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

Citation: *A. N. v. Minister of Employment and Social Development*, 2016 SSTADIS 141

Tribunal File Number: AD-15-889

BETWEEN:

A. N.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: April 21, 2016

Canada

REASONS AND DECISION

OVERVIEW

[1] This is an application seeking leave to appeal from the decision of the General Division rendered on May 23, 2015.

[2] The Applicant applied for an *Old Age Security* pension in March 2010. The Respondent found that the Applicant had resided in Canada for 12 years and thereby awarded a partial pension of 12/40ths, effective April 2009. The Applicant appealed the award to the General Division, alleging that he had resided in Canada for considerably longer than 12 years and therefore should be entitled to a larger pension. The General Division allowed the appeal in part, finding that the Applicant had resided in Canada for 25 years after the age of 18 from January 1, 1957 up to and including December 31, 1982 and that he resumed Canadian residency as of July 1, 2011. The Applicant disputes the findings made by the General Division, as he maintains that he has been a resident of Canada for 37 years, from 1957 onwards, other than from early 1995 to March 12, 2010, and that he should therefore be awarded a pension at the rate of 37/40 of a full pension.

[3] The Applicant filed an application requesting leave to appeal, alleging that the General Division made a number of errors in determining when he was resident in Canada. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[4] Does the appeal have a reasonable chance of success on any of the grounds raised by the Applicant?

SUBMISSIONS

[5] 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.

[6] The Applicant made several submissions under each of these grounds, and addressed virtually each of the 93 paragraphs of the General Division's decision.

[7] After the Applicant filed an application requesting leave to appeal, he filed additional documents and submissions, on September 16, 2015, October 27, 2015, January 26, 2016, February 2, 8, and 23, 2016 and April 1, 4 and 7, 2016.

[8] The Social Security Tribunal provided a copy of the leave materials to the Respondent. However the Respondent did not file any submissions.

ANALYSIS

[9] I need to be satisfied that the appeal has a reasonable chance of success, before leave can be granted: *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

(a) **Paragraphs 1, 3, 13 and 14 of the General Division decision – Form of hearing**

[10] Initially the General Division scheduled a teleconference hearing of the appeal but amended this to a videoconference hearing, in response to the Applicant's objections and request for an in-person hearing.

[11] The Applicant submits that the General Division failed to observe a principle of natural justice, as it failed to provide him with an in-person hearing. He believes that an in-person hearing was the appropriate form of hearing in this case because of his medical

issues. He initially described a loss of hearing in his left ear, but advises that he has since been diagnosed with the following condition:

> …postural/positional vertigo which engenders dizziness unexpectedly, with increased blood pressure inside the cranium and the difficulty in articulating the left hand, the results of surgery and a steel pin inserted in the bottom of the "ulna" at the articulation with the wrist together with the rebuilding of the structure in the left thumb at the hand, which h had become brittle from arthritis.

[12] The Applicant submits that an in-person hearing before the General Division would have provided him with an opportunity to more fully respond to questions.

[13] On November 25, 2014, the Applicant filed an application with the Appeal Division, requesting leave to appeal the decision of the General Division to proceed by way of videoconference. On March 2, 2015, the Appeal Division refused the application for leave to appeal. The Appeal Division Member in that application was not persuaded that the Applicant would be unable to fully present his case by videoconference. She held that a videoconference hearing would adequately address his concerns that his physical restrictions would make a teleconference hearing difficult. She also determined that the application was prematurely brought, and should be brought after the hearing of the matter on its merits.

[14] The Applicant filed an application with the Federal Court of Appeal, for judicial review of the March 2, 2015 decision of the Appeal Division. The application was subsequently transferred to the Federal Court by Order of Justice Rennie dated September 30, 2015, for jurisdictional reasons.

[15] On October 30, 2015, Madam Prothonotary Tabib ordered a stay of the application for judicial review until 45 days following the expiration of all appeal and judicial review rights flowing from the May 23, 2015 decision of the General Division. On November 10, 2015, the Applicant filed a motion with the Federal Court that the Order by Madam Prothonotary Tabib be immediately declared null and void and that the case be continued in the Federal Court without further delay. On December 10, 2015, the Federal Court varied the Order of Madam Prothonotary Tabib dated October 30, 2015, by deleting the words "and judicial review" from paragraph 1 of the Order, and otherwise dismissed the application.

