



**SUPREME COURT OF CANADA**

**CITATION:** Québec (Attorney General) v. Canada, 2011 SCC 11,  
[2011] 1 S.C.R. 368

**DATE:** 20110303  
**DOCKET:** 33524

**BETWEEN:**

**Attorney General of Quebec**  
Appellant  
and  
**Her Majesty The Queen in Right of Canada**  
Respondent

**OFFICIAL ENGLISH TRANSLATION**

**CORAM:** McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

**REASONS FOR JUDGMENT:**  
(paras. 1 to 49)

LeBel J. (McLachlin C.J. and Binnie, Deschamps, Fish,  
Abella, Charron, Rothstein and Cromwell JJ. concurring)

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Quebec (Attorney General) v. Canada, 2011 SCC 11, [2011] 1 S.C.R. 368

**Attorney General of Quebec**

*Appellant*

v.

**Her Majesty The Queen in Right of Canada**

*Respondent*

**Indexed as: Quebec (Attorney General) v. Canada**

**2011 SCC 11**

File No.: 33524.

2010: October 14; 2011: March 3.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

*Social law — Canada Assistance Plan — Cost sharing —  
Federal-provincial agreement entered into under Canada Assistance Plan for*

*purpose of sharing costs of welfare services — Federal government refusing to share in costs incurred by Quebec for two types of services — Whether social services provided in schools were “welfare services” within meaning of Canada Assistance Plan — Whether federal government already sharing in costs of support services provided to persons with disabilities living in residential resources for clients who required continuous assistance on basis that these services constituted “adult residential care services” under Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977 — Canada Assistance Plan, R.S.C. 1985, c. C-1, ss. 2, 4(b), 5(2)(c) — Canada Assistance Plan Regulations, C.R.C. 1978, c. 382, s. 8 — Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977, S.C. 1976-77, c. 10, s. 27(8) — Federal-Provincial Fiscal Arrangements and Established Programs Financing Regulations, 1977, SOR/78-587, ss. 24(1), 24(2)(b).*

The *Canada Assistance Plan* (“CAP”), which has been repealed, was enacted in 1966 in the context of the federal government’s anti-poverty plan. The CAP made it possible for provincial governments to enter into agreements with the federal government on sharing the costs of certain assistance programs and welfare services provided in their territory. Quebec signed such an agreement with the federal government in 1967. It subsequently commenced an action for a declaration that the federal government had to share under the CAP in costs paid in respect of two types of services: social services provided in schools (“SSS”) between 1973 and 1996 and support services provided to persons with disabilities living in residential resources (“SSPD”) between 1986 and 1996. The federal government refused to

share in these costs, arguing that SSS were not covered by the *CAP* and that the costs of SSPD had been shared since 1977 under another Act of Parliament. The Federal Court and the Federal Court of Appeal decided in the federal government's favour and dismissed Quebec's claim.

*Held:* The appeal should be dismissed.

SSS are not eligible for cost sharing under the *CAP*. In light of the definitions of "welfare services" and "welfare services provided in the province" in s. 2 of the *CAP*, the federal government had to share in the costs of a service only if the service had an anti-poverty object and was provided to persons in need or persons who would become persons in need in the absence of such a service. A service would not be considered a "welfare service" unless it had been established for the specific purpose of alleviating, eliminating or preventing poverty. This would require the existence of a close connection between the nature of the service and the eradication of the causes or effects of poverty. In the instant case, a close connection did not exist between SSS and even the preventive aspect of the fight against poverty. Rather, the evidence shows that the true object of SSS was to contribute to the educational mission of schools and to support educational activities, not to fight poverty. The makeup of the school population altered nothing in the nature of SSS.

Nor can cost sharing be ordered in the case of SSPD provided to clients requiring continuous assistance, because in accordance with the residual exception set out in s. 5(2)(c) of the *CAP*, the costs that could be shared under the *CAP* did not

include the costs of services shared pursuant to another Act of Parliament. The federal government was already sharing in the costs of the SSPD in question under s. 27(8) of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977* on the basis that they constituted an “adult residential care service”.

Section 24 of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Regulations, 1977* defined the term “institution” for the purposes of the federal program as including a facility qualifying as a “home for special care” under s. 8 of the *Canada Assistance Plan Regulations*. Although the s. 8 in question refers to provincial standards, provincial legislation cannot be applied in interpreting the meaning of the term “institution” in the federal legislation. The reference to provincial legislation concerned the quality of the services provided in a residential facility for persons with disabilities and was not intended to establish criteria for characterizing such a facility as an “institution”.

The intensiveness of the services provided by residential resources was a key factor in characterizing such resources as “homes for special care” that provided “adult residential care services”. A residential resource that provided all the services referred to in s. 24(2)(b) of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Regulations, 1977* would legitimately have been considered to be providing an “adult residential care service”. In the instant case, the trial judge’s findings of fact show that residential resources in which SSPD were provided and whose clients required continuous assistance were institutions to which

s. 24(2)(b) applied. The services provided in residential resources covered all aspects of daily living, including room and board.

