

Fd: #1

A-235-22

FCA

D E P O S É	COUR D'APPEL FÉDÉRALE FEDERAL COURT OF APPEAL	F I L E D
	NOV 09 2022	
	AHMED LAGRANI	
MONTRÉAL, QC		

FEDERAL COURT OF APPEAL

Between
 Midjohodo Franck Gloglo
 Applicant
 and
 (Canada Employment Insurance)
 Commission
 Attorney General of Canada
 Respondent

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at
 Montreal's Office of the Federal Court of Appeal

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date) NOV 09 2022

Issued by: Address of local office:

AHMED LAGRANI
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TO:
Canada Employment Insurance Commission
Employment and Social Development Canada (Service Canada)
c/o
Attorney General of CANADA
Quebec Regional Office
Department of Justice
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(Name and address of every other person required to be served)

(Separate page)

APPLICATION

(Where the application is an application for judicial review)

This is an application for judicial review in respect of
**The Social Security Tribunal – Appeal Division’s Decision AD-22-796 – Decision
2022/11/08**

**The Decision is dated November 7th, 2022 and has been communicated to me on November
8th 2022 at 09:31 AM**

Judicial Review is sought with respect to considering the case in Law and fact, especially from
the perspective of Natural Law and Justice

I. The applicant makes application for:

1. Judicial review of the Social Security Tribunal – Appeal Division’s Decision AD-22-796 of November 07th 2022, by which the aforesaid Tribunal’s Member, Janet Lew, denied the Appeal of the General Division’s reconsideration Decision GE-21-2186 of October 31st, 2022, that dismissed my claims for employment insurance benefits following an interlocutory Judgement of The Honourable Justice Gabrielle St-Hilaire of the Tax Court of Canada, rendered orally from the Bench on October 6th, 2022 - 2022-384 (EI): *Midjohodo Franck Gloglo v. Minister of National Revenue*, signed and communicated to me on October 7th, 2022.

It is important to indicate that the same Social Security Tribunal – Appeal Division’s Member, Janet Lew, in a previous Decision File number **AD-21-193**, of September 16th, 2021, allowed the Appeal in the same case with respect to the same claims, but ultimately, decided on November 8th 2021:

The appeal is allowed. I am setting aside the General Division decision. I am returning the matter to the General Division for a reconsideration, with directions that it abey the matter until the parties receive a final determination on CRA’s ruling.

The General Division is bound by that determination – **para 25 of 8 November 2021’s Decision** –

2. So, only the issue for insurability that is addressed under Employment Insurance Act could be pursued from the Canada Revenue Agency’s CPP/EI Ruling Division through the Tax Court of Canada’s level; therefore, the Tax Court could not have heard the case in Law and fact as the main issue – claim for employment insurance benefits was on hold before the Social Security Tribunal –. Eventually, The presiding Honourable Justice Gabrielle St-Hilaire confirmed the January 10th 2022’s Decision of the Minister of National Revenue that denied the insurability of my employment as McCann FitzGerald Assistant Professor in Law and Business with University College Dublin – Sutherland School of Law, under *Employment Insurance Act*, Sec. 5

It is also very important to mention before the Tax Court of Canada, **the Minister of National Revenue, then Respondent over the case for insurability, admitted my Irish Employment Detail Summary 2020**, which Service Canada did receive since April 2021, and the Social Security Tribunal right from the beginning, what demonstrated that the requested insurability was not necessary -**see Respondent’s Reply 2022-384 (EI), section 7.h., in addition of showing**

an act of gage procedure engaged by Canada Employment Insurance Commission. Clearly, Canada Employment Insurance Commission purposively requested an insurability, they ought to know was not necessary'. Therefore, when the case returns to the Social Security Tribunal, following the interlocutory Judgement of The Honourable Justice Gabrielle St-Hilaire, Canada Employment Insurance Commission has not made any submission,

