

File #1123-02

The Prince Edward Island Human Rights Panel

BETWEEN:

**PAT COADY
on behalf of
JENNIFER COADY**

COMPLAINANT

AND:

**QUEENS REGION HEALTH
and
DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

RESPONDENT

DECISION ON PRELIMINARY MATTERS

Hearing Date: September 29, 2004

**Panel Member
Richard Noonan - Commissioner
Prince Edward Island Human Rights Commission
PO Box 2000
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Preliminary Issues

1. On August 12, 2004, the Respondent requested that I refer a question or questions to the Supreme Court of Prince Edward Island under s. 28(3) of the Human Rights Act R.S.P.E.I. 1988, Cap. H-12, as amended. The two questions proposed for the Court's consideration, and my analysis of them, are as follows:
 - a) **Is the Disability Support Program (DSP) a service in the context of the Prince Edward Island Human Rights Act?**
2. Services provided the governments have been consistently held as coming within the protection of human rights legislation. For example, social services, financial assistance programs, provincial social assistance benefits, and Workers' Compensation have all been held to be services and, as such, are protected from discrimination on enumerated grounds. The unemployment insurance system, for example, is also a service customarily available to members of the general public who qualify for benefits. (*Canada (Attorney General) v. Canada (Human Rights Comm.) and Gonzalez* (1997), 32 C.H.R.R. D/89 (F.C.T.D.) at paragraph 38; *Druken v. Canada (Employment and Immigration Commission)* (1987), 8 C.H.R.R. D/4379 (C.H.R.T.).
3. In *Saskatchewan (Human Rights Commission) v. Saskatchewan (Department of Social Services)* (Sask C.A.) 1988 S.J. No. 464, the Saskatchewan Court of Appeal stated: "It seems obvious that the financial assistance provided for under the appropriate legislation is a service offered to the public". The provision of financial and social assistance through the DSP is analogous to other government programs which have been held to be "services" for the purpose of human rights protection. While the DSP is offered and accessible to the public of P.E.I., not all residents of P.E.I. are entitled to receive the service. However, eligibility requirements do not diminish the "public" nature of the offer of service, but are recognized merely as a method to ensure the impartial and universal application of services.

4. (b) **Is the Disability Support Program (DSP) an enactment pursuant to s. 2(2) of the Prince Edward Island Human Rights Act.**

5. Section 2(2) provides as follows:

2(2) Subsection (1) does not prevent the denial or refusal of accommodation, services and facilities, to a person on the basis of age if the accommodation, services or facilities are not available to that person by virtue of any enactment in force in the province.

6. Therefore, in certain situations, section 2(2) permits discrimination on the basis of age, which would otherwise be prohibited by s.2(1). The purpose of such provisions is to provide an exception for legislation which use classifications based on differential treatment of young people. For instance, persons under 18 (the age of majority) cannot vote and are denied legal capacity to initiate lawsuits. Other legal distinctions are made on the basis of age (for example, the right to drive a car and the right to vote).

7. The PEI *Interpretation Act* R.S.P.E.I. 1988, Cap I-8, section 1(c), defines “enactment” as an Act of Parliament or regulation or any portion of an Act or regulation. The definition of “regulation” means:

1(e) A regulation, order, rule, form, tariff of costs or fees, proclamation or bylaw enacted

1. in the execution of a power conferred by or under the authority of an Act, or
2. by or under the authority of the Lieutenant Governor in Council,

But does not included an order of a court or an order made by a public officer or administrative tribunal in a dispute between two or more persons;

8. The Respondent’s position is that the DSP was created by Ministerial Order. The DSP is a program, as outlined in the “Program Overview Section”. Section 1.1.1 states:

The Disability Support Program is a program designed to financially assist Islanders with disabilities to overcome physical and systemic barriers, to attain a satisfactory quality of life, and to achieve financial independence.

9. The program description does not state that the DSP is an enactment, nor

does it describe the DSP as fitting within the description of the definition of a regulation. The program description does not state that the DSP is a regulation, an order, a tariff of costs or fees, a proclamation or a bylaw. It specifically states that it is a program and a program is not an enactment. Further, the Respondent states that the Regulations pursuant to the *Social Assistance Act* define the DSP as “A Provincial Program that provides support to a person with a disability”. Further, while section 1.2.1 of the DSP delegates program authority to the Minister of Health and Social Services, the Program was not created by legislation and is not an enactment.

10. I heard oral argument on the issues on September 29, 2004. Taking into account the submissions of the parties to this Panel, orally and in writing, I wish to briefly convey my decision.

Decision

11. A Human Rights Panel does not have the powers of a court to consider questions of law except for the limited purpose of applying Human Rights legislation to the facts of this complaint. Keeping the limitations of my role in mind, I nevertheless wish to efficiently deal with the issues before me on these preliminary matters.
 - a) Service: I am persuaded that the DSP is a Service within the meaning of section 2(1)(a) of the Prince Edward Island Human Rights Act.
 - b) Enactment: I have reviewed the Affidavit of Mr. Stewart, Clerk of Executive Council. I do not consider the information contained therein to provide evidence that the DSP is an enactment. Therefore, section 2(2) of the Prince Edward Island Human Rights Act does not apply.

I therefore advise that the Panel will resume on November 16, 2004, and the parties will be expected to proceed with witnesses, and arguments at that time.

Dated this 5th day of November, 2004.

Signed: Richard Noonan
Richard Noonan
Human Rights Commissioner

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