

CANADA / JUDGMENT

LeBlanc v. City of Transcona

[1974] SCR 1261

COURT

Supreme Court of Canada

DECIDED

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LeBlanc v. City of Transcona

Collection

Supreme Court Judgments

Date

1973-08-27

Report

[1974] SCR 1261

Judges

Fauteux, Joseph Honoré Gérard; Abbott, Douglas Charles; Martland, Ronald; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Laskin, Bora

On appeal from

Manitoba

Subjects

Public utilities

Decision Content

Supreme Court of Canada

LeBlanc v. City of Transcona, [1974] S.C.R. 1261

Date: 1973-08-27

Maurice LeBlanc and Marcelle LeBlanc Appellants;

and

The City of Transcona Respondent.

1973: February 2; 1973: August 27.

Present: Fauteux C.J. and Abbott, Martland, Ritchie, Spence, Pigeon and Laskin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Social welfare—Application for municipal assistance denied—Appeal to Welfare Advisory Committee—Powers of Committee—Whether Committee may regard schedule in provincial regulations and ignore schedule in municipal by-law—Whether Committee may direct payment of allowance based in part on repayment of applicants' debts—The Social Allowances Act, R.S.M. 1970, c. S160, s. 9.

An application by the appellants to the respondent municipality for assistance under The Social Allowances Act, R.S.M. 1970, c. S160, was denied. An appeal from that ruling to the Welfare Advisory Committee (the appeal board designated under the Act) was allowed and the municipality was ordered to grant the appellants supplementary assistance in accordance with provincial rates. In calculating the amount to be paid, the Welfare Advisory Committee took into account certain monthly payments the appellants were obligated to make to retire previously incurred debts. An appeal by the municipality to the Court of Appeal was allowed by a majority decision and from that decision the appellants, with leave, appealed to this Court.

Held (Laskin J. dissenting): The appeal should be dismissed.

Per Fauteux C.J. and Abbott, Martland, Ritchie, Spence and Pigeon JJ.: The Court below was correct in its view that the Welfare Advisory Committee was not authorized to have regard to the schedule in the regulations made by the Province and was confined to consideration of the schedule in the municipal by-law provided for under s. 11(5)(b) of the Act. The Legislature contemplated that there should be a variety of standards of municipal assistance varying from one municipality to another guided by what the

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municipal elected authorities believed was a proper standard applicable to the various areas over which each council had control, and that municipal assistance in each municipality should be covered by the by-law applicable thereto. The Legislature also saw fit to provide for provincial assistance to the very limited class of persons set out in s. 5 of the Act and there provided that by regulation a schedule should be made applicable to them and to them alone.

There was no reference in the schedule to the municipal by-law to the repayment of debts and, accordingly, the Welfare Advisory Committee was not authorized to direct the payment by the municipality of any municipal allowance which would cover the repayment of the appellants' debts.

Per Laskin J., dissenting: Since the appeal board is not expressly limited in municipal assistance cases by the scales fixed by the municipal assistance by-law, and since there is no express exclusion of provincial rates as a permissible reference by which to assess need on appeals in municipal assistance cases, and since those rates have been fixed “for the purpose of the Act”, the appeal board may exercise its powers under s. 9 on the basis of the provincial rates where this is necessary to meet, so far as those rates can do so, the needs of a particular appellant.

In determining, under its broad powers, the extent to which an appellant should be aided by a grant, the appeal board, no less than the municipal administrator of the municipal assistance by-law, may take into account debts of the applicant-appellant. This was implicit in the fact that the person’s budgetary requirements and his income and resources to meet them are to be considered. Moreover, there is nothing in s. 9 to exclude a consideration of debts.

APPEAL from a judgment of the Court of Appeal for Manitoba[1], allowing an appeal from an order of the Welfare Advisory Committee,

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whereby an appeal from a ruling of the respondent municipality refusing the appellants social allowance was allowed. Appeal dismissed, Laskin J. dissenting.

R.D. Gibson, for the appellants.

V.L. Baird, Q.C., for the respondent.

The judgment of Fauteux C.J. and Abbott, Martland, Ritchie, Spence and Pigeon JJ. was delivered by

SPENCE J.—I have had the opportunity of reading the reasons for judgment written by Mr. Justice Laskin and I adopt the very complete statement of the statutes and regulations as therein set out.