3. Therefore, the APPELLANT ASKS that the Federal Court of Appeal to

- decide the case in law and fact from the perspective of Natural Law and Justice,
- grant his employment insurance benefits based on my Irish Employment Details 2020, which the Minister of National Revenue, as Respondent before the Tax Court of Canada, admitted – see **Respondent's Reply 2022-384 (EI), section 7.h** and order that Service Canada puts it in his record of employment,
- impose on Service Canada the repayment of all COVID financial support he was obligated to rely upon following the unjust rejection of his Irish Employment Details 2020
- award a three hundred and sixty thousands (360000) dollars of compensatory damage for, on one hand, gag procedure engaged in by Service Canada and Canada Employment Insurance Commission by requesting the insurability of his employment to Canada Revenue Agency – CPP/EI Ruling Division, what they ought to know was not necessary – **Respondent's Reply 2022-384 (EI), section 7.h.** –, and on the other hand, emotional distress and several damages – I was expelled from my place due to this situation that puts me in a difficult financial situation, loss of chance, in accordance with the Supreme Court of Canada's philosophy, as reported by then Professor and Dean of Law, now The Honourable Justice Sebastien Grammond, 'Un nouveau départ pour les dommages-intérêts punitifs' (2012) 42 RGD 105 at p 117:

[...] les dommages-intérêts accordés en vertu du par. 24 (1) de la Charte constituent une réparation de droit public tout à fait particulière, qui peut répondre aux objectifs suivants : (1) indemniser le demandeur du préjudice et des souffrances résultant de la violation du droit; (2) défendre le droit en cause en soulignant son importance et la gravité de la violation; (3) dissuader les agents de l'État de porter atteinte au droit à l'avenir. *Vancouver (Ville) c. Ward*, [2010] 2 R.C.S. 28, para 31.

- impose on the Respondent, Service Canada, and Canada Employment Insurance Commission, to bear the fees and disbursements

II. The grounds for the application are:

1. The Social Security Tribunal failed to adjudicate the case from the perspective of Natural Law and Justice with regard to *Agreement on Social Security Between Canada and Ireland* in Force January 1, 1992 (SI/92-53), particularly the preamble according to which both countries 'RESOLVED to co-operate in the field of social security'; the Tribunal also failed in the conceptualization of Canadian bijuralism in respect of employment insurance benefits; if the Social Security Tribunal does not have that jurisdiction, this might have been indicated months ago to permit that I pursued the case in Law and fact in Court, for a judicial interpretation of the *Agreement on Social Security Between Canada and Ireland* in Force January 1, 1992 (SI/92-53) and in Common Law.

2. Having erred in the conceptualization of the Law and based its decision on an erroneous finding, in addition to unduly holding the case for unnecessary insurability – see **Respondent's Reply 2022-384 (EI), section 7.h.**, not to mention the undue hold of Service Canada on my claims for employment insurance benefits to await that the case be before the Social Security Tribunal to request that insurability, the Social Security Tribunal has committed procedural unfairness

3. The case requires a Judicial interpretation of the *Agreement on Social Security Between Canada and Ireland* in Force January 1, 1992 (SI/92-53) that is implemented in Canadian Domestic Law following the Proclamation Declaring the *Agreement on Social Security Between Canada and Ireland* in Force January 1, 1992, SI/92-53, by JOHN C. TAIT, Deputy Attorney General and Registered by NANCY HUGUES ANTHONY, Deputy Registrar General of Canada on 1992- 04-08. That interpretation is permitted under the conditions elaborated in *Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3:

- (a) to confirm the meaning of a provision as conveyed by the text, its object and purpose;
- (b) to determine a meaning where the provision is ambiguous or obscure; **or**
- (c) to determine the meaning where the ordinary meaning is manifestly absurd **or** unreasonable

4. “[T]he national application of international law is, as far as Canadian judges and other domestic actors are concerned, a question of statutory interpretation, which must be addressed, rationalized, and understood within that framework” – Stéphane Beaulac, “National Application of International Law: The Statutory Interpretation Perspective” (2003) *Canadian Yearbook of International Law* 225 at p 229;