[16] The application for leave to appeal decided on March 2, 2015 was in the context of an interlocutory decision of the General Division. My colleague determined at paragraph 21 that, in the interests of the administration of justice, generally there should be no appeals of interlocutory judgments, barring special circumstances. My colleague found that the application for leave to appeal was premature and should only be brought after a hearing on its merits.

[17] Although my colleague determined that the application for leave to appeal was prematurely brought and although she would have dismissed the application for leave on that basis alone, she also fully addressed the merits of the Applicant's application requesting leave to appeal.

[18] For the most part, I do not see that the Applicant has raised any new issues regarding the hearing before the General Division, which he did not already raise in his previous leave to appeal application and which has not already been addressed by my colleague. Based on the submissions before her, my colleague fully determined the issue of the appropriateness of the form of hearing in the application for leave to appeal filed on November 15, 2014.

[19] However, the Applicant now re-visits the issue of the constitutionality of section 21 of the *Social Security Tribunal Regulations*. The section allows the Social Security Tribunal to hold hearings by way of written questions and answers; teleconferences, videoconferences or other means of telecommunication; or the personal appearance of the parties.

[20] The decision of the General Division indicates that the Applicant had raised but did not pursue any constitutional arguments in support of his appeal to the General Division. He indicated that any written references to constitutional issues in any of his submissions related solely to his form of hearing appeal. The General Division had, by the time of hearing on March 10, 2015, already determined the form of hearing and did not address the Applicant's constitutional arguments.

[21] In his application for leave to appeal filed on November 25, 2014, the Applicant did not challenge the constitutionality of section 21 of the *Social Security Tribunal Regulations.* He now raises that issue before me.

[22] The Appeal Division normally will not exercise its discretion and consider constitutional 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 issues raised by an appellant: *C.F. v. Minister of Employment and Social Development* (February 24, 2016), AD-15-992 (SSTAD) (currently unreported). This should also hold true when an applicant has had a previous application seeking leave to application. The Applicant should not now be permitted to pursue any constitutional arguments, since he did not pursue them in his previous application requesting leave to appeal.

[23] The Applicant also argues that the Supreme Court of Canada has mandated that "in person" hearings will be granted to appellants who requested them prior to the formation of the Social Security Tribunal. This is not accurate. The Supreme Court of Canada has never addressed whether "in person" hearings are required.

[24] The Applicant cited *L.L. v. Minister of Human Resources and Skills Development and A.C.*, 2013 SSTAD 12, a decision of my colleague, in support of his claim to an in-person hearing. The Member there granted a *de novo* hearing before the Appeal Division, based on the appellant's legitimate expectations at the time of filing. In *Alves v. Canada (Attorney General),* 2014 FC 1100, the Federal Court held that it was an error for the Appeal Division to consider an applicant's application based on her legitimate expectations at the time of its filing with the Pension Appeals Board. The Federal Court has clearly determined that there is no entitlement to an in-person hearing for applications filed before the Social Security Tribunal came into operation.

[25] Apart from any constitutional issues, the application for leave regarding the form of hearing has been previously adjudicated by the Appeal Division and I consider the issue *res judicata* before me. As such, the Appeal Division no longer has jurisdiction to determine the issue of the appropriateness of the form of hearing. The Applicant failed to raise the

constitutional issue in his previous application requesting leave to appeal, and I therefore decline to exercise my discretion and hear any constitutional arguments at this juncture.

(b) Paragraph 4 – Service Canada Fredericton file

[26] The Applicant submits that the General Division erred in law in making its decision, by failing to ensure that it had the same information which Service Canada Fredericton had in its possession.

[27] The Applicant is required to prove his claim throughout and adduce sufficient evidence. Service Canada is a separate and distinct entity from the General Division, and it does not necessarily share information with the Social Security Tribunal or the General Division. Had there been any documents or information which the Applicant intended the General Division to consider, it was incumbent upon him to provide that evidence.

