

Federal Court



Cour fédérale

Date: 20180115

Docket: T-323-17

Citation: 2018 FC 36

Toronto, Ontario, January 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

STEVEN KENNETH GROSVENOR

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Grosvenor represents himself on this application. He has not worked since April, 2006 for health-related reasons. In June 2012 he applied for *Canada Pension Plan*, RSC, 1985, c C-8 [CPP] disability benefits. He was found to be disabled and unable to work. Disability benefits were granted and, applying the maximum period of retroactivity ordinarily available under the legislation, back-dated to March 2011.

[2] Mr. Grosvenor objected to the retroactivity period. He argued that the incapacity provisions at subsections 60(8), (9), and (10) of the CPP applied because he had been continuously unable to apply for benefits prior to 2012: his benefits should therefore have been payable back to 2006 when he ceased work due to his medical condition. In the alternative, he submitted before the Social Security Tribunal Appeal Division [SST-AD] and this Court that the medical evidence established his incapacity as of March 2008 and that benefits should have been payable from at least that date.

[3] The Social Security Tribunal General Division [SST-GD] found that he had failed to establish that he was incapable of forming an intention to apply for disability benefits between 2006 and 2012. The SST-GD denied his application.

[4] Mr. Grosvenor sought leave to appeal that decision to the SST-AD, but leave was denied. Mr. Grosvenor now seeks judicial review of the leave denial decision. He submits that the SST-GD and SST-AD arrived at the wrong conclusion by misapplying the case law concerning incapacity and incorrectly weighing the evidence. He asks that the Court set aside the SST-AD decision and direct the payment of full benefits with interest and a reasonable allowance for expenses. Alternatively, Mr. Grosvenor asks the Court to return the matter for re-determination but direct a determination granting him the relief he seeks.

[5] The sole issue raised in this application is the reasonableness of the SST-AD decision. Mr. Grosvenor has very ably advanced his submissions. However, on judicial review the role of the Court is to assess whether a decision—in this case the SST-AD decision to refuse leave to

appeal within the framework Parliament has established in the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA]—was reasonable (*Tracey v Canada (AG)*, 2015 FC 1300 at para 17). This Court’s role on judicial review is not to re-assess the merits of the claim, or to substitute its preferred outcome. Rather, the Court is required to consider whether the reasons reflect an intelligible, transparent and justifiable decision-making process and to determine whether the result falls within the range of possible, acceptable outcomes based on the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 47). Applying this standard, as I am obligated to do, I am unable to identify any error on the part of the SST-AD warranting intervention. The application is dismissed for the reasons that follow.

II. Legislative Framework

[6] The CPP provides that no benefits are payable unless an application for them has been made (CPP subsection 60(1)). Normally, the earliest date on which a person can be deemed to be disabled is fifteen months prior to making that application (CPP para 42(2)(b)). However, if an individual who is incapable of making the application, later regains the capacity to do so, the Minister may deem the application to have been made before the s 42(2)(b) deemed disability date (CPP subsection 60(9)). The incapacity must have been continuous (CPP subsection 60(10)).

[7] Initial decisions relating to CPP benefits are appealable to the SST-GD and heard on a *de novo* basis; the SST-GD has discretion to dismiss the appeal or confirm, rescind or vary a decision in whole or in part or give the decision that should have been given (DESDA subsection 54(1)). SST-GD decisions may, with leave, be appealed to the SST-AD (DESDA subsection

56(1)). The SST-AD must refuse leave unless the applicant can demonstrate the appeal has a reasonable chance of success on one of three prescribed grounds: that the SST-GD (1) violated a principle of natural justice or acted beyond or refused to exercise its jurisdiction; (2) erred in law; or (3) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it (DESDA subsections 58(1) and (2)).

[8] For ease of reference relevant extracts from the CPP and DESDA are reproduced in the attached Annex.

III. Decision under Review

[9] The Court is reviewing the SST-AD decision. However to assess the reasonableness of that decision it is necessary to review and consider the SST-GD decision. An overview of both decisions follows.

A. *SST-GD Decision*

[10] The hearing before the SST-GD was in person. The SST-GD reviewed the background of the claim and identified the issue before it as being whether Mr. Grosvenor met the definition of incapacity as defined in subsections 60(8), (9) and (10) of the CPP.