The Welfare Advisory Committee by its undated order allowed the appeal of the present appellants from the decision of the municipal authorities in the City of Transcona refusing to grant to them municipal assistance. That order was explained in the letter of the secretary of that committee addressed to the appellants and dated October 30, 1970. The second paragraph of that letter reads:

As you know, your appeal was allowed and the municipality is ordered to grant you supplementary assistance in accordance with provincial rates.

(The italics are my own.)

As pointed out by Monnin J.A. in the reasons for judgment for the majority of the Court of Appeal which he delivered, the Act, that is The Social Allowances Act of the Province of Manitoba, R.S.M. 1970, c. S160, contemplates that both municipal and provincial allowances are to be payable under the terms of this statute. The provincial allowance entitled “social allowance” is payable under the provisions of s. 5(1) of the statute to a very limited group of persons who may be

described as being unemployable through physical or other cause and certain other limited and specified groups. Then by s. 11 of the statute and particularly s. 11(5) thereof a municipality is permitted to grant assistance to persons in need and not eligible to receive

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social allowance under this Act. The municipality is required to enact a by-law and provide in that by-law that there may be an appeal from the decision refusing to grant assistance to an unnamed tribunal. Section 11(5)(b) provides:

11. (5) Where a municipality

...

(b) grants the assistance in accordance with a schedule of assistance which meets the cost of basic necessities as determined from time to time under by-law of the municipality

(The italics are my own.)

The City of Transcona enacted such a by-law and the by-law has been filed in the material in connection with this appeal. The Province of Manitoba has also, by its regulations, enacted a schedule and that schedule being Reg. 138/69 has also been filed. It is agreed that the schedule to the municipal by-law is much more restrictive than the schedule set out in the said provincial regulation. The municipal officials of the City of Transcona, of course, were guided by the schedule set out in the by-law of the city in considering and in refusing the appellants' application for municipal assistance. As I have stated, on the other hand, the Welfare Advisory Board in terms allowed the appeal and granted a supplementary allowance, which under the provisions of the statute the municipality was required to pay, on the basis of the provincial regulations.

Therefore, the first and most important consideration both before the Court of Appeal for Manitoba and this Court is whether the Welfare Advisory Board considering an appeal as authorized by s. 9 of The Social Allowances Act from the refusal of a municipality to grant municipal allowance could have regard for the schedule set out in the provincial regulations and ignore the schedule set out in the municipal by-law. Section 9 of The Social Allowances Act grants that right of appeal and provides, in a

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summary fashion, not only for the carrying on of the appeal but for the powers of the Welfare Advisory Board therein. That latter topic is dealt with in s. 9(6) of The Social Allowances Act which simply provides that the Board may dismiss the appeal or dismiss the appeal and order that social allowance or municipal assistance be revoked or discontinued or allow it and direct that social allowance or municipal assistance in an amount stated in the order be paid to the appellant, or allow it and vary the order or direction made by the director or, (as is applicable in the present case) the municipality.

As will be seen, the section contains no guide as to how the Welfare Advisory Board should fix the amounts by which it intends to vary any municipal assistance granted or to allow municipal assistance when one has been refused by the municipality.

Chief Justice Freedman, in dealing with this topic said:

It was argued by counsel for the City that the provincial scale is applicable only when the province is furnishing assistance to a person in need directly and not when such assistance is furnished through a municipality. On that point I can only say that the Act does not so provide. I have not been able to find anything to warrant the construction that the Act should be so limited in its application. The powers of the appeal board are stated in terms that are broad and comprehensive. The appeal board may allow the appeal and direct that municipal assistance be paid in an amount stated in its order. In the present case the order stipulated that the assistance be on the basis of provincial rates. The Regulation passed under The Social Allowances Act and filed as part of the material here sets forth a schedule of costs of basic necessities. Those are the “provincial rates”, and it is then simply a question of mathematics to calculate precisely how much the applicants would be entitled to receive under the order.

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Monnin J.A., giving the judgment for the majority in the Court of Appeal for Manitoba, arrived at the opposite conclusion, saying:

Municipal officers cannot be found in error if they strictly comply with their municipality’s by-law. How then can an appeal board decide otherwise, and say to the municipal officers “you did nothing wrong but we propose to compensate the applicants—and not the other recipients—on an entirely different basis”? This could lead to chaos. If the legislators intended such a situation—and I can hardly visualize it—they would have said so in no uncertain terms.

Such is not the case. The appeal board, just as the director of welfare for the City of Transcona, is bound to apply the municipal schedule. This obviously contemplates that there can be as many municipal schedules as there are municipalities. Here again if the legislature intended to do away with the variety of schedules all it had to do was abolish the provisions for municipal schedules and decree the establishment of a provincial schedule which would apply uniformly throughout the province.

