Federal Court  Cour fédérale

Date: 20201022

Dockets: T-1265-19
T-1266-19

Citation: 2020 FC 996

Ottawa, Ontario, October 22, 2020

PRESENT: The Honourable Madam Justice McVeigh

Docket: T-1265-19

BETWEEN:

BRIAN SMITH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-1266-19

AND BETWEEN:

MICHELLE SMITH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The two Applicants, Brian and Michelle Smith [the Smiths] are spouses and reside in Kelowna, British Columbia. These judicial reviews concern their applications for benefits [OAS benefits] under the *Old Age Security Act*, RSC 1985, c O-9 [*OAS Act*] that were applied for on March 29, 2017 by Brian Smith. They seek judicial review of a single decision dated June 24, 2019 [Decision], by the Minister of Employment and Social Development Canada [Minister]. This Application is unusual because the Smiths are not asking for a review of a negative decision but of a positive decision where they are alleging it should have been positive for a different reason and they should be entitled to more retroactive benefits than is statutorily allowable.

[2] Both represented themselves very ably before the Court. The applications were heard sequentially with Michelle Smith adopting much of the argument of her husband. Mr. Smith's claim is for a loss of Guaranteed Income Supplement [GIS] benefits and Mrs. Smith's claim is for the loss of her allowance (ALW) benefits.

[3] Because the applications are so interrelated and related to the same decision as well as Michelle's allowance claim (ALW) is dependant on Brian's claim, I am writing one decision.

[4] This application challenges a decision that found that there had been an administrative error but not erroneous advice. The Smiths were accorded retroactive payment for the months

May 2016 to August 2016 ($2,020.98) under section 32 of the *OAS Act*. The Smiths had sought lost benefits for the period of April 2016 to August 2016

[5] The Smiths bring this action because they believe besides the remedy they already received that they are entitled to OAS benefits for the month of April 2016 and that the remedy should be because they relied on erroneous advice [E/A] not just an administrative error [A/E]. They believe that they received erroneous advice from the Service Canada website, instruction sheets and application forms.

[6] The file is very well documented with no credibility issues at play.

II. Background

A. *The Smiths apply for OAS benefits: Pension, GIS, and Allowance (ALW)*

[7] Mr. Smith turned 65 on May 21, 2015. On March 29, 2017, he applied for an OAS Pension. At this time, Mrs. Smith was at least 60 but not yet 65 years old, entitling her to apply for an ALW under Part III of the *OAS Act*. Accordingly, Mr. Smith indicated in his application that his spouse was an appropriate age. He also indicated in his OAS Pension application that he wanted to apply for a GIS benefit by checking off box 11 on the application form.

[8] He began the process of applying for OAS benefits by reviewing the Government of Canada's websites dealing with *OAS Act*—the Service Canada Website. He also read the relevant application forms and accompanying information sheets. Solely from this review, Mr. Smith

concluded that he should first apply for an OAS Pension before seeking the other OAS benefits like GIS and his spouse's ALW.

[9] The Smiths after their review thought that once the OAS Pension was approved, they could apply for related benefits: Mr Smith's GIS; and Mrs. Smith's ALW. At no point before applying did Mr. or Mrs. Smith speak to, consult, or rely on advice from a Service Canada employee, or any other third party.

[10] Mr. Smith applied for his OAS Pension and the application was received in the Victoria office by Service Canada on March 29, 2017. When an OAS Pension application has box 11 checked off to indicate an applicant wants to apply for a GIS benefit or ALW application kits are supposed to immediately be mailed to them to complete. This did not happen.

[11] Hearing nothing back and worried they were missing their GIS and ALW benefits because they believed they could not apply for them until Mr. Smith received his OSA, the Smiths called Service Canada for an update on July 27, 2017. The Smiths were advised that his interpretation that they needed to wait for the OAS application to be accepted was not right and that they should file the GIS and ALW applications immediately. The agent then said she would send them the applications to fill out, but rather than wait even longer for benefits, the Smiths decided to speed up the process. They printed the forms, and filled them out immediately. The Smiths wrote a letter that same day where they explained why they did not apply for everything together, and attached the two application forms.