[11] The SST-GD noted that Mr. Grosvenor's evidence reflected that: (1) he had not worked since April 2006; (2) he had suffered from long intermittent periods of blackout between 2006 and 2012; (3) he had been hospitalized for a two month period following his departure from

work; (4) his activities relating to daily life had been governed by patterns of behaviour and primarily guided by his wife; (5) he was not in a position to make decisions for himself until he completed treatment in 2011 and 2012 and prior to that he merely complied with instructions relating to the conduct of daily life and familiar patterns of behaviour; (6) his memories of the period are fragmented and are very limited outside the patterns of behaviour provided him by his wife ; (7) he continued to maintain a driver's licence, play video games with his son and perform household chores as they were requested of him; (8) he was aware of his tendency to be distracted and therefore he decided not to transport others when he was driving; (9) he maintained joint financial accounts with his wife and used a credit card to purchase groceries; and (10) he was aware of and able to identify medication he had been prescribed.

[12] The SST-GD noted that the application for CPP disability benefits was initiated in 2012 after Mr. Grosvenor's employer rejected a proposed back to work plan and his doctor then determined an application should be made. The SST-GD also noted a letter dated March 2015 from Mr. Grosvenor's wife stating that between 2006 and 2012 her husband could not care for himself and she managed his affairs. She indicates that Mr. Grosvenor operated on "autopilot" with her assistance and that any disruption to his established patterns created significant problems. She stated that she had considered seeking formal control over his affairs by way of a Power of Attorney but did not do so for several reasons: she was told his health would improve allowing him to return to work, she was concerned with the stigma that might attach to Mr. Grosvenor as a professional engineer if she were to do so, and she had experienced no practical difficulties in managing matters without a Power of Attorney.

[13] The SST-GD summarized the medical evidence, noting it reflected that treatment was pursued and continued through 2012 with the objective of returning Mr. Grosvenor to work. The medical evidence also stated that the outcome of treatment or the response of the employer to a back to work proposal was difficult to predict, and that an application for permanent benefits during this process ran the risk of derailing hope for recovery and undermining Mr. Grosvenor's treatment.

[14] In assessing the matters before it the SST-GD acknowledged that Mr. Grosvenor had been found to be suffering from a severe and prolonged disability. The date of onset had been determined to be March 2011 with an effective date of benefit payments of July 2011. The SST-GD then addressed the subsection 60(9) definition of incapacity noting that an individual must demonstrate incapacity to form or express an intention to make an application before the day on which the application was made and, pursuant to subsection 60(10), that the period of incapacity be continuous.

[15] The SST-GD relied upon *Sedrak v Minister of Social Development*, 2008 FCA 86 for the principle that the ability to form the intention to apply for benefits was not different from the capacity to form an intention with respect to other choices presented to an applicant. The SST-GD also noted that medical evidence and the activities of a claimant may be relevant when assessing continuous incapacity for the purposes of subsections 60(9) and (10) of the CPP (*Attorney General of Canada v Danielson*, 2008 FCA 78 [*Danielson*]).

[16] Within this framework the SST-GD noted that: (1) a 2010 neurological assessment had found Mr. Grosvenor as functioning in the average range; (2) he had participated in the neurological assessment and other treatment programs which would have required him to provide written consent and there was no evidence that consent had been provided on his behalf; (3) documentation relating to the 2012 claim was signed by Mr. Grosvenor despite a medical assessment that indicated his incapacity had begun in 2008 and was assessed as ongoing; (4) the ability to form express and specific intent had been demonstrated through Mr. Grosvenor's submissions throughout the SST-GD process.

[17] The SST-GD accepted Mr. Grosvenor's evidence that he functioned based on patterns of behaviour but found that despite their rote nature his daily tasks required the formation of specific intentions to accomplish them. The SST-GD noted that Mr. Grosvenor had continued to manage his own affairs, retain a driver's licence and use a credit card: these activities required an ability to form intent and were evidence of an ability to make decisions and exercise judgment. The SST-GD also relied on Mr. Grosvenor's independently-generated concern for vehicle passenger safety to conclude he was able to exercise judgment.

[18] The SST-GD concluded that the failure to apply for benefits prior to 2012 was driven by uncertainty as to the permanence of the disability and a treatment plan aimed at returning Mr. Grosvenor to work. While the SST-GD acknowledged that the outcome of the treatment program was uncertain, it found that the inability to predict the outcome was not equivalent to being incapable of forming the intent to make an application.

[19] After considering the medical evidence and Mr. Grosvenor's activities between the date of disability and the date of application the SST-GD was unable to conclude that he had been incapable of forming an intention to apply for disability benefits between 2006 and 2012.