### **Cases Cited**

**Referred to:** *Confédération des syndicats nationaux v. Canada (Attorney General)*, 2008 SCC 68, [2008] 3 S.C.R. 511; *Reference re Employment Insurance Act (Can.)*, ss. 22 and 23, 2005 SCC 56, [2005] 2 S.C.R. 669; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Finlay v. Canada (Minister of Finance)*, [1993] 1 S.C.R. 1080.

### **Statutes and Regulations Cited**

*Act respecting health services and social services and amending various legislation*, S.Q. 1991, c. 42.

*Blind Persons Act*, R.S.C. 1952, c. 17.

*British North America Act, 1951* (U.K.), 14 & 15 Geo. VI, c. 32, s. 1.

*Budget Implementation Act, 1995*, S.C. 1995, c. 17, ss. 31, 32.

*Canada Assistance Plan*, R.S.C. 1985, c. C-1, preamble, ss. 2 “home for special care”, “welfare services”, “welfare services provided in the province”, 4, 5(2)(c).

*Canada Assistance Plan Regulations*, C.R.C. 1978, c. 382, s. 8.

*Canada Health Act*, R.S.C. 1985, c. C-6.

*Constitution Act, 1867*, ss. 91(2A), 94A.

*Constitution Act, 1940* (U.K.), 3 & 4 Geo. VI, c. 36, s. 1.

*Constitution Act, 1964* (U.K.), 12 & 13 Eliz. II, c. 73, s. 1.

*Disabled Persons Act*, S.C. 1953-54, c. 55.

*Federal-Provincial Fiscal Arrangements and Established Programs Financing Act*, 1977, S.C. 1976-77, c. 10, s. 27(8).

*Federal-Provincial Fiscal Arrangements and Established Programs Financing Regulations*, 1977, SOR/78-587, s. 24(1) “institution”, (2)(b) “adult residential care service”.

*Supreme Court Act*, R.S.C. 1985, c. S-26, s. 35.1.

APPEAL from a judgment of the Federal Court of Appeal (Létourneau, Nadon and Pelletier JJ.A.), 2009 FCA 361, 400 N.R. 323, [2009] F.C.J. No. 1580 (QL), 2009 CarswellNat 5376, affirming a decision of de Montigny J., 2008 FC 713, 359 F.T.R. 1, [2008] F.C.J. No. 896 (QL), 2008 CarswellNat 5959. Appeal dismissed.

*Dominique Rousseau and Mélanie Paradis*, for the appellant.

*René LeBlanc and Bernard Letarte*, for the respondent.

English version of the judgment of the Court delivered by

LEBEL J. —

## I. Introduction

[1] In this appeal as of right by the Attorney General of Quebec under s. 35.1 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, the Court must determine whether, under the *Canada*

*Assistance Plan*, R.S.C. 1985, c. C-1 (“*CAP*”), which was repealed by the *Budget Implementation Act, 1995*, S.C. 1995, c. 17, ss. 31-32, the federal government was obliged to share in the costs of certain social services provided in Quebec between 1973 and 1996. The case relates to two specific types of services: social services provided in schools (“*SSS*”) between 1973 and 1996 and support services provided to persons with disabilities living in residential resources (“*SSPD*”) between 1986 and 1996. A third aspect of the case relating to the costs of correctional services for juvenile delinquents was abandoned by the appellant following the trial judgment.

[2] The Attorney General of Quebec is challenging the federal government’s refusal to share in the costs of the two types of services in issue under the *CAP*. In reply, the federal government argues that *SSS* were not covered by the *CAP* and that the costs of *SSPD* had been shared since 1977 under another Act of Parliament. The Federal Court and the Federal Court of Appeal decided in the federal government’s favour and dismissed the Attorney General of Quebec’s claim.

[3] For the reasons that follow, I would dismiss the appeal with costs.

## II. Origin of the Case

[4] The origin of this case can best be understood by considering the role played by the federal government in social policy development in Canada during the 20th century. Traditionally, and for a long time, that role remained quite limited. Indeed, federal and provincial social security programs developed slowly up to the time of the Great Depression of

1929 and World War II. Until then, the federal government generally took refuge behind the constitutional division of powers and left it up to the provinces to provide and, above all, finance social services for the public.

[5] However, things changed starting in the 1930s. In response to persistent pressure from various sectors of Canadian society for government intervention in the social arena and because of its fiscal situation following World War II, the federal government agreed to play a greater role in financing social programs for the Canadian public. Its increased participation in social policy development involved two types of initiatives.

[6] First, the federal government played a key role in creating a number of income security programs for specific clienteles. For that purpose, it had to enter into agreements with the provinces to amend the Constitution so that Parliament would have the authority to make laws in relation to unemployment insurance and old age pensions (*Constitution Act, 1940* (U.K.), 3 & 4 Geo. VI, c. 36, s. 1, adding s. 91(2A); *British North America Act, 1951* (U.K.), 14 & 15 Geo. VI, c. 32, s. 1, adding s. 94A, subsequently amended by the *Constitution Act, 1964* (U.K.), 12 & 13 Eliz. II, c. 73, s. 1; see *Confédération des syndicats nationaux v. Canada* (Attorney General), 2008 SCC 68, [2008] 3 S.C.R. 511; *Reference re Employment Insurance Act (Can.), ss. 22 and 23*, 2005 SCC 56, [2005] 2 S.C.R. 669). Those constitutional amendments gave effect to one of the recommendations of the Royal Commission on Dominion-Provincial Relations, better known as the Rowell-Sirois Commission. The universal income security programs established by the federal government included unemployment insurance, family allowances and old age security. A guaranteed income supplement program under which additional allowances

were paid to seniors with incomes below a set minimum was later added to the old age security program.

