Citation: *M. S. v. Minister of Employment and Social Development,* 2014 SSTAD 321

Appeal #: CP 29095

BETWEEN:

M. S.

Appellant

and

Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER:	HAZELYN ROSS
HEARING DATE:	September 3, 2014
TYPE OF HEARING:	In Person
DECISION DATE:	November 7, 2014

PERSONS IN ATTENDANCE

Appellant	-	M. S.
Witness for the Appellant	-	S. S. (Appellant's wife)
Appellant's Counsel	-	Reginald D'Entremont
Respondent's Representative	-	Nancy Luitweiler
Witness for the Respondent	-	Dr. Micheline Begin

DECISION

[1] The Member of the Appeal Division finds that a *Canada Pension Plan* (CPP) Disability Pension is not payable to the Appellant.

INTRODUCTION

[2] This is an appeal from a decision of a Review Tribunal issued November 12, 2012, which held that a CPP Disability Pension was not payable to the Appellant.

[3] On his behalf, Counsel for the Appellant filed an Application for Leave to Appeal with the Pension Appeals Board (PAB), which granted leave on January 19, 2013. Pursuant to s. 260 of the *Jobs, Growth and Long-term Prosperity Act* the Appellant's file was transferred to the Appeal Division of the Social Security Tribunal ("the Tribunal") for the determination of the Appeal.

GROUNDS OF APPEAL

[4] Through his representative, the Appellant cites what he terms are errors on the part of the Review Tribunal. He states that the Review Tribunal:

a) Misstated his status as a parent, stating he had no children or dependents when the Appellant, in fact, has three children.
b) Made reference to the Appellant suffering from an alcohol addiction when he does not.
c) Mischaracterised his coaching certificate and misinterpreted his abilities from the fact that he had earned a coaching certificate.
d) Misapprehended the offers of work that were made to the Appellant.
e) Failed to appreciate that none of the medical recommendations alleviated his pain.
f) Erred in its appreciation of the nature of the rehabilitation that was offered to him.

[5] The hearing proceeded by way of an appeal *de novo* in accordance with subsection 84(1) of the *Canada Pension Plan* (CPP) as it read immediately before April 1, 2013 and in accordance with the legitimate expectation of the Appellant at the time he filed his Application for Leave to Appeal.

THE LAW

[6] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

> a) Be under 65 years of age;
> b) Not be in receipt of the CPP retirement pension;
> c) Be disabled; and
> d) Have made valid contributions to the CPP for not less than the Minimum Qualifying Period (MQP).

The Minimum Qualifying Period (MQP)

[7] The Appellant stopped work in the fall of 2005. The parties agree and the Tribunal finds that the MQP date is December 31, 2005. Accordingly, the onus is on the Appellant to establish that, on a balance of probabilities, that he had a severe and prolonged disability, within the meaning of CPP paragraph 42(2)(a), on or before December 31, 2005.

ISSUE

[8] At issue before the Tribunal is the question:

> Is it more likely than not that the Appellant had a severe and prolonged disability within the meaning of CPP paragraph 42(2)(a)on or before December 31, 2005?

Disability in the CPP

[9] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. The

Appellant must establish that on or before December 31, 2005, he was incapable regularly of pursuing any substantially gainful occupation and that his disability is prolonged.

EVIDENCE

The Appellant's testimony

[10] At the start of his testimony, the Appellant's representative asked the Appellant to show his arms to the hearing. The Tribunal noted and the Appellant's representative pointed out that the Appellant's right arm is considerably shorter than his left and, that there was only a single fused digit on his right hand. The Appellant's representative also asked him to lift a box as if it weighed 5 lbs., which the Appellant did with what he expressed to be some difficulty.

[11] The Appellant's representative led testimony designed to establish the stated grounds of the appeal. However, this being a hearing *de* novo, the oral testimony was wider ranging than the grounds of appeal would suggest.

[12] In his testimony, the Appellant denied that he has ever had a problem with alcohol. He stated that he did undergo a detoxification programme for an addiction to marijuana, but has never done more than social drinking, a position which was supported by his spouse in her testimony. The Appellant also provided testimony about his educational and work history. He testified that he is educated to the Grade 12 level and has completed a course in auto mechanics. He has had various employment including work at a switch plant; a truck driver (big rig) and has worked in the parts and service department of the local Canadian Tire. He has also worked in a pizza parlour as a delivery person and in fish plants. In fact, the Appellant was working at a fish plant when, in November 2005, he suffered a work related injury that led him to stop working and, ultimately, to make an application for CPP disability benefits.