There may well be justification for considering that the Legislature, in enacting s. 9 of The Social Allowances Act, had intended that the Welfare Advisory Board in considering an appeal from a municipality’s refusal to grant municipal assistance should have the power to increase the basis upon which the application can be considered beyond that set out in the municipal schedule. However, by s. 11(5)(b) which I have cited, the municipality was authorized to set, by by-law, the schedule of the cost of basic necessities. By s. 2(d), “basic necessities” were defined as follows:

(d) “basic necessities” means the things and services to which reference is made in section 3;

And s. 3 refers to:

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- (a) such things, goods, and services as are essential to his health and well-being, including food, clothing, shelter, and essential surgical, medical, optical, dental, and other remedial treatment, care, and attention;

There can be no doubt that a municipal officer considering an application for the grant of municipal assistance was entitled to and, in fact, required to have regard alone to the schedule set out in the municipal by-law so authorized. As Monnin J.A. points out, it would result in a most invidious situation if one applicant for municipal assistance being unsatisfied with a limitation of the grant of such assistance or refusal of any grant could apply by way of appeal to the Welfare Advisory Board and obtain an allowance larger than one which the municipal officer was entitled to grant while another applicant would be bound, not having appealed, by the provisions of the municipal by-law. If it were intended to give to the Welfare Advisory Board any such unusual power of making special rules in exceptional cases then that should have been set out expressly in the statute. Lacking such express grant of power, surely a provincial statute should not be interpreted to provide for such unequal and, in my opinion, improper treatment of the citizens of a municipality. On the other hand, I am of the opinion that the Legislature contemplated that there should be a variety of standards of municipal assistance varying from one municipality to another guided by what the municipal elected authorities believed is a proper standard applicable to the various areas over which each council has control, and that municipal assistance in each municipality should be covered by the by-law applicable thereto. The Legislature also saw fit to provide for provincial assistance to the very limited class of persons set out in s. 5 of The Social Allowances Act and there provided that by regulation a schedule should be made applicable to them and, in my opinion, to them alone.

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It is true that s. 6(2) of the Canada Assistance Plan, 1966-67 (Can.), c. 45, now R.S.C. 1970, c. C-1, provides that the agreement with the province shall provide that the province

- (a) will provide financial aid or other assistance to or in respect of any person in the province who is a person in need described in paragraph (a) of the definition “person in need” in section 2, in an amount or manner that takes into account his basic requirements;

And s. 2 defines a “person in need” as one who by reason of inability to obtain employment ... is found to be unable (on the basis of a test established by the provincial authority that takes into account that person’s budgetary requirements and the income and resources available to him to meet such requirements) to provide adequately for himself.

It may be argued that the Province of Manitoba when paying a proportion of the municipal assistance paid out by the City of Transcona is not providing for persons in need in accordance with that requirement in the Canada Assistance Plan in that the schedule applied is not a schedule made by the province. That, in my view, is a matter which must be settled between the Province of Manitoba and Canada and can have no application to an appeal by the present appellant against the refusal of the City of Transcona to grant him a municipal allowance.

For these reasons, I have come to the conclusion that the Court of Appeal of Manitoba was correct in its view that the Welfare Advisory Board was not authorized to have regard to the schedule in the regulations made by the Province and was confined to consideration of the schedule in the municipal by-law.

I now turn to the second question, that is, whether or not the Welfare Advisory Board had the power to direct that the municipality should

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pay to the appellants a municipal allowance based, in part, on the repayment of debts which the appellants had acquired. Since in the view I have expressed both the municipal officers and the Welfare Advisory Board were governed by the provisions in the schedule to the municipal by-law, regard must be had to that schedule to determine this topic. That schedule makes detailed provision for the cost of basic necessities for food, clothing, shelter, utilities, fuel, household and personal needs, health care and for special needs up to \$75 per household in any fiscal year as well as for some special allowances covering special cases. There is no reference whatsoever in the schedule to the repayment of debts. For this reason, I am of the opinion that the Welfare Advisory Board was not authorized to direct the payment by the municipality of any municipal allowance which would cover the repayment of the debts of the appellants.

Even if the Welfare Advisory Board were, despite my view, permitted to have regard to the schedule in the provincial regulation, I have searched that regulation and find nothing therein applicable to the payment of debts nor is the matter referred to in The Social Allowances Act.

