Federal Court  Cour fédérale

Date: 20090623

Docket: T-1793-07

Citation: 2009 FC 654

Ottawa, Ontario, June 23, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MARIA POON

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Canada Pension Plan/Old Age Security Commissioner of Review Tribunals (the tribunal) dated September 7, 2007. The tribunal determined that the Respondent was incapable of forming or expressing an intention to make an application at an earlier time and deemed September 2003, the month of the Respondent's sixty-fifth birthday, as the date of her application for an Old Age Security (OAS) pension and Guaranteed Income Supplement (GIS).

Factual Background

[2] Maria Poon was born in the Philippines on September 28, 1938. She has lived in Canada since 1963 and she turned 65 years old in 2003. In June 2003, the Respondent completed an application for an OAS pension. However, she did not submit this application until January 20, 2005. The Respondent also submitted applications for the GIS for 2003-2004 and 2004-2005 respectively on January 21, 2005.

[3] By letter dated March 29, 2005, the Respondent explained why she did not file her OAS application in June 2003. She advised that following the death of her mother, she was informed by family members that she was adopted and left the Philippines with her adopted mother in 1949. She further advised that due to a house fire in 1970, she lost all her birth certificate information. Due to complications following the fire and her adoption status, the Respondent hesitated searching for her birth information. The Respondent also admitted that she was advised that she would receive retroactive payments and she thought it would be "nice to receive a lump sum payment". She therefore did not see the urgency in filing the application. She further admitted to being a procrastinator by nature, to filing her income tax returns late a few times and to "not purchasing RSP's on time". The Respondent did not state or suggest that she had applied late due to medical incapacity.

[4] By letter dated April 13, 2005, the Minister granted the Respondent's application for an OAS pension and GIS with the maximum retroactive payment of benefits allowed under the

Canada Pension Plan, R.S.C. 1985, c. C-8 (the Plan). The Respondent's applications were deemed to have been made in January 2005 and the effective payment date for the payment of benefits was therefore February 2004. The Respondent was notified in the same letter that she could appeal this decision to the Minister within 90 days from the date of receipt of the letter.

[5] By letter dated June 6, 2005, the Respondent requested a reconsideration of the Minister's decision and suggested for the first time that she had submitted her application late due to a medical condition. Specifically, the Respondent attached a questionnaire completed by her physician, Dr. Kovacs, wherein it was noted that the Respondent did not submit her application sooner as she was "forgetful and inattentive". Dr. Kovacs did not state or provide any additional objective medical reports or investigations at this time to establish that the Respondent was unable to submit an application earlier due to a medical incapacity.

[6] By letter dated January 5, 2006, the Minister reconsidered and confirmed the decision granting the Respondent an OAS pension with an effective payment date of February 2004.

[7] By letter to the tribunal dated April 4, 2006, the Respondent requested an appeal of the Minister's decision denying her an earlier deemed date of application because of her incapacity. By letter dated June 8, 2006, the Minister requested that the Respondent complete a Declaration of Incapacity in order to process her request for retroactive OAS pension payments.

[8] In the Declaration of Incapacity, dated July 28, 2006, the Respondent's psychiatrist, Dr. Plante, indicated that the Respondent's condition made her incapable of forming or expressing the intention to make an application and that the Respondent's incapacity began in April 1996 and was ongoing on the date of the declaration. No additional medical reports or investigations were appended to the report but Dr. Plante referred to a letter, dated March 22, 2004, which was addressed to the tribunal. In this letter, Dr. Plante noted that the Respondent was a patient of the St. Luc Community Mental Health Centre from April 1996 until 2001 for "état délirant paranoïde".

[9] By letter dated September 26, 2006, the Minister denied the Respondent's request for an earlier retroactive date of payment of her OAS pension because the additional information contained in the Declaration of Incapacity did not confirm continuous incapacity prior to her initial application date of January 2005.

[10] The appeal to the tribunal was heard on June 20, 2007 in Montreal, Quebec.

Issues

[11] The Applicant submits the following issues to be determined in this application:

1. Did the tribunal err in law in its consideration and determination that the Respondent was incapable of forming or expressing an intention to make an application for OAS benefits and GIS within the meaning of subsection 28.1(2) of the *Old Age Security Act*?

2. Did the tribunal base its decision on an erroneous finding of fact that it made in a perverse or capricious manner without due regard to the evidence?

3. Did the tribunal provide adequate reasons to support its decision?

Impugned Decision

[12] The tribunal determined that the Respondent was not capable of expressing or forming the intention to make an application for Old Age Security Pension and Guaranteed Income Supplement under subsections 8(1) and 8(2) and subsections 11(1), 11(2) and 11(3) of the *Old Age Security Act,* R.S.C., 1985, c. O-9 (the Act) before January 2005.