[13] The Appellant testified about his interaction with the Worker's Compensation Board (WCB), from which much of the medical documentation derives, and his attempts to rehabilitate and return to the workforce. The Appellant also testified about the assessments that were made concerning him, in particular those of Dr. Mahar and Ms. DeBruin, a Certified Career Coach and Employment Counsellor.

[14] The Appellant was asked questions about his compliance with his medication regime and readily admitted that, due to his dislike of medication, he does not always take the prescribed medications. He attributed his dislike of pills to the likely cause of his physical deformity as stemming from his mother taking thalidomide when she was pregnant with him. When asked, he testified that he did take Tylenol 2 for pain and that when he was taking other medication he had to take a pill in order to allow him to take the prescribed medication, all of which went against the grain for him.

[15] In cross-examination, the Appellant agreed that in 2004, he was capable of light duties. However, he disagreed that he could do sedentary work. Neither could he work for 5 hours a day as concluded in the Functional Ability Assessment of March 2006 outside of a controlled, experimental environment, which was his description for the setting under which the Functional Ability Assessment was carried out. The difference between light duties and sedentary work is measured in terms of the number of hours a person is required to sit or stand during the course of an eight hour work day.[1] It was the Appellant's testimony that in 2006 he could not stand for longer than 30 to 45 minutes and could not sit for very long. Also when asked, the Appellant sought to explain certain statements by Dr. Yabsley concerning his negative attitude as stemming from what he, the Appellant, perceived to be Dr. Yabsley's rudeness and intrusive questions.

[16] With respect to his coaching certificate, the Appellant testified that the certificate did not permit him to go on the ice or skate; rather it allowed him to be a kind of aide to the young players and looking out for their welfare. Similarly, he explained that he did not accept the job at Home Hardware because of the nature of the work, which involved loading and unloading trucks and that the person who offered him work agreed he would not be suitable for the intended job. He denied making any statement that he would seek work at a new hardware store in his area and pointed out that he could not do any job that involved heavy lifting. He expressed skepticism that he could find a job in a hardware store that would allow him to simply sit behind a counter.

[1] Exhibit 1, p. 189.

[17] In relation to his activities of daily living during this period, the Appellant testified that he babysat his own children while his wife was at work. The children were then 4 and 7 years old, with the 7 year-old girl attending school during the day. In the evenings his wife was at home.

[18] Also in cross examination, the Appellant amplified the details of his interaction with Dr. Yabsley. He testified that he became angry with the doctor because while it was the second time he was seeing Dr. Yabsley, the doctor's interaction with him was less than professional. He testified that on learning that the Appellant had worked at Canadian Tire, Dr. Yabsley asked him about drills and then went on to ask him about his sex life. It was this line of questions that caused him to have the negative attitude that Dr. Yabsley remarked upon.

[19] Again, with respect to the findings of both Dr. Yabsley and Dr. Mahar that he could do light or sedentary work, the Appellant was adamant that he could not. Nor did he take up Ms. DeBruin's suggestion that he retrain for other work, although he later testified that he asked his case manager several times about retraining but was told that the WCB does not pay for retraining. He reiterated that after his second injury to his left foot he found it impossible to return to work.

Testimony of S. S.

[20] S. S., the Appellant's wife, appeared and testified on his behalf. She explained the changes in the Appellant's demeanour, his frustration at his inability to cope and the effect on their family life. According to Mrs. S. S., not only did the Appellant become cranky, he began to use marijuana. Ultimately, he had to attend counselling and ceased using this substance.

[21] Mrs. S. S. testified to the Appellant's dislike of pills; his sparing use of alcohol and his inability to do much around the home. She testified she was now the family's main breadwinner, working at two jobs to provide for their family.

The Expert's Evidence

[22] The Tribunal qualified Dr. Micheline Begin as an expert in the field of general medicine. Dr. Begin adopted her summary of the medical evidence[2] as her testimony and outlined the major points in the medical evidence as she saw them. Her testimony mainly addressed the medical and other reports that pre-dated the Appellant's MQP.