B. *SST-AD Decision*

[20] The SST-AD began its analysis by noting that Mr. Grosvenor had to demonstrate that the grounds of appeal fall within the scope of section 58 of DESDA and that the appeal had a reasonable chance of success. The SST-AD then summarized Mr. Grosvenor's grounds of appeal as claims that the SST-GD:

- A. failed to properly apply the test for incapacity and failed to follow the appropriate legal authorities;
- B. erred in finding he was not incapacitated where the evidence showed him unable to make any significant decisions on his own and was dependent on others to make decisions on his behalf; and
- C. erred in preferring the neuropsychological opinion over that of another medical expert.

[21] The SST-AD first noted that no medical opinions had been prepared contemporaneously for the period 2006 to 2009 which addressed Mr. Grosvenor's incapacity. The SST-AD concluded "[t]here was little to no documentary basis upon which the General Division could

make any findings regarding the extent of the incapacity of the Applicant dating to as early as 2006.”

[22] The SST-AD then addressed each of the identified grounds of appeal.

[23] In considering the test for incapacity the SST-AD summarized Mr. Grosvenor’s submissions as they related to the relevant jurisprudence and the absence of any substantive evidence disputing his claim of incapacity. The SST-AD noted that the onus was on Mr. Grosvenor to establish his claim and that the SST-GD was required to be satisfied, on a balance of probabilities, that Mr. Grosvenor had been incapacitated. The SST-AD noted that the SST-GD identified the relevant jurisprudence, followed the approach to incapacity outlined in the jurisprudence and properly considered both the medical evidence and the activities in which Mr. Grosvenor was involved. The SST-AD concluded that “it cannot be said that the General Division did not properly apply the test for incapacity.”

[24] The SST-AD then considered the submission that the SST-GD had erred in finding that Mr. Grosvenor: (1) was not incapacitated; (2) had maintained management and control of his affairs when the evidence showed his wife had acted as a *de facto* Power of Attorney; and (3) had not relied upon a full-time caregiver when the evidence showed his wife had fulfilled that role. The SST-AD accepted that Mr. Grosvenor significantly relied on his spouse and may have exhibited incapacity from “time to time” between 2006 and 2012. However the SST-AD concluded that it was not unreasonable for the SST-GD to find that the performance of some of the undisputed activities demonstrated capacity to form intent. The SST-AD found that Mr.

Grosvenor was essentially seeking reconsideration of the evidence on appeal. The SST-AD noted that this was not the role of the Appeal Division and concluded the appeal did not have a reasonable chance of success on this ground.

[25] In addressing the neuropsychological report the SST-AD concluded that the SST-GD did not place “significant emphasis” on the report, or draw its own conclusions from the report. It concluded that Mr. Grosvenor was in effect arguing that his doctor’s medical opinion, that he was incapacitated, should have been unreservedly accepted. The SST-AD concluded that to accept this position would have been to improperly apply the incapacity test which requires a consideration of both medical evidence and activities. Again the SST-AD concluded there was no reasonable chance of success on this ground of appeal and dismissed the application for leave.

IV. Analysis

A. *Capacity*

[26] Subsections 60(8) and (10) of the CPP impose the onus on applicants to demonstrate that they were continuously “...incapable of forming or expressing an intention to make an application...”. Capacity “does not require consideration of the capacity to make, prepare, process or complete an application for disability benefits, but only the capacity, quite simply, of ‘forming or expressing an intention to make an application’” (*Danielson* at para 5, citing *Morrison v The Minister of Human Resources Development*, Appeal CP 04182, March 7, 1997). In determining the issue of capacity there is a need to consider not only the medical evidence but also the “relevant activities of the individual concerned between the claimed date of the

commencement of the disability and the date of application which cast light on the capacity of the person concerned during the period of so “forming and expressing” the intent” (*Danielson* at paras 6 and 7).

[27] Mr. Grosvenor takes issue with the SST-GD’s finding that activities such as driving, credit card usage and Mr. Grosvenor’s decision not to carry passengers in his car for safety reasons demonstrate capacity. He argues that these activities are not “relevant activities” for the purposes of subsections 60(8)-(10) of the CPP and therefore should not have been considered; rather, his capacity needed to be assessed based on his decision making in contexts similar to those relating to the making of an application for CPP disability benefits. I am unpersuaded.

