S.C.A. No. 02681

NOVA SCOTIA COURT OF APPEAL

Jones, Hart, Hallett, Freeman and Roscoe, JJ.A.

BETWEEN:

IRMA SPARKS
Appellant

- and -

DARTMOUTH/HALIFAX COUNTY
REGIONAL HOUSING AUTHORITY
Respondent

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA
Intervenor

Vincent Calderhead for the Appellant

Jamie S. Campbell for the Respondent

Tim LeMay for the Intervenor

Appeal Heard: November 16, 1992

Judgment Delivered: March 2, 1993

THE COURT: Appeal allowed; ss. 10(8)(d) and 25(2) of the **Residential Tenancies Act** is declared to be of no force and effect per reasons for judgment of Hallett, J.A.; Hart, Jones, Roscoe and Freeman, JJ.A. concurring.

HALLETT, J.A.

The appellant has been a public housing tenant for over ten years. In accordance with the terms of her lease she was given one month's notice by the respondent to quit her residential premises. She is a single black mother with two children and is on social assistance. The respondent is a public housing authority. If the appellant had been a tenant of a private sector landlord she would have had the benefit of the so-called "security of tenure" provisions of the **Residential Tenancies Act**, R.S.N.S., 1989, Chapter 401 and could not have been given such short notice.

The **Act** gives residential tenants substantive rights in excess of those provided by the common law particularly with respect to the landlord's right to terminate the tenancy by notice to quit. However, the **Act's** application to public housing tenants is severely limited by **s. 10(8)(d)** and **s. 25(2)**; the appellant challenges their constitutionality.

Section 10(8) and **Section 25** provide:

> "10(8) Notwithstanding the periods of notice in subsection (1), (3) or (6), where a tenant, on the eighteenth day of May, 1984, or thereafter, has resided in the residential premises for a period of five consecutive years or more, notice to quit may not be given except where
>
> (a) the residential premises are leased to a student by an institution of learning and the tenant ceases to be a student;
>
> (b) the tenant was an employee of an employer who provided the tenant with residential premises during his employment and the employment has terminated;
>
> (c) the residential premises have been made uninhabitable by fire, flood or other occurrence;
>
> (d) the residential premises are operated or administered by or for the Government of Nova Scotia, the Government of Canada or a municipality;
>
> (e) a judge is satisfied that the tenant is in default of any of his obligations under this Act, the regulations or the lease;
>
> (f) a judge is satisfied that it is appropriate to make an order under Section 16 directing the landlord to be given possession at a time specified in the order, but not more than six months from the date of the order, where
>
> (i) the landlord in good faith requires possession of the residential premises for the purpose of residence by himself or a member of his family,

(ii) the landlord in good faith requires possession of the residential premises for the purpose of demolition, removal or making repairs or renovations so extensive as to require a building permit and vacant possession of the residential premises, and all necessary permits have been obtained, or

(iii) the judge deems it appropriate in the circumstances.

25(1) This Act governs all landlords and tenants to whom this Act applies in respect of residential premises.

(2) Where any provision of this Act conflicts with the provision of a lease granted to a tenant of residential premises that are administered by or for the Government of Canada or the Province or a municipality, or any agency thereof, developed and financed under the *National Housing Act*, 1954 (Canada) or the *National Housing Act* (Canada), the provisions of the lease govern. 1970, c. 13, s. 12; 1981, c. 48, s. 2."

Sections 10 (1) and **(6)** are also relevant for a proper understanding of the relationship between landlords and residential tenants in Nova Scotia:

"10(1) Notwithstanding any agreement between the landlord and tenant respecting a period of notice, notice to quit residential premises shall be given

(a) where the residential premises are let from year to year by the landlord or tenant at least three months before the expiration of any such year;

(b) where the residential premises are let from month to month

(i) by the landlord, at least three months, and

(ii) by the tenant, at least one month,

before the expiration of any such month;

(c) where the residential premises are let from week to week,

(i) by the landlord, at least four weeks, and

(ii) by the tenant, at least one week, before the expiration of any such week.

