Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *C. M. v. Minister of Employment and Social Development,* 2016 SSTADIS 40

Appeal No: AD-15-1190

BETWEEN:

C. M.

Applicant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: January 21, 2016

Canada

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated September 10, 2015. The General Division had conducted an in-person hearing on April 15, 2015, and after hearing the evidence and reviewing the submissions, determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not "severe" at her minimum qualifying period of December 31, 1997. The Applicant filed an application requesting leave to appeal on October 24, 2015. The Applicant filed additional information. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[2] Does the appeal have a reasonable chance of success?

SUBMISSIONS

[3] The Applicant filed an application for a Canada Pension Plan disability pension on October 24, 2012. She submitted that the decision contained many errors and omissions, although did not immediately identify any in the application requesting leave to appeal.

[4] On November 6 and December 3, 2015, the Social Security Tribunal wrote to the Applicant, advising her that her application requesting leave to appeal was incomplete and that she should explain the grounds of appeal.

[5] The Applicant responded to both letters and filed extensive submissions as follows:

(a) e-mail of November 23, 2015 – while she noted some of her symptoms and past medical visits, the Applicant did not specify any errors which the General Division may have made in its decision;

(b) e-mail of November 24, 2015 – the Applicant produced copies of various receipts, e.g. prescription receipt dated September 20, 2004 for Amitriptyline 10 mg;

(c) e-mail of November 30, 2015 – the Applicant provided a review of her multiple symptoms, including the early onset of symptoms of fibromyalgia, and provided a medical history and some photographs;

(d) e-mail of December 5, 2015 – the Applicant described some of the medical procedures she has undergone; she also requested time to review her medical files from 1989 to 2014 for one of her physicians;

(e) facsimile of December 8, 2015, consisting of 60 pages, largely of handwritten submissions – the Applicant described her medical issues and employment efforts. The Applicant also addressed some of the evidence in the decision of the General Division by providing more background information or response;

(f) e-mail of December 18, 2015 – the Applicant provided a detailed description of her past medical issues and current problems. She also noted that she has a witness letter. She also noted that she has been unsuccessful thus far in obtaining records from one of her physicians. The Applicant submitted that the General Division failed to consider her education and employment history when it assessed the severity of her disability, did not accurately set out the evidence and limited her evidence regarding her employment or volunteer work experiences; and

(g) letter filed January 7, 2016 with the Social Security Tribunal, consisting of 68 pages of handwritten submissions, most of which largely duplicate her facsimile of December 8, 2015. There is also a typewritten and handwritten statement which she indicates was made under oath. The Applicant provided a detailed chronological history.

[6] In her submissions of December 8, 2015 and January 7, 2016, the Applicant submits that there were the following errors or issues:

(a) the process was unfair as she has not had sufficient time to provide updated information or obtain additional records;

(b) the process was unfair as she was not competent to give evidence at the hearing before the General Division, given her medical status;

(c) the letter dated September 11, 2015 from the Social Security Tribunal enclosing a copy of the decision of the General Division was unsigned, and the decision too was unsigned;

(d) the conclusions made by the General Division do not accord with her own records and recollection;

(e) she wanted to produce witnesses, including medical experts, for her hearing before the General Division, but none of them attended the hearing;

(f) the Social Security Tribunal did not provide any funding for her to obtain her medical files;

(g) an in-person hearing was not the most effective form of hearing, as she would have preferred "letters replies";

(h) she did not receive a copy of the *Social Security Tribunal Regulations*, *Department of Employment and Social Development Act* or *Jobs, Growth and Long-Term Prosperity Act*, which would have enabled her to understand the requirements she had to meet to qualify for a Canada Pension Plan disability pension;

(i) at paragraph 26 of its decision, the General Division stated that there was no medical information on file for the period between December 16, 2011 and December 2, 2014. The Applicant stated that she had been advised to

obtain information only from “1995 or before”. She offered to obtain more information;

(j) at paragraph 28 of its decision, the General Division noted that the Applicant worked part-time. The Applicant confirmed that she largely worked part-time throughout her life, but explains that she has had limitations and restrictions. She explained that she is now unable to upgrade her skills by taking computer courses, as she faces financial constraints;

(k) at paragraph 31 of its decision, the General Division found that the Applicant’s disability was not that severe such that it precluded her from performing work suitable within her medical conditions and capabilities. The Applicant submits that there is no work which is flexible enough to accommodate her;

(l) at paragraph 33 of its decision, the General Division listed some but not all of the Applicant’s disabilities. The General Division did not list her sinus, sight and other mobility issues;