[7] Second, the federal government intervened, with an equally specific focus, in the area of social assistance. Since it continued to recognize that the provinces were primarily responsible for establishing social programs, and since it believed that the need for social assistance measures would decrease as income security programs expanded, it chose to focus its initiatives in this area on some of the most vulnerable groups in society. It then decided to help establish programs for specific clienteles rather than creating a nationwide universal social security system. With this in mind, the federal government enacted, *inter alia*, the *Blind Persons Act*, R.S.C. 1952, c. 17, and the *Disabled Persons Act*, S.C. 1953-54, c. 55.

[8] Thus, the federal government's role in social policy development in Canada during the postwar period was characterized by the adoption of specific objectives for its initiatives. Each initiative focussed on a particular clientele, such as seniors, unemployed persons, families, blind persons or disabled persons. The *CAP* was enacted as part of this process.

[9] The *CAP* (short title of the *Act to authorize the making of contributions by Canada toward the cost of programs for the provision of assistance and welfare services to and in respect of persons in need*) was enacted in 1966, and payments under it ceased, beginning in 1996, pursuant to the *Budget Implementation Act, 1995*, which also introduced the Canada Health and Social Transfer. Since this last change took place, the federal government has been contributing to the costs of social programs established by the provinces through per capita grants.

[10] From the beginning, the *CAP* formed part of the federal government's anti-poverty plan. It operated in the same way as the federal selective assistance programs that already existed for specific clientele. The *CAP* was not modelled on the universal social programs that had begun to appear in the 1960s, such as the nationwide scheme that had been established in 1966 by enacting the federal legislation now known as the *Canada Health Act*, R.S.C. 1985, c. C-6. It was instead designed to fulfil the federal government's promises to the most vulnerable groups in Canadian society.

[11] The *CAP* was essentially a plan for sharing the costs of services that were intended to serve as a social safety net. It was a selective, residual anti-poverty tool created to protect categories of individuals in especially precarious financial situations. According to the terms of the *CAP* itself, its purpose was solely to share the costs of provincial services for "persons in need" and persons who were likely to become persons in need if such social services did not exist. The wording of the preamble to the *CAP* confirmed the specific nature of the anti-poverty mechanism chosen by Parliament:

WHEREAS the Parliament of Canada, recognizing that the provision of adequate assistance to and in respect of persons in need and the prevention and removal of the causes of poverty and dependence on public assistance are the concern of all Canadians, is desirous of encouraging the further development and extension of assistance and welfare services programs throughout Canada by sharing more fully with the provinces in the cost thereof . . . .

[12] Under s. 4 of the *CAP*, the federal and provincial governments could enter into cost-sharing agreements for certain "assistance" programs and for "welfare services provided in the province":

4. Subject to this Act, the Minister may, with the approval of the Governor in Council, enter into an agreement with any province to provide for the payment by Canada to the province of contributions in respect of the cost to the province and to municipalities in the province of

(a) assistance provided by or at the request of provincially approved agencies pursuant to the provincial law; and

(b) welfare services provided in the province by provincially approved agencies pursuant to the provincial law.

Like the other Canadian provinces, Quebec signed such an agreement with the federal government in 1967.

[13] During the period when the *CAP* applied, the federal government paid about \$98 billion to the provinces, including nearly \$34 billion to Quebec, as financial contributions to services of the types mentioned in s. 4 of the *CAP*. The dispute in this case arose out of a decision by the federal government that SSS and SSPD were not eligible for cost sharing under the *CAP*. Quebec estimates that it was deprived of at least \$285 million in contributions because of the way the federal government interpreted the scope of the *CAP*.

[14] First, the federal government refused to share in the costs of SSS — services provided by social workers in Quebec schools — arguing that they were universal services intended for a clientele much broader than the one covered by the *CAP*. Although the *CAP* did apply to minors who could be characterized as “young persons in need of protection”, the federal government argued that SSS were intended for all students, regardless of their socio-economic background. It also based its justification for refusing to share in the costs of SSS on the fact that the main purpose of such services was to support the educational mission of schools. In its view, therefore, the role of SSS was unrelated to the *CAP*’s anti-poverty objective, and SSS were also

expressly excluded from cost sharing under the *CAP* by the exception for services relating to education set out in s. 2 of the *CAP*.

[15] The Attorney General of Quebec disputed this interpretation. In his view, SSS were “welfare services” within the meaning of s. 2 of the *CAP*. Since such services were intended primarily for a disadvantaged clientele, Quebec argued that their purpose was to prevent poverty. Thus, their main object was not to support the educational mission of schools. On this point, the Attorney General of Quebec stressed the impact of the administrative reorganization that had begun in Quebec in the early 1970s, at which time the responsibility for managing SSS was conferred on the Ministère des Affaires sociales (now the Ministère de la Santé et des Services sociaux). Until then, they had been managed through the education system. In the appellant’s view, this reorganization had profoundly changed the nature of services provided in schools: from that time on, social workers focussed their attention on the child rather than on the student. In this new operating framework, schools served merely as a meeting point at which students could be found together, thus facilitating the work of social workers.

