between the inability to travel and the 'special weather conditions'.

'Likely'

Tamberlin J stated that the Regulations were designed to provide a benefit to students as stated in the Preamble to the *Student and Youth Assistance Act 1973*, and thus it should be interpreted beneficially. A number of previous Federal Court judgments on the meaning of 'likely' in other Acts had decided that 'likely' referred to 'a real not remote possibility'. Because the Regulations are beneficial legislation the Court preferred an interpretation that promoted the object or purpose underlying the Regulations.

This meant a broader interpretation than set out in the cases if possible. 'It is also important to bear in mind that the predictive assessment called for in the present circumstances is whether it is 'likely' that a student would be unable to travel to school because of special weather conditions': Reasons, p.8. Because of the difficulty of predicting the weather it was 'more fitting to speak in terms of a possibility that is more than remote': Reasons, p.9.

'Special weather conditions'

According to Tamberlin J the word 'special' had to be read in context. It signified an event or circumstances which was 'out of the ordinary or normal course': Reasons, p.9, or as had been stated in *Beadle and D-G of Social Security* (1984) 6 ALD 1, 'circumstances that are unusual, uncommon or exceptional'. It was argued by the DEETYA that there was nothing 'special' about the weather conditions. This was the usual pattern.

The Court decided that:

> 'the reference to "special" weather conditions in sub-item (5) means weather conditions on some days of the year which are special in the sense that the rainfall might be expected to be such that a student is unable to travel to school over 20 or more school term days.'

(Reasons, p.10)

The question to be answered is whether there are days in the year that are so unusual that compared to other days in the year the Barretts may not be able to travel.

'Because of'

It was argued by the DEETYA that there had to be a causal connection between the 'special weather conditions' and the inability to travel. The Court accepted that this was correct, but found that the AAT had stated that there was such a connection.

It was also argued by the DEETYA that it was the nature of the road, and not the weather which caused the inability to travel. Tamberlin J disagreed saying that 'the provision calls for a consideration of the access which is in fact available and not of potentially better access': Reasons, p.11.

Formal decision

The Federal Court dismissed the appeal of the DEETYA.

[C.H.]

SSAT Decision

Important note: *Decisions of the Social Security Appeals Tribunal, unlike decisions of the Administrative Appeals Tribunal and other courts, are subject to stringent confidentiality requirements. The decisions and the reasons for decisions are not public documents. In the following summaries, names and other identifying details have been altered. Further details of these decisions are not available from either the Social Security Appeals Tribunal or the Social Security Reporter.*

Newstart allowance: calculation of the debt

AB and Centrelink Delegate to the DSS

Decided: 6 May 1998

AB incurred an newstart allowance debt of $1508.18 from September 1996 to April 1997. Centrelink raised a debt on the basis AB had not advised in his fortnightly forms of his part-time employment, nor of his earnings. AB maintained that he worked as a trainee or volunteer and the money he received was not his wage.

The SSAT had before it details of the money paid by AB's employer which would generally be for the week ending Friday. But it was clear that AB did not work regular times or regular days, and his income fluctuated significantly. AB's fortnightly forms did not coincide with the payment periods of his employer.

The SSAT found that there were discrepancies between the information provided by the employer and that disclosed by AB. It did not accept that AB was a volunteer (as he had claimed), and nor did it accept that the moneys paid to him were for expenses (s.8 exempt income).

The ARO had calculated the debt by reducing the weekly payment paid by the employer to a daily rate in respect of each day of the relevant benefit fortnight. The SSAT had no hesitation in finding that AB had objectively made false statements in his fortnightly forms. There was a debt to the Commonwealth (s.1224). The difficulty for the SSAT was how the debt should be calculated. It noted that the ARO had followed the internal (DSS) instruction issued on 21 April 1997. This purported to follow the Federal Court in *Danielson* (1996) 2(7) *SSR* 103. The SSAT found that the guideline was not consistent with the remarks made by the judge. These remarks were not essential to the decision in *Danielson*, and so not strictly binding. However they are highly influential. Danielson was a casual employee whose income fluctuated. She was paid on a Wednesday and her fortnightly benefit period commenced on a Monday. Given, the above, the Court found it difficult to contemplate how the DSS would be able to calculate the overpayment. The SSAT decided not to follow the DSS's guideline but to follow the reasoning in *Danielson*, and set the matter aside with directions that Centrelink should recalculate the debt if it could obtain accurate information on AB's income in each benefit fortnight. Otherwise there was no debt.

[C.H.]