
SUBMISSIONS TO -

The Board of Review

RE -

A Preliminary Point In the Appeal
of Mrs. Lillian Carrigan

From -

Simon Fodden,
Of Counsel For the Appellant

Toronto

July 16, 1971

This is to confirm and reiterate the request which I made at the inception of the hearing in this matter on July 14, 1971. I requested that, as counsel on behalf of Mrs. Lillian Carrigan, the appellant herein, I have access to the reasons for judgment in previous cases which dealt with points similar to the ones at issue in this case.

The issue here concerns the right of a municipal welfare administrator to require, as a condition of maintaining the flow of welfare payments, that a wife, living apart from her husband, initiate legal proceedings against her husband for the financial support of herself and/or her children. I appreciate, of course, that the Board may wish to delete the names of the parties in previous cases. Moreover, I am prepared to attend at the Board's office in order to perform this research if that would prove more convenient to the Board and its staff.

I make this request in order properly to prepare my client's case. Neither the relevant statute nor regulations contain a clearly worded provision which would deny welfare payments to an otherwise eligible recipient in such circumstances. Thus, the policy must depend upon interpretation, inference, and syllogism. It is my understanding that the Board has dealt with similar issues in the past. Without knowing what interpretations, reasons, and inferences have influenced previous judgments, I cannot know the nature of the case I have to meet.

Although previous decisions may not be legally binding upon the Board they are unavoidably of persuasive value in subsequent adjudication. The principles of fairness require a tribunal to be as consistent as possible in its jurisprudence. Where relevant facts are similar, decisions would have to be similar. This is the essence of impartial, objective, and rational adjudication.

Our very assumption that this tribunal attempts to perform in a fair manner necessarily implies that it is influenced by its previous decisions and its past reasoning. Thus, unless counsel were to know what happened before, he cannot be prepared to deal with the issues that inevitably will be uppermost in the minds of the Board members.

Moreover, the present state of affairs puts the appellant at a disadvantage vis a vis the Department. In a very real sense, the Department whose ruling is under review, has an interest adverse to that of the appellant. Unavoidably, having been involved in numbers of cases, the Department knows the state of the Board's jurisprudence. As a party to previous cases, it will have received previous judgments. It must know the Board's decisions in order properly to administer public welfare allowances. Thus, we have a situation where, in fact, only one of two competing parties has been provided with the jurisprudential background of the case to be resolved. I respectfully submit that the elementary components of a fair hearing require that both parties have equal access to the jurisprudence.

Undoubtedly, such considerations have motivated the publication of judgments rendered by the Courts, the Immigration Appeal Board, the Income Tax Appeal Board, the Unemployment Insurance Umpire, the Ontario Labour Relations Board, Boards of Labour Arbitration, and many other tribunals which exercise judicial functions in our jurisdiction. In tax cases, one of the more compelling analogies to welfare cases, the published judgments substitute numbers for names in order to protect the anonymity of the parties involved.

On the basis of all the foregoing considerations, I respectfully reiterate my request that the Board of Review make its previous judgments available to the appellant in this matter.

Dated at Toronto
this 16th day of July, 1971

Simon Fodden
of Counsel for the Appellant