[13] The issue in this case is to determine whether Maria Poon is eligible to receive payment beyond the maximum retroactivity period of 12 months because she was incapable of forming or expressing an intention to make an application before the day on which her application was actually made in January 2005, as per subsections 8(1) and 8(2) of the Act and subsections 3(1) and 3(2) of the *Old Age Security Regulations,* C.R.C., c. 1246.

[14] The incapacity provisions protect the benefit eligibility of persons who are unable to apply for benefits on time because of incapacity. In particular, the provisions allow for an earlier deemed date of application for a benefit if the Minister is satisfied that an individual was incapable of forming or expressing the intention to make a timely application and the incapacity was continuous.

[15] The Respondent admitted at the hearing that she failed to submit her applications in 2003 because she is a bit lazy and somewhat of a procrastinator but also, because she did not know the

Act limited the retroactivity of payments. She testified that she signed her applications in 2003 but did not mail them because she was waiting for documents from the Embassy of the Philippines to establish her birth date. She had also lost documents in a fire at her apartment in Montreal in 1970.

[16] Following this fire, which caused the Respondent much trauma, she started to consult a psychiatrist, although she was not able to tell the tribunal his name. The Respondent's testimony often came back to the fire of 1970, the politicians in power at the time and the lawyers involved in her settlement lawsuit. The tribunal noticed that she seemed confused, disoriented and unable to focus on the matter before the tribunal. She also mentioned several times "that people were trying to do things to her".

[17] The note from Dr. Plante dated March 22, 2006 indicates that the Respondent had been a patient of his clinic from 1996 until 2001. Dr. Plante stated that:

> Elle demeure confuse et désorientée dans ses affaires personnelles, incapable de tenir ses affaires à jour avec diligence… Elle demeure une personnalité avec syndrome anxiété sévère et à coloration interprétative et paranoïde.

[18] A note from Dr. Kovacs states that:

> I certify that this patient who is under my care since 1982 has personality problems mainly in short [and] long term memory difficulties and needs assistance to manage her affairs.

[19] The tribunal found that the Respondent's testimony was a confirmation of the medical reports which relate to her state of mind since 1982. Given the Respondent's testimony and the medical reports, the tribunal concluded that the Respondent was not capable of expressing or

forming the intention to make an application before January 2005. The tribunal further found on such evidence that this incapacity has been continuous since 1982 and therefore existed when Maria Poon turned 65 years old in September 2003.

[20] The Respondent's application for an OAS pension and her applications for the GIS should therefore be deemed to have been made in September 2003. The tribunal found that the requirements provided by the Act in subsection 28.1(2) were met and the Respondent's application should be deemed to have been made in the month proceeding the first month in which the benefit could have commenced to be paid, which, in this instance, is on the Respondent's 65th birthday.

Relevant Legislation

[21] The relevant legislative provisions are found at Appendix A at the end of this document.

Analysis

Standard of Review

[22] The Applicant submits that section 83 of the Plan provides for an appeal, with leave, from decisions of the Tribunal to the Pension Appeals Board (PAB). Decisions of the PAB on questions of law are reviewable on a standard of correctness (*Spears v. Canada*, 2004 FCA 193, 320 N.R. 351 at paras. 9-11; *Canada (Minister of Human Resources Development) v. Scott*, 2003 FCA 34, 300 N.R. 136 at para. 7).

[23] The Applicant argues that the tribunal and the PAB are both statutory bodies that perform similar functions and exercise similar authority and powers. For example, both the tribunal and the

PAB have equal powers under the Plan to confirm or vary a decision made by the last decision-maker and to take any action that might have been taken by the last decision-maker (Plan, subsections 82(11) and 83(11)). Moreover, subsection 84(1) of the Plan gives both the tribunal and the PAB the authority to determine questions of law and fact. This subsection further provides that the decisions of a tribunal and of the PAB are final and binding for all purposes of the Plan, except as provided by the Plan.

[24] Based on the foregoing, the Applicant alleges that decisions of the tribunal on questions of law should be accorded the same degree of deference as is accorded to decisions of the PAB. Decisions of the tribunal on questions of law should therefore be reviewed on the same standard of correctness that applies to decisions of the PAB. Therefore, a reviewing Court must intervene, if the decision of the Commissioner of Review Tribunals is incorrect.