10(6) Notwithstanding the periods of notice in subsection (1), where a year to year or a month to month tenancy exists or is

> deemed to exist and the rent payable for the residential premises is in arrears for thirty days, the landlord may give to the tenant notice to quit the residential premises fifteen days from the date the notice to quit is given."

Public housing tenants are treated differently than private sector residential tenants in that the terms of the lease with a housing authority can override the provisions of the **Act** and the public housing tenant in possession for five years or more by reason of **s. 10(8)(d)** does not have "security of tenure". The appellant's lease provides for termination on one month's notice. A private sector tenant with five years possession, subject to certain exceptions which are not relevant to this factual situation, can only be given a notice to quit if a judge is satisfied that the tenant is in default of any of the tenants obligations under the **Act**, the **Regulations** or the lease **(s. 10(8)(e)).**

The appellant sought a declaration that **s. 10(8)(d)** and **s. 25(2)** of the **Act** contravened **s. 15(1)** of the **Charter of Rights and Freedoms** and were of no force and effect. The learned trial judge concluded that the sections did not infringe the appellant's **s. 15(1)** equality right.

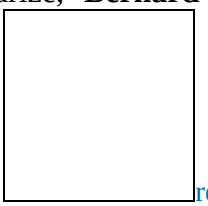
The respondents admitted that women, blacks and social assistance recipients form a disproportionally large percentage of tenants in public housing and on the waiting list for public housing. The case was argued before the learned trial judge on the basis that such persons were adversely impacted by the challenged sections.

In 1988 this court dealt with a challenge under **s. 15(1)** of the **Charter** to the constitutionality **Sections 10(8)(d)** and **25(2)** of the **Act**. The court concluded that the sections did not offend **s. 15(1) (Bernard v. Dartmouth Housing Authority** reflex**,** (1988), 88 N.S.R. (2d) 190). In writing for the court Mr. Justice Pace stated at p. 198:

> "There is no doubt there is a difference or inequality between the protection afforded a non-subsidized tenant and a subsidized tenant. However, not every difference or inequality gives rise to discrimination such as would necessitate the invocation of the protection afforded under the provisions of s. 15(1) of the **Charter**. As this court has stated in **Reference Re Family Benefits Act**, supra, the burden of proof of discrimination is cast upon the challenger to establish a prima facie violation of s. 15(1) of the **Charter**.
>
> In the present appeal, the trial judge found the appellant failed to establish a prima facie case of unequal treatment. He found that she was not treated in a prejudicial manner and that she freely took advantage of the benefits of subsidized housing with knowledge of the disadvantages."

In short, this court concluded that discrimination had not been proven at trial and dismissed the appeal; the challenge failed because of the lack of evidence of discrimination.

The learned trial judge's decision in the appeal we have under consideration concluded with the following:

> "To summarize, **Bernard v. Dartmouth Housing Authority**  reflex, (1988), 88 N.S.R. (2d) 190 is the law in Nova Scotia as it relates to distinctions created in the **Residential Tenancies Act** affecting tenants of public housing. Distinctions, differences or inequality do not necessarily give rise to discrimination. As in **Bernard**, the Tenant here has not established a **prima facie** case of discrimination as it affects public housing tenants as a whole.
>
> With regard to the Tenant's submission that she is suffering adverse affect discrimination by virtue of being black, a woman, and a recipient of social assistance, I find that she has not established a **prima facie** case thereof. I accordingly find that sections (10)(8)(d) and 25(2) of the **Residential Tenancies Act** do not contravene the provisions of s. 15(1) of the **Charter**. Because of this finding there is no necessity to consider s. 1 of the **Charter**."

The principal focus of the appellant's argument both at trial and before this court is that the appellant suffers adverse effect discrimination because of the effect on her of the two sections in question.