(c) Paragraphs 5, 8, 9 and 11 – Respondent's submissions of March 3, 2015

[28] The Applicant informed the General Division at the outset of the hearing that he had not received the Respondent's submissions dated March 3, 2015 (GT32). The General Division provided the Applicant with a brief summary of the Respondent's position. The General Division noted that the Applicant did not request an adjournment of the proceedings.

[29] The Applicant contends that he had not been informed that he could seek an adjournment. It appears that he is suggesting that the General Division failed to observe a principle of natural justice by failing to offer an adjournment of the proceedings.

[30] The Applicant does not now suggest that had he been aware that he could have sought an adjournment, that he would have sought one and would have in due course responded to the Respondent's submissions. The Applicant does not indicate that he would have prepared any differently for the hearing before the General Division, such that he might have, for instance, adduced any additional evidence or called any witnesses. Adjournments are not granted as of right, and the Applicant would not only have had to show that there

was a basis upon which the General Division ought to have granted one, but that he would have been prejudiced otherwise if the hearing were to proceed.

[31] The Applicant advises that he did not receive a copy of the Respondent's submissions until after the hearing had concluded. After receiving the Respondent's submissions, he contacted the Social Security Tribunal and asked the General Division to remove the Respondent's submissions from the record, as information contained therein conflicted with a settlement offer made by the Respondent on February 4, 2015. The fact that information set out in the Respondent's submissions conflicts with a settlement offer appears to be the only concern which the Applicant has in relation to the Respondent's submissions.

[32] The settlement offer is at AD1A-90 and is marked on a "*Without Prejudice"* basis. The General Division did not admit the Respondent's settlement offer into the evidentiary record, so the General Division would have been unaware of any inconsistencies between the Respondent's submissions and its settlement offer. Even so, parties are motivated to endeavor to settle for different reasons, and sometimes arrive at offers for reasons often unrelated to the merits of the claim. Generally, settlement offers are made on a without prejudice basis, so it is not bound by any representations or offers which might have been made. If there were a risk that the terms of a without prejudice settlement offer would be later disclosed in proceedings, this could discourage settlement negotiations.

[33] The Applicant has not identified any information or argument within the Respondent's submissions of March 3, 2015 which he might have disputed or responded to, nor has he adduced any evidence to rebut any of the information or evidence contained within the March 3, 2015 submissions. He does not suggest that the Respondent's submissions would have had any effect on his preparation or presentation, other than it might have coloured consideration of the settlement offer. Nonetheless, I am prepared to grant leave to appeal on this ground. I am satisfied that the appeal has a reasonable chance of success on the basis that the Applicant may have been deprived of the opportunity to fully know and meet the case against him. If so, it cannot necessarily be said that under such circumstances he had been provided with a fair hearing.

[34] Although I have granted leave to appeal on this ground, this in no way prejudges the outcome of the appeal. The Applicant should be prepared to address the concerns which I have raised above, and demonstrate that he might have responded to the March 3, 2015 submissions, had he received them in a timely manner, rather than suggest that he is necessarily entitled to a reassessment or re-hearing.

(d) Paragraphs 6, 8, 10 and 11 – Respondent's settlement offer of February 4, 2015

[35] The Applicant submits that the General Division erred in law by excluding critical evidence. He submits that the General Division should have admitted details of a settlement offer of February 4, 2015 from the Respondent into the evidence. He argues that by failing to do so, the General Division violated his fundamental rights under the Constitution. However, he did not identify which section(s) of the *Canadian Charter of Rights and Freedoms* is alleged to have been violated. Offhand, based on the scant materials regarding a proposed constitutional challenge, I see no merit to this allegation that there is a constitutional right to admit the details of a settlement offer into evidence.

[36] The General Division properly excluded this evidence from the record: *Gorgiev v. Canada (Minister of Human Resources Development)*, 2005 FCA 55 (CanLII). The Respondent might have arrived at a settlement offer for reasons unrelated to the merits of the claim.

[37] Despite my comments above, however, as I have granted leave to appeal, if the Applicant intends to pursue a constitutional argument, he will need to comply with the notice provisions under paragraph 20(1)(a) of the *Social Security Tribunal Regulations.* He should also provide a fulsome record which should include evidence, submissions and the authorities upon which he intends to rely to establish that his "fundamental rights under the Constitution" have been violated. If the Applicant fulfills these requirements, I will extend the time by which the Respondent is permitted to file any submissions.