(m) at paragraph 34 of its decision, the General Division listed some of the Applicant’s occupations. The Applicant denies that she has ever been a bus driver, and states that she drove a work van “with and without kids less than 5 times to [her] knowledge”. The Applicant submits that the General Division was unreasonable in finding that she has transferable work skills, given her disabilities and limitations. She denies that she has ever had gainful employment without a benevolent employer;

(n) at paragraph 37 of its decision, the General Division found that the Applicant is able to skate upwards of 10 to 30 minutes. The Applicant submits that she has not felt safe skating and has not had the financial resources to even go skating in the past three years;

(o) at paragraph 38 of its decision, the General Division concluded that the Applicant has not established that she has a severe disability that rendered her incapable regularly of pursuing a substantially gainful employment. The Applicant submits that the General Division erred in coming to this conclusion, as she experiences recurring joint muscle bone abnormalities, dental, sinus and eye irregularities and does not feel well enough to work regularly even on a part-time basis. She advises that she has always required assistance to try to keep or get employment insurance; and

(p) the General Division failed to consider her education and employment history when it assessed the severity of her disability, did not accurately set out the evidence and limited her evidence regarding her employment or volunteer work experiences.

[7] The Respondent has not filed any written submissions in respect of this leave application.

ANALYSIS

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

(a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[9] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

The Federal Court of Canada recently approved this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[10] I will review each of the Applicant's grounds of appeal.

(a) Fairness of process – filing of records

[11] The Applicant submits that the disability appeals process is unfair as she has not been afforded sufficient time to produce updated information or obtain medical records.

[12] The Applicant filed an appeal with the Office of the Commissioner of Review Tribunals on April 7, 2011 and had approximately four years within which to obtain any medical records, before the hearing proceeded before the General Division.

[13] The Applicant filed a number of medical and other records with the Office of the Commissioner of Review Tribunals. Indeed, the file with the Office of the Commissioner of Review Tribunals spanned over 500 pages. While some of it included the application materials and correspondence, much of the file consisted of medical documentation.

[14] On May 21, 2013, the Social Security Tribunal sent a letter to the Applicant, advising her that the Social Security Tribunal had replaced the Office of the Commissioner of Review Tribunals and that her file had been transferred to the Social Security Tribunal. The letter invited the Applicant to send any additional information or submissions she might have by March 31, 2014. The Applicant filed additional records and submissions on the following dates:

- December 20, 2013 (GT4)
- January 9, 2014 (GT3)
- March 21, 2014 (GT11)
- March 24, 2014 (GT12)
- March 26, 2014 (GT13 and GT14)

- March 28, 2014 (GT7, GT8, GT9 and GT10) - in document numbered GT7-1, the Applicant even wrote that she was “greatful [*sic*] that the time will reach deadline …”

[15] On April 1, 2014, the Social Security Tribunal wrote to the Applicant, advising that the parties to the appeal would be allowed to continue to file new documents and submissions until they were given notice that no further documents would be accepted by a certain date, subject to the discretion of the General Division.

[16] The Applicant continued to file documents and submissions:

- April 4, 2014 (GT16)
- April 9, 2014 (GT6)
- June 10, 2014 (GT18)
- June 16, 2014 (GT19)

[17] On October 6, 2014, the Social Security Tribunal issued a Notice of Hearing to the parties, advising that a hearing had been scheduled for January 15, 2015. The Social Security Tribunal also advised the parties that they had until November 17, 2014 to file additional documents or submissions, and until December 16, 2014 to file any response materials, and if any documents were filed late, they would be considered only at the discretion of the General Division.

[18] The Applicant continued to file additional documents and submissions:

- October 23, 2014 (GT21 and GT22)
- November 24, 2014 (GT25) – she indicated that she was still requesting and getting medical records and getting some assistance.
- December 7, 2014 (GT26) – she advised that she had suffered a family loss and wanted more time to review and that she had new documents to send.

[19] The hearing file indicates that the Applicant contacted the Social Security Tribunal and requested an adjournment of the hearing until either spring or summer 2015, and that she was advised that she would need to make a written request, setting out the reasons for requesting an adjournment.

[20] On December 17, 2014, the Applicant filed a written request to adjourn the hearing until spring 2015, as she required additional time to prepare and as her representative would be away. She also hoped to file additional medical records. She also advised that she had experienced two family tragedies.

[21] The Applicant filed additional records and submissions on December 29, 2014 (GT28).

[22] On January 7, 2015, the Social Security Tribunal sent a letter to the parties, advising that the General Division had granted the Applicant's adjournment request, for the reason that the Applicant had experienced two tragedies in the family. The hearing was rescheduled to April 15, 2015. The Social Security Tribunal confirmed that the parties had until November 17, 2014 to file additional documents or submissions, and until December 16, 2014, to respond to any documents, and that if any documents were filed late but before a decision was issued, they would be considered only at the discretion of the General Division.