Monnin J.A., in the course of his reasons for judgment for the majority of the Court of Appeal for Manitoba, said:

Inclusion of monies for payment of legitimate debts as a matter of public assistance is such a new idea—without mentioning anything about its propriety—that had the legislature intended such a payment it ought again to have distinctly so provided.

I am fortified in this view by having regard to the essential purpose of The Social Allowances Act. That statute, as my brother Laskin has

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pointed out, sets out its purpose in s. 3 thereof, which I quote:

Provision of essential supplies services, and care.

3. Subject as herein provided, the Government of Manitoba and each of the several municipalities in the province may take such measures as are necessary for the purpose of ensuring that no resident of Manitoba, lacks
 - (a) such things, goods, and services as are essential to his health and well-being, including food, clothing, shelter, and essential surgical, medical, optical, dental, and other remedial treatment, care, and attention; and
 - (b) an adequate funeral upon his death.

To ensure each resident of Manitoba does not lack such goods, things and services as are essential to his health and well-being including food, clothing, shelter and essential surgical, mental, optical, dental and other remedial treatment, care and attention and an adequate funeral upon his death does not include insuring that his creditors will be paid the debts which are legitimately owing to them. To provide for the payment of debts in a social assistance statute would turn the purpose of that statute, at any rate in part, from social insurance to creditors' relief and provide for the payment out of public funds of the debts due to various creditors such as banks, finance companies, credit unions and the like. Surely such a result from a social assistance act would be so startling that exact and express provision would have to be made therefor. If the result of failure to provide for the payment of such debts may be that creditors will be able to collect them from the recipient of the municipal allowance to the detriment of his ability to obtain his own basic needs, in such case the remedy is by the prevention of the creditors so collecting their debts from the recipient and not by providing public funds from which those debts to private creditors may be paid.

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For this reason, I am of the opinion that the Court of Appeal for Manitoba was correct in deciding that no allowance could be made for repayment of debts.

In the result, I would dismiss the appeal. I would adopt the same course as the Court of Appeal for Manitoba in providing that the costs of the respondent should be paid by the Department of Public Welfare but I would make no other order as to costs.

LASKIN J. (dissenting)—This appeal, brought by leave from the majority decision of the Manitoba Court of Appeal, Freedman C.J.M. dissenting, turns on the powers given by s. 9 of The Social Allowances Act, R.S.M. 1970, c. S160, to the Welfare Advisory Committee as the appeal board designated under s. 2(a) of the Act. The language in which those powers are expressed admits of both a broad and a narrow construction. The broad construction means that the appeal must succeed; the narrow construction demands dismissal.

Any approach to construction of imprecise or loose language in particular provisions of a statute must begin with a consideration of the purpose of the enactment as a whole. Its history is relevant in this connection as are those of its terms which indicate purpose and those which establish and define the machinery for its administration.

In the present case, the purpose of The Social Allowances Act is clearly spelled out in s. 3 thereof in these words:

3. Subject as herein provided, the Government of Manitoba and each of the several municipalities in the province may take such measures as are necessary for the purpose of ensuring that no resident of Manitoba, lacks

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- (a) such things, goods, and services as are essential to his health and wellbeing, including food, clothing, shelter, and essential surgical, medical, optical, dental, and other remedial treatment, care, and attention; and
- (b) an adequate funeral upon his death.

The history or background of the present formulation of the Act lies in an agreement between the Government of Manitoba and the Government of Canada, dated March 26, 1967, made pursuant to s. 4 of the Canada Assistance Plan, now R.S.C. 1970, c. C-1. The Canadian Act authorizes agreements with the Governments of the Provinces for the sharing of the cost of provincial and municipal assistance and welfare to persons in need. Federal grants depend on provincial subscription to various conditions, and among them are those set out in s. 6(2)(a)(b)(e) of the Canada Assistance Plan, as follows:

- (2) An agreement shall provide that the province
 - (a) will provide financial aid or other assistance to or in respect of any person in the province who is a person in need described in paragraph (a) of the definition “person in need” in section 2, in an amount or manner that takes into account his basic requirements;
 - (b) will, in determining whether a person is a person described in paragraph (a) and the assistance to be provided to such person, take into account such person’s budgetary requirements and the income and resources available to him to meet them;
 - (e) will ensure the provision by law, not later than one year from the effective date of the agreement, of a procedure for appeals from decisions of provincially approved agencies with respect to applications for assistance or the granting or providing of assistance by persons directly affected by such decisions;

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The definition of “person in need” in s. 2, so far as relevant here, reads:

“person in need” means

- (a) a person who, by reason of inability to obtain employment, loss of the principal family provider, illness, disability, age or other cause of any kind acceptable to the provincial authority, is found to be unable (on the basis of a test established by the provincial authority that takes into account that person's budgetary requirements and the income and resources available to him to meet such requirements) to provide adequately for himself, or for himself and his dependants or any of them.