[16] Second, starting on April 1, 1977, the federal government refused to share in the costs of SSPD, arguing that it was already doing so under the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977*, S.C. 1976-77, c. 10 (“*Fiscal Arrangements Act, 1977*”). Unlike services provided in residential resources whose clients received support on an as-needed basis, SSPD provided in residential resources whose clients required continuous assistance were considered to constitute an “adult residential care service” within the meaning of s. 27(8) of the *Fiscal Arrangements Act, 1977* and s. 24(2)(b) of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Regulations*,

1977, SOR/78-587 (*"Fiscal Arrangements Regulations, 1977"*). The federal government argued that SSPD therefore fell under the residual exception set out in s. 5(2)(c) of the *CAP*, which excluded from cost sharing under the *CAP* the costs of services the federal government was required to share with the provinces pursuant to any other Act of Parliament. However, I note that the costs of services provided in residential resources whose clients did not require continuous assistance were shared under the *CAP* until payments under it gradually ceased between 1996 and 2000.

[17] The Attorney General of Quebec disagreed that services provided in residential resources whose clients required continuous assistance constituted an "adult residential care service". In light of the process of deinstitutionalization that had taken place in Quebec starting in the 1960s, the Attorney General of Quebec argued that SSPD had to be considered care provided in the user's "home" rather than in an "institution in respect of adults". He also noted that this reality was reflected in the fact that users paid their own lodging and food expenses and sometimes signed their own leases.

[18] A political solution was never found to the dispute between the Quebec government and the federal government over cost sharing for these programs. To resolve the impasse, the Attorney General of Quebec commenced an action in the Federal Court on December 23, 1996, for a declaration that the federal government must reimburse to Quebec half the costs of SSS for the period from 1973 to 1996 and of SSPD for the period from 1986 to 1996. Initially, Quebec's claim also included an aspect relating to services provided to juvenile delinquents for the period from 1979 to 1984, but as I mentioned above, that aspect was abandoned.

### III. Judicial History

#### A. *Federal Court, 2008 FC 713, 359 F.T.R 1 (de Montigny J.)*

[19] The Federal Court dismissed Quebec's claim in its entirety. De Montigny J. first found that the costs of SSS could not be shared under the *CAP*. In his opinion, SSS were not "welfare services" within the meaning of s. 2 of the *CAP*, because they "had nothing to do with *CAP*'s anti-poverty objectives" (para. 323). Rather, they were social services that were intended for a universal clientele, namely Quebec school students, and that contributed to the educational mission of schools by ensuring that the work of social workers was focussed on problems related to school attendance and academic success.

[20] Even if SSS could have been considered "welfare services", de Montigny J. would have denied the cost sharing sought by Quebec under the *CAP*, because those services fell under the exception for "any service relating wholly or mainly to education" set out in s. 2 of the *CAP*. The trial judge rejected the interpretation of the Attorney General of Quebec to the effect that the meaning of "*enseignement*" (the word used in the French version of the section as the equivalent for "education") should be limited to the transmission of knowledge. Following a comparative analysis of the English and French versions of the *CAP*, he instead concluded that Parliament had opted for an open concept of education encompassing both traditional academic learning and the complete development of the child (para. 328).

[21] Next, de Montigny J. found that SSPD constituted an "adult residential care service" within the meaning of the *Fiscal Arrangements Act, 1977* and the *Fiscal Arrangements*

*Regulations, 1977*, and that they were already subsidized under that Act. While he acknowledged that the process of deinstitutionalization had changed the nature of care provided to persons with disabilities, he expressed the opinion that the intensiveness of the services provided to users of residential resources with continuous assistance had remained more or less the same as it had been when patients were being placed in institutions. In his view, the intensiveness of services was inherent and implicit in the “institution” concept. Accordingly, relying on the *CAP*’s residual nature as provided for in s. 5(2)(c), he refused to require the federal government to share in the costs of SSPD for clients requiring continuous assistance.

B. *Federal Court of Appeal, 2009 FCA 361, 400 N.R. 323 (Létourneau, Nadon and Pelletier J.J.A.)*

[22] The Federal Court of Appeal dismissed the appeal of the Attorney General of Quebec. Létourneau J.A. first concluded that the trial judge’s analysis with respect to SSS was not open to criticism. He agreed with the finding that the object of SSS was not to fight poverty. Although he acknowledged that the *CAP* provided financing for social programs designed to prevent poverty, he concluded that the creation of such programs had to be justified by a “real rather than hypothetical imminence of need” (para. 24). In his view, therefore, the trial judge had been right to find that SSS were not eligible for cost sharing under the *CAP* as “welfare services”.

[23] Létourneau J.A. then dealt quickly with the eligibility of SSPD for cost sharing under the *CAP*, saying only that the trial judge had made no error that would justify the intervention of the Federal Court of Appeal on this point.