[23] The letter of January 7, 2015 also indicates that the Applicant could seek another adjournment of the hearing, if she could establish that exceptional circumstances existed to justify one.

[24] The Applicant continued to file additional documents and submissions:

- January 7, 2015 (GT29)
- January 10, 2015 (GT30) – The Applicant wrote that she still was not giving up getting old medical files and that she reserved the right to continue to add relevant medical information.

- March 11, 2015 (GT33) – The Applicant confirmed that she was preparing for the hearing and indicated that she required assistance with a box of records.

[25] The Social Security Tribunal contacted the Applicant by telephone on April 8, 2015 to remind her of the hearing. On April 9, 2015, the Applicant contacted the Social Security Tribunal and confirmed that she would be attending the hearing.

[26] The hearing before the General Division proceeded on April 15, 2015. Following the hearing, the Applicant filed a two-page e-mail in which she provided additional information. The General Division did not consider this e-mail.

[27] The Applicant did not seek any further adjournments after she had been granted one in early January 2015. She had from at least from April 7, 2011, when she filed an appeal with the Office of the Commissioner of Review Tribunals, to November 17, 2014 to obtain and file any records, and possibly up to April 15, 2015, although any records filed after November 17, 2014 would have been considered at the discretion of the General Division. A review of the history of the proceedings indicates that the Applicant availed herself of the opportunity to file records and submissions. Indeed, the Applicant filed records on no less than 22 different occasions between April 7, 2011 and March 2015. Given the long history of this appeal and the multiple filings, it cannot be said that the General Division denied the Applicant the opportunity to produce records. I am not satisfied that this ground has a reasonable chance of success.

(b) Fairness of process – competency of the Applicant

[28] The Applicant submits that the hearing was unfair as she was not competent to give evidence at the hearing before the General Division. This is the first instance whereby this allegation has arisen. Apart from the fact that it should have been raised at the earliest opportunity – either prior to or during the hearing – there is no supporting evidence that the Applicant was not competent to give evidence. In any event, the Applicant was represented at the hearing. Had there been any issues regarding the Applicant's competency, surely that would have been evident to at least the Applicant's

representative and surely an adjournment request would have been made immediately. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(c) Unsigned correspondence and decision

[29] The Applicant suggests that the decision and the letter from the Social Security Tribunal enclosing the decision of the General Division are void, as neither was signed. This does not speak to any of the enumerated grounds of appeal under subsection 58(1) of the DESDA, as it does not suggest any errors on the part of the General Division. In any event, there is no authority of which I am aware which invalidates a decision (or a letter from the Social Security Tribunal) if it is unsigned. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(d) Conclusions of the General Division

[30] The Applicant submits that the conclusions drawn by the General Division do not accord with her own records and recollection. The Applicant has not identified which conclusions the General Division may have drawn which may have been based on erroneous findings of fact, nor has she set out the evidence or material which the General Division might not have appropriately considered. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(e) Witnesses

[31] The Applicant indicates that she wanted to produce witnesses, including medical experts, for her hearing before the General Division, but none of them attended the hearing. This does not speak to any grounds of appeal under subsection 58(1) of the DESDA and therefore cannot be visited upon the General Division. It was incumbent upon the Applicant to secure the attendance of her witnesses. The General Division was under no duty or any obligation to ensure that the Applicant's witnesses attended the hearing. Had the Applicant signaled to the General Division that material witnesses had failed to attend, the General Division might then have had to determine the appropriateness in proceeding with hearing the appeal. However, the issue of the witnesses' attendance

appears not to have been raised. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(f) Funding for medical records

[32] The Applicant submits that the Social Security Tribunal should have provided funding for her to obtain her medical files. Apart from the fact that there is no authority for this, this ground does not speak to any of the enumerated grounds of appeal under subsection 58(1) of the DESDA. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(g) Form of hearing

[33] The Applicant submits that an in-person hearing was a less effective form of hearing and that "letters replies" (i.e. questions and answers) would have been preferable in the circumstances of her case. The Applicant does not explain how she might have been denied natural justice or the opportunity to fairly present her case, or how any bias or prejudice might have arisen. As such, I am not satisfied that this ground addresses any of the grounds of appeal under subsection 58(1) of the DESDA. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(h) Copies of legislation