[12] On August 2, 2017, Service Canada received a combined application for Mr. Smith's GIS and for Mrs. Smith's ALW. This application included a letter from the Smiths stating that they did not realize they could have applied for GIS and ALW along with the OAS Pension application, and that they expected these would each become effective at the same time as the OAS Pension:

> An initial application for the Canada Pension Plan ("CPP") retirement benefit together with an application for the OAS Pension benefit was made by Brian R. Smith earlier this year in March, 2017, at which time Brian R. Smith had requested that payment for both pensions to begin (calculated and paid) from a date eleven months earlier, on April, 2016. The CPP benefits have since been calculated and paid commencing from that date of April, 2016 and Brian R. Smith is currently waiting for the Old Age Security Pension benefits to be approved and if approved, they will also begin (calculated and paid) as of April, 2016.
>
> What was not understood initially in this process was that the application for the [GIS] benefit and the application for the Allowance benefit should have been made at the same time…

[13] Mr. Smith spoke with a variety of Service Canada agents, seeking updates on the applications. All of the conversations are documented in the record. He received conflicting information from these agents, but there was a consensus that the Smiths could have applied for GIS and ALW sooner and that they should have received application kits earlier.

[14] On September 27, 2017, Mr. Smith again called Service Canada and spoke to an agent named "Andrea". He was aware of the November 2017 timeframe provided to him in his previous call, but expressed to Andrea that he and Mrs. Smith were "unable to wait due to financial strain. [They were] currently receiving CPP only and having to rely on borrowing money from friends/relatives as they [were] unable to meet their basic daily needs". Mr. Smith

requested that his application be expedited. He also alleges that Andrea advised him during this call that the effective dates would be the same for his OAS Pension and GIS, and for Mrs. Smith's ALW.

[15] Mr. Smith's OAS Pension was approved on October 2, 2017. The effective date was April 2016. Two days later, his GIS application and Mrs. Smith's ALW were approved, effective September 2016. Each were retroactively effective 11 months before the date of application. The OAS application had been received in March 2017 and the GIS and ALW applications were received in August 2017.

[16] On October 2 and 6, 2017, Mr. Smith followed-up, speaking with two agents. The second, "Stephanie", allegedly advised him that his request to expedite was accommodated. He would eventually receive confirmation by letters on October 10 and 13, 2017, that his OAS Pension was approved on October 2, 2017, and that his GIS and Mrs. Smith's ALW were approved on October 4, 2017.

[17] Contrary to what Andrea allegedly advised earlier, Stephanie advised the Smiths that the benefits' effective dates are calculated a maximum 11 months retroactive to an OAS application's receipt. Service Canada's website indicates this, as does the OAS Pension information sheet. Accordingly, Mr. Smith's OAS pension became effective April 2016 (as it was received in March 2017). The GIS and Mrs. Smith's ALW were effective September 2016 (as those applications were received in August 2017).

[18] Mr. Smith again contacted Service Canada on October 17, 2017. The agent he spoke to, "Kahlila", allegedly confirmed that the Smiths could have applied for all of the benefits at the same time by ticking the relevant boxes of the OAS Pension application, and that the benefits would have the same effective dates (similar to what "Andrea" had advised). The Smiths allege that Kahlila had forwarded a request to change the benefits' effective dates to be the same. This is consistent with the Intranet IT Renewal Delivery System notes for that date which state:

> As per clt req sent 2nd level urgent GE Re: Req to Correct Effective Date of GIS and Recalculate Ent (DIRE NEED) Please review question # 11, on OAS app Re: GIS. Effective date of GIS approved for 09/2016. **OAS back-dated to 04/2016. GIS & ALW should have also been back-dated to 04/2016 based on the clt's expressed intent to be reviewed for GIS**. Clt only sent in ISP-3025_16 after being advised to. Please release all ent to clt for 04/16 to 08/16. Clt will call after Friday for update.