[28] In reaching its determination, the SST-GD was well aware of the *Danielson* decision and the need to consider both medical evidence and “relevant activities” in considering the question of capacity. The SST-GD undertook an analysis of the activities of Mr. Grosvenor and concluded that these activities were “relevant activities” for the purposes of assessing capacity.

[29] Mr. Grosvenor further argues that the analysis was too broad and encompassed activities that were unrelated to forming the intent to apply for benefits. He submits that the SST-AD focused on the SST-GD’s process as opposed to the substance of the decision in considering the application for leave to appeal.

[30] The issue raised before the SST-AD was a misapplication of the test for incapacity and it is in this context that the SST-AD reviewed the test and the steps taken by the SST-GD. In this

regard the SST-AD did not err in reviewing the process. Upon a review of the decision as a whole, it is also clear that the SST-AD did not limit its analysis to process as Mr. Grosvenor suggests.

[31] The SST-GD's conclusion that the activities in question were relevant to a capacity assessment was addressed later in the SST-AD decision. The SST-AD found that the SST-GD could look beyond whether Mr. Grosvenor was independently making financial or medical decisions and consider his other activities. It addressed the activities that the SST-GD had considered and analysed. It concluded that these activities would have required Mr. Grosvenor to form intentions relevant to the incapacity analysis and that the SST-GD did not err considering these "relevant activities." It was not unreasonable or incorrect for the SST-AD to conclude that the SST-GD had not erred and that Mr. Grosvenor had failed to demonstrate a reasonable chance of success based on this ground of appeal.

B. *Findings*

[32] Mr. Grosvenor also submits that the SST-AD unreasonably concluded that his submissions that the SST-GD findings were inconsistent with the evidence did not have a reasonable chance of success on appeal.

[33] The SST-AD noted Mr. Grosvenor's claims that the evidence showed he was unable to make significant decisions on his own, but also recognized, as noted above, that the SST-GD was entitled to look beyond medical or financial decisions to the applicant's other activities. Neither the SST-AD nor the SST-GD ignored the evidence as it related to the role of his wife in his care

and the management of his affairs. Instead, the SST-AD noted that the SST-GD weighed this evidence with the facts that Mr. Grosvenor cooked, attended appointments, performed household chores and (most significantly) made decisions concerning driving. The SST-AD found that the evidence allowed the SST-GD to reasonably conclude that performing some of these activities called for “specific intent to accomplish specific actions” and as such Mr. Grosvenor had not established continuous incapacity.

[34] An appeal based on an erroneous finding of fact is only available to an appellant where the SST-GD has made the finding of fact “in a perverse or capricious manner or without regard for the material before it” (DESDA para 58(1)(c)). In this case the SST-GD addressed all of the evidence. While Mr. Grosvenor strongly disagrees with the manner in which the evidence was weighed this does not lead to the conclusion that findings of fact were perverse, capricious or made without regard for the evidence. The SST-AD set out its analysis, and found that the issue was one of disagreement and an attempt to have the evidence reassessed on appeal, a ground of appeal that is not available under subsection 58(1) of DESDA.

[35] I am satisfied that this conclusion was reasonably available to the SST-AD as was its ultimate conclusion that the appeal did not have a reasonable chance of success on this ground.

C. *Medical Evidence*

[36] Mr. Grosvenor further submitted that the SST-GD, and subsequently the SST-AD, misunderstood and over-emphasised the importance of a neuropsychological assessment that stated his intellectual functioning was average. He argued that too much weight was placed on

the assessment, which had been prepared for his doctor, and too little emphasis given to the doctor's opinion that followed the assessment.

[37] The SST-AD disagreed with Mr Grosvenor's submission that significant emphasis had been placed on the neurological assessment. The SST-AD also found that Mr. Grosvenor's argument to the effect that "the General Division should have unreservedly accepted his Doctor's medical opinion that he was incapacitated" was simply inconsistent with the test for incapacity requiring consideration of both medical evidence and relevant activities. In effect the SST-AD found Mr. Grosvenor was again seeking a reassessment of the evidence, a ground for appeal it had previously noted was not available under subsection 58(1) of DESDA. This conclusion was reasonably available to the SST-AD. There is no basis upon which to interfere with the SST-AD determination that the ground of appeal raised no reasonable chance of success.

D. *Evidentiary Gaps*

[38] In his submissions Mr. Grosvenor also raised the failure of the SST-GD to have afforded him an opportunity to address gaps in his medical evidence prior to rendering its final decision. I am unaware of any jurisprudence that imposes an obligation upon a tribunal to seek evidence from an applicant. Regardless, the issue was not raised before the SST-AD and as such is not a basis upon which to interfere with the SST-AD decision on judicial review.