[25] Here, there are three questions: first, the application in law of incapacity pursuant to subsection 21.8(2)(1) of the OAS Act where the standard of review is correctness; second, the capacity of the Respondent to form or to express the intent to apply for a Plan disability benefits, which is a question of mixed law and fact where the standard of review is one of reasonableness; and third, the adequacy of the reasons of the PAB decision, which is a question of law where the standard of review is one of correctness. I concur with the Applicant's analysis of the appropriate standards of review (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[26] The providing of meaningful reasons is necessary in order to ensure procedural fairness and natural justice for the Applicant (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Adu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 565, 139 A.C.W.S. (3d) 164) and is reviewable on the standard of correctness.

Applicant's Arguments

a) Did the tribunal err in law in its consideration and determination that the Respondent was incapable of forming or expressing an intention to make an application for OAS benefits and GIS within the meaning of subsection 28.1(2) of the Old Age Security Act?

[27] The Applicant argues that the tribunal erred in law in its consideration and determination that the Respondent was incapable of forming or expressing an intention to apply for a benefit pursuant to subsection 28.1(2) of the Act. The Applicant submits that the same wording for incapacity is used under subsection 28.1(2) of the Act and subsection 60(9) of the Plan. The legal test developed under subsection 60(9) of the Plan is therefore the same test that applies under subsection 28.1(2), namely, whether the person who handles one's personal affairs in a diligent manner does not make one incapable of forming or expressing an intention to apply for a benefit.

[28] In its reasons, the tribunal adopted the evidence of Dr. Kovacs that the Respondent "has personality problems mainly in short [and] long term memory difficulties and needs assistance to manage her affairs". However, Dr. Kovacs did not provide any objective evidence to support this opinion. Moreover, the Applicant submits that requiring assistance to manage one's affairs, particularly at the Respondent's age, does not make one incapacitated.

[29] The terms used in subsection 28.1(2) of the Act are not whether a person has been incapable of making an application, but rather whether a person is incapable of *forming or expressing an intention* to make an application. Furthermore, the incapacity must be continuous (subsection 28.1(3) of the Act; *Goodacre v. Canada (Minister of Human Resources Development),* 2000 LNCPEN 19, Appeal No. CP07661, June 21, 2000 (P.A.B.)). The medical reports and the activities performed by the Respondent during the alleged period of incapacity are fundamental to a determination of incapacity.

[30] When interpreting section 28.1 of the Act, the question is not whether a person is capable of dealing with the consequences of an application, but rather whether that person was capable of forming an intention to apply or not (*Morrison v. Canada (Minister of Human Resources Development),* 1997 LNCPEN 49, Appeal No. CP04182, May 4, 1997 (P.A.B.)). In the case at bar, the tribunal applied a much less restrictive test for incapacity. In the presence of equivocal medical evidence, the tribunal equated the Respondent's personal management and personality problems with being incapable of forming or expressing an intention to apply for a benefit.

[31] The Applicant further submits that the tribunal made an error in law in deeming the Respondent disabled as of September 2003 (at para. 16 of the decision), then contradicting itself (at para. 19) when stating that the Respondent's application should be deemed to have been made in the month preceding the first month in which the benefit could have commenced to be paid which in this instance is on the Respondent's 65th birthday, which would mean October 2003.

[32] There is cogent evidence that the Respondent formed the intention to perform various activities and made decisions before she submitted her application for OAS and GIS benefits in January 2005 but none of these activities were addressed in the tribunal's reasons. For example, the Respondent formed an intention to complete and sign an application for an OAS pension in June 2003 and she also formed an intention to complete and sign applications for a GIS supplement for 2003-2004 and 2004-2005, which she submitted in January 2005. She also formed the intention to put $3,667 in her RRSP between July 2004 and June 2005, as well as the intention to apply for and collect a disability pension form the Régime de rente du Québec, which was stopped in October 2003.

[33] The Respondent formed the intention to write a letter to the Embassy of the Philippines in January 2005 requesting assistance in tracing her birth date and other related information and she formed the intention to explain why she did not apply for benefits prior to January 2005. In a relatively detailed letter dated March 29, 2005, the Respondent noted that her adoption status and complications following a house fire in which she lost her birth certificate information delayed her from handing in her application earlier. The Respondent also admitted to being a procrastinator and thought "it would be nice to receive a lump sum payment" and "did not feel the urgency to do what I was required". Moreover, the Respondent recognized "the folly" of delaying the submission of her application and apologized for the "inconvenience this has caused your department in due process of my case".

[34] There was no evidence on file that the Respondent appointed a Power of Attorney, that she was under tutorship or curatorship, or that she had any regular assistance in managing her personal affairs. In addition, the Applicant notes that there is no evidence on file that the Respondent was institutionalized or unable to live independently at any time prior to January 2005.

