whole. Both sections deal with the situation where an applicant has confirmed employment. When section 55(2)(a) speaks of "financial independence", it is referring back to the "independence from disability assistance or hardship assistance" identified in section 54.1. The test in section 54.1 is higher than the test in section 55(2)(a), in that it requires the confirmed employment to enable complete independence from disability assistance as opposed to just significantly promoting financial independence as specified in section 55(2)(a). The evidence indicates that the appellant's net income as an online customer care professional would be less than the earned income exemption, and so would not diminish the family unit's reliance on disability assistance. Even if, as argued by the appellant, one assumes that the appellant's income would increase above his initial rate, there is no evidence before the panel to indicate that the increase would be of an amount that could reasonably be said to "significantly" promote the family unit's financial independence. In the panel's view, the speculation that the appellant's earned income may reduce the family unit's reliance on other supplements is not sufficient to "significantly promote" financial independence. Accordingly, the panel finds that the third element of section 55(2)(a) was not satisfied.
>
> Finally, the fourth element is that the "*recipient is required to move to begin*" the confirmed employment. The ministry had concluded that the appellant had already moved to Community C before commencing his employment as an online customer care professional, taking this to mean that the appellant was not required to move in order to commence the employment. The evidence, in context with the definition of "moving cost" in section EAPWDR section 55(1), indicates that the appellant did not move his household to Community C - as required by the employer - until after he had commenced employment in December, 2012. The panel finds that the fourth element of section 55(2)(a) was satisfied.
>
> Based on the foregoing analysis, particularly with respect to the third element of section 55(2)(a), the panel finds the ministry was reasonable in concluding that the legislative criteria of EAPWDR section 55(2)(a) was not satisfied.

Standard of Review

[21] The parties agree that the standard of review to be applied to the Tribunal's decision is one of patent unreasonableness. Pursuant to s. 19.1 of the *EA Act*, decisions of the Tribunal are reviewed on the standards of review set out in s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "*ATA*"), which provides:

> 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.

[22] A “privative clause”, as that term is used in s. 58 of the *ATA*, is defined in s. 1 as a full privative clause with a finality and exclusive jurisdiction clause.

[23] The *EA Act* contains a full privative clause in s. 24, which reads in material part as follows:

24(6) The tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under section 19 and to make any order permitted to be made.

(7) A decision or order of the tribunal under this Act on a matter in respect of which the tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

[24] Questions of law within the exclusive jurisdiction of the Tribunal therefore are reviewed on the standard of patent unreasonableness. See *Sahyoun v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2014 BCCA 86 at para. 9; *Lee v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2013 BCSC 513 at para. 45; *Arbic v. British Columbia (Ministry of Housing and Social Development*), 2011 BCSC 410 at para. 22.

[25] Patent unreasonableness is the most deferential standard of review: *Lee* at para. 52. In *Lee* Fisher J. observed the standard has been found to mean the court is to determine whether the decision under review is “clearly irrational”, “not in accordance with reason”, or “openly, evidently and clearly unreasonable” (at para. 54, referencing *Arbic* at para. 23 and the cases cited therein, *Manz v. Sundher*, 2009 BCCA 92 at para. 39, and *Sahyoun* at para. 35). The meaning of patent unreasonableness was not changed by the Supreme Court of Canada’s decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9: *Manz* at para. 36. At para. 52 in *Lee*, the court provided this further discussion of the approach to applying the patent unreasonableness standard:

… [a]n inquiry under the patent unreasonableness standard will consider a number of factors, such

> as whether the decision has rational support or falls within a range of outcomes defensible in respect of the facts and the law, but will demand less of the tribunal's reasons than under the reasonableness standard: *Viking Logistics Ltd. v. British Columbia (Workers' Compensaiton Board)*, 2010 BCSC 1340 at paras. 60-61. I agree with the respondent Tribunal's submission that a reviewing court should not closely parse the decision-maker's "chain of analysis" or put undue emphasis on the precise articulation of the decision if the underlying logic is sound. If there is a rational basis for a decision it should not be disturbed because of defects in reasoning …

[26] In *Vikings Logistics*, Holmes J. also considered the standard of patent unreasonableness as prescribed by s. 58(2)(a) of the *ATA*, in light of *Dunsmuir*, and concluded that (at para. 63):

> … [s]tanding at the upper end of the "reasonableness" spectrum, the "patently unreasonable" standard in s. 58(2)(a) nonetheless requires that the decision under review be defensible in respect of the facts and the law.