Central to the purpose of The Social Allowances Act and to the realization thereby of the conditions of the Canada Assistance Plan are ss. 2(d)(f) and 6 of the provincial Act which read as follows:

2. In this Act

- (d) "basic necessities" means the things and services to which reference is made in section 3.
- (f) "cost of the basic necessities" or "cost of his basic necessities" means the cost, as established in the regulations, of those basic necessities with respect to which a regulation is made under section 6.
6. The Lieutenant Governor in Council may, by regulation made by order in council, establish, for the purpose of this Act and as at the time of the making of the regulation, the cost of the several basic necessities or of those the cost of which should, in his opinion, be established from time to time.

I emphasize that the cost of basic necessities, as established by provincial regulation, is for the purpose of the Act, a purpose that includes the provision of aid to the needy by the Province in some cases and by its various municipalities in others.

The provincial aid is through a "social allowance", payable to those who qualify under s. 5 of the Act. This policy of assistance, as reflected in the regulations establishing the cost of

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basic necessities, is administered by the Director of Public Welfare pursuant to s. 7. Such regulations were enacted and were filed on October 10, 1969. They set out in considerable detail the scale of allowances to single persons and to persons living as members of a household for specified basic necessities, and provide also for taking into account an applicant's financial resources with specified exclusions.

The Act invites municipalities to establish programmes of assistance to persons in need who are not eligible to receive provincial social allowance, holding out to them grants to meet a considerable portion of the cost of such assistance if the programme meets certain conditions specified in s. 11(5). Among the conditions that a municipality must meet to have its assistance programme qualify as "municipal assistance" for grant purposes are those set out in s. 11(5)(b) and (c) which require that the municipality

- (b) grants the assistance in accordance with a schedule of assistance which meets the cost of basic necessities as determined from time to time under by-law of the municipality;
- (c) provides by by-law for an appeal by persons applying for or receiving such assistance from any refusal to grant assistance, any decision to terminate such assistance and any determination of the amount of such assistance granted or to be granted.

I note that s. 11(5)(b) uses the phrase “cost of basic necessities” in a municipal connotation although its definition is related to a provincial standard.

The Welfare Advisory Committee as the appeal board under The Social Allowances Act was the instrument chosen by the Government and Legislature of Manitoba to fulfil the

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requirement of a “procedure for appeals” under s. 6(2)(e) of the Canada Assistance Plan in accordance with Manitoba’s commitment under its agreement with the Government of Canada. Neither the Canada Assistance Plan nor the agreement made in pursuance thereof between the Governments of Manitoba and of Canada specifies the kind of appeal mechanism, nor do they prescribe or limit the powers that may be conferred by the Province upon the agency which it establishes to carry out its commitment to provide “a procedure for appeals from decisions of provincially approved agencies with respect to applications for assistance or the granting or providing of assistance by persons directly affected by such decisions”.

What kind of agency is the Welfare Advisory Committee? As the designated “appeal board” under s. 2(a) of The Social Allowances Act it is simply the Welfare Advisory Committee established under The Department of Welfare Act, R.S.M. 1970, c. W110. Section 7 of this Act reads in its relevant provisions as follows:

7 (1) There is hereby created and established a committee called: “The Welfare Advisory Committee” which shall be composed of fifteen members appointed by order of the Lieutenant Governor in Council.

- (2) One of the members of the committee shall be named chairman and one shall be named vice-chairman of the committee in the order in council appointing him or in a subsequent order.
- (3) Subject to subsection (4), each of the members of the committee, unless sooner removed by the Lieutenant Governor in Council, shall hold office for three years from such date as is fixed in the order in council appointing him, and thereafter until his successor is appointed, but may be reappointed for a further term.
- (5) Three members of the committee, of whom one is the chairman or vice-chairman, constitute a quorum.
- (9) The committee shall consider and report to the minister on any matter that may be referred to it; and

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shall perform such other duties as may from time to time be prescribed by order of the Lieutenant Governor in Council.