#### IV. Analysis

[24] This appeal raises issues of statutory interpretation that are complex owing to the number and the technical nature of the statutory provisions governing federal transfers to the provinces for social services. In essence, the Court must determine whether SSS and SSPD were eligible for cost sharing under the *CAP*. In the case of SSS, the fundamental issue is whether they were “welfare services provided in the province” within the meaning of s. 2 of the *CAP*. If so, it must then be determined whether they were nonetheless excluded from cost sharing under the *CAP* as a result of the exception for “any service relating wholly or mainly to education” set out in that same section. Where SSPD are concerned, it must be determined whether the federal government was already sharing in the costs of these services as “adult residential care service[s]” within the meaning of the *Fiscal Arrangements Act, 1977*. The relevant statutory provisions are reproduced in the Appendix.

[25] In *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, the importance of which it has often emphasized, this Court held that unless the trial judge made palpable and overriding errors in assessing the evidence, an appellate court’s proceedings should be conducted on the basis of that judge’s findings of fact. In the case at bar, the errors identified by the Attorney General of Quebec were not palpable and overriding errors. My analysis of the questions of law at issue in this appeal will therefore be based on the trial judge’s findings of fact.

##### A. *SSS and the Definition of “Welfare Services Provided in the Province”*

[26] In this Court, the Attorney General of Quebec argues that SSS were “welfare services” within the meaning of s. 2 of the *CAP*. Although the services provided were universal in nature, he submits that SSS were intended to prevent poverty, since they were provided primarily to children from disadvantaged socio-economic backgrounds. The Attorney General of Quebec therefore contends that the trial judge erred in concluding that the concept of “welfare services” extended only to social services intended exclusively for persons in need (A.F., at para. 28). He submits that universal social programs were eligible, but that cost sharing was limited to services provided to the clientele covered by the *CAP* (A.F., at para. 41).

[27] In principle, the Attorney General of Quebec is correct that the definition of “welfare services” was not dependent on the target clientele of the social programs established by the provinces. It is indeed possible that not every recipient of a “welfare service” belonged to the clientele covered by the *CAP*. However, the Attorney General of Quebec’s criticism of the trial judge in this respect is groundless. The trial judge found that in such cases, the federal government and the province concerned had established the proportion of costs eligible for cost sharing by means of a complex mechanism for dividing up the clientele (para. 56).

[28] However, in addition to this division of the clientele, the universal services in question had to be consistent with the provisions of the *CAP* on which cost sharing was based. In this regard, the relevant portions of the definitions of “welfare services” and “welfare services provided in the province” in s. 2 of the *CAP* read as follows:

2. . . .

“welfare services” means services having as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on public assistance . . . ;

“welfare services provided in the province” means welfare services provided in the province pursuant to the provincial law to . . . persons in need or persons who are likely to become persons in need unless those services are provided;

[29] Although the argument in the courts below concerned mainly the concept of “welfare services”, both these definitions are essential to an interpretation of the scope of s. 4(b) of the *CAP*. They seem to say that the federal government had to share in the costs of a service only if the service had an anti-poverty object *and* was provided to persons in need or persons who would become persons in need in the absence of such a service (*Finlay v. Canada (Minister of Finance)*, [1993] 1 S.C.R. 1080, at p. 1123, *per* Sopinka J.). Thus, what must be determined in the instant case is whether the trial judge erred in concluding that SSS were not eligible for cost sharing under the *CAP*.

[30] To do this, it must first be determined what was meant by the words “services having as their object the lessening, removal or prevention of the causes and effects of poverty”. In my opinion, these words suggest that a “welfare service” had to have an anti-poverty *purpose*. Therefore, a service would not be considered a “welfare service” unless it had been established for the specific purpose of alleviating, eliminating or preventing poverty. In practice, this would require the existence of a *close connection* between the nature of the service and the eradication of the causes or effects of poverty. From this standpoint, if an established service contributed to the fight against poverty only incidentally, indirectly or by extension, it could not be considered a “welfare service” for the purposes of cost sharing under the *CAP*, since the close connection requirement would not be met.

[31] In the instant case, the trial judge rejected the argument that there was a close connection between SSS and even the preventive aspect of the fight against poverty. Instead, he found that the true object of SSS was to contribute to the educational mission of schools. His finding was based on a careful examination of the testimonial and documentary evidence. He reviewed all the testimony and commented on the principal documentary evidence, which provided ample support for his finding. As a result, in my opinion, the Court has no reason to interfere with it. This finding is sufficient in itself for us to dismiss the appeal on this first aspect of the claim of the Attorney General of Quebec.

[32] However, the Attorney General of Quebec also argues that SSS were eligible for cost sharing under the *CAP* insofar as they were provided to a [TRANSLATION] “disadvantaged clientele” (A.F., at para. 64). With respect, this argument is erroneous. It is of course true that many students in Quebec’s school system were persons “in need” within the meaning of the *CAP*. It may also be true that many of the interventions by social workers in schools concerned such students. Nonetheless, the makeup of the school population did not alter the nature of SSS. Their purpose was to support educational activities, not to fight poverty, and this purpose did not qualify them for the cost-sharing mechanism in respect of social services. This is in fact what the trial judge concluded in stressing the actual purpose of SSS (para. 323).

