

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240918

Docket: A-358-23

Citation: 2024 FCA 150

**CORAM: STRATAS J.A.
LASKIN J.A.
BIRINGER J.A.**

BETWEEN:

LINDA BARTLETT

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online videoconference hosted by the Registry on September 18, 2024.

Judgment delivered from the Bench at Ottawa, Ontario, on September 18, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on September 18, 2024).

STRATAS J.A.

[1] Ms. Bartlett appeals from the judgment dated December 6, 2023 of the Federal Court (*per* Lafrenière J.): 2023 FC 1648. The Federal Court dismissed her application for judicial review. In that application for judicial review, Ms. Bartlett sought to set aside a decision of the Social

Security Tribunal – Appeal Division. In that decision, the Appeal Division refused to grant her leave to appeal.

[2] In our view, the appeal must be dismissed.

[3] The Appeal Division identified the correct legal test for the granting of leave. That test is found in section 58.1 of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34. The Appeal Division found that none of Ms. Bartlett's issues met the test. The Appeal Division was not satisfied that the General Division had erred in any arguable way. In particular, the Appeal Division noted that Ms. Bartlett intended to base her appeal on particular figures that the General Division had rejected on the facts.

[4] What is the nature of the Appeal Division's decision denying leave to appeal? In this case, it is a factually suffused one. As well, Ms. Bartlett's intended appeal concerns an underlying issue, the proper calculation of a retirement pension, one that itself is factually suffused. So here we are reviewing a factually suffused leave decision about a factually suffused underlying issue. Such a decision is most unconstrained and, thus, is very hard to set aside: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. Indeed, we are unaware of any post-*Vavilov* case where a reviewing court has set aside a decision of this sort for unreasonableness. There is no basis to do so here.

[5] In her oral submissions, Ms. Bartlett attempted to persuade us that her pension was incorrectly calculated. That issue, going to the merits, is for those who decide the merits under

the relevant legislation. We do not decide the merits. We are restricted to a reviewing role and, in a factually suffused case like this, that role is very limited.

[6] Overall, we agree with the reasons of the Federal Court and its conclusion that the decision of the Appeal Division was reasonable. Ms. Bartlett has not persuaded us otherwise.

[7] Ms. Bartlett also submits that the General Division proceeded unfairly. Incidents of alleged procedural unfairness in proceedings before an administrative decision-maker, here the General Division, must be raised before that decision-maker where possible and as soon as practicable: see *Halton (Regional Municipality) v. Canada (Transportation Agency)*, 2024 FCA 122 and the many leading cases cited at para. 38. Further, where it is possible to raise procedural unfairness before the administrative decision-maker, procedural unfairness cannot be raised for the first time on judicial review (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654), let alone as a new issue in an appeal from a judicial review (*Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] 1 S.C.R. 678; *Quan v. Cusson*, 2009 SCC 62, [2009] 3 S.C.R. 712). Even if Ms. Bartlett became aware of some procedural issues for the first time when the Appeal Division had carriage of the matter, she should have raised them as part of her application for leave to appeal. She did not.

[8] Despite these authorities, perhaps due to her status as an unrepresented litigant, the Federal Court nevertheless did consider Ms. Bartlett's allegations of procedural unfairness. It

concluded that there was no procedural unfairness. On this, we agree with the reasons and result reached by the Federal Court.

[9] For the foregoing reasons, we will dismiss the appeal. As the respondent has not sought costs, we will not award any.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-358-23

STYLE OF CAUSE: LINDA BARTLETT v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: BY ONLINE
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REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
LASKIN J.A.
BIRINGER J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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(ON HER OWN BEHALF)

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