(e) Paragraph 7 – Request for no publication

[38] The Applicant submits that he asked the General Division not to publish its decision. This does not address any of the enumerated grounds of appeal under subsection 58(1) of the DESDA.

(f) Paragraphs 16, 17, 60, 61, 69, 72, 73, 79 and 80 – Suspension of pension

[39] At paragraph 16, the General Division set out the eligibility requirements for payment of a partial Old Age Security pension. The Applicant submits that the General Division erred in law when it failed to apply subsections 9.(1), 9.(2) and 9.(4) of the *Old Age Security Act*. Subsection 9.(1) deals with suspensions of pension, while subsections 9.(2) and 9.(4) allow for no suspension after 20 years of residence after attaining the age of 18 years. The subsections however deal with suspension of payment of a pension, rather than determining eligibility to a partial pension. I am not satisfied that the appeal has a reasonable chance of success on this ground.

[40] At paragraph 17, the General Division referred to subsection 21(1) of the *Old Age Security Regulations*. The Applicant argues that the General Division erred in referring to the subsection, as it relates to payment of an allowance to survivors. The General Division was referring to the *Old Age Security Regulations*, and not the *Old Age Security Act*. Subsection 21(1) of the *Old Age Security Act* deals with payment of an allowance to survivors, whereas subsection 21(1) of the *Old Age Security Regulations* deals with residency and presence in Canada. I am not satisfied that the appeal has a reasonable chance of success on the ground that the General Division erred in referring to subsection 21(1) of the *Old Age Security Regulations*.

(g) Paragraphs 17 and 20 – *Old Age Security Act* and *Regulations* and entitlement to Guaranteed Income Supplement

[41] The Applicant submits that that the General Division erred in calculating the years in which he was a resident of Canada. The Applicant argues that he resided in Canada for 37 years and was entitled to a partial pension of 37/40 of a full Old Age Security pension, plus

a Guaranteed Income Supplement from 2009 to 2015. This particular submission calls for a reassessment. 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. I am not satisfied that there is a reasonable chance that the Applicant will succeed in demonstrating that a reassessment is appropriate.

[42] The Applicant submits that his yearly applications for a Guaranteed Income Supplement were filed in a timely manner. The General Division determined that it did not have jurisdiction on the issue of the Applicant's Guaranteed Income Supplement and accordingly did not render a decision pertaining to this issue. There is no suggestion by the Applicant that the General Division might have improperly declined jurisdiction. The General Division noted that the Applicant had not sought a reconsideration of the Respondent's initial decision of December 13, 2011 regarding a Guaranteed Income Supplement.

[43] The issue concerning the timeliness of the Applicant's Guaranteed Income Supplement is not properly before me. I am not satisfied that the appeal has a reasonable chance of success on the ground relating to the Applicant's entitlement to a Guaranteed Income Supplement from 2009 to 2015.

(h) Paragraphs 22 to 70 – Erroneous findings of fact

[44] The Applicant alleges that the General Division based its decision on several erroneous findings of fact, in paragraphs 22 to 70. These paragraphs do not represent findings of fact *per se.* Rather, they represent the General Division's summary of the evidence before it. In that regard, I am not satisfied that the appeal has a reasonable chance of success. I will nonetheless address the Applicant's submissions.

i. Paragraph 24 – Proof of residency

[45] The Applicant alleges that the General Division based its decision on an erroneous finding of fact that it made without regard for the material before it, when it found that he "did not provide the date when his residency in Switzerland ceased". The Applicant alleges

that the dates when he left Vermont and returned to Canada were fully documented and had been provided to Service Canada and to Canada Revenue Agency.

[46] The General Division did not make any findings or suggest when the Applicant might have returned to Canada at paragraph 24. I do not find that the General Division misstated the evidence in this paragraph regarding when the Applicant might have returned to Canada, as it did not even address the issue in this paragraph.

[47] The Applicant suggests that the documentation had been provided to Service Canada or to Canada Revenue Agency. As noted above under subheading (b), it was incumbent upon the Applicant to adduce sufficient evidence to substantiate his claims. The General Division relies on the parties to properly file any documents with the Social Security Tribunal, and it could not have been aware of any gaps in the hearing file, if the Applicant did not ensure that he had filed all supporting documentation.

