

SUPREME COURT OF YUKON

Citation: *Major v. Yukon (Government of)*,
2019 YKSC 30

Date: 20190617
S.C. No. 18-AP013
Registry: Whitehorse

BETWEEN

PAUL JAMES MAJOR

APPELLANT

AND

GOVERNMENT OF YUKON:
CHRISTINE TAPP – A/DIRECTOR, SOCIAL SUPPORTS
STEVEN TAPP – OUTREACH WORKER, HOUSING AND COMMUNITY OUTREACH
SERVICES
STEPHEN DOYLE – A/DEPUTY DIRECTOR, SOCIAL SUPPORTS
NATASHA RUMSEY – A/MANAGER, HOUSING AND COMMUNITY OUTREACH
SERVICES
PATRICK THOMPSON – SUPERVISOR, INCOME SUPPORTS
MICHAEL NADEAU – CASE MANAGER, INCOME SUPPORTS
PETER HUA – SUPERVISOR, INCOME SUPPORTS

RESPONDENTS

Before Mr. Justice G. Mulligan

Appearances:
Paul James Major
Karen Wenckebach

Appearing on his own behalf
Counsel for the respondents

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an appeal of the decision of the Social Assistance Review Committee (“SARC”) dated March 4, 2019.

[2] In its five page written decision, the Committee upheld the decision of the Director that Mr. Major be compensated by \$1,270 for household allowance payments for the period 2010-2016. Mr. Major had been seeking the maximum benefit of \$500 per year which would have totalled \$3,500.

[3] The SARC declined to deal with other issues stating that they were not related to his eligibility for household benefits given the decision of the Supreme Court of Yukon. I will deal with that decision later in these reasons.

JURISDICTION

[4] The *Social Assistance Act*, R.S.Y. 2002, c. 205, as amended, (the “Act”) provides that an appeal lies to the Supreme Court of Yukon. Paragraph 12 provides:

12(1) The parties to a review request may appeal the decision to the Supreme Court on a question of law or fact within 30 days of the date of the committee’s decision.

(2) The Supreme Court may

(a) confirm or rescind the decision of the committee;

(b) substitute its decision for that of the committee, exercising in doing so all the powers of the committee; or

(c) refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

(3) An appeal to the court does not suspend the effect of the decision being appealed, unless the court on application orders otherwise. S.Y. 2008, c.22, s.10

[5] This matter has some history. In reviewing the history of proceedings, I pause to note that Mr. Major’s Notice of Appeal seeks orders under 11 headings. Several items

fall far outside the scope of judicial review contemplated by the legislature under the *Act*.

[6] Mr. Major's request for an injunction and for compensatory damages, for example, fall outside the scope of this judicial review. However, his request for full disbursement of the housing allowance, \$3,500 for the period in question, is a live issue.

[7] In his submissions to the SARC he raised certain other issues.

[8] The Committee disposed of these issues in its decision and stated in its conclusion:

Other issues were also brought up by Mr. Major during the November meeting, including his relationship with the Housing and Community Outreach Services Program, the availability of additional shelter benefits, and his current living situation. These issues were not considered by the Committee as they were not related to eligibility for the household benefit during 2010-2016, and the specific direction provided by the Supreme Court.

HISTORY

[9] The SARC first dealt with the matter on June 7, 2018. It found that Mr. Major did not provide sufficient evidence about his eligibility. Mr. Major appealed that decision to the Supreme Court of Yukon. A hearing took place before Justice Menzies resulting in an order dated October 25, 2019. In his decision, his Honour noted:

THE COURT: This is an appeal from an order of the Social Assistance Review Committee, who issued their decision on June 25, 2018. This was with respect to an annual household benefit of \$500 that is available to someone who is using the auspices of the Social Assistance Program in the Territory of the Yukon.

[10] His Honour further noted that the *Act* does not necessarily prohibit retroactive disbursements of the household benefit and that Mr. Major was not informed of the benefit.

[11] His Honour then ordered the matter back to SARC and ordered that Mr. Major meet with the Director to provide evidence of his financial situation. That meeting took place on November 23, 2018. It was recorded and a transcript was provided.

[12] The SARC then met again with Mr. Major on March 4, 2019. After reviewing submissions of the Director and Mr. Major, the Committee accepted the Director's recommendation that Mr. Major be paid \$1,270 for household expenses for the period in question, reasoning that there were certain household expenses incurred even though Mr. Major was living in furnished accommodations during the period in question.

[13] As at case management conference, Chief Justice Veale ordered the respondents file an outline, with the opportunity for Mr. Major to deliver a reply. Both have been done for this hearing.

Submissions of the Respondents

[14] As the respondents noted in their outline, the Supreme Court of Canada has provided guidance with respect to judicial review of tribunals. As the Court stated at para. 28 of *Dunsmuir v. New Brunswick*, 2008 SCC 9:

Judicial review is the means by which courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. The function of judicial review is therefore to ensure the legality, the reasonableness and the fairness of the admin[is]trative process and its outcomes.

[15] The respondents submit in para. 21 of their outline:

Here, then, the only issues the Court may address are whether the SARC erred in refusing to decide questions on discretionary aid on the merits; and whether it was reasonable in upholding the Director's decision on the household allowance.

[16] With respect to the issue of correctness concerning the issue of discretionary aid and other items outside of the housing allowance, I am satisfied that the standard is correctness. I am satisfied that the decision on this issue was correct given the direction by Menzies J. in his order for a rehearing on the issue of household expenses.

[17] With respect to the issue of SARC's decision on the \$1,270 housing allowance, I am satisfied that the test is reasonableness.

[18] The SARC had a range of possible outcomes available to it. It relied on the Director's input after a comprehensive meeting between the Director and Mr. Major, as ordered by Menzies J. The Committee considered Mr. Major's input at the hearing. SARC was interpreting its home statute.

[19] As the Supreme Court stated in *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres*, 2016 SCC 47, at para. 22, with respect to the presumption of reasonableness:

(1) *Presumption of Reasonableness*

[22] Unless the jurisprudence has already settled the applicable standard of review (*Dunsmuir*, at para. 62), the reviewing court should begin by considering whether the issue involves the interpretation by an administrative body of its own statute or statutes closely connected to its function. If so, the standard of review is presumed to be reasonableness (*Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3, at para. 46). This presumption of deference on judicial review respects the principle of legislative supremacy and the choice made to delegate decision making to a tribunal, rather than the courts. A presumption of deference on judicial review also fosters access to justice to the extent the legislative choice to delegate a matter to a flexible and expert tribunal provides parties with a speedier and less expensive form of decision making.

CONCLUSION

[20] The SARC decision not to deal with issues outside its household allowance expenses scope as ordered by Menzies J. was correct.

[21] The SARC decision to allow the household equipment benefit of \$1,270 was reasonable in the circumstances. It had the report of the Director after a meeting with Mr. Major as ordered. It had input at a hearing from Mr. Major. It was interpreting its own statutes and the regulations which were familiar to it. The tribunal's decision is owed deference.

[22] The appeal is dismissed. In the circumstances no order as to costs.

MULLIGAN J.