Social Benefits Tribunal File no. 0605-04207
Hearing Date January 17th 2007

COMMENTS ON DECISION DATED FEBRUARY 23RD 2007
By : Robert T. Chisholm Date of Comments : March 5th 2007

1. General

The Decision to enforce the repayment on me is unacceptable, unsatisfactory and must be reversed, for the reasons given below. Comments on specific sections of the Decision are given below in blue font, under the section in question.

Page 3 of Decision :-

The Appellant then indicated that he had had adequate time to reply to the Respondent's submission but he requested that the overpayment be dismissed because part of the reason that he had to rely on GWA was because he had been denied UI by the chairperson of the board of referee who has since become a Social Benefits Tribunal member.

With respect to this other concern raised by the Appellant, the Tribunal indicated that the Appellant might question the fairness of this hearing if the Social Benefits Tribunal member who made the decision to deny him Unemployment Insurance in 1995 was the same member to hold this hearing, however this is not the case.

The Tribunal admits here that one of its current members, Roger R. Presseault, was partly responsible for my situation when his federal Board of Referees wrongly denied me U.I. benefits in 1995. Yet the Tribunal pretends that this is of no consequence to the Decision. This constitutes corruption in that the Tribunal is, in effect, merely seeking to protect one of its own members and the Tribunal as a whole, in an attempt to escape public accountability and censure for prolonging a vexatious and ill-founded program of legalistic harassment at my expense, resulting from a situation in 1995 that had no business occurring in the first place.

Page 4 of Decision :-

In about August 1995 the Appellant had to show his tax return to the Welfare office. This tax return showed details of losses on the property in question however their social assistance was cut off based on what the Welfare office considered to be fraud.

This assessment concerning ''fraud'' was ill-founded with respect to the facts of the situation. It was purely a product of incompetently-designed and incompetently-enforced legislation at the time which ignored financial realities.

Page 5 of Decision :-

The Appellant feels that the Ontario government rules for calculating the expenses of a rental property were not correct. More specifically he feels that the rules which did not allow mortgage payments to be included in the expenses were not correct since in their case the mortgage payments were the major expense-so according to the government's rules the Appellant was making a profit when in reality, the opposite was true.

Exactly.

Page 6 of Decision (item 1 of 2):-

that he owned the building, he would not have been eligible for assistance. The Appellant indicated that when he bought the small apartment building in April 1988, he paid $245,000. He put $70,000., as a down payment and the balance was mortgaged. The value of the building went down and in May 2000 when the bank reclaimed the building because they were unable to keep up with the payments, the actual proceed from the sale of the apartment building was only about $150,000.

When asked by the Case Presenting Officer about explaining why the Appellant did not report rental income at the time of his application, the Appellant indicated that he had no real income because the expenses exceeded the income. The Appellant agreed that his gross rental income was about $25680. per year. The Appellant's view is that the Respondent should only consider net income in order to determine eligibility for assistance and that the legislation is not correct in the way it calculates income.

The Tribunal admits here that we made a downpayment of $70,000 to purchase the said apartment building for $245,000, with the balance of $175,000 being mortgaged. The Tribunal also admits that the bank reclaimed the building in 2000 because we could not keep up with the mortgage payments, and then sold the building for $150,000. An attached bank document dated September 3rd 1998 shows that the outstanding principal was then $141,196.97 compared with $175,000 at the time of purchasing the building. In February 1995 the outstanding balance was more than $141,196.97. To realise that amount in a sale, considering a typical real estate agent's commission of 6%, would have required actual sale proceeds of $150,209.54, not including extras required to cover legal fees.

The $150,000 realised by the bank when it sold the building all went to cover the outstanding principal, so that we got precisely NOTHING and so LOST ALL our equity represented by the intial downpayment. That is what would have happened if we had attempted to sell the building in 1995.

Page 6 of Decision (item 2 of 2) :-

maternity leave. The Appellant and his wife signed an Agreement to Reimburse however it is so long ago that the Appellant does not remember what transpired. The Appellant does not agree that his wife's maternity leave Unemployment Insurance should have been budgeted against their social assistance. The Appellant opined that this is another problem with the social assistance program.

Definitely there was another problem here with the social assistance legislation at the time. Further, the situation would never have arisen if the current Social Benefits Tribunal member already referred to had not, along with his federal Board of Referees in February 1995, wrongly refused me U.I. benefits in the first place.

Pages 7 and 8 of Decision :-

Reasons

The Tribunal was very sympathetic to the Appellant's desperation and need to apply for social assistance in 1995 due to having been denied Unemployment Insurance at the time. The Tribunal considered the Appellant's testimony that at the time of his application for General Welfare Assistance, the Appellant failed to declare that he was the owner of an apartment building because he knew that to do so would make him ineligible for assistance.