[48] If the Applicant is to succeed on this ground, he must show that the General Division not only based its decision on an erroneous finding of fact, but that it also did so without regard for the material before it. The General Division did not base its decision on when the Applicant ceased residency in Switzerland and took up residency in Vermont. I find that nothing turns on the fact that the General Division did not indicate when the Applicant's residency in Switzerland ceased.

ii. Paragraphs 25 and 45 – Responses in Questionnaire

[49] The General Division examined a Questionnaire completed by the Applicant in support of his claim to an Old Age Security pension. The Applicant listed his residences from January 1, 1957 to the present. The Applicant states that he now "rescinds his signature". He also indicates that the information in the Questionnaire was not wholly accurate, as he had neglected to check his passport entries to verify his dates of entries.

[50] Even if the information contained in the Questionnaire was inaccurate, that does not result in an erroneous finding of fact made by the General Division without regard for the material before it, if it made findings based on the material before it. The General Division should be able to rely on the accuracy of information provided by an applicant. The fact that

the Applicant might have provided inaccurate information is irrelevant to this consideration. I am not satisfied that the appeal has a reasonable chance of success on this ground.

iii. Paragraphs 26, 78.3 and 88 – Applicant's document dated June 30, 2010

[51] The General Division noted that the Applicant had prepared a document titled "Time spent living each country from August 1969 to present". The Applicant submits that the "original document … is a different document than what the Tribunal Member printed" He points out that he had indicated on the document that the information he provided was to the best of his recollection, and that he ought not to have been held to the truth or accuracy of its contents. He also points out that he had provided passport stamps from 1977 to 2010, which the General Division could have reviewed when it determined when he was resident in Canada.

[52] At paragraph 26, the General Division did not purport to reproduce the document in its entirety. The General Division merely summarized the information which the Applicant had provided. Again, the General Division should be able to rely on the accuracy of information provided by an applicant. It is, after all, an applicant's case to prove. I am not satisfied that the appeal has a reasonable chance of success on this ground.

iv. Paragraph 27 – Marital status

[53] The General Division indicated that the Applicant had been separated from his spouse in September 1999. The Applicant submits that this does not reflect his testimony. He explained why the Applicant's spouse left. She had returned to England to look after her father. I do not find that anything turns on this evidence, even if the General Division did not accurately or fully set out the Applicant's testimony.

v. Paragraph 28 - Switzerland

[54] The General Division indicated that an Attestation certified that the Applicant arrived in Switzerland on July 31, 1969 and that he departed on June 2, 1970 for Canada. The Applicant submits that the General Division inferred that the Applicant was evasive and

hiding facts. I do not see that the General Division made any inferences of this nature. I am not satisfied that the appeal has a reasonable chance of success on this ground.

vi. Paragraph 30 - Approval of OAS application

[55] The General Division indicated that the Applicant's application for an Old Age Security pension had been improved and that he had been awarded a partial pension of 12/40ths effective April 2009. The Applicant states that he was so preoccupied with other matters that he did not appeal the Respondent's decision in a timely manner. This cannot be visited upon the General Division and does not fall within any of the enumerated grounds of appeal under subsection 58(1) of the DESDA.

vii. Paragraph 34 – Naming of Respondent and contents of Questionnaire

[56] The General Division indicated that the Applicant had completed a Questionnaire, at the request of the Respondent. The Applicant suggests that the General Division should identify parties by name, so it is clear who is being discussed. This does not sound in an error that falls within subsection 58(1) of the DESDA.

[57] The Applicant brought up additional information regarding his residency, which he had provided to the Respondent's representative. This calls for a reassessment, which is beyond the scope of a leave application.

viii. Paragraph 35 – Banking and U.S. Social Security System

[58] The Applicant suggests that the General Division based its decision on an erroneous finding of fact that he could not have been resident in Canada if he failed to maintain a bank account in Canada. The Applicant indicates that he neglected to advise the General Division that he had opened a new bank account in 2010, in X, Ontario. The General Division in fact indicated that the Applicant testified that he had a bank account in Canada. The fact that he may have neglected to advise that he had opened an account in 2010 in X, Ontario is of no consequence under the circumstances.