The Committee is composed of members who are not required by statute to have any special qualifications. The choice is left to the Government to which the Committee members are closely tied by reason of the control of the duration of their service. The statute gives the Committee no defined duties; it is left to the responsible Minister and to the Government to assign work to it. It has no decision-making authority under The Department of Welfare Act; it is not constituted to be a quasi-judicial agency under that Act. It has this latter character under The Social Allowances Act only to the extent, in any express sense, to which it must, under s. 9 (4)(5) of the Act, give notice of a “meeting” to hear the appeal of an applicant for assistance and must hear evidence offered by the appellant and by the municipality that is involved. Unlike some other non-curial tribunals which have an appellate authority, e.g. the Immigration Appeal Board and the Manitoba Municipal Board, the Welfare Advisory Committee is not a court of record.

The jurisdiction and powers with which the Welfare Advisory Committee has been invested under s. 9 of The Social Allowances Act are, so far as material, as follows:

9 (1) An applicant or a recipient or a person who has applied for, or is or was receiving, municipal assistance from a municipality which has by by-law made this section apply in respect of assistance granted by it to persons in need may appeal to the appeal board where he feels his treatment was unfair because

- (a) he was not allowed to apply or re-apply for social allowance or municipal assistance;
- (b) his request for social allowance or municipal assistance or increase in social allowance or

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municipal assistance was not decided upon within a reasonable time;

- (c) his application for social allowance or municipal assistance was denied;
 - (d) his social allowance or municipal assistance was cancelled, suspended, varied or withheld;
or
 - (e) the amount of social allowance or municipal assistance granted is insufficient to meet his needs.
- (6) The appeal board may, by written order,
- (a) dismiss the appeal; or
 - (b) dismiss the appeal and order the social allowance or municipal assistance be revoked or discontinued; or

- (c) allow it and direct that a social allowance or municipal assistance in an amount stated in the order be paid to the appellant; or
- (d) allow it and vary the order or direction made by the director or the municipality;

and if the appeal is allowed the director or the municipality shall pay a social allowance or municipal assistance to the appellant from the date of the order of the appeal board as provided in that order.

Under s. 9(7)(8), an appeal, on leave being granted, lies to the Manitoba Court of Appeal from any final order or decision of the appeal board upon any question of jurisdiction or any point of law. The present appeal to this Court has been brought by its leave after leave to appeal was refused by a majority decision of the Manitoba Court of Appeal.

The respondent City of Transcona qualified for provincial aid under The Social Allowances Act through a by-law passed on April 3, 1967. The appeal provision which it incorporated into that by-law, in obedience to s. 11(5)(c), was outright adoption of the “Appeal Board as provided in the Social Allowances Act”. Section 9(9) of this Act authorized a municipality to provide by by-law that s. 9 applies “in respect of assistance granted or that may be granted by it to persons in need”.

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Schedule A to the respondent city’s by-law sets out the kind and measure of basic necessities according to which indigent persons may obtain assistance. Their financial resources are, of course, to be part of the calculation of need. The appellants, parents of five children, all under age ten at the time, applied for assistance on September 25, 1970, by a written application signed by the husband, who was employed by the provincial Liquor Control Commission. The application showed that his take home pay was \$377 per month and he set out debt obligations of \$65 per month under Court order pursuant to The Orderly Payment of Debts Act and \$30 per month to a credit union. The application was denied by letter dated September 28, 1970. An affidavit of the city’s welfare director, sworn on November 16, 1970, stated that the gross earnings of the male applicant (his wife did not work outside the home) were \$554 per month and, deducting \$95 per month for the two debts and making the usual deductions for taxes, insurance and pension plan payments amounting to \$82 per month, the net was \$377 per month. The maximum allowance under the by-law, according to the affidavit, was \$260 per month, and hence the applicants were \$117 over the schedule. The male applicant had claimed that he needed \$462 per month net to provide basic necessities for the family.

In appealing to the Welfare Advisory Committee, the male applicant showed the cost of basic needs for the family to be \$555.10 per month (which included an allowance for debts in the amount of \$100 per month) and a net monthly income of \$377; hence, he asked for a supplement of \$178.10 per month. The appeal board noted that certain debts were already taken into account in the net income calculation and, after calculating the family’s needs at pro-

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vincial rates and adjusting the net income of \$377 to \$327.50, it decided that the appellants were entitled to a supplement of \$63.80 per month plus essential health care. These details were conveyed in a letter of October 21, 1970. In a follow-up letter of October 30, 1970, the appeal board's secretary on behalf of the board revised the allowance upwards because the information it had concerning income and debts was inaccurate. The basic budget for the family according to provincial rates remained the same save as to an additional clothing allowance and the adjusted net monthly income was shown as \$377.60 from which were deducted \$80 for debts (\$40 under the Court order and \$30 to the credit union and \$10 for personal debt), a \$20 general allowance and a transportation allowance of \$12, leaving a net income of \$265.60. The supplementary allowance was fixed, therefore, at \$133.20 per month.