[33] As a result of this conclusion, I do not have to rule on the interpretation issue raised by the appellant concerning the exclusion of “any service relating wholly or mainly to education” under s. 2 of the *CAP*. I will therefore turn now to the issue of cost sharing for SSPD.

B. *Meaning of the Word “Institution” in the Fiscal Arrangements Act, 1977 and Cost Sharing for SSPD*

[34] Until April 1, 1977, the *CAP* was the source of federal funding for the costs of social services provided to persons with disabilities living in residential resources insofar as those services were provided in a “home for special care” within the meaning of s. 2 of the *CAP*. But the coming into force of the *Fiscal Arrangements Act, 1977* fundamentally changed the rules for sharing the costs of SSPD. Because of the creation of a program to finance extended health care services, some of the services formerly funded under the *CAP* as “homes for special care” then began to be funded as “adult residential care services” under the *Fiscal Arrangements Act, 1977*. And s. 5(2)(c) of the *CAP* continued to confirm the *CAP*’s residual nature by providing that the costs that could be shared under the *CAP* did not include the costs of services shared by the federal government and the provinces pursuant to another Act of Parliament. It was the application of this principle that led to the differences between the Quebec government and the federal authorities.

[35] After the *Fiscal Arrangements Act, 1977* came into force, the *CAP* continued to be the source of federal funding for the costs of SSPD for clients who did not require continuous assistance. But on the basis of s. 5(2)(c) of the *CAP*, the federal government refused to share in the costs of SSPD for clients who required continuous assistance. In its view, such services basically constituted an “adult residential care service” within the meaning of the *Fiscal Arrangements Act, 1977*.

[36] To determine whether SSPD were eligible for cost sharing under the *CAP*, the only question this Court must answer concerns the meaning of the “adult residential care service” concept referred to in s. 27(8) of the *Fiscal Arrangements Act, 1977*. As I mentioned above, the appellant argues that SSPD could not be characterized as adult residential care services because they were provided in the recipient’s “home”. This argument has two aspects, which I will discuss in turn: the first concerns the very nature of residential resources, while the second relates to the range of services offered in such resources.

[37] Section 24 of the *Fiscal Arrangements Regulations, 1977* must be considered in analysing the Attorney General of Quebec’s argument. I believe it will be helpful here to reproduce, in part, this provision, which defined the term “institution” for the purposes of the federal program:

24. (1) For the purposes of this section,

...

“institution” means

(a) in the case of a service other than converted mental hospitals, a facility or portion of a facility that qualifies as a home for special care under section 8 of the *Canada Assistance Plan Regulations* . . . .

(2) . . .

(b) “adult residential care service” means a service provided in an institution in respect of adults consisting of

(i) personal and supervisory care according to the individual requirements of residents of the institution,

(ii) assistance with the activities of daily living and social, recreational and other related services to meet the psycho-social needs of the residents of the institution,

- (iii) services required in the operation of the institution, and
- (iv) the provision of room and board . . . .

[38] The Attorney General of Quebec contends, first, that residential resources were not “institutions” within the meaning of s. 8(f) of the *Canada Assistance Plan Regulations*, C.R.C. 1978, c. 382 (“*CAP Regulations*”), which read as follows:

8. For the purposes of the definition “home for special care” in section 2 of the Act, the following kinds of residential welfare institutions are prescribed for the purposes of the Act as homes for special care:

. . .

(f) any residential welfare institution the primary purpose of which is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially,

the standards of which . . . are, in the opinion of the provincial authority, in accordance with the standards generally accepted in the province for residential welfare institutions of that kind.

[39] Relying on the last part of this provision, the Attorney General of Quebec submits that the criteria provided for in a Quebec statute, the *Act respecting health services and social services and amending various legislation*, S.Q. 1991, c. 42 (“*AHSSS*”), had to be applied to determine whether a residential resource could be characterized as an “institution” within the meaning of the *CAP Regulations*. I disagree. In my opinion, the Attorney General of Quebec is wrong in law to state that s. 8(f) of the *CAP Regulations* incorporated provincial legislation to establish the criteria for *characterizing* a residential facility for persons with disabilities as an “institution”. I believe that the reference to provincial legislation instead concerned the *quality* of the services provided in such facilities.

[40] The concluding words of s. 8 of the *CAP Regulations* must therefore be understood to state a condition that costs were to be shared only if “standards generally accepted in the province” were met. Thus, the obligation assumed by the federal government under the *CAP* was to share in the costs of services provided in “homes for special care” only if the services met quality standards set out in the provincial legislation applicable to that type of institution. It is reasonable to conclude that the federal government was simply ensuring that it would not share in the costs of services that did not meet provincial quality standards. From this perspective, the concluding words of s. 8 represented neither more nor less than a guarantee for the federal government that the *CAP* would not be a blank cheque given to the provinces without regard for the quality of the services provided. I agree with the respondent that setting out in Schedule A to the agreement entered into with Quebec under s. 4 of the *CAP* a list of the “homes for special care” approved in accordance with provincial standards was the best way to secure that guarantee (R.F., at para. 169).