[27] At para. 61 the court also stated:

> [t]o assess whether the decision is defensible in respect of the facts and the law will require some inquiry into the decision-making process, but the extent of that inquiry will turn on the degree of deference to be afforded in the particular circumstances. This is in part because deference amounts to respecting an outcome without second-guessing the reasoning that reached it. In a sense, this was always the approach to the "patently unreasonable" standard, which differed from the "reasonableness" standard largely in degree and by demanding less of the tribunal's reasons.

The Issue

[28] The only issue on this judicial review is whether the Tribunal's interpretation of s. 55(2)(a) was patently unreasonable. The parties dispute how to properly apply that standard in the circumstances of this case.

The Position of the Parties

[29] The petitioner argues the Tribunal essentially interpreted the third element in s. 55(2)(a) of the *EAPWD Regulation*, which requires the recipient to have confirmed employment that will "significantly promote the financial independence of the family unit", to mean "immediately enable the family unit to significantly reduce its reliance on disability assistance". He submits this interpretation is clearly and evidently unreasonable or irrational. The petitioner's analysis includes a very careful examination of each step in the Tribunal's chain of reasoning, and may be summarised as follows:

1. The Tribunal's interpretation of "financial independence" to mean a reduction in monthly disability assistance is overly or unreasonably narrow and fails to reflect the broad language of the provision. The interpretation fails to reflect the context of the *EAPWD Regulation* as a whole and also relies heavily upon the wording of the preceding section 54.1, which it irrationally incorporates into s. 55(2(a), although this provision did not exist when s. 55(2)(a) was drafted.

2. The Tribunal's interpretation of the word "promote" in relation to financial independence essentially requires the family unit to provide evidence confirming financial progress at the time of the hearing. As such, it is also overly narrow and fails to reflect the actual wording of the provision and the context of the regulation.

[30] The petitioner submits that in order to determine whether the Tribunal's interpretation is patently unreasonable, the provision must be analysed according to the contextual or modern approach to statutory interpretation set out in Elmer Driedger's second edition of the *Construction of Statutes* (Toronto: Butterworths, 1983) at p. 87:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

(This passage cited with approval in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21).

[31] In *Lee* the court found the legislative scheme at issue in this case to be "benefits-conferring legislation that should be considered remedial and should be given a fair, large and liberal interpretation", and that this same principle is reflected in s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 and a number of authorities (at para. 62).

[32] The petitioner says the task of this court is to determine whether the Tribunal's interpretation was rational. To do so, the court must determine what interpretations s. 55(2)(a) can rationally support. This requires examining the text of the provision in its grammatical and ordinary sense, as well as its context and purpose. Relying upon the decision of *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, the petitioner argues the court cannot fulfill its supervisory role without embarking on a (careful) review of the entire context of the relevant provision and setting out all possible rational interpretations. At issue in *CHRC* was whether the Canadian Human Rights Commission had reasonably interpreted its authority by awarding legal costs pursuant to provisions of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. The Court concluded the decision of the commission was not reasonable after closely examining the text of the provisions, their legislative history, and prior decisions of the commission itself regarding its jurisdiction to award costs.

[33] The petitioner argues that reviewing an administrative decision maker's interpretation of a statute for patent unreasonableness is inherently different than reviewing factual findings because it is not a matter of simply determining whether there is any evidence to rationally support the finding.

[34] The respondent argues there is nothing irrational about the Tribunal's decision regarding s. 55(2)(a). With respect to the term "financial independence", the plain meaning of independence is the absence of dependence. In the context of a scheme involving the provision of disability assistance, it is rational and logical to interpret the section as referring to independence from that form of assistance. He further argues nothing about the Tribunal's requirement for some specific evidence of an increase in earned income is inconsistent with the plain meaning of s. 55(2)(a). Nothing about the word "promote" necessarily requires accepting speculative possibilities for an improvement in circumstances.

[35] The respondent submits the petitioner is really asking the court to apply a correctness standard in the guise of patent unreasonableness to the Tribunal's interpretation of the provision. In this regard, he points not only to the petitioner's suggestion that the Tribunal's interpretation of the provision be compared to all of

the possible rational interpretations identified by the court, but also to the distinction the petitioner draws between how to determine the patent unreasonableness of a factual finding versus the interpretation of a statutory provision.