[19] As the Smiths' inquiry escalated in conversations with other agents in subsequent calls to Service Canada, they were advised that they could seek a reconsideration. They did so on November 6, 2017; and it was replied to on December 28, 2017 [Reconsideration Request].

B. *First-level review: the Reconsideration Request is denied*

[20] The Smiths' Reconsideration Request states the following, among other things:

> …we were denied benefits under the [*OAS Act*] due to the confusing, misleading and incorrect advice provided to us by Service Canada. Based on the advice received from Service Canada, as contained in various materials provided by Service Canada, we were made to believe that the various applications for the [the OAS Pension] and other benefits provided for under the Act, namely; the [GIS and the Allowance] had to be submitted in chronological order.

The Smiths requested that all their benefits "commence payment at the same time as payment of the OAS Pension".

[21] On May 24, 2018, Service Canada's Old Age Security department denied the Reconsideration Request, confirmed by letters to the Smiths. The letters stated simply:

> Payment of retroactive Old Age Security benefits can be made for up to eleven months from the date we receive your application, however this retroactive period cannot cover any months prior to the month after your sixty-fifth birthday.

[22] Still displeased, the Smiths took further steps. On June 5, 2018, the Smiths initiated a privacy request for OAS records and the IT Renewal Deliver System notes. Subsequently, on August 20, 2018, the Smiths appealed their Reconsideration Request's result at the Social Security Tribunal—General Division [SST].

C. *Second-level review: SST appeal and ministerial intervention*

[23] The Smiths' appeals—one by each spouse—reiterated the same issues included in their Reconsideration Request. The appeals specified that the Smiths did not merely seek retroactive effective dates of April 2016. Rather, they aimed to address Service Canada's and the Minister's failures to offer any guidance that would have permitted this result, despite the Minister's alleged insistence that this information should have been known by the Smiths via the Service Canada website. Specifically, the Smiths maintain that they were:

> denied benefits, or a portion of the benefits, under the [*OAS Act*] due to our reliance upon the advice provided by Service Canada, acting on behalf of the Minister. [The Smiths] contended that the advice provided by Service Canada…does not convey that the

> applications for the OAS Pension, the GIS and the Allowance can all be filed at the same time. To the extent that such advice is supposed to convey such a meaning, it does not, and therefore, as we have claimed, it is confusing, misleading and incorrect.

[24] In short, if the Smiths knew they could have applied for everything at once, they would have, but they claim that nowhere does Service Canada represent this possibility, thus they lost out on several months of benefits.

[25] On September 5, 2018, the SST forwarded the Smiths' notices of appeal and materials to the Minister. The SST's jurisdiction does not cover section 32 of the *OAS Act*, so the Minister intervened and initiated an investigation. During this time, the SST held the Smiths' matter in abeyance, pending the Minister's determination. This was confirmed to the Smiths by letters dated January 22, 2019. The letters also sought further information and evidence from the Smiths to support their claim and to complete the investigation. The Smiths complied as best they could on February 21, 2019.

[26] After reviewing the file, the Minister found that there was an administrative error because of the delay in providing the Smiths with the GIS and ALW application kits immediately after Mr. Smith's application record was received. They were paid retroactive from May 2016 to August 2016, but not for the month of April. The *OAS Act* indicates that retroactive can only be 11 months (*OAS Act*, ss 11(7), 19(6)). The application was received March 29, 2017, and if the application for the GIS had been sent out immediately it would not have been received by them or made until April 2017. Therefore, the Minister found that they were eligible for the GIS commencing in May 2016.

[27] The decision-maker did not find any erroneous advice was provided, but did find there had been an administrative error. In his decision dated June 24, 2019, the Minister changed the effective dates to May 2016 to reflect the delay in sending them application kits.

[28] The Smiths now apply to this Court for judicial review of the decision of the Minister.