[41] Moreover, it must not be forgotten that the *CAP* was established by a spending statute whose purpose was to remedy an imbalance that had been observed between the federal government’s tax revenues and the expenses incurred by the provinces. The Attorney General of Quebec’s argument would therefore mean that the Parliament of Canada left it up to the provinces to determine the scope of a federal spending statute. I cannot believe that this was Parliament’s intention at the time the *CAP* was drafted.

[42] If this were the interpretation to be given to s. 8(f) of the *CAP Regulations*, it would have to be concluded that, before the *CAP* was repealed, it would have been open to each province to amend its legislation to change the criteria for what it considered to be “institutions”

in order to avoid the application of the residual exception of s. 5(2)(c) of the *CAP*. As the respondent states in her factum, the effect of the interpretation suggested by the Attorney General of Quebec would have been [TRANSLATION] “to deprive the Government of Canada of any power to assess the provinces’ claims under the legislation it was responsible for administering” (para. 168). For these reasons, the argument that the *AHSSS* had to be applied in interpreting the meaning of the term “institution” in the federal statute and regulations must be rejected.

[43] The Attorney General of Quebec also insists that the range of services offered in residential resources did not meet the cumulative conditions set out in s. 24(2)(b) of the *Fiscal Arrangements Regulations, 1977*, which defined “adult residential care service”. He argues that residential resources could not be considered “institutions” within the meaning of that provision because they did not provide recipients with room and board. The essence of the Attorney General of Quebec’s interpretation is that residential resources did not “provide” services relating to room and board, because the recipients paid for those services themselves.

[44] This argument must also be rejected. The fact that most recipients of SSPD paid the costs of their own room and board — using social security benefits — does not mean that residential resources did not provide them with those services. The evidence at trial showed that the recipients did not do their own grocery shopping or cook their own meals (para. 405) and that, although some recipients signed leases, reception and rehabilitation centres (“CAR”) or rehabilitation centres for mentally impaired persons (“CRDI”) always co-ordinated and supervised, from an administrative standpoint, the activities of residential resources, which were

responsible for placing and moving recipients (para. 395). The recipients had no choice in this respect.

[45] Accordingly, even assuming that the amount of social assistance benefits covered all costs of the recipients' room and board — although this seems doubtful — it is impossible to conclude that those services were not provided by an institution for adults within the meaning of s. 24(2)(b) of the *Fiscal Arrangements Regulations, 1977*. In fact, without the support of CAR or of CRDI, recipients of SSPD who required continuous assistance would have been unable to feed themselves and would not have been lodged in this type of residential resource. In the final analysis, I cannot conclude, as the Attorney General of Quebec suggests, that residential resources provided home care rather than an “adult residential care service”. Deinstitutionalization was a valid social objective, but it did not change the legal framework established under the relevant federal legislation for cost sharing under the *CAP*.

[46] I agree with the trial judge that the intensiveness of the services provided by residential resources was a key factor in characterizing such resources as “homes for special care” that provided “adult residential care services”. Although intensiveness was not, *per se*, a classification criterion under s. 24(2)(b) of the *Fiscal Arrangements Regulations, 1977*, it seems obvious to me that it was implicit in all the cumulative factors set out in that section. It was even explicit in s. 24(2)(b)(ii), which referred to services provided to recipients to assist with the activities of daily living as well as social and recreational services.

[47] Therefore, a residential resource that did not provide all these services would not have had the “intensiveness” needed to qualify under s. 24(2)(b)(ii). Conversely, a residential

resource that provided all the services referred to in s. 24(2)(b) of the *Fiscal Arrangements Regulations, 1977* would legitimately have been considered to be providing an “adult residential care service”. It could be concluded that such a resource was an institution “the primary purpose of which is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially” within the meaning of s. 8(f) of the *CAP Regulations*.

[48] In the instant case, the trial judge’s findings of fact show that residential resources in which SSPD were provided and whose clients required continuous assistance were institutions to which s. 24(2)(b) of the *Fiscal Arrangements Regulations, 1977* applied. De Montigny J. was correct in concluding that the services provided in residential resources covered “all aspects of daily living” (para. 405). Since the Attorney General of Quebec has failed to identify any error warranting the Court’s intervention, the residual exception in s. 5(2)(c) of the *CAP* must apply, as the federal government shared in the costs of the services provided by the institutions in question pursuant to another Act, the *Fiscal Arrangements Act, 1977*. As a result, cost sharing for SSPD under the *CAP* could not be ordered.

#### V. Disposition

[49] For these reasons, the appeal is dismissed with costs.

### **APPENDIX**

*Canada Assistance Plan*, R.S.C. 1985, c. C-1

[Preamble] WHEREAS the Parliament of Canada, recognizing that the provision of adequate assistance to and in respect of persons in need and the prevention and removal of the causes of poverty and dependence on public assistance are the concern of all Canadians, is desirous of encouraging the further development and extension of assistance and welfare services programs throughout Canada by sharing more fully with the provinces in the cost thereof;

...