One of the attacks made upon this direction was that the appeal board was functus after sending out its letter of October 21, 1970. The Manitoba Court of Appeal refused to dispose of the case on what the majority called a technicality, and there is the added point, noted by Freedman C.J.M. in his dissent, that the formal order in appeal was that made following the appeal board hearing on October 20, 1970, which said simply that the appeal was allowed and that the applicants were entitled to a supplementary allowance from the city according to provincial rates. The two letters were for the purpose of giving effect to the order. This same point was raised in this Court but only faintly, and I would reject it. I would reject also the contention that the formal order is fatally defective because it refers to a refusal of "social allowance" (rather than "municipal assistance") and directs that the appeal from the refusal of social allowance be allowed. The order is simply a projection of an assertion of power which the

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appeal board felt that it had under s. 9 of The Social Allowances Act. If the power exists, then I see nothing wrong with the order, even though there is technical merit (if I may use such a phrase in connection with supplications for assistance to meet basic needs) in the appeal board's failure to refer to a refusal to give "municipal assistance".

This brings me, at long last, to the nub of this appeal which is, first, whether the appeal board may order the city to give assistance in a measure beyond that limited by its by-law and whether, in calculating the required allowance for particular applicants for municipal assistance the appeal board may include, whether by deduction from gross income or otherwise, debts as a relevant factor in fixing the amount. Monnin J.A. speaking for the majority of the Manitoba Court of Appeal (himself and Guy J.A.) answered in the negative on both issues; Freedman C.J.M., addressing himself to the powers of the appeal board only, answered in the affirmative.

There is one matter, which I consider to be of primary importance in the construction of the powers of the appeal board, to which I wish to refer immediately because counsel for respondent relied on it in extension of the premises upon which Monnin J.A. proceeded in his reasons. It was urged by counsel (and Monnin J.A. expressed the point, in a more proper context, in refusing leave to appeal to this Court) that the primary matter in issue was one that could easily be corrected by the Legislature if the appellants' position be the "correct" one and the decision of

the Manitoba Court of Appeal be “wrong”. I confess to a complete inability to understand how the fact that the Legislature

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could move on the matter can be of any help to the construction urged by the city. The contention is logically fallacious because it assumes a conclusion upon which to base it, and thus begs the question. It is equally reasonable to urge that if the appellants’ contention be “wrong”, the Legislature can move just as quickly to undo the result of accepting it. I do not regard my function in the interpretation of legislation as qualified by assurance or expectation or apprehension of what the Legislature can or may do or not do.

There is no doubt that the officer charged with administration of the city’s municipal assistance by-law must abide by its limitations. His duties under the by-law are to a large degree clerical because the allowances to a qualified applicant are fixed, and evaluation comes in mainly in the determination of the applicant’s resources and this too may involve a simple calculation. If the appeal given by s. 9 is one limited to the determination whether the by-law has been correctly applied, then it does not go much beyond the review of arithmetic calculations.

Section 9 is not, however, so expressly confined. An appeal thereunder is open to a person in need “where he feels his treatment was unfair because the amount of municipal assistance granted is insufficient to meet his needs” (to quote the words of s. 9(1)(e)). The majority of the Manitoba Court of Appeal would have it that s. 9(1)(e) be read as if it concluded with the words “as determined under the by-law” or “in accordance with the by-law”.

Again, s. 9(6) dealing with the powers of the appeal board in the disposal of an appeal does not expressly limit the board, in municipal

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assistance appeals, by the terms of the municipal by-law. Clause (c) of s. 9(6) authorizes the board to allow an appeal and direct that “a social allowance or municipal assistance in an amount stated in the order be paid to the appellant”. There is no incongruity in recognizing a broader power in the appeal board than is initially reposed in a municipal welfare administrator who is limited by the maximum allowances fixed by the by-law under which he acts. There is the fact that municipalities may exhibit variations in the allowances that they fix; and the result will be that different scales of basic needs will be in force, which may meet the position of some applicants and not of others with the same requirements. The Social Allowances Act, in leaving municipalities in the first instance to fix their own scales of need, may reasonably be taken to have provided protection for the basic purpose of the Act in the open-ended power left to the appeal board. That basic purpose, set out in s. 3 already quoted, was to ensure that no resident of Manitoba lacks such things, goods and services as are essential to his health and well-being; and it was shored up by the provisions of ss. 2(d)(f) and 6, previously quoted, which look to provincial prescriptions respecting the cost of such necessities.