The learned trial judge made the following findings:

> "I accept the submissions by the Tenant that single parent mothers, and blacks, are less advantaged than the majority of other members of our society. It also goes without saying that social assistance recipients are also less advantaged, although some arguments could be made that there are certain advantages accruing to such recipients if they are able to obtain suitable public housing at a smaller percentage of their income than would be the case if they were a private sector tenant."

The learned trial judge in dealing with the issue of discrimination, after making reference to **Andrews v. Law Society of British Columbia**, 1989 CanLII 2 (S.C.C.), [1989] 1 S.C.R. 43; (1989), 56 D.L.R. (4th) 1 (S.C.C.) and **McKinney v.**

University of Guelph, 1990 CanLII 60 (S.C.C.), (1990), 76 D.L.R. (4th) 545 (S.C.C.) stated :

> "The tenant in this case is treated differently because and solely arising from having applied and met the criteria for public housing. I agree with the submission by counsel for the Landlord that the fact that public housing tenants are disproportionately black, females on social assistance tells us something about public housing but doesn't tell us anything about being black, about being female or upon being on social assistance. I agree that it is not a characteristic of any of those three groups to reside in public housing.
>
> I accept the submission that the legislature is not discriminating against black, female, social assistance recipients by treating public housing tenants differently. "

The learned trial judge concluded that in order to succeed the appellant:

> "would have to show that the legislation somehow exempted blacks, women, and recipients of social assistance from the protection of the statute by singling out a characteristic of being a black, female, social assistance recipient, and exempting from the protection of the **Act** those with that characteristic."

The Law on s. 15(1) of the Charter

The most authoritative case in Canada with respect to the interpretation and application of s. 15(1) of the **Charter** is **Andrews v. Law Society of British Columbia,** supra. McIntyre, J., in dealing with the "concept of equality" made the following statement at D.L.R. p. 11:

> "To approach the ideal of full equality before and under the law
>
> - and in human affairs an approach is all that can be expected
> - the main consideration must be the impact of the law on the individual or the group concerned. "

In the **Andrews** case Mr. Justice McIntyre put the burden of proving an infringement of **s. 15(1)** on the complainant and described the extent of that burden when he stated at p. 23:

> “A complainant under s. 15(1) must show not only that he or she is not receiving equal treatment before and under the law or that the law has a differential impact on him or her in the protection or benefit accorded by law but, in addition, must show that the legislative impact of the law is discriminatory."

Distinctions in treatment of different individuals and groups does not infringe on an individual's equality rights as provided by **s. 15(1)** of the **Charter** unless the law is also discriminatory. In the **Andrews** case Justice McIntyre directed his attention to the meaning of "discrimination". After reviewing several statements which aim to define the term "discrimination" he stated at p. 18:

> “I would say then that discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed."

In **R. v. Turpin**, 1989 CanLII 98 (S.C.C.), (1989) 48 C.C.C. (3d) 8, [1989] 1 S.C.R. 1296, 69 C.R. (3d) 97 the Supreme Court of Canada stated that finding that discrimination exists will, in most cases, entail a search for a disadvantage that exists apart from and independent of the particular legal distinction being challenged. The court went on to hold that victims of discrimination will often be members of a discreet and insular minority and, thus, come within the protection of **s. 15(1)** of the **Charter**.

The Issues

Counsel for the appellant invites us to reconsider the decision of this court in the **Bernard** case; and secondly, to find that the learned trial judge was in error when he concluded that the appellant did not suffer from adverse effect discrimination by reason of the effect on her of the provisions of **ss. 10(8)(d)** and **25(2)** of the **Residential Tenancies Act.**

The provisions of **ss. 10** and **25(1)** of the **Act** which give a residential tenant some protection from termination without cause do not, by reason of **s. 10(8)(d)** and **s. 25(2**) apply to public housing tenants. The appellant asserts that the two sections infringe her **s. 15(1) Charter** right of equality in that they discriminate against her and that the two sections cannot be saved by **s. 1** of the **Charter**.