[59] The Applicant suggests that the General Division made an erroneous finding of fact in concluding that he could not have been resident in Canada if he contributed to the social security system of "another country(ies)". The Applicant advises that he contributed to only the U.S. Social Security System.

[60] I do not see anywhere within paragraph 35 that the General Division found that the Applicant could not have been resident in Canada if he did not maintain any Canadian bank accounts or if he contributed to the social security system of "another country(ies)". I am not satisfied that the appeal has a reasonable chance of success on this ground.

ix. Paragraph 39 - Dr. Turgeon

[61] The Applicant submits that the General Division failed to observe a principle of natural justice, as it cast doubt on the credibility of his witness. During the hearing, the General Division determined that Dr. Turgeon's letter was irrelevant to the issues at hand. The Applicant submits that the General Division could have called Dr. Turgeon as a witness and examined him on the letter.

[62] The General Division is an independent and impartial administrative tribunal. It acts for neither party to a proceeding. Simply put, it role is to consider and assess the evidence before it and to come to a determination based on that evidence. If the Applicant wished to rely on Dr. Turgeon's letter, he was entitled to call him as a witness.

[63] The General Division in fact did not determine that Dr. Turgeon's letter was irrelevant. Rather, it assigned little weight to the letter, for the reasons set out in paragraph 83. The General Division determined that the letter was of little assistance, as it lacked specificity.

[64] The issue of the weight to be ascribed to evidence does not fall within any of the enumerated grounds of appeal under subsection 58(1) of the DESDA. The Federal Court of Appeal has declined to interfere with a decision-maker's assignment of weight to the evidence, holding that that properly is a matter for "the province of the trier of fact": *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Similarly, I would defer to the General Division's assessment of the evidence. As the trier of fact, it is in the best position

to assess the evidence before it and to determine the appropriate amount of weight to assign. The Appeal Division does not hear appeals on a *de novo* basis and is not in a position to assess the matter of weight. I am therefore not satisfied that the appeal has a reasonable chance of success. I cannot conclude that the General Division should have placed more weight or given greater consideration to the medical report of the Applicant's family physician.

x. Paragraphs 40 and 41 – Reconsideration decision sought

[65] The Applicant raises issues that were previously addressed above, regarding provisions of the *Old Age Security Act*, and information which had provided to Service Canada.

[66] The Applicant indicates that he sought a reconsideration of a decision made in December 2011. He alleges that he has yet to receive a reconsideration decision from the Respondent. While this does not speak to any of the grounds of appeal under subsection 58(1) of the DESDA, I note that at paragraph 41 the General Division appears to refer to a reconsideration decision made by the Respondent. The Respondent typically does not revisit its reconsideration decisions, as by then the appropriate step is for an applicant to appeal a reconsideration decision to the General Division.

xi. Paragraph 42 - U.S. Social Security coverage record

[67] The General Division noted that the Applicant has 42 quarters of coverage of U.S. Social Security. The General Division also noted that the Applicant had contributions in all four quarters for each year between 1996 and 2007, other than in 2001 and 2002, when he contributed for one quarter.

[68] The Applicant argues that the General Division erred in finding that this was conclusive evidence that he could not have been resident in Canada. The Applicant explains that he is entitled to receive Social Security benefits from the U.S. as he maintained a continuous operation there. He denies that there is any relationship between U.S. Social Security and U.S. residency.

[69] There is no indication in paragraph 42 or elsewhere in the General Division decision that it determined that the Applicant could not have been resident in Canada if he were either contributing to or receiving U.S. Social Security benefits. I am not satisfied that the appeal has a reasonable chance of success on this ground.

xii. Paragraph 46 – Vehicles and business in X

[70] The General Division noted that the Applicant had provided photographs of his business on X Street in X. The Applicant explained the loss of his business. This does not address any of the enumerated grounds of appeal under subsection 58(1) of the DESDA.

xiii. Paragraph 47 – Mailing addresses

[71] The General Division indicated that on August 22, 2013, the Applicant changed his mailing address for all appeal-related communications, from X to X, Ontario. The Applicant explained that he changed his mailing address, as it would enable him to quickly communicate with the Social Security Tribunal. This does not address any of the enumerated grounds of appeal under subsection 58(1) of the DESDA.

xiv. Paragraphs 48 and 88 – Tenancy agreement

[72] The Applicant's son entered into a tenancy agreement for a term from July 1, 2010 to June 30, 2011. The Applicant was named as a guarantor. The Applicant explains that he continued to remain a Canadian resident and either slept in X, Ontario, or when in X, stayed with his son. This calls for a reassessment and does not address any of the enumerated grounds of appeal under subsection 58(1) of the DESDA.

xv. Paragraph 49 – Mr. B.