The Tribunal considered that the Appellant had put $70,000 as down payment on the apartment building in 1988 and had been paying mortgage from 1988 to the time of his application for General Welfare Assistance in 1995 and therefore he had equity in the real estate property even though the value may have gone down. The Tribunal considered the Appellant's testimony that the market value went down however when the Appellant lost the property in 2000, the bank was able to sell it for

7

$150,000. The Tribunal finds that although the market value of the property went down the value of the property was likely at least $150,000 and if the Appellant had sold it in 1995 the Tribunal is persuaded that the Appellant would likely have had access to at least the value of the original down-payment. The asset was therefore above the allowable limit at the time of the Appellant's application for assistance.

This last paragraph is completely wrong. As already explained, we would NOT have had ''….access to at least the value of the original downpayment …''. Instead, we would have had NOTHING.

Page 8 of the Decision (half way down) :-

The Appellant also had gross income from the property in the amount of about $25,000 a year and the Legislation in effect at the time did not allow the Administrator to consider all the mortgage payments the Appellant was making and all the expenses incurred in running a building.

Exactly. The crux of the problem was and is that the law was and is ''conveniently'' blind to the financial realities. This was and is just plain incompetence.

Page 9 of the Decision (item 1 of 3) :-

Insurance because she went on Maternity leave. Evidence also shows that after the Appellant's benefit unit's General Welfare Assistance was terminated, the Appellant was subsequently granted Unemployment Insurance benefits for the same time period when he was a recipient of General Welfare Assistance. The Unemployment Insurance Benefits the Appellant and his wife received were therefore refundable to the Administrator on receipt. This was not done.

This was and is unsatisfactory when the problems involving my ''dis-entitlement'' to U.I. benefits had no business to occur in the first place. The said problems were products of (a) mis-information and (b) incompetently-designed legislation, this time at federal government level. There is clear evidence here that ''…the left does not know (and does not care) what the right hand is doing…'', yet the Tribunal continues to press an obviously ill-founded legal ''case'' against me (and paying people to do it). At about the time my problems started, and as the Tribunal is aware, the federal government was also paying for plane tickets for Maritimers to fly to Ontario to seek work (as an experimental pilot project) and were paying for welders to be trained to work on the Hibernia offshore oil production platform, whilst simultaneously pursuing an ill-founded program of legalistic obstructionism designed to deny me any chance of retraining in order to get back to work and become a taxpayer again. This was nothing more than incompetence and corruption, at my expense, on the part of the federal government, which they were attempting to cover up simply by feeding government money to lawyers.

Page 9 of the Decision (item 2 of 3) :-

Subsection 28(11) of the *Ontario Works Act, 1997* states that the onus lies on the Appellant to satisfy the Tribunal that the decision of the Administrator is wrong. In this case, after considering the Appellant's testimony, arguments and written submissions, as well as the documents relied on by the Respondent and the Respondent's written submission and the Respondent's representative's arguments, the Tribunal does not find that this onus has been met. The Tribunal finds that there was an enforceable overpayment that is recoverable under this Act even though it was made by a welfare administrator under the general Welfare Assistance Act.

It is perfectly clear that the Administrator IS wrong - even though the Administrator's case is supported by the legislation, which has been proven to be incompetent.

Page 9 of the Decision (item 3 of 3) :-

The Tribunal considered that the Appellant is presently not working and the rate of recovery of $75 per month may be causing his family undue hardship, therefore Appellant should consider renegotiating the amount that he is paying for recovery per month if he finds the amount too high. The Respondent is to cooperate with the Appellant to come to an agreement as to the rate of recovery that would be more manageable for him if the Appellant so requests.

While I appreciate the Tribunal's offer to lower the rate of recovery, it is nonetheless obvious that the Decision as a whole must be reversed and the claim against me dropped.

Page 10 of the Decision :-

Order

Appeal denied. The decision of the Administrator is affirmed. The Administrator is to cooperate with the Appellant to negotiate a lower rate of recovery if so requested by the Appellant.

H. Buckley-Routh

H. Buckley-Routh
Presiding Member

FEB 2 3 2007

On the contrary, my Appeal must be allowed, for the reasons given above.

Robert T. Chisholm, Ottawa, March 5th 2007

Attachment :-

''MORTGAGE.pdf'' – contains two documents – (a) 1998 mortgage loan statement, (b) February 2000 letter from the bank concerning our mortgage payment arrears. (this has been sent to the Tribunal in hardcopy, along with the analysis above).