[23] Dr. Begin addressed the issue of disc hernia, noting that a disc hernia can occur without the sufferer experiencing low back pain. Following X-rays of his back, the Appellant had been diagnosed as suffering a disc hernia and a disc fusion. She noted that the symptoms of a disc hernia include low back pain as well as numbness, which indicates that there is nerve damage; it is this latter that would cause more concern.

[24] Dr. Begin observed that in the Appellant's case the major concern is with low back pain and sacro-iliac damage. She noted that the Appellant's medical history in respect of his back commenced with an injury in 1989. He was treated on a conservative basis, by which, it is meant that he did not undergo surgery. However, Dr. Mooney's report noted that the Appellant stopped attending physiotherapy because of a lack of money.

[25] Dr. Begin explained that at the point where disc fusion occurs, articulation of the spine is lessened. Fusion can be caused by irritation. It heals over time. Initially there is pain accompanied by reduced mobility, however the condition is treatable. In very severe cases, orthopaedic surgery is performed. Dr. Begin noted that the Appellant had been prescribed a number of drugs that included Celebrex, an anti-inflammatory; and Flexeril, a muscle relaxant. As noted earlier, physiotherapy was also initiated but discontinued.

[26] In the Appellant's case, a CT scan of his lumbar spine revealed a minor disc bulge. Degenerative disc disease was also noted; however, Dr. Begin explained that disc degeneration was part of the normal aging process. However, disc degeneration can be exacerbated by injury.

[2] Exhibit 3.

[27] With respect to the sacro-iliac damage, Dr. Begin noted that there was injury to the Appellant's right sacro-iliac joint, which could be the result of a motor vehicle accident.

[28] Speaking to the kinds of treatments the Appellant has received, Dr. Begin observed that both Dr. Yabsley and Dr. Kinsley opted for physiotherapy to address the Appellant's back conditions. In fact, the Appellant started physiotherapy in November 2005 but as stated earlier he stopped the treatments.

[29] In January 2006, the Appellant was diagnosed with chronic sciatica and on-going back pain. The prognosis at that time was one of "limited improvement". It was also noted that the medical reports following this diagnosis all stated that the Appellant was unlikely to progress to non-sedentary work, meaning that, in the opinion of the medical practitioners who treated him, the Appellant could do sedentary work. Dr. Begin testified that while the Appellant underwent two MRI examinations, the results were more or less the same; and the doctors' treatment recommendations remained the same. Surgery was never recommended; neither was the Appellant referred to a pain clinic. This came later in 2009, some four years after the MQP.

[30] With regard to the Appellant's residual work capacity, Dr. Begin testified that two Functional Abilities Assessments were performed on the Appellant. The first in July 2004, which concluded that the Appellant had a workday tolerance capacity of 8 hours. The second was performed by Tom Stanley, a registered physiotherapist in March 2006. Mr. Stanley found that the Appellant had a workday tolerance of five hours.[3]

[31] When specifically asked what the normal treatment protocols are for patients with complaints similar to the Appellant, Dr. Begin testified that medications including muscle relaxants, narcotic or non-narcotic, for which a prescription would be required, would normally be prescribed. In addition, physiotherapy, massage and chiropractic therapy are also usual. However, there was no indication that the Appellant had undergone either massage or chiropractic therapy. Furthermore, a 2012 prescription for medication remained unfilled.

[32] In cross-examination, Dr. Begin was asked to address Dr. Heffernan's report, in which a reference to a nerve conduction study carried out on the Appellant states "it was a very

[3] Exhibit 1 at p. 135.

abnormal study."[4] Dr. Begin was asked to address the question of "abnormal." She explained that a physician's use of the term "abnormal" indicates that some obstruction of the nerve caused by an external compression was detected. She indicated that this would require treatment to relieve the compression in order to improve nerve function and she offered the opinion that the compression was likely due to the disc herniation that had been detected.