[34] The Applicant alleges that the process was unfair as she did not receive a copy of the *Social Security Tribunal Regulations*, *Department of Employment and Social Development Act* or *Jobs, Growth and Long-Term Prosperity Act*, which would have enabled her to understand the requirements she had to meet to qualify for a Canada Pension Plan disability pension. The Applicant likely is alluding to the Canada Pension Plan, as it sets out the eligibility requirements for a Canada Pension Plan disability pension. Nonetheless, there is no obligation on the Social Security Tribunal or the General Division to furnish copies of legislation, though the Social Security Tribunal does include links on its website to laws and regulations, including to the *Canada Pension Plan*, at http://www1.canada.ca/en/sst/rdl/lawsregs.html. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(i) Advice regarding production of medical records

[35] At paragraph 26 of its decision, the General Division stated that there was no medical information on file for the period between December 16, 2011 and December 2, 2014. The Applicant submits that she had been advised to obtain information only from "1995 or before" and offered to obtain more information.

[36] All of the material information should have been before the General Division. Had either the Social Security Tribunal or the General Division led the Applicant to understand that she would need to provide medical information for only the timeframe prior to 1996, this might have resulted in a breach of the principles of natural justice, but as the Applicant has not pointed to and I do not see any evidence where either the Social Security Tribunal or the General Division might have provided this advice, I am not satisfied that the appeal has a reasonable chance of success on this ground. Even so, while the Applicant alleges that she had been advised to provide medical information for only the timeframe prior to 1996, the decision of the General Division suggests that the only medical evidence before it was prepared mid-2004 and onwards. There does not appear to have been any documentary medical evidence for any period prior to 2004.

[37] I hasten to point out that the other party to these proceedings had provided submissions for the hearing before the General Division and as recently as January 15, 2015, indicated that the Applicant would have to prove that she "was disabled...on [*sic*] or prior to her Minimum Qualifying Period (MQP) of December 1997 and continuously thereafter". This should have alerted the Applicant that she should have focused on obtaining medical records to support her claim that she was disabled not only in or prior to December 1997, but continuously since then. In other words, it would not have been sufficient for her to prove the severity of her disability at only her minimum qualifying period, as she would have had to establish that she has been severely disabled since then. This would have required her to obtain records after 1997 as well.

(j) Paragraphs 28, 31, 33, 34, 37 and 38 of the General Division decision

[38] The Applicant submits that the General Division erred in some of its conclusions, such as determining whether her disability is severe or that she has been rendered incapable regularly of pursuing a substantially gainful occupation.

[39] Paragraph 28 formed part of the summary of the evidence that was before the General Division. The General Division summarized the Applicant's education and work experience and noted the Applicant worked part-time. The Applicant does not dispute this but explains that even when working part-time, she had various limitations and restrictions. This does not suggest that the General Division might have made an erroneous finding of fact.

[40] Paragraph 31 represents the submissions of the Respondent, rather than the findings *per se* which might have been made by the General Division, although ultimately the General Division accepted the submissions.

[41] At paragraph 33, the General Division listed some but not all of the Applicant's disabilities. The Applicant submits that the General Division erred as it did not list her sinus, sight and other mobility issues. Presumably, the Applicant suggests that the General Division failed to consider these medical issues, in the course of determining whether she is severely disabled. However, she does not suggest that these other medical issues are singularly disabling or otherwise, or how consideration of these other medical issues impact her overall capacity. Based on the evidence set out by the General Division, it does not seem that these other medical issues were of such severity that they necessarily merited any significant consideration.

[42] Indeed, the Supreme Court of Canada has determined that it is unnecessary for a decision-maker to write exhaustive reasons addressing all the issues before it. In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board*), [2011] 3 S.C.R. 708, 2011 SCC 62 (CanLII), the Supreme Court of Canada remarked that:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred,

> but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, at p. 391).

[43] I note too the words of Stratas J.A. in *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 (CanLII) in this regard. Stratas J.A. wrote:

> … trial judges are not trying to draft an encyclopedia memorializing every last morsel of factual minutiae, nor can they. They distill and synthesize masses of information, separating the wheat from the chaff and, in the end, expressing only the most important factual findings and justifications for them.

[44] At paragraph 34 of its decision, the General Division listed some of the Applicant's occupations. The Applicant denies that she has ever been a bus driver, and states that she drove a work van "with and without kids less than 5 times to [her] knowledge". The evidence before the General Division was that when working for Renfrew Boys and Girls Club, the Applicant earned her licence to drive a handi bus. It seems that the General Division inferred that, as the Applicant went to the effort of obtaining her licence to drive a handi bus, that she must have driven the handi bus for at least some portion of time. The General Division did not indicate, nor did it appear particularly relevant, the extent to which she might have driven the handi bus, as ultimately the General Division appears to have been particularly interested only in the fact that she was qualified to drive a bus, which enhanced the transferability of her skills.