[36] The Minister argues the court must not embark on an inquiry that involves parsing the Tribunal's reasoning too finely. The decision should be examined as an organic whole without a line by line "treasure hunt" for error: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 and *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd*., 2013 SCC 34.

[37] Both the Tribunal and the Minister take the position that the approach in *CHRC* is difficult to reconcile with other more recent decisions of the Supreme Court of Canada, including *Newfoundland Nurses* and *Paperworkers Union*, as well as with *Lee* and *Sayhoun*. In any event, it is clear that a patent unreasonableness standard of review must be taken to require greater deference to the Tribunal's decision than that expressed in *CHRC*, *Newfoundland Nurses* or *Paperworkers Union* and therefore demand less of the Tribunal's reasons (Vikings Logistics).

Analysis

[38] In *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396, our Court of Appeal considered the issue of how the court should engage in the review of a decision interpreting a statutory provision, based albeit on a reasonableness standard. Groberman J.A. did not disagree with the chambers judge's finding that the decision maker's discussion of the scope of a particular word in the statutory provision contained several errors. He went as far as to say the discussion might be characterized as unreasonable because it ignored well established principles of statutory interpretation. He determined, however, that this problem alone did not mean the decision must be quashed as unreasonable, stating "[n]ot every error in a Tribunal's chain of reasoning will compel the quashing of its decision. The role of the error in the decision is critical." (at para. 49).

[39] The Court of Appeal identified the correct approach to determining reasonableness, as the one articulated by the Supreme Court of Canada in *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 56:

> [The fact that the reviewing court must look to the reasons given by the tribunal to determine reasonableness] does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

[40] Groberman J. A. further explained the approach as follows (at para. 56):

> A court assessing an administrative tribunal's decision on a standard of reasonableness owes the tribunal a margin of appreciation. The court should not closely parse the tribunal's chain of analysis

> and then examine the weakest link in isolation from the reasons as a whole. It should not place undue emphasis on the precise articulation of the decision if the underlying logic is sound. On the other hand, a court does not have *carte blanche* to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result.

[41] Given the greater deference required by the standard of patent unreasonableness that applies in this case, the direction in *Petro-Canada* against closely parsing a tribunal's chain of analysis applies with even more force here. The decisions of Tribunals subject to a patent unreasonableness standard of review are owed an even more significant margin of appreciation than those subject to reasonableness review.

[42] As noted by the respondent, it is important to assess whether the decision under review was patently unreasonable bearing in mind the Tribunal's powers on appeal. The Tribunal must determine if the reconsideration decision being appealed is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of the person appealing the decision. The Tribunal is limited to either confirming or rescinding the decision based on a standard of reasonableness.

[43] Both parties and the Tribunal asked the court to consider the purpose of the legislation. In *Lee* the court discussed the purposes of the *EA Act* and the *EAPWD Act* which provide the context for the Tribunal's interpretation of s. 55(2)(a) of the *EAPWD Regulation* (at para. 86):

> … [t]he Ministry pointed out that the current legislation has a shift in focus towards a culture of responsibility, self-reliance and employment, which is similar to the emphasis on self-sufficiency in the prior legislation … I would characterize the purpose more specifically to the *EA Act* and the *EAPWD Act* as the provision of income and disability assistance and other benefits to persons in need, and good stewardship of the expenditure of public funds required for these programs. [Emphasis added.]

[44] In other words the legislative scheme has a dual purpose.

[45] The petitioner argues the responsible stewardship purpose is already reflected in s. 55(3) and (4), which require there to be no other resources available to the family unit to cover the moving costs and limit the amount of the moving supplement to the least expensive, appropriate mode of moving. Therefore, the petitioner says, s. 55(2) must be interpreted in accordance with the benefits-conferring purpose only. It then becomes clear that the provision was designed to provide funds for moving, living and transportation expenses when necessary to avoid specified risks or to provide a significant improvement in the lives of the family unit.