SUBMISSIONS

The Submissions of the Appellant's Representative

[33] In submissions, the Appellant's representative commented that the medical reports of those professionals who were based in Halifax should be given little weight as they failed to recognize the difference between the lengths of the Appellant's arms, stating that this was in itself a disability. Specifically, the Appellant's representative submitted that the Tribunal should give little weight to the reports that had been made by Drs. Muise, Mahar and Alexander as, in his view, they were unreliable. He contrasted the reports of these doctors with that of Dr. Heffernan, who found the abnormality explained by Dr. Begin and questioned why it was only he who found the scan abnormal.

[34] In addition, the Appellant's representative cited the report made by Ms. DeBruin with approval, noting that she actually spoke with prospective employers in the field suggested by the professionals who assessed the Appellant in respect of his WCB claim. He noted that these employers told Ms. DeBruin that, given his medical condition and his congenital condition they would not be prepared to employ him. In his submissions, it follows from the position of the prospective employers that no jobs are available to the Appellant and, therefore, he is disabled.

[35] Further, the Appellant's representative argued that as the WCB found the Appellant to be disabled, it did not follow that the CPP would not also find the Appellant to be disabled. With respect to the position of the Appellant's family physician vis-à-vis the specialists, the Appellant's representative submitted that it was only in 2010 that the family physician, Dr. Dow, felt free to make her statement that the Appellant was disabled.

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[4] Exhibit A. 1: p. 153.

The Submissions of the Respondent's Representative

[36] Counsel for the Respondent made the following submissions: First, she noted that the MQP was agreed as December 31, 2005. She submitted that the objective medical evidence did not support a finding that, on or before the MQP, the Appellant had a severe and prolonged disability. She observed that the medical reports indicated that his pain conditions improved with physiotherapy and medication and she observed that even after his second injury in September 2005, the medical specialists recommended only conservative treatment. The Appellant was never considered a candidate for surgery. Further, while Dr. Heffernan did find an abnormality in the Appellant's spine, it was the evidence of Dr. Begin that his condition was treatable.

[37] Commenting on the Appellant's employability in the context of *Villani*[5], the Respondent's representative observed that at his MQP, the Appellant was a young man, 36 years old. He had completed Grade 12 and had taken some post-secondary courses. In addition, he had a varied work experience including work as a truck driver driving eighteen-wheelers. Furthermore, he is able to use a computer. The Minister's representative noted that at p. 196 of Exhibit 1, Ms. DeBruin, in her report to the WCB, did recommend that the Appellant be retrained possibly in a computer related area. In her submission, Ms. DeBruin made this recommendation after having looked at all the factors respecting the Appellant's ability and employability.

[38] The Minister' representative submitted that the Appellant wants to work in his own geographic area but, relying on the decision in *Rice*,[6] economic factors are irrelevant to a determination of entitlement to a CPP disability pension.

[39] Furthermore, in her submission, the Appellant lacked motivation either to return to work or to retrain and had, in fact, adopted a "disabled" lifestyle. She noted that as late as September 2008, the WCB was still being sent reports and appeared to be requesting information on the

[5] *Villani v. Canada (Attorney General),* 2001 FCA 248
[6] Canada (Minister of Human Resources Development) v. Rice, 2002 FCA 47 at para. 8

Appellant's ability to return to work and the opportunity to retrain,[7] which in her submission contradicts the Appellant's testimony about WCB's position on retraining him.

[40] The Respondent's representative concluded by stating that the Appellant's medical conditions were not severe and the test in *Villani* had not been met. She observed that while his family physician had changed her mind about his employability, she did so in 2012, which is 7 years outside of the MQP. She reiterated her position that as of the MQP, the Appellant retained capacity to perform sedentary work.

ANALYSIS

Is the Appellant disabled?

[41] The onus is on the Appellant to establish, on a balance of probabilities, that he had a severe and prolonged mental or physical disability on or before December 31, 2005.

[42] In *Villani* the Court clarified that in assessing the severe criterion in paragraph 42(2)(a) of the CPP, the Tribunal must adopt a "real world" approach adopted by the PAB in *Barlow v. Minister of Human Resources Development* (1999), C.E.B. & P.G.R. 8846 (P.A.B.). The Court noted that requiring that a claimant be incapable of regularly pursuing any substantially gainful occupation was quite different from requiring that the claimant be incapable at all times of pursuing any conceivable occupation. The hypothetical occupations which a decision-maker must consider cannot be divorced from the particular circumstances of the applicant, such as age, education level, language proficiency and past work and life experience.