III. Issues

[29] The Applicants presented the issues as:

A. What is the appropriate standard of review?

B. Did the Minister fail to observe a principal of natural justice, procedural fairness or other procedure that the Minister was required by law to observe?

C. Did the Minister base his findings in the Third Decision on an erroneous interpretation of Section 32 of the *OAS Act*?

D. Did the Minister base his findings in the Third Decision on an erroneous finding of fact that there was no erroneous advice given by the Minister that resulted in a denial of a portion of the benefits to which the applicant was entitled to under the *OAS Act*?

E. Alternatively, did the Minister base his findings in the Third Decision on an erroneous finding of fact that there was no administrative error made by the Minister that resulted in a denial of a portion of the benefits to which the applicant was entitled to under the *OAS Act*?

F. Did he Minister err in law and/or acted in a way contrary to law in the Third Decision in limiting the amount of the benefits denied under the Minister's finding of administrative error?

[30] I will deal with the Applicants' issues as follows:

A. Did the Minister fail to observe a principle of natural justice or duty of procedural fairness; and

B. Was the Minister's Decision was unreasonable?

A. *Standard of Review*

[31] The standard for determining whether the decision-maker complied with the duty of procedural fairness is generally said to be correctness. However, attempting to shoehorn the question of procedural fairness into a standard of review analysis is an unprofitable exercise (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-56, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The ultimate question is whether the Applicants knew the case to meet, and had a full and fair chance to respond.

[32] Regarding the second issue, the standard of reasonableness applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). In similar matters of a discretionary nature by the Minister of Employment and Social Development, reasonableness has been applied (*Torrance v Canada (Attorney General)*, 2020 FC 634 at paras 27-31 [*Torrance*]).

[33] Under the reasonableness standard, the Court will intervene only if it is satisfied "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision-maker made the decision, and enable the Court to determine whether the decision falls within the range of

acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick,* 2008 SCC 9 at para 47).

B. *Did the Minister fail to observe a principle of natural justice or duty of procedural fairness?*

[34] The arguments regarding procedural fairness are somewhat confusing and seem to trying to fit a square peg in a round hole. However, given that the Applicants are self-represented, I will try to address their arguments as they presented them.

[35] The Applicants submitted that the decision of Service Canada was not procedurally fair because the decision-maker did not provide sufficient reasons of why they did not find that the Applicants were given erroneous advice. The Applicants say their submissions advanced arguments that there had been an erroneous advice on the website and never received reasons why it was not erroneous advice contrary to the statute.

[36] The Applicants' position is that Service Canada was required to by subsection 27.1(2) of the *OAS Act* to give sufficient reasons. The provision states that "…shall without delay notify, in writing, the person who made the request of the Minister's decision and of the reasons for it." The argument is summarised by the Applicants as "The applicant submits that the Minister is require to provide reasons for the Third Decision pursuant to a duty both at common law, as part of the duty of procedural fairness, as well as under statute."

[37] Though the Applicants agree that they did not receive erroneous advice from any of the Service Canada staff, they submitted that the erroneous advice was on S/C website, application forms and information sheets. As set out above at paragraphs 5 and 9, Mr. Smith relied on the website, which lead him to believe that it was chronological process. He reasoned that he had to first apply for OSA benefits and then had to wait for his application to be accepted before applying for GIS and his wife's allowance.

[38] The written submissions refer to three decisions that the Applicants argued support the procedural unfairness of not having reasons of why their reliance on the website was not an E/A . The three decisions the Applicants refers to are:

1) the initial decision where the Minister set the effective date to April, 2016;
2) the second decision, or reconsideration, where the Applicants claimed E/A and A/E and where no reasons were given regarding them, but only on the delay by the Applicants in filing for the GIS; and
3) the third decision, where the Minister found an A/E was made, but not that any E/A was given. The third decision was dated June 24, 2019 and received by the Applicants on the July 4, 2019.

[39] As part of the procedural unfairness arguments, the Applicants seem to have concerns that the E/A / A/E "Recommendations and approval by the designated authority dated May 31, 2019" does not have analysis or reasons for there being no E/A.