[35] The Applicant submits that the tribunal made an error in law in misapplying the legal test under subsection 28.1(2) of the Act and by not considering the Respondent's activities during the alleged period of incapacity. The Respondent made several decisions during this period which confirm that she was capable of forming and expressing her intentions.

b) Did the tribunal base its decision on an erroneous finding of fact that it made in a perverse or capricious manner without due regard to the evidence?

[36] The Applicant advances that the tribunal did not acknowledge the lack of objective medical evidence.

[37] The tribunal only had reports from two doctors, Dr. Kovacs and Dr. Plante and neither of these reports included objective medical findings such as tests or results from examinations. Dr. Plante wrote a letter to the tribunal, dated March 22, 2004, which summarized the Respondent's medical history. In the report, which is difficult to read, Dr. Plante noted that the Respondent was a patient of the St. Luc Community Health Care Centre "pour état délirant paranoïde" from April 1996 until July 2001, which is prior to the period of alleged incapacity and thus is irrelevant.

[38] Dr. Kovacs submitted a short letter dated November 27, 2006 written on a prescription note addressed “to whom it may concern”, in which he opined that the Respondent had been under her care since 1982 and had personality problems engendering memory difficulties. The tribunal relied on this short letter to conclude that the Respondent was incapacitated since 1982 as there was no other medical evidence before the tribunal to support this conclusion. The tribunal also disregarded evidence from Dr. Kovacs submitted in a questionnaire, dated June 2005, in which Dr. Kovacs noted that the reason the Respondent did not submit an application sooner was because she was merely “forgetful and inattentive” with no mention of incapacity. The tribunal therefore ignored medical evidence that indicated the Respondent was merely inattentive but not incapacitated within the meaning of the Act.

c) Did the tribunal provide adequate reasons to support its decision?

[39] The Applicant submits that the reasons provided by the tribunal in support of its decision are inadequate, as per *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (C.A.) at paras. 17-21, where the Federal Court of Appeal found that adequate reasons “are those that serve the functions for which the duty to provide them was imposed.”

[40] The duty to provide an adequate analysis of the evidence does not vary depending on the party seeking judicial review (*Mahy v. Canada*, 2004 FCA 340, 327 N.R. 287 at para. 13; *Canada (Minister of Human Resources Development) v. Quesnelle*, 2003 FCA 92, 301 N.R. 98 at paras. 11-12). Furthermore, adequate reasons offer significant benefits not only to the parties, but to other

claimants affected or potentially affected by the decision-maker's decision (*Baker*, above at para. 39).

[41] While there may have been conflicting evidence regarding the Respondent's capacity to form or express an intention to make an application for benefits, the tribunal did not explain why it disregarded evidence on file regarding the Respondent's capacity. Specifically, the tribunal did not explain why it ignored evidence regarding the Respondent's capacity to form the intent to carry out various activities prior to January 20, 2005, including her capacity to:

a. Complete and sign an application for OAS benefits in 2003;
b. Recognize that she needed professional help;
c. Decide to seek professional medical attention on her own between 1996 and 2001;
d. Inquire about her birth certificate from the Philippine embassy in 2005;
e. Submit her application for OAS and GIS benefits in 2005 on her own;
f. Invest in her RRSP; and
g. Apply for and receive a Québec disability pension.

[42] In addition, the tribunal did not explain why it concluded the Respondent was incapacitated despite a marked lack of medical evidence on file to support this determination. In essence, the medical evidence before the tribunal consisted of two brief medical notes from Dr. Kovacs and a two-page handwritten report and Declaration of Incapacity from Dr. Plante, none of which are supported by objective medical findings. The tribunal did not have the benefit of any detailed psychiatric examinations, investigations or clinical notes detailing the Respondent's mental status prior to January 2005.

[43] Furthermore, the Applicant argues that the medical evidence was equivocal. Dr. Plante stated that the Respondent was isolated, easily influenced, made friends with anyone and that she eventually realized her error and asked for professional help while Dr. Kovacs noted that the Respondent required assistance to manage her personal affairs. However, neither of her treating physicians expressly stated that Ms. Poon required institutionalization, tutorship or curatorship, or constant supervision due to mental illness or incapacity.

[44] Although Dr. Kovacs said she attended the Respondent from 1982, she did not provide any objective medical evidence of incapacity, much less continuous incapacity. Similarly, Dr. Plante's hand-written letter addressed to the tribunal in which she concluded that the Respondent had personality problems and long and short-term memory problems but did not provide any objective evidence to support her opinion. The tribunal failed to adequately canvass this opinion, properly contextualize it and indicate why it preferred these medical opinions over cogent contradictory evidence of the Respondent's ability to form or express her intentions. In addition, mere personality and memory problems do not constitute incapacity under the provisions of the Act.