- The principles for interpreting a Treaty or Agreement between States are laid down in Art. 31-33 of the *Vienna Convention on the Law of Treaties*. Those principles include the **terms of the Treaty with consideration to its object and purpose** and, in addition to the text, its **preamble** (Art. 31. 1-2 *Vienna Convention on the Law of Treaties*), and recourse must be made to other means if the application of the Treaty or Agreement ‘leads to a result which is manifestly absurd or unreasonable’ – Art 32. b *Vienna Convention on the Law of Treaties*),

5. The textualist application of Article II of *Agreement on Social Security Between Canada and Ireland* in Force January 1, 1992 (SI/92-53), by the Social Security Tribunal of Canada, leads to a manifestly absurd and unreasonable result. And it is not possible that Canada and Ireland, that are parties to the United Nations’ General Assembly resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights*, 3 January 1976 which provides in Art. 9 ‘The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance’, and which share the tradition of Common Law that intrinsically finds a remedy to a wrong situation, would have intended such an unreasonable and absurd construction.

6. Yet I consistently indicated from the start that ‘A textualist application of the Agreement to my claims for employment insurance benefits would lead to a huge injustice, which is contrary to the purpose of the establishment of the social insurance system, as put forward by the Right Honourable Bennett: ‘On notera que l’expression employée est la suivante: assurance contre le chômage. Il serait donc bien de comprendre, dès le début, qu’il s’agit d’une mesure d’assurance, et non pas d’une mesure de secours. L’assurance se définit ainsi: contre le versement d’une certaine somme d’argent, ordinairement appelée prime, et la plupart du temps effectué à l’avance, la personne qui verse la prime bénéficie de certains avantages si certains évènements ont lieu ou certaines circonstances se présentent’ – Débats de la Chambre des communes (R.B. Bennett), 12 February 1935, at p 722 / Georges Campeau, “L’Assurance-Emploi: Les Enjeux Constitutionnels du Détournement du Régime d’Assurance-Chômage” (1999) 14 *Journal of Law and Social Policy* 91-106.

7. So, The Federal Court of Appeal is to look beyond the mere text of the provisions of Article II of *Agreement on Social Security Between Canada and Ireland* in Force January 1, 1992 (SI/92-53), and undertake a contextual and purposive approach to interpreting the Agreement in order to find a meaning that harmonizes the wording, object, spirit and purpose of the aforesaid

Agreement: (1) it must be presumed that both Canada and Ireland do not intend their Agreement to have absurd consequences; (2) Absurd consequences are not limited to logical contradictions or internal incoherence but include violations of established legal norms such as rule of law; they also include violations of widely accepted standards of justice and reasonableness; (3) Whenever possible, an interpretation that leads to absurd consequences is rejected in favour of one that avoids absurdity; (4) The greater the absurdity, the greater the departure from ordinary meaning that is tolerated. – **Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed., Markham, LexisNexis, 2014, p. 308, par. 10.5**

8. The words of the Article II of the Agreement are to be read in their entire context, with regard to the fact that Ireland would pay unemployment benefits if it were Canada that had determined the Record of employment, and harmoniously with the scheme of the Agreement, its object, and the purpose for cooperating in the field of of Social Security, which must be understood broadly in respect of the International Labour Organization (ILO) - Social Security (Minimum Standards) Convention, 1952 (No. 102), to which both Canada and Ireland are parties, as the minimum standards of Social security include: medical care, sickness benefit, unemployment benefit, employment injury benefit, old-age benefit, family benefit, invalidity benefit, maternity benefit, survivors' benefit.

9. I indicated that the quest for justice for a citizen in relation to employment insurance requires that their case be reviewed thoroughly for justice in Law and Equity – Pierre Issalys, “La justice administrative dans l’État providence: le sens de l’histoire”, (25’-26’: last minute of the presentation): *Compte-rendu XVe Journée de droit social et du travail - 2013* | Faculté de science politique et de droit | UQAM,

10. The award of employment insurance benefits in my case cannot hurt public order, as there is a valid employment contract, which is not null *ab initio*, as established by the Tax Court of Canada in ***Godoy Enriquez v. M.N.R.* 2019 TCC 114**, since I held all appropriated Irish Administrative Documents to engage in employment in the republic of Ireland,

11. The issue of awarding my employment insurance benefits based on my Irish Employment Detail Summary 2020 comes to the determination of whether I was ordinarily residing in Canada during my academic tenure at National University of Ireland -Dublin’s Sutherland School of Law

III. This application will be supported by the following material: (I reserve the right to rely upon additional materials, and affidavit where necessary)

- My Irish Employment Detail Summary 2020 which Service Canada and the Social Security Tribunal have respectively had on file since April and June 2021 and my Contract of Employment that has also been on the Social Security Tribunal’s file; *Agreement on Social Security Between Canada and Ireland* in Force January 1, 1992 (SI/92-53)

- SST/TSS REC: JUN 23, 2021 GD2

- SST/TSS REC: JL 06, 2021 GD6

- SST/TSS REC: JL 07, 2021 GD7

- AD4 - SST/TSS REC: OC 28, 2021

- Social Security Tribunal General Division’s Decision of August 9th, 2021, Appeal Division’s Decision of November 8th, 2021, Social Security Tribunal Notice of Hearing by Written Questions and Answers - GE-21-2186 – and Copy of Written Answer to the Social Security Tribunal dated Oct. 19th 2022; Decision of Social Security Tribunal’s GE-21-2186 of October 31st 2022 and Appeal Decision AD-22-796 of 7 November 2022,

In addition,

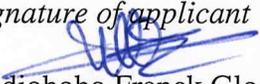
- my Irish Resident Permit (Department of Justice' explicit authorization to remain resident and engage in work or business in Ireland) and Irish Public Service Card, that I submitted to Canada Revenue Agency's CPP/EI Appeals Division's Officer, Ms. Genevieve Milette Eastern Quebec Tax Service Office 2575, St Anne Boulevard, Quebec, QC, G1J 1Y5, and which I also supplied to the Tax Court of Canada, upon request of the Respondent, Minister of National Revenue,
- If necessary, I will supply the University College Dublin's Host Agreement (work permit for a non-European researcher), however this University's Document is weak in the face of my Irish Public Service Card and Resident Permit,
- **Reply 2022-384 (EI)** of the Minister of National Revenue, Respondent before the Tax Court of Canada,
- Each month's Payslip from November 2019 through August 2020, which I supplied to the Tax Court on the request of the Respondent, Minister of National Revenue,
- my Tax Declaration 2019 and 2020, also supplied to the Tax Court of Canada
- my introductory memorandum and Very Quick Response to the Reply of Minister of National Revenue, **portions regarding Employment Insurance**,
- A copy of a selected list of jobs I applied for since 2020, which demonstrated I really was on job hunting, a copy of which I supplied to Me Noémie Vespignani, in the Tax Court room, prior to the Hearing of October 6th, 2022,
- A copy of the Document I prepared for my Oral Argument before the Tax Court, which ultimately the Tax Court did not collect, and this might be because the Tax Court was not to hear the case in Law and fact, having been called upon to decide the issue of insurability,

IV. The applicant requests that the Social Security Tribunal sends a certified copy of the following materials that are in their possession to the Registry:

Irish Employment Detail Summary 2020, my Contract of Employment, Social Security Tribunal' General Division Decision of August 9th 2021, Appeal Division's Decision of November 8th 2021, Social Security Tribunal Notice of Hearing by Written Questions and Answers - GE-21-2186 – Copy of my Written Answer to the Social Security Tribunal dated Oct. 19th 2022; General Decision of Social Security Tribunal's GE-21-2186 of October 31st 2022; ADN1–SST/TSS REC: NO 01 2022; Appeal Decision AD-22-796 of November 7th 2022; SST/TSS REC: OC 17 2022
 SST/TSS REC: JUN 23, 2021 GD2; SST/TSS REC: JL 06 2021 GD6; SST/TSS REC: JL 07 2021 GD7; AD4 - SST/TSS REC: OC 28 2021

Montreal, November 9th, 2022

Signature of applicant


 Midjohoho Franck Gloglo
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 SOR/2004-283, ss. 35 and 38

May it PLEASE the FEDERAL COURT OF APPEAL to communicate with me by email



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FROM / DE:

Fabian Philip Marius
Support Services
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