The respondent's position is that the exempting provisions do not amount to a violation of **s. 15(1)** since the distinction drawn by the legislation is between groups of tenants and does not relate to a prohibited ground of discrimination. The respondent relies on the notion that to constitute a violation **of s. 15(1)** the impugned difference in treatment must relate to a "personal characteristic". Tenancy, it is argued, is not such a characteristic. In addition, the respondent relies on the decision of this court in Bernard, supra, where these sections were upheld. It is appropriate to reconsider the issues disposed of in Bernard for two reasons. First, the body of evidence put forward in this case is not the same as was before the court then. In this case, the appellant adduced a substantial body of evidence at trial relating to the composition of the group of public housing tenants and the social condition of this group as related to their housing needs. Secondly, significant direction respecting the application of **s. 15** has since been given by the Supreme Court of Canada in the **Andrews and Turpin** cases to which I have referred. In general, those cases provide direction on the type of legislative distinction which is discriminatory and which amount to a **s. 15** violation. In addition, the Court gives direction as to the types of groups to be protected by **s. 15**; the shelter of **s. 15** is not limited to persons and groups falling within the listed grounds of prohibited discrimination in **s. 15(1)**, but extends to those which can establish that their condition is analogous to the listed ones. In particular, such analogy is made out where the evidence discloses the group complaining of discrimination is historically disadvantaged.

The questions to be answered by this court can be stated as follows:

1. Do the exempting provisions of the **Act** infringe the appellant's **s. 15(1) Charter** rights?

2. If the first question is answered in the affirmative, can the impugned provisions be saved by **s. 1**, that is, do they constitute a reasonable limit prescribed by law and justified in a free and democratic society?

First Issue

Sections 10(8)(d) and **25(2)** draw a distinction between public housing tenants and private sector tenants such that a benefit extended to the latter group is denied the former. That the distinction puts public housing tenants at a disadvantage is apparent. The question, then, is whether or not this disadvantage amounts to discrimination.

Section 15(1) of the **Charter** provides:

> "15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination

> based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

I find that the impugned provisions amount to discrimination on the basis of race, sex and income; it is not necessary in this case to show adverse effect discrimination as argued by the appellant. An adverse impact analysis has been applied in cases involving legislation which is neutral on its face. **Sections 10(8)(d)** and **25(2)** are not neutral; they explicitly deny benefits to a certain group of the population (public housing tenants) while extending them to others.

The fact that the legislation describes the group (public housing tenants) by reference to a factor which is not a listed ground in **s. 15(1)** does not avail the respondent. The respondent relied on the notion that the distinction drawn by the legislation is not discriminatory, since it is not "based on grounds relating to a personal characteristic" of the appellant. The respondent does not dispute that race, gender and income are personal characteristics, but argues that the legislation is not "based on" such characteristics. This position was accepted by the learned trial judge.

The phrase "based on grounds relating to personal characteristics" as used in the **Andrews** case cannot be taken to mean that the personal characteristics must be explicit on the face of the legislation, nor that the legislation must be manifestly directed at such characteristics. Such an interpretation would fly in the face of the effects-based approach to the **Charter**, espoused by the Supreme Court of Canada.

It is clear that a determination of the constitutionality of legislation must take account of both the purpose and effects of that legislation. In **R. v. Big M Drug Mart Ltd.**, 1985 CanLII 68 (S.C.C.), [1985] 1 S.C.R. 293, Dickson J. stated at p. 331:

> " In my view, both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. This object is realized through the impact produced by the operation and application of the legislation. Purpose and effect respectively, in the sense of the legislation's object and its ultimate impact, are clearly linked, if not indivisible."