V. Conclusion

[39] The SST-AD decision reflects the required elements of justifiability, transparency and intelligibility within the decision-making process and falls within the range of possible, acceptable outcomes defensible in respect of the facts and law. The decision is reasonable. The application is dismissed.

[40] The Respondent has not sought costs and none are awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No costs are awarded.

"Patrick Gleeson"
Judge

ANNEX*Department of Employment and Social Development Act, SC 2005, c. 34*

Decision	Décisions
54 (1) The General Division may dismiss the appeal or confirm, rescind or vary a decision of the Minister or the Commission in whole or in part or give the decision that the Minister or the Commission should have given.	54 (1) La division générale peut rejeter l'appel ou confirmer, infirmer ou modifier totalement ou partiellement la décision visée par l'appel ou rendre la décision que le ministre ou la Commission aurait dû rendre.
Appeal	Appel
55. Any decision of the General Division may be appealed to the Appeal Division by any person who is the subject of the decision and any other prescribed person.	55 Toute décision de la division générale peut être portée en appel devant la division d'appel par toute personne qui fait l'objet de la décision et toute autre personne visée par règlement.
Leave	Autorisation du Tribunal
56 (1) An appeal to the Appeal Division may only be brought if leave to appeal is granted.	56 (1) Il ne peut être interjeté d'appel à la division d'appel sans permission.
[...]	[...]
Grounds of appeal	Moyens d'appel
58 (1) The only grounds of appeal are that	58 (1) Les seuls moyens d'appel sont les suivants :
(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;	a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;
(b) the General Division erred in law in making its decision, whether or not the error	b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à

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.

Criteria

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

la lecture du dossier;

c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

Critère

(2) La division d'appel rejette la demande de permission d'en appeler si elle est convaincue que l'appel n'a aucune chance raisonnable de succès.

Canada Pension Plan, RSC, 1985, c. C-8

When person deemed disabled

42(2) For the purposes of this Act,

(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

(i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and

(ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in

Personne déclarée invalide

42(2) Pour l'application de la présente loi :

a) une personne n'est considérée comme invalide que si elle est déclarée, de la manière prescrite, atteinte d'une invalidité physique ou mentale grave et prolongée, et pour l'application du présent alinéa :

(i) une invalidité n'est grave que si elle rend la personne à laquelle se rapporte la déclaration régulièrement incapable de détenir une occupation véritablement rémunératrice,

(ii) une invalidité n'est prolongée que si elle est déclarée, de la manière prescrite, devoir vraisemblablement durer pendant une période longue,

death; and	continue et indéfinie ou devoir entraîner vraisemblablement le décès;
(b) a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person — including a contributor referred to in subparagraph 44(1)(b)(ii) — be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.	b) une personne est réputée être devenue ou avoir cessé d'être invalide à la date qui est déterminée, de la manière prescrite, être celle où elle est devenue ou a cessé d'être, selon le cas, invalide, mais en aucun cas une personne — notamment le cotisant visé au sousaliné a 44(1)b(ii) — n'est réputée être devenue invalide à une date antérieure de plus de quinze mois à la date de la présentation d'une demande à l'égard de laquelle la détermination a été faite.
Payment of Benefits: General Provisions	Paiement des prestations : dispositions générales
Application for benefit	Demande de prestation
60 (1) No benefit is payable to any person under this Act unless an application therefor has been made by him or on his behalf and payment of the benefit has been approved under this Act.	60 (1) Aucune prestation n'est payable à une personne sous le régime de la présente loi, sauf si demande en a été faite par elle ou en son nom et que le paiement en ait été approuvé selon la présente loi.
[...]	[...]
Incapacity	Incapacité
(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 on behalf of that person, that the person had been incapable of	(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 former ou d'exprimer l'intention de faire une

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.

Idem

(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

(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,

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

(c) the application was made

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.

Idem

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

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

(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 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.

Period of incapacity

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

(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) 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.

Période d'incapacité

(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.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-323-17

STYLE OF CAUSE: STEVEN KENNETH GROSVENOR v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 17, 2017

REASONS AND JUDGMENT: GLEESON J.

DATED: JANUARY 15, 2018

APPEARANCES:

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FOR THE APPLICANT
(SELF-REPRESENTED)

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FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT