

[3] The applicant seeks leave to appeal the decision of the Board. For the reasons that follow, her motion for leave to appeal is dismissed.

Relevant Statutory Provisions

[4] The applicant is eligible for income assistance under section 5(1)(a)(i) of the *Act* and section 4(1) of the *Regulation*:

Income assistance

5(1) The director shall provide income assistance, in accordance with this Act and the regulations, to or in respect of a person who, in the opinion of the director is a person

- (a) who, by reason of age or by reason of physical or mental ill health, or physical or mental incapacity or disorder that is likely to continue for more than 90 days
 - (i) is unable to earn an income sufficient to meet the basic necessities of himself and his dependants, if any.

Eligibility for income assistance and general assistance

4(1) Subject to this section, an applicant is eligible to receive income assistance or general assistance if the financial resources of his or her household are less than the cost of basic necessities and the shelter costs for his or her household.

[5] The term “financial resources” in section 4(1) of the *Regulation* is defined in section 1 of the *Act*:

“financial resources” means, with the exception of the exemptions specified in the regulations, any one or more of the following things:

- (a) all the real and personal property of an applicant, a recipient or a dependant of the applicant or recipient, including the net income from any such property,

- (b) allowances, pensions, insurance benefits, and income from business farming or any other source received by an applicant, recipient or a dependant of the applicant or recipient,
- (c) gifts and gratuities whether in cash or in kind received by an applicant, recipient or a dependent of the applicant or recipient on a one time basis or otherwise, and
- (d) the value attributed by the director to free shelter, free board or free lodging, received by an applicant, recipient or a dependant of the applicant or recipient.

[6] Sections 8(4) and 8(5) of the *Regulation* (the work incentive provisions) provide an exemption for employment earnings used in the calculation of financial resources as follows:

8(4) In calculating the financial resources of an applicant or recipient, the following earnings are not to be included:

- (a) up to \$200 of net monthly earnings, plus 30% of net monthly earnings in excess of \$200 for each employed or self-employed person in a household who has been enrolled for one month or longer;
- (b) up to \$200 of net monthly earnings for each employed or self-employed person in a household who has been enrolled for less than 30 days.

8(5) In subsection (4), “**net monthly earnings**” means

- (a) monthly employment earnings less compulsory payroll deductions; or
- (b) monthly self-employment earnings less self-employment expenses approved by the director.

[7] The term “employment earnings” in section 8(5)(a) of the *Regulation* is not defined in the legislation.

Background

[8] The applicant receives income assistance under the *Act* as a single person unable to earn income because of a disability. She was, however, employed part-time for a number of years and permitted to keep a portion of her earnings without any deduction to her income assistance pursuant to the work incentive provisions.

[9] Unfortunately, in December 2015, the applicant was involved in a motor vehicle accident and was unable to work due to her injuries. As a result, MPI began paying her the indemnity authorised by section 83(1) of *The Manitoba Public Insurance Corporation Act*, CCSM c P215 for part-time earners.

[10] The applicant reported receipt of the indemnity to the respondent. In August 2016, the respondent began deducting the amount of the indemnity from the applicant's monthly income assistance. The respondent decided that the indemnity was not employment earnings under the work incentive provisions in the *Regulation* and was, therefore, not exempt from inclusion in the applicant's financial resources for the purposes of calculating her monthly income assistance. In June 2017, after the indemnity ended, a structural reorganization at the applicant's place of work left her unemployed.

[11] The applicant appealed the respondent's decision to treat the indemnity as unearned income to the Board. The Board dismissed her appeal.

[12] The Board considered the applicant's assertion that the term "employment earnings" in the work incentive provisions is ambiguous and inconsistent with the intent of the *Act* and that there was a direct causal

relationship between employment wages and eligibility for the indemnity. It considered jurisprudence regarding statutory interpretation and the applicability of *Charter* values (*Canadian Charter of Rights and Freedoms*). It also considered the testimony of the applicant's expert witness on "the impact of income assistance and employment earnings on individuals with disabilities."

[13] In reaching its decision, the Board examined the nature of the indemnity and how it is funded. It noted that the respondent does not treat other benefits arising from employment, including Workers' Compensation, Canada Pension Plan and Employment Insurance, as employment earnings. Ultimately, it concluded:

In summary, after carefully considering the written and verbal evidence presented to it, the Board finds that [the indemnity] payments are not employment earnings within the meaning of the *Regulation*, that the Department's treatment of [the indemnity] payments is not inconsistent with the intent of the work incentive scheme, and that the Department's treatment of [the indemnity] payments is consistent with the statutory intent of the *Act* and *Charter* values. The Board confirms the decision of the Director to include [the indemnity] payments as unearned income when calculating [the applicant's] financial resources.

Test for Leave to Appeal

[14] Section 23(1) of *The Social Services Appeal Board Act*, CCSM c S167 provides that leave to appeal to the Court of Appeal may only be granted on a question of law or jurisdiction. Additionally, as this Court has previously stated, the applicant must have an arguable case that has a reasonable prospect of success; the question of law or jurisdiction must raise an issue that warrants the attention of the Court; and the Court may also

consider whether the denial of leave could result in an injustice (see *Rolling River School Division v Rolling River Teachers' Association of the Manitoba Teachers' Society et al*, 2009 MBCA 38 at paras 12-13; and *Stadler v Director, St Boniface/St Vital*, 2018 MBCA 103 at paras 14-15).

[15] Arguable merit is established if the issue raised by the applicant cannot be dismissed through a preliminary examination of the question of law (see *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 74).

[16] As explained by Steel JA in *Harder v Director Fort Garry/River Heights*, 2017 MBCA 11, the applicable standard of review is a relevant factor when considering the “reasonable prospect of success” criterion (at para 13):

When considering the third criterion as to whether there is a reasonable prospect of success, it is appropriate for the court to consider the standard of review that would be applied by the court on appeal on the basis that it relates to the “reasonable prospect of success” (*Sterling O & G International Corp v Director of Employment Standards Division (Man)*, 2012 MBCA 18 at para 18, 275 ManR (2d) 280 (in chambers); see also *Harder v Manitoba Public Insurance Corp et al*, 2012 MBCA 20 at paras 28-29, 275 ManR (2d) 298; and *Green v Houston Recruiting Services Ltd*, 2011 MBCA 16 at para 27, 262 ManR (2d) 177).

Positions of the Parties

[17] The parties agree, as do I, that the standard of review that would be applied on the appeal is reasonableness (see *Murray v Director of Employment and Income Assistance (Man)*, 2015 MBCA 66 at para 18; and *Stadler v Director, St Boniface*, 2017 MBCA 108 at para 10).

[18] The applicant asserts that the Board erred in law by concluding that the indemnity does not meet the definition of employment earnings in the work incentive provisions.

[19] In terms of the merits of the appeal, the applicant argues that the Board's decision is unreasonable because it failed to apply *The Interpretation Act*, CCSM c I80, principles of modern statutory interpretation and *Charter* values, and it failed to find the term employment earnings is ambiguous. She asserts that the Board applied a narrow, non-contextual approach focussing on the source and nature of the indemnity rather than conducting a purposive and contextual analysis. She says that because the Board grappled with the wrong issues and employed a flawed analysis, its decision is not reasonable.

[20] Finally, she contends that the outcome of her appeal may assist in determining similar disputes regarding other types of income replacement benefits.

[21] The respondent accepts that the issue in this case involves statutory interpretation which is a question of law and that there may be other recipients of income assistance who could be affected by the outcome of this appeal. It also agrees with the principles of statutory interpretation as outlined by the applicant. However, it asserts that the applicant has not raised an arguable case of substance and, therefore, the motion for leave to appeal should be dismissed. It argues that the Board's conclusion that the indemnity "is not encompassed by the term 'employment earnings' as found in the work incentive provisions was reasonable."