[45] At paragraph 37, the General Division found that the Applicant was able to skate upwards of 10 to 30 minutes without any discomfort. The Applicant denies that she has been able to skate for the past three years, owing to financial constraints. She also states that she does not feel safe skating. The General Division relied on the Questionnaire which the Applicant had filed with her application for a Canada Pension Plan disability pension. At page GT1-56 of the hearing file, the Applicant indicated that she was able to skate upwards of 10 to 30 minutes without discomfort. Thus, there was an evidentiary foundation

upon which the General Division could find that that she was able to skate for 10 to 30 minutes without discomfort, even if her capacity for skating may have changed since the Applicant completed the Questionnaire. In any event, the General Division was focused on the Applicant's status at the minimum qualifying period.

[46] The Applicant submits that the General Division was unreasonable in finding that she has transferable work skills, given her disabilities and limitations. She denies that she has ever had gainful employment without a benevolent employer. She further submits that the General Division erred in concluding that she does not have a severe disability which has rendered her incapable regularly of pursuing a substantially gainful employment. The Applicant submits that she has a severe disability, as she experiences recurring joint muscle bone abnormalities, dental, sinus and eye irregularities and does not feel well enough to work regularly even on a part-time basis. She advises that she has always required assistance to try to keep or get employment insurance.

[47] It seems that the Applicant is seeking a reassessment of the facts and reweighing of the evidence. As the Federal Court held in *Tracey*, it is not the role of the Appeal Division to reassess the evidence or reweigh the factors considered by the General Division when determining whether leave should be granted or denied. Neither the leave nor the appeal provides opportunities to re-litigate or re-prosecute the claim. I am not satisfied that the appeal has a reasonable chance of success on the ground that the General Division erred in its findings.

(k) Education and employment history

[48] The Applicant submits that the General Division failed to consider her education and employment history when it assessed the severity of her disability, did not accurately set out the evidence and limited her evidence regarding her employment or volunteer work experiences.

[49] At paragraph 34 of its decision, the General Division indicated that in assessing whether an individual's disability is severe, it had to consider factors such as level of

education and past work experience. The General Division then proceeded to consider these. It wrote:

> The [Applicant] was 47 years old at the time of application with a grade XII education and two years of post-secondary diploma in social work. Her work experience includes working as a cashier; youth care worker, bus driver, graphics and arts designer and delivery driving.

[50] Hence, it cannot be said that the General Division failed to consider the Applicant's education and employment history.

[51] As indicated above, a decision-maker is not required to incorporate all of the evidence before it. It distills and synthesizes masses of information. The Applicant did not refer me to any portions of the evidentiary record that was before the General Division to support her allegation that the General Division did not accurately set out the evidence. An assertion alone is insufficient to satisfy me that there is a reasonable chance of success on this ground.

NEW FACTS

[52] The Applicant appears to have raised a number of new facts regarding her medical history and treatment, which may not have been before the General Division. She also suggests that she might file additional medical records, if she is able to secure their production from various physicians.

[53] In a leave application, any new facts should relate to the grounds of appeal. If the Applicant is requesting that we consider any additional facts, re-weigh the evidence and re-assess the claim in her favour, I would be unable to do so at this juncture, given the limitations of subsection 58(1) of the DESDA. Neither the leave application nor the appeal provides any opportunities to re-assess or re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*.

[54] In *Tracey*, the Federal Court determined that there is no obligation to consider any new evidence. Indeed, Roussel J. wrote:

> Under the current legislative framework however, the introduction of new evidence is no longer an independent ground of appeal (*Belo-Alves* [*v. Canada (Attorney General)*, 2014 FC 1100], at para 108).

[55] If the Applicant has provided these new facts and proposes to file additional records in an effort to rescind or amend the decision of the General Division, she must now comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and must also file an application for rescission or amendment with the same Division that made the decision. There are strict deadlines and requirements under section 66 of the DESDA for rescinding or amending decisions. Subsection 66(2) of the DESDA requires an application to rescind or amend a decision to have been made within one year after the day on which a decision is communicated to a party, while paragraph 66(1)(b) of the DESDA requires an applicant to demonstrate that the new facts are material and could not have been discovered at the time of the hearing with the exercise of reasonable diligence. Under subsection 66(4) of the DESDA, the Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so, which in this case is the General Division.

[56] In summary, the new facts as presented by the Applicant do not raise nor relate to any grounds of appeal and I am therefore unable to consider them for the purposes of a leave application.

CONCLUSION

[57] Given the considerations above, the application for leave to appeal is dismissed.

Janet Lew
Member, Appeal Division