[40] This application is with regards to the June 24, 2019 decision. While the decision-maker had all the prior material as well as extensive submissions from the Applicants each time a decision was made, the judicial review application is only on the June 24, 2019 decision.

[41] The Supreme Court of Canada [SCC] has indicated that if the reasons are insufficient, the Certified Tribunal Record [CTR] can be used to "supplement" but I do not see the SCC meaning that each of the decisions or procedural steps in the CTR are to be reviewed (see *Federal Courts Rules*, (SOR/98-106) r 302; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15; *Vavilov* at para 94).

[42] I find no procedural unfairness in this decision. The decision-maker relied on all the submissions of the Applicants as well as the May recommendation (above at para 39). This recommendation factually included the E/A submissions but only analysed the administrative error and then went directly to recommending that section 32 of the *OAS Act* be "…invoked and remedial action be taken to put Mr. Smith in the position he would have been in had the error not occurred."

[43] I do not find any procedural error or breach of fundamental justice as the actual decision does provide reasons of why no E/A was found (see below at paragraph 55). Consequently, the Applicants were put into the position they would have been had no A/E been committed. There is no difference in the remedy for either or an E/A or A/E. The lack of reasons on the May recommendation is not a breach given it is not the decision which is the subject of this judicial review.

[44] The Applicants argued at the hearing that it was a question of law involving statutory interpretation that E/A could come from a website and not just from direct contact (two way) with a Service Canada personal. This argument was not in any of the Applicants previous submissions to the decision-maker.

[45] The Respondent objected to this very late additional argument being considered, as it was not information that was presented to the decision-maker so it is not part of the record. I agree that that this argument was not presented to the decision-maker or in the materials until the "Applicant's Supplementary Record" filed August 10, 2020.

[46] Similarly, it is not fair to the Respondent to have an argument presented 10 days before the hearing. On August 5, 2020, Prothonotary Furlanetto granted permission to file a supplementary record after being asked by the Applicants if they could to address *Vavilov*. The supplementary submissions contain, however, new arguments related to statutory interpretation advancing that advice should include relying on the website and how *Vavilov* applies to that argument.

[47] I do not find that this evidence fits into any of the exceptional category of when new evidence can be presented on a procedural fairness argument as it is legal argument and could have been presented to the decision-maker (*Assn of Universities & Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at para 20). It cannot now be argued it was procedurally unfair for the decision-maker to not make a determination on an argument not presented to them. Even though the Applicants argue that, the issue regarding the E/A only

became an issue after the release of the decision, so they say it did not matter that he did not argue it before the decision-maker. I do not agree. If that argument was presented to the decision-maker that he relied on statutory interpretation to say that erroneous advice should be expanded from the current jurisprudence to include advice from the website, then he could (and should) have submitted that to the decision-maker.

[48] If I did consider this argument the Applicants interpretation of "advice" in paragraph 39 of their submissions, I do not find this "one way advice" is expressly supported by *King v Canada,* 2009 FCA 105 as they claimed. Even taking the Smiths' interpretation that "information, instructions, directions and advice" communicated "via the Internet" can constitute erroneous advice under section 32 of the *OAS Act*, they fail to explain how the Decision is inconsistent with it.

[49] The Applicants cannot claim the Minister's interpretation is erroneous that the E/A has to be a two-way communication given that in this context that interpretation is entirely consistent with section 32 of the *OAS Act*, and is consistent with *Torrance*.

[50] The burden to prove that advice the Applicants were given was erroneous is with the Applicants (*Manning v Canada (Human Resources Development)*, 2009 FC 523 at para 37). If the Applicants are to prove that the advice was erroneous then they have to demonstrate that this erroneous advice resulted in the denial of a benefit, or portion thereof (*Torrance* at para 50). Even if I had found that there had been E/A that the Applicants had relied on, which I have not,

they would still have the burden of showing that the website gave erroneous advice. This burden was not met.

