



## TRANCHEMONTAGNE v ONTARIO

App No. 2006 SCC 14.

**Country:**

**Region:** Americas

**Year:** 2006

**Court:** Supreme Court of Canada

### Facts

The appellants in this case were Robert Tranchemontagne and Norman Werbeski. The duo applied to the director of Ontario Disability support program for support pursuant to Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sch. B (â€œODSPAâ€•). The financial assistance was meant to help people with disabilities cope with their impairments but those unsuccessful under this ODSPA would have to benefit from a lower levels of assistance offered under Ontario Works Act, 1997, S.O. 1997, c. 25, Sch. A (â€œOWAâ€•).

The two legislation serve different purposes, while ODSPA is supposed to ensure support for disabled applicants, recognizing that the government shares in the responsibility of providing such support OWA is meant to provide only temporary assistance premised on the concept of individual responsibility.

The director held that the two appellants were not entitled to the benefits under the ODSPA and when they requested for a review of the directors decision, it was rejected and they sought intervention of the Social Benefits tribunal (SBT). The rulings for the two appellants were delivered on different dates. In the case of Tranchemontagne, it determined that he suffered from alcoholism and that that was a disabling condition. In the case of Werbeski, it was determined that alcoholism â€œsubstantial impairmentâ€• that â€œsubstantially restricts working ability. SBT based their decision on s 5(2) of the ODSPA which provided that among other things person who were alcoholics were not eligible for income support.

The appellants argued that they had other impairments other than alcohol but this argument was rejected by the SBT. They further argued that s 5 (2) is inapplicable virtue of the Ontario Human

Rights Code, R.S.O. 1990, c. H.19 (â€œCode).

They further argued that it was discriminatory to deny them support on the basis of the alcoholism status and that the code was superior to s 5(2) of the ODSPA.

On this argument, the SBT held that it did not have jurisdiction to determine the applicability of s5(2) in relation to the code.

The appellants jointly appealed to the divisional court and the judges agreed with the SBT that the authority to consider the court could not be found in the statutes. They appealed to the

Supreme Court to determine whether (a) the Tribunal had the jurisdiction to consider the Code in rendering its decisions and (b) if â€œyesâ€™ should the Tribunal decline to exercise its jurisdiction

in the present case? The Ontario Human Rights Commission (â€œthe Commissionâ€™) intervened

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### Decision and Reasoning

Majority judgement

The following issues arose from the appeal;

Whether SBT has the jurisdiction to consider the Code in rendering its decisions?

And if the answer to the first question is yes, should the SBT have declined to exercise its jurisdiction in the present cases?

The judges stated that statutory bodies like SBT do not have inherent jurisdiction and was therefore necessary to examine the statutes to examine what powers it had. The relevant statutes in this regard are ODSPA and OWA. The court was guided by Nova

Scotia (Workersâ€™ Compensation Board) v. Martin, Nova [2003] 2 S.C.R. 504, 2003 SCC 54, as well as Douglas Kwantlen Faculty Assn. v. Douglas College, [1990]3 S.C.R. 570

In ODSPA, the purpose of the Act is provided for in s1 and it can be summed up as offering support to persons with disabilities whereas s1 of the OWA states in nutshell that its purpose was to offer assistance to person needing help.

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The judges stated thus â€œThe Code is fundamental law. The Ontario legislature affirmed the primacy of the Code in the law itself, as applicable both to private citizens and public bodies. Further, the adjudication of Code issues is no longer confined to the exclusive domain of the intervener the Ontario Human Rights Commission (â€œOHRCâ€•): s. 34 of the Code. The legislature has thus contemplated that this fundamental law could be applied by other administrative bodies and has amended the Code accordingly.

The court also stated that the law has been settled that statutory tribunals empowered to decide questions of law are presumed to have the power to look beyond their enabling statutes in order to apply the whole law to a matter properly in front of them. By applying this principle to the present appeal, apparently the SBT had the jurisdiction to consider the Code in determining whether the appellants were eligible for support pursuant to the ODSPA.

Tribunal could not decline jurisdiction since it had not been granted authority to do so, it cannot

avoid considering the issues relating to the Code in these cases and thus

the Tribunal is the most appropriate forum to decide those issues. The

applicability of s 5(2) of the Act is best decided by the Tribunal because the latter is practically

unavoidable for vulnerable applicants who have been denied financial assistance under the

Act. Such applicants merit prompt, final and binding resolutions for their disputes. Where an

issue is properly before a tribunal pursuant to a statutory appeal, and especially where a

vulnerable applicants are advancing arguments in defence of their human rights, it would be

rare for this tribunal not to be the one most appropriate to entertain the dispute.

Tribunals should be allowed to handle issues of justice as this brings justice closer to the people.

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Dissenting judgment.

Tribunals have free standing jurisdiction concurrent with that of the commission to enforce code in way that nullifies a provision.

Further the tribunal lacks jurisdiction to apply a code in way that renders a provision inoperable

Due to the easy manner a tribunal is meant to operate imposing code compliance

hearings would impact negatively on its ability to help person living with disabilities in the society, they were guided by the case of Scotia (Workersâ€™ Compensation Board) v Martin [2003] 2 SCR 504 )

## Decision Excerpts

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