[46] The petitioner relies on *Atfield v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2006 BCSC 1480, reconsideration allowed 2006 BCSC 1883, to make this point. There, the court concluded that a finding by the Minister interpreting s. 55(3)(b) as requiring estimates for moving costs prior to approving them was patently unreasonable. The court identified the protection for the Minister provided by s. 55(4), which limits the amount of moving costs, as one of several factors leading to that conclusion. The case goes on to focus on whether the social assistance worker's exercise of discretion in the circumstances was patently unreasonable. In my view the case does not stand for the proposition that the dual purposes of the

legislative scheme require the dichotomous analysis of s. 55 suggested by the petitioner. In addition, as noted by the respondent, a close examination of the subparagraphs of s. 55(2) shows that each one has criteria that must be satisfied in order to receive the supplement.

[47] Accordingly, I conclude the Tribunal's interpretation of the third element of s. 55(2)(a) – confirmed employment that would "significantly promote the financial independence of the family unit" – is not irrationally narrow because it fails to reflect or confine itself to the benefits-conferring purpose of the statutory scheme.

[48] I agree instead with the submissions of the Minister that there is nothing irrational about interpreting the words "financial independence" in s. 55(2)(a) as referring to a reduction in dependence on monthly disability assistance, given the dual purpose of the legislative scheme and because of the other requirement that a recipient must have confirmed employment from which he or she will earn income in order to apply for the supplement. In other words, it is not irrational for the Tribunal to conclude that the element of financial independence requires more than the prospect of earning income, given that it is a separate element from confirmed employment. Earned income from confirmed employment cannot help but improve the lives of recipients and their family units, given the exemptions provided for elsewhere in the *EAPWD Regulation*.

[49] I do not agree with the petitioner's suggestion that the ordinary meaning of "significantly promoting financial independence" cannot rationally bear the Tribunal's interpretation of s. 55(2)(a). I also disagree with the petitioner's other point that because s. 54.1 specifically refers to independence from disability benefits, "significantly promoting financial independence" in s. 55(2)(a) must mean something else but certainly not independence from or reduction in dependence upon disability.

[50] It is true the Tribunal was incorrect when it described the words financial independence in s. 55(2)(a) as "referring back" to the "independence from disability or hardship assistance identified in s. 54.1", given that s. 54.1 was enacted after s. 55(2)(a). The Tribunal goes on, however, to describe s. 54.1 as setting out a higher test for eligibility for an employment supplement, as it requires confirmed employment that will enable the family unit to become "completely" independent of disability assistance as opposed to "just significantly promoting financial independence …". This analysis is not irrational. The words "significantly promoting financial independence" must be ascribed meaning. To determine their meaning, the Tribunal embarked on reading the provision "harmoniously" with s. 54.1. The decision makes it clear the Tribunal did not conclude reading provisions harmoniously involves finding them to have the same meaning. Subsections 54.1 and 55(2)(a) contain the only supplements related to confirmed employment, and therefore s. 54.1 provided the Tribunal with an appropriate interpretative aid.

[51] *Petro-Canada* provides the court must determine the role of an error in a tribunal's reasoning in the decision under review. In my view the error involved here played very little, if any, role in the Tribunal's decision, given its interpretation that "significantly promoting financial independence" in s. 55(2)(a)set out a less rigorous test for eligibility than "independence from disability or hardship assistance" in s. 54.1.

[52] Finally, the petitioner focused particular attention on the plain meaning of the word "promote" in s.

55(2)(a) to argue the Tribunal's interpretation was patently unreasonable. The thrust of his argument is that by defining the word "promote" as requiring a family unit to confirm or show financial independence from disability assistance, the Tribunal's interpretation was overly narrow and not rationally supported by the provision. Relying on a dictionary definition for "promote", the petitioner's submissions ignore the reality that the word "promote" in s. 55(2)(a) is modified by the adverb "significantly". As noted by the respondent, s. 55(2)(a) requires significant promotion of financial independence, not potential, possible or bare promotion. It is not patently unreasonable for the Tribunal to conclude that speculation as to earned income reducing the family unit's reliance on other supplements was insufficient to meet the statutory requirement that earned income "significantly promote" financial independence.

Conclusion

[53] Accordingly for the reasons set out above, I conclude the Tribunal's interpretation of s. 55(2)(a) of the *EAPWD Regulation* was not patently unreasonable. The petition is therefore dismissed. If necessary, the parties may appear before me to speak to costs.

"Fleming J."