There is also the fact that The Social Allowances Act was intended to meet the qualifying conditions of the Canada Assistance Plan, and especially to see to the succor of a “person in need” as defined in para. (a) of the definition thereof in s. 2 of the federal Act. Both the federal Act and the provincial Act contemplate assessments of individual need. Administrative convenience dictates that there be a generally applicable scale of costs of necessities, but even there the assessment is according to the individual situation. I do not find it aberrant, therefore, that scope should be left for meeting an individual applicant’s needs if, as in this case,

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the particular municipal scale of benefits falls short of meeting them and they can be met by applying a provincial scale. Monnin J.A. was of the opinion in his majority reasons that “the right of appeal is to make sure that all requirements of the municipality have been met and no more”. There are no express words in the Act that require this conclusion. I read s. 9 as designed rather to see to support for those in need. Only an applicant for assistance or a recipient is given a right of appeal; no such right is provided for a municipality.

The logic of the submissions made on behalf of the appellants might lead to the conclusion that on an appeal to the appeal board from a decision under the provincial need regulations, the board would be entitled to meet the particular applicant’s basic needs by an award beyond the provincially prescribed allowances. The controlling factors here, however, are the definition of a “person in need” and the provincial prescription of the cost of basic necessities around which, as I have already noted, the Act revolves. The definition makes the test established by the provincial authority the determinant, a test that must take into account the person’s budgetary requirements and the income and resources available to him to meet such requirements. The Social Allowances Act of Manitoba does not incorporate this definition, although the phrase “person in need” is used in the Act (as, for example, in the key sections 9(1) and 11(5)). Rather, it applies it, in accordance with its terms, through regulations under s. 6.

I appreciate that the right of appeal given by s. 9(1) and the powers of the appeal board on an appeal as delineated in s. 9(6) apply equally to social allowance and to municipal assistance.

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What this conveys to the respondent in the present case is that the two schemes for alleviation of need, the one provincial and the other municipal, must be treated as separate schemes for the purposes of appeal no less than for the purposes of original application, and that the powers of the appeal board must be treated as limited in each case to the scales of allowance appropriate to that scheme of relief which is invoked.

This is not an impossible interpretation but I find a more compelling one, which leads me to a different conclusion, in the broad terms of the supervisory powers vested in the Appeal Board, especially when regard is had to the character of the Board and, above all, to the purpose of the Act.

In sum, since the appeal board is not expressly limited in municipal assistance cases by the scales fixed by the municipal assistance by-law, and since there is no express exclusion of provincial rates as a permissible reference by which to assess need on appeals in municipal assistance cases, and since those rates have been fixed “for the purpose of the Act”, the appeal board may exercise its powers under s. 9 on the basis of the provincial rates where this is necessary to meet, so far as those rates can do so, the needs of a particular appellant.

In determining, under its broad powers, the extent to which an appellant should be aided by a grant, the appeal board, no less than the municipal administrator of the municipal assistance by-law, may take into account debts of the applicant-appellant. This is implicit in the fact that the person’s budgetary requirements and his income and resources to meet them are to be considered. Moreover, there is nothing in s. 9 to exclude a consideration of debts. It is a rational interpretation of the broad powers reposed in the board to read them as authorizing such a course. I am concerned here with the principle

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and not with the kind or size of debts that may be considered. No doubt the Legislature could fix limiting guides if it chose to do so but, failing any limitation, the board can hardly act otherwise than on the basis of the looking at the entire situation of a person claiming assistance.

It is beside the point that to make allowance for debts is to provide for creditors. To fail to make any such allowance, to forbid it as a matter of law, may be to provide for creditors at the risk of failing to meet basic needs of an indigent and his family. As between the two courses, that must surely be chosen which will keep faith with the object of the Act.

I would, accordingly, allow the appeal, set aside the order of the Manitoba Court of Appeal and restore the order of the appeal board. The appellants should have their costs in this Court, but I would make no other order as to costs.

Appeal dismissed, LASKIN J. dissenting.

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Solicitor for the respondent: V.L. Baird, Winnipeg.

[1] [1971] 4 W.W.R. 23, 19 D.L.R. (3d) 692.

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