

Thomasson v. Ontario Ministry of Community and Social Services, et al.

This motion is a request by the Respondents to dismiss the Application because it has been rendered moot by the decision of the Social Benefits Tribunal.

The background to this motion is a decision by the Director of Income Support with the Ontario Disability Support Program to disallow certain expenses that the Applicant had incurred in his farm business. The Applicant appealed that decision to the Social Benefits Tribunal and also filed this Application for a declaration under the *Charter of Rights and Freedoms* that the Director's treatment of farm expenses was discriminatory pursuant to section 15 of the *Charter*. This Application was adjourned pending the decision of the Social Benefits Tribunal.

The Social Benefits Tribunal allowed the Applicant's appeal and directed that the specific farm expenses previously disallowed by the Director be allowed. The Director of ODSP has subsequently indicated in letters to the Applicant that they will abide by the decision of the SBT and continue allowing those expenses in future unless the Applicant's circumstances should change.

It is the Respondent's position that, given that the SBT has ruled in the Applicant's favour, that the underlying dispute raised in this Application has been resolved and there is therefore no necessity to address the constitutional issues. The Applicant disagrees and indicates that although the underlying dispute has been resolved by the SBT, it was resolved for the wrong reasons and this Court should nonetheless hear the constitutional issue.

The Supreme Court of Canada in *Phillips v. N.S. (Westray Mine Inquiry)*, [1995] 2 S.C.R. 97 at 111 indicated the following:

This Court has said on numerous occasions that it should not decide issues of law that are not necessary to a resolution of an appeal. This is particularly true with respect to constitutional issues and the principle applies with even greater emphasis in circumstances in which the foundation upon which the proceedings were launched has ceased to exist.

This statement of law is a complete answer to the Applicant's position with respect to this Application. He acknowledges that the dispute between himself and the Director of ODSP has been resolved; he just disputes the reasoning of the SBT. The foundation for this Application, ie. that the provisions of Directive 5.7 are discriminatory has ceased to exist because the SBT has ruled that the provision was misapplied in the Applicant's case and the matter has been rectified. Further, the SBT's decision has been accepted by the Director both for the 2005 year and for future years. The Applicant is no longer in a position to argue that he is being discriminated against given that he is now receiving the benefit of that directive. The fact that the Applicant was unhappy with the SBT's

reasoning is not relevant to the issue before me. The Applicant always has the option to appeal the SBT's ruling if they so choose.

For the reasons outlined above, the Respondent's motion is granted and the Application is dismissed as moot.