[73] The Applicant alleges that Mr. B. accompanied him to the hearing before the General Division. He expected Mr. B. to give evidence and confirm that the Applicant was a resident of Canada after July 2011. The Applicant alleges that the General Division barred Mr. B. from giving evidence, on the basis that only attorneys were permitted to participate in hearings before the General Division.

[74] The Applicant has not substantiated these allegations by providing the timestamps of the hearing before the General Division. If these allegations are borne out, excluding Mr. B. from the hearing could have resulted in a breach of procedural fairness.

[75] That said, I consider this issue moot given that the General Division found that the Applicant had resumed his residence in Canada as of July 1, 2011.

xvi. Paragraphs 51 and 78.3 – Passport stamps

[76] The Applicant states that the evidence before the General Division consisted of his passports, documenting his travels from approximately March 1977 to March 2010. The Applicant submits that the General Division overlooked a five-page document titled "PASSPORT STAMPS IN PASSPORTS FROM 1977 TO 2010" which he advises details all of his entries into foreign countries and every return to Canada or the United States.

[1] The Applicant suggests that the General Division should have referred to this five-page document in its decision. However, the documentary record before the General Division appears to have been quite extensive. It is trite to say that a decision-maker is not required to address all of the evidence before it, unless it is of sufficient probative value to the issues at hand. In *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 (CanLII), 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.

[77] The passport entries would not have been conclusive evidence of Canadian residency. Nonetheless, the General Division did consider this five-page document. It specifically referred to the document in paragraph 81. I am not satisfied that the appeal has a reasonable chance of success on this ground.

xvii. Paragraph 56 – Family and work history

[78] The Applicant provides some background information regarding his wife and children and his work history. He specifically mentioned the dates 1964, 1968, 1970 and 1974, to underscore his residency in Canada at that time. Given that the General Division found that the Applicant had been resident in Canada after age 18 from January 1, 1957 up to and including December 31, 1982, I find these submissions moot. Additionally, they do not address any of the enumerated grounds of appeal under subsection 58(1) of the DESDA.

xviii. Paragraphs 60, 77 and 78.6 – X residency

[79] The Applicant submits that the General Division erred when it wrote that he resided in an apartment above his store on X Street, X from 1987 to 1992 or 1993, and that he then moved to an apartment on X Avenue and subsequently another apartment on the same street. The Applicant alleges that he in fact resided at the apartment above his store from 1987 to 1990, and that he lived in two different apartments from 1991 to May 1994 (although I note that this appears to conflict with his submissions at page 22, where he states that he occupied the space as living quarters until spring 1978 when he took over an apartment in Outremont). The Applicant alleges that this erroneous finding of fact demonstrates a concerted effort on the part of the General Division Member to limit his years of residence in Canada.

[80] Even if I should accept that the General Division misstated the evidence by writing that the Applicant resided at the apartment on X Avenue up to 1992 or 1993, I do not see how this supports the Applicant's allegation that the General Division Member tried to limit his years of residence in Canada. After all, the dates written by the General Division largely, if not altogether, coincide with the dates which the Applicant alleges he lived in Canada. I am not satisfied that the appeal has a reasonable chance of success on this ground.

xix. Paragraph 62 – Quebec Health Card

[81] The Applicant submits that the General Division misstated the evidence regarding his health care in Canada. He suggests that the General Division did so to minimize his years of residency. He advises that he has been seeing Dr. Gerstein, a dermatologist, since 1969,

and that records of his visits still exist. I do not see any fundamental inconsistency between the General Division's summary of the evidence and the Applicant's advice that he has been seeing Dr. Gerstein since 1969. The General Division wrote that the Applicant has been regularly seeing the X dermatologist since 1969. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(i) Paragraph 72 - Submissions of Respondent

[82] The Applicant argues that there are a number of erroneous findings of fact in paragraph 72 of the decision of the General Division. Paragraph 72 simply represents the arguments of the Respondent, and not any findings of fact.