[45] The tribunal also failed to explain why it determined the Respondent was incapacitated in the face of other contradictory evidence from the Respondent, including her failure to mention the issue of medical incapacity or a mental illness in her initial application for an OAS pension. Instead, the issue of incapacity did not arise until she requested a reconsideration of the Minister's initial decision, which was nearly seven months after her initial application was made.

[46] Moreover, the tribunal failed to explain why it totally disregarded written and oral evidence from the Respondent who explained that she did not apply for benefits earlier because she was a procrastinator; she thought it would be nice to receive a lump sum payment; and she was not aware of the limited retroactivity on the payment of benefits. The tribunal's reasons therefore fail to provide sufficient guidance regarding the basis for the decision and, as a result, are inadequate.

Respondent's Arguments

[47] The Respondent was served personally with the application but did not file an appearance. The Court does not have the benefit of her submissions.

Analysis

[48] The primary issue in the case at bar is whether the Board made a reviewable error in concluding that the Respondent was incapable of forming or expressing an intention to make an application for an OAS pension and GIS benefits within the meaning of the Act.

[49] In *Sedrak v. Canada (Minister of Social Development)*, 2008 FCA 86, 377 N.R. 216, the Federal Court of Appeal recently stated that the capacity to form the intention to apply for benefits is not different in kind from the capacity to form an intention with respect to other choices which present themselves to an applicant. The fact that a particular choice may not suggest itself to an applicant because of his world view does not indicate a lack of capacity.

[50] In *Morrison*, above at para. 5, the Pension Appeals Board stated that:

> … The activities of the individual concerned during that period will be particularly significant if the expert medical opinions are of a general, varied or equivocal nature and perhaps not fully or adequately supported by medical evidence, and failure to apply for a disability pension at an earlier date. Moreover, the question of what occurred to "trigger" the application when it was in fact and finally made, with the required capacity present, will be an interesting and significant one. …

[51] This approach was recently approved by the Federal Court of Appeal in *Canada (Attorney General) v. Danielson*, 2008 FCA 78, 165 A.C.W.S. (3d) 560 at para. 7 and *Canada (Attorney General) v. Kirkland*, 2008 FCA 144, 167 A.C.W.S. (3d) 417 at para. 7.

[52] The medical notes of Dr. Plante and Dr. Kovacs are not detailed enough for this Court to conclude that the Respondent was incapable of forming an intention to apply for an OAS pension and GIS benefits between June 2003 and January 20, 2005.

[53] The various activities performed by the Respondent and mentioned at paragraph 41 above, was neither addressed nor analyzed by the Board. This omission is a misapplication of the legal test to find if the evidence supports a conclusion that the Respondent was incapable of forming an intention to apply for an OAS pension and GIS benefits in 2003 (*Danielson*, above at para. 11).

[54] This error warrants the intervention of the Court.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed. The decision of the Board dated September 7, 2007 is set aside and the matter referred back to a differently constituted panel for re-determination, without costs.

"Michel Beaudry"
Judge

APPENDIX A

Relevant Legislation

Old Age Security Act, R.S.C., 1985, c. O-9:

28.1 (1) Where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that the person was incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

28.1 (1) Dans le cas où il est convaincu, sur preuve présentée par une personne ou quiconque de sa part, qu'à la date à laquelle une demande de prestation a été faite, la personne n'avait pas la capacité de former ou d'exprimer l'intention de faire une demande de prestation, le ministre peut réputer la demande faite au cours du mois précédant le premier mois au cours duquel le versement de la prestation en question aurait pu commencer ou, s'il est postérieur, le mois au cours duquel, selon le ministre, la dernière période pertinente d'incapacité de la personne a commencé.

(2) Where an application for a benefit is made by or on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that

(2) Le ministre peut réputer une demande de prestation faite au cours du mois précédant le premier mois au cours duquel le versement de la prestation en question aurait pu commencer ou, s'il est postérieur, le mois au cours duquel, selon le ministre, la dernière période pertinente d'incapacité de la personne a commencé, s'il est convaincu sur preuve présentée par la personne ou quiconque de sa part :

(a) the person was incapable of forming or expressing an intention to make an application before the day on which the application was actually made,

a) que la personne n'avait pas la capacité de former ou d'exprimer l'intention de faire une demande de prestation avant la date à laquelle la demande a réellement été faite;

(b) the person had ceased to be so incapable before that day, and

b) que la période d'incapacité de la personne a cessé avant cette date;

(c) the application was made

c) que la demande a été faite :

(i) within the period beginning on the day on which that person had ceased to be incapable

(i) au cours de la période — égale au nombre de jours de la période d'incapacité mais ne pouvant

and comprising the same number of days, not exceeding twelve months, as in the period of incapacity, or

(ii) where the period referred to in subparagraph (i) comprises fewer than thirty days, not more than one month after the month in which that person ceased to be so incapable,

the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

(3) For the purposes of subsections (1) and (2), a period of incapacity must be a continuous period, except as otherwise prescribed.

