



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 126

Tribunal File Number: AD-15-452

BETWEEN:

**J. C.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet Lew

DATE OF DECISION: April 4, 2016

## REASONS AND DECISION

### OVERVIEW

[1] This case is about whether the General Division breached any principles of natural justice when it summarily dismissed the Appellant's appeal, without considering any *Charter* arguments raised by him.

### FACTUAL BACKGROUND

[2] The key facts for the purposes of this appeal are set out below.

[3] On April 15, 2015, the General Division summarily dismissed the Appellant's application for greater retroactivity of payment of a Canada Pension Plan disability pension, on the basis that the earliest that he could be deemed disabled was 15 months prior to his most recent application for a Canada Pension Plan disability pension. The General Division summarily dismissed his appeal, given that it was satisfied that it did not have a reasonable chance of success.

[4] Although the Appellant had alleged that his rights under sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* had been violated, the General Division did not address any of the Appellant's *Charter* arguments, nor did it determine whether the Appellant had complied with paragraph 20(1)(a) of the *Social Security Tribunal Regulations* by serving notice of constitutional question.

### ISSUES

[5] This appeal raises a number of issues, including whether the General Division might have failed to observe a principle of natural justice when it did not address the Appellant's *Charter* arguments. For the reasons that follow, I need address only this single issue, whether the General Division failed to observe a principle of natural justice.

## SUBMISSIONS

[6] The Appellant's submissions of November 6, 2015 indicate that he intends to continue to challenge the constitutional validity of certain provisions of the *Canada Pension Plan*.

[7] The Respondent's counsel filed submissions on August 21, 2015. In supplemental submissions filed on November 9, 2015, counsel for the Respondent concedes that it is apparent that the Appellant did not have the opportunity to file a notice under paragraph 20(1)(a) of the *Social Security Tribunal Regulations* with respect to the sections 7 and 12 *Charter* arguments he made. Counsel for the Respondent contends that there is no evidentiary foundation for the *Charter* argument before the Appeal Division, nor any evidence in the correspondence from the General Division that such a notice was requested from the Appellant.

[8] The Respondent's counsel argues that, more significantly, while the General Division indicated that the Appellant wished to raise a *Charter* challenge before the General Division, there is no evidence that the General Division considered that argument when it summarily dismissed the Appellant's appeal. As this raises a potential issue of natural justice and procedural fairness, the Respondent is of the position that this matter should be returned to the General Division.

[9] The Respondent's counsel further maintains that the Appeal Division is not the appropriate forum to argue a *Charter* challenge for the first time, due to the scope of its jurisdiction, the nature of appeals heard by the Appeal Division, and here, the lack of an evidentiary record. The Respondent's counsel contends that, if the Appellant intends on pursuing any *Charter* arguments, the matter should be returned to the General Division.

[10] The Respondent's counsel further contends that, as an alternative, in the event the Appeal Division does not accept these submissions, the decision of the General Division is reasonable, the *Charter* arguments cannot succeed and the appeal should be dismissed.

## ANALYSIS

[11] The Social Security Tribunal has developed a number of general practices and procedures when the constitutionality validity, applicability or operability of any provisions of the *Canada Pension Plan*, the *Old Age Security Act*, the *Employment Insurance Act*, Part 5 of the *Department of Employment and Social Development Act* or the regulations made under any of those Acts are at issue before the Tribunal. To date, these include the following:

- the Social Security Tribunal will provide an appellant with the opportunity to comply with the notice provisions under paragraph 20(1)(a) of the *Social Security Tribunal Regulations*;
- the General Division will notify an appellant that, if he or she fails to comply with the notice provisions under paragraph 20(1)(a) of the *Social Security Tribunal Regulations*, the Social Security Tribunal could consider summarily dismissing the matter;
- the General Division generally will not summarily dismiss a matter involving the *Charter*, as a party might provide evidence and submissions during the hearing of an appeal: *J.C. c. Ministre de l'Emploi et Développement des compétences*, 13 mai 2015, AD-15-74 (unpublished decision in French), paras. 2 to 4, 22 to 26, 30 to 36;
- once the Social Security Tribunal is satisfied that an appellant has complied with the notice provisions under paragraph 20(1)(a) of the *Social Security Tribunal Regulations*, the Social Security Tribunal generally will invite parties to provide a “fulsome record, which should include their evidence, submissions, and the authorities that they intend to rely upon”: *G.B. v. Minister of Human Resources and Skills Development and J.B.*, 2014 SSTGDIS 28, at para. 48;

- if there is an insufficient factual foundation in the *Charter* submissions, the General Division should order the appellant to file amended submissions: *G.B., supra*;
- the Appeal Division generally will not exercise its discretion and consider *Charter* arguments for the first time on appeal, if these arguments have not been raised or considered by the General Division, and particularly where there is no evidentiary record or any findings of fact dealing with the issues raised by the Appellant: *C.F. v. Minister of Employment and Social Development* (February 24, 2016), AD-15-992 (SSTAD) (currently unreported).

[12] The General Division did not follow the Social Security Tribunal’s general practices and procedures. The Appellant had made submissions to the General Division that, when an individual’s disability claim is “unjustly denied”, both sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* are violated, as that individual is deprived of “life, liberty and security” and is subjected to cruel and unusual treatment or punishment. Although these submissions were made in response to a notice of intention to summarily dismiss from the General Division, the General Division nevertheless:

- (1) did not determine whether the Appellant had complied with the notice requirements under paragraph 20(1)(a) of the *Social Security Tribunal Regulations*;
- (2) did not invite both parties to provide a “fulsome record”, and
- (3) did not seek clarification as to which specific provisions of the *Canada Pension Plan* allegedly violate an individual’s rights under either sections 7 or 12 of the *Charter*.

[13] I make no comment regarding the reasonableness of the Appellant’s submissions concerning the *Charter* – indeed, the nature of the proposed constitutional issue remains somewhat unclear – but the General Division should have firstly determined whether the Appellant had complied with paragraph 20(1)(a) of the *Social Security Tribunal Regulations*,

invited the parties to provide a “fulsome record”, and in the Appellant’s case, amended *Charter* submissions, and then addressed and considered the Appellant’s *Charter* arguments.

[14] I accept the submissions of the Respondent’s counsel that, in overlooking the *Charter* arguments of the Appellant, the General Division failed to observe a principle of natural justice and failed to ensure that the Appellant had been provided with a fair hearing and an opportunity to fairly present his case. The appropriate relief under these circumstances is to return the matter to the General Division for a redetermination.

[15] The Respondent’s counsel also requests the Appeal Division to consider providing directions allowing the Appellant to comply with paragraph 20(1)(a) of the *Social Security Tribunal Regulations* and, if he does not comply, that the General Division consider summarily dismissing the appeal as the appropriate remedy. I will leave it to the General Division to determine the appropriate disposition of the matter before it, but I will direct that it advise the Appellant of the notice requirements under paragraph 20(1)(a) of the *Social Security Tribunal Regulations* and that it provide him with an opportunity to comply with them.

## CONCLUSION

[16] The appeal is allowed and the matter remitted to a different member of the General Division for a redetermination, with a direction that it advise the Appellant of the notice requirements under paragraph 20(1)(a) of the *Social Security Tribunal Regulations* and that it provide him with an opportunity to comply with them.

*Janet Lew*

Member, Appeal Division