(j) Analysis section - Paragraphs 77 to 92

[83] The Applicant largely identifies findings of fact made by the General Division. He disputes the findings and argues that the Member should have come to a different conclusion regarding his residency after December 31, 1982 and up to July 1, 2011, based on the evidence before her. He claims that the General Division should not have relied on his letters in which he advised when he had been resident in Canada. He claims his letters were unreliable as he prepared them without referring to his passport entries. He argues that the entries in his passport should be conclusive evidence of his residency. He claims that since September 11, 2001, "there is constant diligence from U.S.B.P. on stamping foreigner passports at all U.S.A. ports of entry". He also argues throughout paragraphs 77 to 92 inclusive that the General Division Member should have applied section 9 of the *Old Age Security Act*.

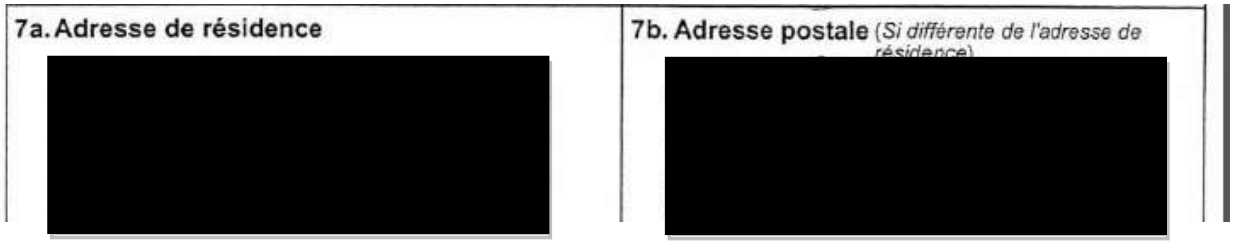
[84] I have previously addressed section 9 of the *Old Age Security Act.* I have also indicated above that a reassessment is beyond the scope of an appeal as it does not address any of the enumerated grounds of appeal under subsection 58(1) of the DESDA.

[85] I have also indicated that for an erroneous finding of fact to have arisen, the General Division not only based its decision upon that finding of fact, but that it had also been made without regard for the evidence before it. The General Division was entitled to

rely on the accuracy of the evidence before it, particularly as it had been provided by the Applicant. There was extensive documentation before the General Division and it was up to the General Division to assess and weigh that evidence, and accept whether entries in the Applicant's passport could be accepted as conclusive evidence of his residency.

[86] The Applicant alleges that the General Division Member was biased, as she found that he reported he was residing in the United States in June 2010. The General Division Member relied on the Applicant's application for an Old Age Security pension. The Applicant denies that he provided a U.S. address for residence, and claims that the address represents a postal office box. That may be so, but nonetheless the Applicant provided a U.S. address as his address of residence.

OAS Application



[87] The Applicant has not raised any new grounds in these final paragraphs, which he has not already raised. I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[88] The Application for leave to appeal is granted on the sole ground that the General Division may have failed to observe a principle of natural justice, when it did not offer or suggest that the Applicant could seek an adjournment of the proceedings after he discovered that he had not received the Respondent's submissions. And, depending upon whether the Applicant complies with the notice requirements under paragraph 20(1)(a) of the *Social Security Tribunal Regulations*, and any additional submissions from the Applicant, I am

prepared to review the ground that there may have been a violation of the Applicant's *Charter* rights.

[89] I invite the parties to make submissions in respect of the form of hearing (i.e. whether it should be conducted by teleconference, videoconference or other means of telecommunication, whether it should be held in-person or conducted by exchange of written questions and answers). If a party requests a hearing other than by exchange of written questions and answers, I invite that party to provide an estimate of the time required to prepare oral submissions.

[90] This decision granting leave does not in any way prejudge the result of the appeal on the merits of the case.

Janet Lew
Member, Appeal Division