And at p. 334:

> “In short, I agree with the respondent that the legislation's purpose is the initial test of constitutional validity and its effects are to be considered when the law under review has passed or, at least, has purportedly passed the purpose test,. If the legislation fails the purpose test, there is no need to consider further its effects, since it has already been demonstrated to be invalid. Thus, if a law with a valid purpose interferes by its impact, with rights or freedoms, a litigant could still argue the effects of the legislation as a means to defeat its applicability and possibly its validity."

Accepting, without deciding, that the purpose of the legislation is not to discriminate, we must still determine whether or not it has a discriminatory effect. To do so, it is necessary to examine the group affected. Such an examination must take account

not merely of the manner in which the group is described in the legislation, in this case as "public housing tenants". In addition, regard must be had to the characteristics shared by the persons comprising the group.

Low income, in most cases verging on or below poverty, is undeniably a characteristic shared by all residents of public housing; the principal criteria of eligibility for public housing are to have a low income and have a need for better housing. Poverty is, in addition, a condition more frequently experienced by members of the three groups identified by the appellant. The evidence before us supports this.

Single mothers are now known to be the group in society most likely to experience poverty in the extreme. It is by virtue of being a single mother that this poverty is likely to affect the members of this group. This is no less a personal characteristic of such individuals than non-citizenship was in **Andrews**. To find otherwise would strain the interpretation of "personal characteristic" unduly.

Similarly, senior citizens that are in public housing are there because they qualify by reason of their low incomes and need for better housing. As a general proposition persons who qualify for public housing are the economically disadvantaged and are so disadvantaged because of their age and correspondingly low incomes (seniors) or families with low incomes, a majority of whom are disadvantaged because they are single female parents on social assistance, many of whom are black. The public housing tenants group as a whole is historically disadvantaged as a result of the combined effect of several personal characteristics listed in **s. 15(1)**. As a result, they are a group analogous to those persons or groups specifically referred to by the characteristics set out in **s. 15(1)** of the **Charter** being characteristics that are most commonly the subject of discrimination. In fact, the Legislature recognized the group of persons who qualify for public housing as being disadvantaged; a subsidized housing scheme was created to alleviate their disadvantage.

Section 15(1) of the **Charter** requires all individuals to have equal benefit of the law without discrimination. Public housing tenants have been excluded from certain benefits private sector tenants have as provided to them in the **Act**. The effect of **ss. 25(2)** and **s. 10(8)(d)** of the **Act** has been to discriminate against public housing tenants who are a disadvantaged group analogous to the historically recognized groups enumerated in **s. 15(1)**. The provisions of **s. 10(8)(d)** and **25(2)** discriminate against them because as public housing tenants they do not have the benefit of the law provided to all residential tenants by **s. 10** and **s. 25(1)** of the **Act**. Public housing tenants are not welcome in the private sector rental market and the short notice to quit provisions that can be imposed on public housing tenants, as imposed on the appellant in this case, further disadvantage them as the evidence shows that they have great difficulty in securing rental accommodations in the private sector if evicted from public housing. The content of the law and its impact on public housing tenants is not only that they are treated differently but the difference relates to the personal characteristics of the public housing tenant group. To come to any other conclusion is to close one's eyes to the make up of the public

housing tenancy group and the effect on them of the exempting sections. The two sections infringe public housing tenants **s. 15(1)** rights to the equal benefit of the law without discrimination. Accordingly, **Sections 10(8)(d)** and **25(2)** of the **Residential Tenancies Act** are unconstitutional unless those provisions can be saved by **s. 1** of the **Charter**.