[43] The Appellant is now forty-five years old. He is married and is the father of three, two of whom are below 18 years old. The Appellant is educated to the level of Grade 12 and has obtained a post-secondary education in auto mechanics. His first language is English. The Appellant has worked in various fields of endeavor, including as set out earlier, a truck driver, a parts and service clerk at the local Canadian Tire and latterly as a fork lift driver in a fish plant. The Appellant has a physical deformity of his right arm and hand. He lives in a smaller

[7] Exhibit A-1, p. 184, report addressed to Linda Zambolin of the Workers Advisor Programme.

community in Nova Scotia. The Tribunal's assessment of whether or not the Appellant meets the severe criterion must be carried out in the context of these factors.

Is the severe prong of the definition met?

[44] For the reasons that follow, the Tribunal answers this question in the negative.

[45] In making its determination, the Tribunal retained focus on the critical MQP date of December 31, 2005. The Tribunal finds that the pre-MQP medical reports have consistently found that the Appellant suffered from disc herniation and disc degeneration. However, none of the medical practitioners recommended surgery to correct either condition. It was the evidence of Dr. Begin that management of injury of the kind suffered by the Appellant correlates to the seriousness of the injury, the more serious the injury the more aggressive the treatment, namely surgery. Less severe injury is treated in what is termed a conservative manner and that is by medication, etc. The Tribunal concludes from the absence of surgical intervention, or even a recommendation of surgical intervention, that the Appellant's injury did not rise to such a level of severity that would allow his treating and/or consulting physicians to conclude more was required than the conservative treatments that were recommended.

[46] In this regard, the Tribunal finds on a balance of probabilities, that the Appellant has been less than conscientious in following the recommended treatments. By his own testimony, he takes his medication as he feels is needed and not according to the prescribed regimen because he dislikes taking pills. The Tribunal infers from this testimony that the Appellant seldom takes the prescribed medication. Further, the Appellant discontinued physiotherapy because he did not have the necessary funds. While it is understandable that the Appellant would discontinue physiotherapy in the absence of funds to pay for it, there was no evidence that the Appellant engaged in any other programme such as exercise to address his conditions. Warren[8] affirms the principle that an Appellant must abide by treatment recommendations or have a satisfactory explanation for failing to do so, which the Appellant did not. In the case of the Appellant's failure to take medications in the manner prescribed, the Tribunal finds that he has not provided a satisfactory explanation because the fact is that, notwithstanding any phobia

[8] *Warren v. Canada (Attorney General)*, 2008 FCA 377, see also *Lombardo v. MHRD* (July 23, 2001) CP 12731.

about taking pills, the Appellant does in fact take pills. In these circumstances, the Tribunal finds it is reasonable to expect that he would follow the prescribed medication regime.

[47] Secondly, the Tribunal finds that the Appellant has not made efforts either to seek other work for which he might be suitable or to retrain. The case law, (*Klabouch),*[9] is clear that where there is evidence of residual capacity to work, an Appellant is expected to demonstrate that efforts at obtaining and maintaining employment have been unsuccessful because of the Appellant's health condition. The Appellant relies heavily on the statements of Ms. DeBruin, who found that the prospective employers she spoke to were unwilling to employ the Appellant. The pertinent comment from Ms. DeBruin's report is as follows:

> "When questioned directly about the possibility of hiring an individual with a bad lower back and the congenital defect of his right hand I was told that they did not feel that a person with those disabilities would be able to perform the required tasks. The manager of the Pizza Delight in Yarmouth felt that an individual with the congenital defect described would not even be able to hold onto the delivery pouches, which must be held from the bottom."