(4) This section applies only to persons who were incapacitated on or after January 1, 1995.

dépasser douze mois — débutant à la date à laquelle la période d'incapacité de la personne a cessé,

(ii) si la période visée au sous-alinéa (i) est inférieure à trente jours, au cours du mois qui suit celui au cours duquel la période d'incapacité de la personne a cessé.

(3) Pour l'application des paragraphes (1) et (2), une période d'incapacité est continue, sous réserve des règlements.

(4) Le présent article ne s'applique qu'aux personnes devenues incapables le 1er janvier 1995 ou après cette date.

Old Age Security Regulations, C.R.C., c. 1246:

3. (1) Where required by the Minister, an application for a benefit shall be made on an application form.

(2) Subject to subsections 5(2) and 11(3) of the Act, an application is deemed to have been made only when an application form completed by or on behalf of an applicant is received by the Minister.

3. (1) Si le ministre l'exige, la demande de prestation doit être présentée sur une formule de demande.

(2) Sous réserve des paragraphes 5(2) et 11(3) de la Loi, une demande n'est réputée présentée que si une formule de demande remplie par le demandeur ou en son nom est reçue par le ministre.

Canada Pension Plan, R.S.C. 1985, c. C-8:

60. (8) Where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or

60. (8) Dans le cas où il est convaincu, sur preuve présentée par le demandeur ou en son nom, que celui-ci n'avait pas la capacité de

on behalf of that person, that the person had been incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

former ou d'exprimer l'intention de faire une demande le jour où celle-ci a été faite, le ministre peut réputer cette demande de prestation avoir été faite le mois qui précède celui au cours duquel la prestation aurait pu commencer à être payable ou, s'il est postérieur, le mois au cours duquel, selon le ministre, la dernière période pertinente d'incapacité du demandeur a commencé.

(9) Where an application for a benefit is made by or on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that

(9) Le ministre peut réputer une demande de prestation avoir été faite le mois qui précède le premier mois au cours duquel une prestation aurait pu commencer à être payable ou, s'il est postérieur, le mois au cours duquel, selon lui, la dernière période pertinente d'incapacité du demandeur a commencé, s'il est convaincu, sur preuve présentée par le demandeur :

(a) the person had been incapable of forming or expressing an intention to make an application before the day on which the application was actually made,

a) que le demandeur n'avait pas la capacité de former ou d'exprimer l'intention de faire une demande avant la date à laquelle celle-ci a réellement été faite;

(b) the person had ceased to be so incapable before that day, and

b) que la période d'incapacité du demandeur a cessé avant cette date;

(c) the application was made

c) que la demande a été faite, selon le cas :

(i) within the period that begins on the day on which that person had ceased to be so incapable and that comprises the same number of days, not exceeding twelve months, as in the period of incapacity, or

(i) au cours de la période — égale au nombre de jours de la période d'incapacité mais ne pouvant dépasser douze mois — débutant à la date où la période d'incapacité du demandeur a cessé,

(ii) where the period referred to in subparagraph (i) comprises fewer than thirty days, not more than one month after the month in which that person had ceased to be so incapable, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have

(ii) si la période décrite au sous-alinéa (i) est inférieure à trente jours, au cours du mois qui suit celui au cours duquel la période d'incapacité du demandeur a cessé.

commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

(10) For the purposes of subsections (8) and (9), a period of incapacity must be a continuous period except as otherwise prescribed.

(11) Subsections (8) to (10) apply only to individuals who were incapacitated on or after January 1, 1991.

(12) The Minister may require an applicant or other person or a group or class of persons to be at a suitable place at a suitable time in order to make an application for benefits in person or to provide additional information about an application.

81. (1) Where

(a) a spouse, former spouse, common-law partner, former common-law partner or estate is dissatisfied with any decision made under section 55, 55.1, 55.2 or 55.3,

(b) an applicant is dissatisfied with any decision made under section 60,

(c) a beneficiary is dissatisfied with any determination as to the amount of a benefit payable to the beneficiary or as to the beneficiary's eligibility to receive a benefit,

(d) a beneficiary or the beneficiary's spouse or common-law partner is dissatisfied with any decision made under section 65.1, or

(e) a person who made a request under section 70.1, a child of that person or, in relation to that child, a person or agency referred to in section

(10) Pour l'application des paragraphes (8) et (9), une période d'incapacité doit être continue à moins qu'il n'en soit prescrit autrement.