Issue 2 - s. 1 of the Charter

As stated by LaForest, J. in **Tetreault-Gadoury v. Canada** 1991 CanLII 12 (S.C.C.), (1991), 81 D.L.R. (4th) 358 (S.C.C.) the general approach to be taken by a court when determining whether a law constitutes a reasonable limit to a **Charter** right was initially described by the Supreme Court of Canada in **R. v. Oakes** 1986 CanLII 46 (S.C.C.), (1986), 26 D.L.R. (4th) 200, [1986] 1 S.C.R. 103.. This approach has been restated in a number of other cases including **McKinney** and **Andrews**. The first question to be answered is whether the objectives of the two sections in question are of sufficient importance to warrant overriding the appellant's **Charter** right to equal benefit of the law. Counsel for the respondent argued that the public housing authorities need flexibility to administer the public housing scheme and therefore the Authority should not be burdened with the tenant safeguards as provided in the **Act**.

Administrative flexibility in itself is generally regarded as insufficient reason to warrant overriding a **Charter** right **(Singh v. Minister of Employment and Immigration** 1985 CanLII 65 (S.C.C.), (1985), 17 D.L.R. (4th) 422 at p. 469). However, a degree of administrative flexibility is needed to effectively manage a public housing scheme. Certainly changes in tenants eligibility for public housing should affect the duration of the tenancy. Therefore, there is legitimacy to the objective of not granting all the benefits of the **Act** to public housing tenants. However, neither the Authority nor the Attorney General has proven that the means chosen to achieve the objective are reasonable and demonstratively justified in a free and democratic society. In **short,ss. 10(8)(d)** and **25(2)** are not properly tailored to achieve the legitimate objectives of the housing authorities. The two sections fail the proportionality test, as established by the Supreme Court of Canada, as they impair the public housing tenant's rights under the **Act** to such an extreme extent that the sections cannot be said to be a minimal or reasonable impairment so as to achieve the objectives of making sure that public housing is available for only those persons who qualify. Pursuant to **s. 25(2)** of the **Act** the leases prepared by the Authority, like that entered into between, the Authority and the appellant, can be drawn in such a way as to negate the legislated notice periods to terminate a residential tenancy. Secondly, a public housing tenant like the appellant who has been in possession for more than five years, can be given a notice to quit without a judge being satisfied that the public housing tenant was in default of any of the tenant's obligations under the **Act**, the regulations or the lease.

I am mindful of the fact that the courts should show considerable deference to the measures chosen by the Legislature in balancing the competing social values of equality as guaranteed by **s. 15(1)** of the **Charter** while at the same time

providing a public housing scheme that is equitable and manageable. However, as noted by LaForest, J. in **Tetreault-Gadoury,** supra, "the deference that will be accorded to the government when legislating in these matters does not give them an unrestricted license to disregard an individual's **Charter** rights. Where the government cannot show that it had a reasonable basis for concluding that it has complied with the requirement of minimal impairment in seeking to obtain its objectives, the legislation will be struck down."

Neither the Authority nor the Attorney General have satisfied me that there was a reasonable basis for denying carte blanche, so to speak, the benefits of the **Act** to public housing tenants. In my opinion the broad scope of **ss. 10(8)(d)** and **25(2)** show that the government really did not make an effort to strike a reasonable balance between the Authority's need for some administrative flexibility and the rights of public housing tenants to the equal benefit of the law as guaranteed by **s. 15(1)** of the **Charter**.

Most other provinces have achieved the legitimate objective of treating public housing tenants differently than private sector tenants without resort to the blunt instrument approach that is found in the **Act**. For example, in Ontario public housing tenants are exempted from the benefits of the residential tenancies legislation in three areas only. There is a provision relating to termination of tenancies for misrepresentation of family income. Considering the purposes of the public housing programme that is reasonable and justifiable. Likewise, there is a provision for allowing for termination when a tenant has ceased to meet the qualifications to occupy public housing. That too is justifiable and reasonable. Finally, in Ontario a public housing tenant is not entitled to sublet. That too is reasonable and justifiable because the intent is to provide public housing to those persons who have been found to be in need and are therefore eligible. The objective of public housing to alleviate conditions of the poor in finding adequate housing would be frustrated if a tenant once qualified could sublet to anyone.