[48] It is clear from the above statement that the Appellant's congenital defect played as great a role, if not a greater role, in the prospective employer's assessment of his capabilities and, therefore, employability. However, given that the Appellant had been able to obtain and maintain employment in a wide variety of occupations despite this congenital defect, the Tribunal is not persuaded that one potential employer's assessment of the Appellant's employability should be widened to the larger field of "any substantially gainful occupation". Indeed, Ms. DeBruin never makes such an assessment. What she does conclude is that, "the prospects of Mr. M. S. finding employment as a pizza delivery driver or as a food preparer are non-existent," these being the two forms of employment that had been suggested by WCB. Ms. DeBruin's conclusion took into consideration the Appellant's geographic location and road conditions in his area with their likely effect on his medical condition. Notwithstanding her conclusion, Ms. DeBruin recommended retraining to a position that is more suited to the Appellant's medical condition. At no time, does she state that the Appellant is unfit for all work. Furthermore, Ms. DeBruin's report was issued on May 1, 2009, which is almost 4 years

[9] *Klabouch v. Canada (MSD)* 2008 FCA 33.

after the MQP. Accordingly, the report cannot, and does not, establish that on or before December 31, 2005 the Appellant had a severe and prolonged disability.

[49] It was clear from the Appellant's testimony that he concluded that WCB would not retrain him. However, there was no objective evidence on file to support his position. It was also clear that the Appellant, for his own reasons, had limited his job search to his geographic area, a position that *Rice* precludes him from taking. The Tribunal finds that it was necessary for him to widen the focus of his job search, which the Appellant did not do, thereby undermining his entitlement to a CPP disability payment.

[50] It is true that in 2012 the Appellant's family physician, Dr. Dow, found him to be completely disabled; however, she comes to this conclusion some seven years after the MQP. The Appellant's representative would urge upon the Tribunal the explanation that Dr. Dow had been reticent to buck the findings of the Halifax specialists. This is an argument that the Tribunal cannot accept. Rather, the Tribunal infers that the Appellant's family physician acted in accordance with what the medical evidence concerning the Appellant's injury demonstrated. Accordingly, while the Appellant's medical condition may have deteriorated post-MQP, Dr. Dow's conclusion of 2012 that the Appellant is disabled does not establish that, on or before December 31, 2005, the Appellant had a severe and prolonged disability.

[51] With regard to the argument that as the WCB found the Appellant to be disabled so, too, should the CPP, the Tribunal finds that this argument is not supported by the case law. In *Michaud v. MHRD (July 4, 1997), CP 4510 (PAB),* the Pension Appeals Board made it clear that the focus of the two schemes are different and, thus, the criteria for eligibility must be different. While the WCB focuses on causation, namely asking the question was there a work-related injury that resulted in the claimed disability; the CPP focuses only on capacity to work. Thus it is not relevant to the CPP whether or not a disability is compensable under the WCB regime.[10]

[52] In light of the above analysis, the Tribunal finds that the Appellant did not establish, on a balance of probabilities, that he meets the test for a severe disability as defined in CPP paragraph 42(2)(a). The Appellant is a relatively young person. He is relatively well educated

[10] *Halvorsen v. Canada (Minister of Human Resources Developmen*t), 2004 FCA 377.

having completed high school and a technical diploma. Despite the congenital deformity of his right hand, the Appellant has been gainfully employed in various jobs many of which required manual dexterity as with his job as a tractor trailer driver. The Appellant did testify he could use a computer, therefore, it is not unreasonable for him to be retrained into a sedentary or light job as the Employment Counsellor, Ms. DeBruin suggested. *Bains* [11] stands for the proposition that in order for the disability to be "severe" not only must it preclude an applicant for CPP disability payments from returning to their former employment (or employment of like nature) but the disability must prevent the applicant from rejoining the workforce in any substantially gainful occupation, of whatever nature. In all the circumstances of the Appellant's case, the Tribunal finds that as of the MQP, the Appellant did not have a severe disability as defined by CPP paragraph 42(2)(a).

Is the prolonged prong of the definition met?

[53] In *Klabouch*[12] the Federal Court of Appeal stated that the two requirements of CPP paragraph 42(2)(a) are cumulative so that if an applicant does not meet one or the other condition, his application for a disability pension under the CPP fails. Having found that the Appellant does not meet the test for "severe" the Tribunal finds it is not necessary to make any further examination of the "prolonged" part of the test.

CONCLUSION

[54] The appeal is dismissed.

Hazelyn Ross
Member, Appeal Division

[11] *Bains v. Canada (Minister of Human Resources Development*) January 24, 1997 CP 04153.
[12] *Klabouch v. Canada (MSD)* 2008 FCA 33.