(11) Les paragraphes (8) à (10) ne s'appliquent qu'aux personnes incapables le 1er janvier 1991 dont la période d'incapacité commence à compter de cette date.

(12) Le ministre peut demander à tout requérant ou autre personne ou à tout groupe ou catégorie de personnes de se rendre à une heure raisonnable à un endroit convenable pour présenter en personne une demande de prestations ou fournir des renseignements supplémentaires concernant la demande.

81. (1) Dans les cas où :

a) un époux ou conjoint de fait, un ex-époux ou ancien conjoint de fait ou leurs ayants droit ne sont pas satisfaits d'une décision rendue en application de l'article 55, 55.1, 55.2 ou 55.3,

b) un requérant n'est pas satisfait d'une décision rendue en application de l'article 60,

c) un bénéficiaire n'est pas satisfait d'un arrêt concernant le montant d'une prestation qui lui est payable ou son admissibilité à recevoir une telle prestation,

d) un bénéficiaire ou son époux ou conjoint de fait n'est pas satisfait d'une décision rendue en application de l'article 65.1,

e) la personne qui a présenté une demande en application de l'article 70.1, l'enfant de celle-ci ou, relativement à cet enfant, la personne ou

75 is dissatisfied with any decision made under section 70.1,

the dissatisfied party or, subject to the regulations, any person on behalf thereof may, within ninety days after the day on which the dissatisfied party was notified in the prescribed manner of the decision or determination, or within such longer period as the Minister may either before or after the expiration of those ninety days allow, make a request to the Minister in the prescribed form and manner for a reconsideration of that decision or determination.

(2) The Minister shall forthwith reconsider any decision or determination referred to in subsection (1) and may confirm or vary it, and may approve payment of a benefit, determine the amount of a benefit or determine that no benefit is payable, and shall thereupon in writing notify the party who made the request under subsection (1) of the Minister's decision and of the reasons therefor.

82. (1) A party who is dissatisfied with a decision of the Minister made under section 81 or subsection 84(2), or a person who is dissatisfied with a decision of the Minister made under subsection 27.1(2) of the Old Age Security Act, or, subject to the regulations, any person on their behalf, may appeal the decision to a Review Tribunal in writing within 90 days, or any longer period that the Commissioner of Review Tribunals may, either before or after the expiration of those 90 days, allow, after the day on which the party was notified in the prescribed manner of the decision or the person was notified in writing of the Minister's decision and of the reasons for it.

l'organisme visé à l'article 75 n'est pas satisfait de la décision rendue au titre de l'article 70.1,

ceux-ci peuvent, ou, sous réserve des règlements, quiconque de leur part, peut, dans les quatre-vingt-dix jours suivant le jour où ils sont, de la manière prescrite, avisés de la décision ou de l'arrêt, ou dans tel délai plus long qu'autorise le ministre avant ou après l'expiration de ces quatre-vingt-dix jours, demander par écrit à celui-ci, selon les modalités prescrites, de réviser la décision ou l'arrêt.

(2) Le ministre reconsidère sur-le-champ toute décision ou tout arrêt visé au paragraphe (1) et il peut confirmer ou modifier cette décision ou arrêt; il peut approuver le paiement d'une prestation et en fixer le montant, de même qu'il peut arrêter qu'aucune prestation n'est payable et il doit dès lors aviser par écrit de sa décision motivée la personne qui a présenté la demande en vertu du paragraphe (1).

82. (1) La personne qui se croit lésée par une décision du ministre rendue en application de l'article 81 ou du paragraphe 84(2) ou celle qui se croit lésée par une décision du ministre rendue en application du paragraphe 27.1(2) de la Loi sur la sécurité de la vieillesse ou, sous réserve des règlements, quiconque de sa part, peut interjeter appel par écrit auprès d'un tribunal de révision de la décision du ministre soit dans les quatre-vingt-dix jours suivant le jour où la première personne est, de la manière prescrite, avisée de cette décision, ou, selon le cas, suivant le jour où le ministre notifie à la deuxième personne sa décision et ses motifs, soit dans le délai plus long autorisé par le commissaire des tribunaux de révision avant ou après l'expiration des quatre-vingt-dix jours.

82. (11) A Review Tribunal may confirm or vary a decision of the Minister made under section 81 or subsection 84(2) or under subsection 27.1(2) of the Old Age Security Act and may take any action in relation to any of those decisions that might have been taken by the Minister under that section or either of those subsections, and the Commissioner of Review Tribunals shall thereupon notify the Minister and the other parties to the appeal of the Review Tribunal's decision and of the reasons for its decision.