Discussion

[22] I agree with the parties that the applicant's appeal involves the interplay between two statutes and, therefore, it raises a question of law.

Principles of Statutory Interpretation

[23] As previously indicated, the parties agree on the approach to be taken when interpreting a provision in a statute. The applicable principles include the following:

- Section 6 of *The Interpretation Act* mandates that, "Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects."
- The modern approach to statutory interpretation requires that, "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" (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21, quoting Elmer A Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87; see also *Manitoba Housing v Amyotte et al*, 2014 MBCA 54 at paras 50-52).
- The entire context of a provision must be considered before determining whether it is reasonably capable of multiple interpretations. Ambiguity results only "where a statutory provision is subject to differing, but equally plausible, interpretations" (*Bell*

ExpressVu Limited Partnership v Rex, 2002 SCC 42 at para 62; see also para 29).

- When interpreting legislation, *Charter* values are considered only where there is a “genuine ambiguity” (*ibid* at para 62).
- Any ambiguities in social welfare legislation “should be resolved in favour of the claimant” (*Finlay v Canada (Minister of Finance)*, [1993] 1 SCR 1080 at 1114, quoting *Abrahams v Attorney General of Canada*, [1983] 1 SCR 2 at 10).

Is There an Arguable Case of Substance?

[24] In light of the respondent’s position, the issue to be determined on the motion for leave to appeal is whether there is an arguable case of substance.

[25] As explained by Moldaver J in *McLean v British Columbia (Securities Commission)*, 2013 SCC 67, “under reasonableness review, [appellate courts] defer to *any* reasonable interpretation adopted by an administrative decision maker, *even if* other reasonable interpretations may exist” (at para 40).

[26] The applicant argues that there were two interpretations available to the Board: the narrow, non-contextual approach she says the Board took; and a broader, purposive and contextual interpretation that she advocated. She says that the Board erred in its approach and that this led to an unreasonable conclusion. I disagree, for four reasons.

[27] First, the Board understood the principles of statutory interpretation and recognised that much of the expert’s evidence addressed “broader policy issues” which are not relevant when interpreting legislation.

[28] Second, the Board considered the purpose of the legislation and concluded that the respondent’s “current treatment of [the indemnity] payments does not negate the intended incentive effects of [the work incentive provisions], and therefore is not contrary to the intent of the *Act* or *Regulation*.” In reaching this conclusion, the Board considered the expert’s opinion that the work incentive provisions are irrelevant for individuals who are unable to work.

[29] Third, when considering the purpose of the indemnity, the Board conducted a contextual analysis by examining the nature of the payments and how they are funded.

[30] Fourth, the Board thoroughly reviewed the arguments made at the appeal hearing, including whether the legislation is ambiguous and whether there was a clear nexus between the indemnity and employment before confirming the respondent’s decision to treat the indemnity as unearned income. The Board concluded that there was no clear nexus between the indemnity and employment, and that there was no ambiguity in the use of the term “employment earnings”. Having found that there was no ambiguity in the legislation, there was no need for the Board to consider *Charter* values as an interpretive aid.

[31] In the end, I have not been persuaded that there is an arguable case of substance that the Board’s interpretation of its legislation does not fall within a reasonable range of possible outcomes or interpretations (see *Murray*

at para 18; and *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). In other words, in light of the applicable standard of review, the applicant does not have an arguable case that has a reasonable prospect of success. Therefore, there is no need for a more thorough examination of the legal question (see *Sattva* at para 74).

[32] In addition, while it is unfortunate that the applicant lost her ability to supplement her income assistance through part-time employment, I have also not been persuaded that refusing leave would create an injustice in the circumstances of this case.

Conclusion

[33] In the result, the motion for leave to appeal is dismissed without costs.

leMaistre JA