Counsel for the appellant has brought to our attention that there is in place in the Province a different form of low cost rent or subsidized housing entitled "Rent Supplement Programme". In that programme the tenants who have been approved for public housing and are on a waiting list are placed as tenants in privately owned apartment buildings. The tenant pays exactly the same rent as if he or she were in a public housing project with the Department of Housing paying the difference between the rent paid by the tenant and the market rent. But unlike the tenant in public housing the tenant who is put into a private building has the benefit of being subject to the same terms and conditions as the lease used for other tenants in the building. These, of course, would give such a tenant all the rights provided in the **Act**. In short, there are two types of subsidized tenants; those who are accorded the benefits of the **Act** and those who are not. While I do not like to intrude on the role of the Legislature, there is no evidence that a sufficient attempt was made to draft legislation that would achieve the legitimate objectives of the housing authorities while at the same time recognize the rights of public housing tenants to equal benefit of the law. **Sections 10(8)(d)** and **25(2)** fail both the minimal or

reasonable impairment test and cannot be justified as a reasonable limit on the appellant's right to the equal benefit of the law as guaranteed by **s. 15** of the **Charter**.

The Bernard Decision

In the **Bernard** case it would appear that the evidence before the trial judge respecting the alleged **Charter** infringement was so lacking that this Court could have come to no other conclusion than to dismiss the appeal.

The Trial Judge's Decision

The learned trial judge, in the decision we have under review, considered himself bound by the **Bernard** decision.

Conclusion

Sections 10(8)(d) and **25(2)** of the **Act** are inconsistent with the public housing tenants right to equal benefit of the law without discrimination. The provisions are overly broad. The most appropriate and just remedy is to declare these provisions to be of no force or effect. The public housing authority is not without a remedy under the **Act**. If a public housing tenant with five years possession breaches the terms of a lease the Authority can avail itself of **s. 10(8)(e)** of the **Act** and apply to a judge for permission to give a notice to quit on the basis of a tenant's default under his or her lease. If the judge is satisfied that there has been a default a notice to quit can be given as provided for in the **Act**. I am satisfied that amendments to the **Act** can be designed that will meet the legitimate objectives of the Legislature to give housing authorities the powers needed to properly administer the public housing scheme while at the same time complying with the tests enunciated by the Supreme Court of Canada in **R. v. Oakes**, supra, and the other cases to which I have referred, so as not to infringe the **s. 15 Charter** rights of public housing tenants to the equal benefit of residential tenancy laws in the Province.

Therefore I would allow the appeal and declare **ss. 10(8)(d)** and **25(2)** of the **Residential Tenancies Act** to be unconstitutional and to be of no force and effect. The appellant was represented by Legal Aid and there should not be an order for costs.

J.A.

Concurred in:

Hart, J.A.
Jones, J.A.
Freeman, J.A.
Roscoe, J.A.

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

C.H. No.: 75171

IN THE COUNTY COURT OF
DISTRICT NUMBER ONE

BETWEEN:

DARTMOUTH/HALIFAX COUNTY REGIONAL HOUSING AUTHORITY
APPLICANT

- and -

IRMA SPARKS

RESPONDENT

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA

INTERVENOR

TRIAL JUDGE - Chief Judge Ian M. Palmeter

PLACE OF HEARING - County Court of District Number One

DATES OF HEARING - February 27 and 28, 1992

NAMES OF COUNSEL - Jamie Campbell, Esq.; and
Colin Clarke, Articled Clerk;
Counsel for the Applicant/Landlord

Vincent T. Calderhead, Esq.;
Counsel for the Respondent/Tenant

Allison Scott and Lyse Gareau, Articled Clerk;
Counsel for the Attorney General

S.C.A. No. 02681

NOVA SCOTIA COURT OF APPEAL

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REASONS FOR JUDGMENT BY: HALLETT, J.A