82. (11) Un tribunal de révision peut confirmer ou modifier une décision du ministre prise en vertu de l'article 81 ou du paragraphe 84(2) ou en vertu du paragraphe 27.1(2) de la Loi sur la sécurité de la vieillesse et il peut, à cet égard, prendre toute mesure que le ministre aurait pu prendre en application de ces dispositions; le commissaire des tribunaux de révision doit aussitôt donner un avis écrit de la décision du tribunal et des motifs la justifiant au ministre ainsi qu'aux parties à l'appel.

83. (1) A party or, subject to the regulations, any person on behalf thereof, or the Minister, if dissatisfied with a decision of a Review Tribunal made under section 82, other than a decision made in respect of an appeal referred to in subsection 28(1) of the Old Age Security Act, or under subsection 84(2), may, within ninety days after the day on which that decision was communicated to the party or Minister, or within such longer period as the Chairman or Vice-Chairman of the Pension Appeals Board may either before or after the expiration of those ninety days allow, apply in writing to the Chairman or Vice-Chairman for leave to appeal that decision to the Pension Appeals Board.

83. (1) La personne qui se croit lésée par une décision du tribunal de révision rendue en application de l'article 82 — autre qu'une décision portant sur l'appel prévu au paragraphe 28(1) de la Loi sur la sécurité de la vieillesse — ou du paragraphe 84(2), ou, sous réserve des règlements, quiconque de sa part, de même que le ministre, peuvent présenter, soit dans les quatre-vingt-dix jours suivant le jour où la décision du tribunal de révision est transmise à la personne ou au ministre, soit dans tel délai plus long qu'autorise le président ou le vice-président de la Commission d'appel des pensions avant ou après l'expiration de ces quatre-vingt-dix jours, une demande écrite au président ou au vice-président de la Commission d'appel des pensions, afin d'obtenir la permission d'interjeter un appel de la décision du tribunal de révision auprès de la Commission.

83. (11) The Pension Appeals Board may confirm or vary a decision of a Review Tribunal under section 82 or subsection 84(2) and may take any action in relation thereto that might have been taken by the Review Tribunal under section 82 or subsection 84(2), and shall thereupon notify in writing the parties to the appeal of its decision and of its reasons therefor.

83. (11) La Commission d'appel des pensions peut confirmer ou modifier une décision d'un tribunal de révision prise en vertu de l'article 82 ou du paragraphe 84(2) et elle peut, à cet égard, prendre toute mesure que le tribunal de révision aurait pu prendre en application de ces dispositions et en outre, elle doit aussitôt donner un avis écrit de sa décision et des motifs la justifiant à toutes les parties à cet appel.

84. (1) A Review Tribunal and the Pension Appeals Board have authority to determine any question of law or fact as to

(a) whether any benefit is payable to a person,

(b) the amount of any such benefit,

(c) whether any person is eligible for a division of unadjusted pensionable earnings,

(d) the amount of that division,

(e) whether any person is eligible for an assignment of a contributor's retirement pension, or

(f) the amount of that assignment,

and the decision of a Review Tribunal, except as provided in this Act, or the decision of the Pension Appeals Board, except for judicial review under the Federal Courts Act, as the case may be, is final and binding for all purposes of this Act.

(2) The Minister, a Review Tribunal or the Pension Appeals Board may, notwithstanding subsection (1), on new facts, rescind or amend a decision under this Act given by him, the Tribunal or the Board, as the case may be.

84. (1) Un tribunal de révision et la Commission d'appel des pensions ont autorité pour décider des questions de droit ou de fait concernant :

a) la question de savoir si une prestation est payable à une personne;

b) le montant de cette prestation;

c) la question de savoir si une personne est admissible à un partage des gains non ajustés ouvrant droit à pension;

d) le montant de ce partage;

e) la question de savoir si une personne est admissible à bénéficier de la cession de la pension de retraite d'un cotisant;

f) le montant de cette cession.

La décision du tribunal de révision, sauf disposition contraire de la présente loi, ou celle de la Commission d'appel des pensions, sauf contrôle judiciaire dont elle peut faire l'objet aux termes de la Loi sur les Cours fédérales, est définitive et obligatoire pour l'application de la présente loi.

(2) Indépendamment du paragraphe (1), le ministre, un tribunal de révision ou la Commission d'appel des pensions peut, en se fondant sur des faits nouveaux, annuler ou modifier une décision qu'il a lui-même rendue ou qu'elle a elle-même rendue conformément à la présente loi.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1793-07
STYLE OF CAUSE:	**ATTORNEY GENERAL OF CANADA and MARIA POON**
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	June 22, 2009
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DATED:	June 23, 2009

APPEARANCES:

Sandra Gruescu	FOR THE APPLICANT
No appearance	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Not applicable	FOR THE RESPONDENT