#### INTERPRETATION

#### 2. In this Act,

“assistance” means aid in any form to or in respect of persons in need for the purpose of providing or providing for all or any of the following:

- (a) food, shelter, clothing, fuel, utilities, household supplies and personal requirements (hereinafter referred to as “basic requirements”),
- (b) prescribed items incidental to carrying on a trade or other employment and other prescribed special needs of any kind,
- (c) care in a home for special care,
- (d) travel and transportation,
- (e) funerals and burials,
- (f) health care services,
- (g) prescribed welfare services purchased by or at the request of a provincially approved agency, and
- (h) comfort allowances and other prescribed needs of residents or patients in hospitals or other prescribed institutions;

...

“home for special care” means a residential welfare institution that is of a kind prescribed for the purposes of this Act as a home for special care and that is listed in a schedule to an agreement under section 4, but does not include a hospital, correctional institution or institution whose primary purpose is education, other than that part of a hospital that is used as a residential welfare institution and that is listed in a schedule to an agreement under section 4;

...

“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 the budgetary requirements of that person and the income and resources available to that person to meet those requirements, to provide adequately for himself, or for himself and his dependants or any of them, or

(b) a person under the age of twenty-one years who is in the care or custody or under the control or supervision of a child welfare authority, or a person who is a foster-child as defined by regulation,

and for the purposes of paragraph (e) of the definition “assistance” includes a deceased person who was a person described in paragraph (a) or (b) of this definition at the time of his death or who, although not such a person at the time of his death, would have been found to be such a person if an application for assistance to or in respect of him had been made immediately before his death;

...

“welfare services” means services having as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on public assistance, and, without limiting the generality of the foregoing, includes

- (a) rehabilitation services,
- (b) casework, counselling, assessment and referral services,
- (c) adoption services,
- (d) homemaker, day-care and similar services,
- (e) community development services,
- (f) consulting, research and evaluation services with respect to welfare programs, and
- (g) administrative, secretarial and clerical services, including staff training, relating to the provision of any of the foregoing services or to the provision of assistance,

but does not include any service relating wholly or mainly to education, correction or any other matter prescribed by regulation or, except for the purposes of the definition “assistance”, any service provided by way of assistance;

“welfare services provided in the province” means welfare services provided in the province pursuant to the provincial law to or in respect of persons in need or

persons who are likely to become persons in need unless those services are provided;

...

*Agreement Authorized*

4. Subject to this Act, the Minister may, with the approval of the Governor in Council, enter into an agreement with any province to provide for the payment by Canada to the province of contributions in respect of the cost to the province and to municipalities in the province of

(a) assistance provided by or at the request of provincially approved agencies pursuant to the provincial law; and

(b) welfare services provided in the province by provincially approved agencies pursuant to the provincial law.

*Contributions*

5. . . .

(2) In this section, "cost" does not include,

...

(c) any cost that Canada has shared or is required to share in any manner with the province, or that Canada has borne or is required to bear, pursuant to any other Part or pursuant to any Act of Parliament . . . .

*Canada Assistance Plan Regulations, C.R.C. 1978, c. 382*

8. For the purposes of the definition "home for special care" in section 2 of the Act, the following kinds of residential welfare institutions are prescribed for the purposes of the Act as homes for special care:

(a) homes for the aged,

(b) nursing homes,

(c) hostels for transients,

(d) child care institutions,

(e) homes for unmarried mothers, and

(f) any residential welfare institution the primary purpose of which is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially,

the standards of which (except for the purposes of clause 5(1)(b)(i)(B) of the Act) are, in the opinion of the provincial authority, in accordance with the standards generally accepted in the province for residential welfare institutions of that kind.

*Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977, S.C. 1976-77, c. 10*

**27. . . .**

(8) In this Part, the “extended health care services program” with respect to a province is a program that consists of the following services, as more particularly defined in the regulations, provided for residents of the province, namely,

- (a) nursing home intermediate care service;
- (b) adult residential care service;
- (c) converted mental hospitals;
- (d) home care service; and
- (e) ambulatory health care service.

*Federal-Provincial Fiscal Arrangements and Established Programs Financing Regulations, 1977, SOR/78-587*

24. (1) For the purposes of this section,

. . .

“institution” means

(a) in the case of a service other than converted mental hospitals, a facility or portion of a facility that qualifies as a home for special care under section 8 of the *Canada Assistance Plan Regulations* . . . .

(2) . . .

(b) “adult residential care service” means a service provided in an institution in respect of adults consisting of

(i) personal and supervisory care according to the individual requirements of residents of the institution,

(ii) assistance with the activities of daily living and social, recreational and other related services to meet the psycho-social needs of the residents of the institution,

(iii) services required in the operation of the institution, and

(iv) the provision of room and board to the extent of the total monthly cost or part thereof except for an amount calculated by subtracting, for each recipient of the service,

(A) the total monthly amount or part thereof that is payable to the recipient of the service under any Acts of the province for comforts allowances, clothing, drugs and biologicals, services required in the provision of drugs and biologicals and medical and surgical goods and services and that is shareable under the *Canada Assistance Plan*,

from

(B) an amount equal to the total monthly amount or part thereof of the old age security pension and maximum supplement payable to a beneficiary under the *Old Age Security Act*, who is not a married person;

*Appeal dismissed with costs.*

*Solicitors for the appellant: Chamberland, Gagnon, Québec.*

*Solicitor for the respondent: Attorney General of Canada, Ottawa.*