[51] However, much of the Smiths' background as set out in this section of their arguments is irrelevant to the record before the SST and later the Minister, because they asserted the following:

> My spouse and I had applied for benefits under the Act, namely, the OAS Pension, the GIS and the Allowance, in good faith, relying solely upon the written instructions, directions and advice set forth in the material presented on the Service Canada Website, the instructions, directions and advice in the Information Sheets that accompany the Application Forms for the OAS Pension, the GIS and the Allowance, which information sheets advise how these Applications Forms are to be interpreted and completed; as well as, the instructions and directions in the Application Forms for the OAS Pension, the GIS and the Allowance, respectively.

[52] The Respondent rightly notes that, if the Smiths did not submit to the Minister that they relied on the (erroneous or not) advice of Service Canada agents, then the Minister reasonably directed the analysis toward the S/C website, applications and instruction sheets that the Smiths solely relied on. While there appear to be uncontested allegations in Mr. Smith's affidavit that demonstrate inconsistent and potentially incorrect statements given by Service Canada agents, the Smiths did not rely on such advice when they made their applications.

[53] In summary, the Applicants argue that they were entitled to have the decision-maker determine if there was an erroneous error and for the decision-maker not to do it means that there was a procedural unfairness.

[54] This is simply not borne out by the record. As detailed above in the facts, Service Canada agents provided the Smiths numerous opportunities to engage with the process, and on many occasions took action to accommodate the Smiths in response to their concerns. On the whole, Service Canada consistently and in good faith tried to help remedy the Smiths' situation, though were slow on occasion, and in the end it was found there had been an administrative error, which the Smiths were reimbursed their lost benefits except for the month of April which will be explored later in the reasons.

[55] Further, the Smiths seem to contend, generally, that the Minister failed to provide reasons or, if not that, then adequate reasons. The former argument lacks merit, as the Minister indeed provided reasons, albeit brief on the matter of erroneous advice. These are reasons that the decision maker found there was no erroneous error :

> - There is no finding that erroneous advice was given to you by an employee of Service Canada, which caused the delay of your application for the Guaranteed Income Supplement being received. Your interpretation of information sheets and the Service Canada website is what caused the delay and this is not considered erroneous advice.

[56] In terms of adequacy, the Smiths appear to take issue with the Minister's failure to take a deep analysis of their purported evidence that erroneous advice was given. I find the reasons adequate for the Applicants know why the decision-maker found they had not been given erroneous advice. The reason being that the Applicants themselves had misinterpreted the website and information sheets.

[57] I do not find there was any procedural unfairness in which I could find a reviewable error. Given that, the Minister has a wide discretion to determine procedure and make a

determination of the facts I find that the Decision's reasons are sufficient and satisfy the Smiths' procedural rights.

C. *Was the Minister's Decision was unreasonable?*

[58] The reasons that follow attempt to address all of the Applicants' issues that they raised. (see above at paragraph 29). There are redundancies in my responses to these arguments as the issues and arguments are closely related nuanced arguments with other issues. But because this has been a long very personal process for the Applicants, I will provide the reasons even though they are on occasion repetitive.

[59] I find that the decision was reasonable for the reasons that follow.

(1) Interpretation of the *OAS Act*'s section 32

[60] The Smiths first argue that the Minister relied on an erroneous interpretation of section 32 of the *OAS Act*. This lacks merit, because the Minister did not interpret section 32 in any way inconsistent with the Smiths' assertions.

[61] However, to any extent that the Smiths' interpretation of section 32 is accurate, it was open to the Minister to find that the Smiths' *misinterpreted* such communications—as opposed to those communications being erroneous.

(2) Erroneous finding of no erroneous advice

[62] Nonetheless, it is clear from the background that the Smiths':

a) reviewed the website, made a conclusion about the proper process, and did not attempt to clarify with anyone before applying;
b) waited until nearly August 2017 to connect with a Service Canada agent, who informed them to apply immediately for the GIS and Allowance, which they did;
c) to any extent that the Smiths received inconsistent advice from Service Canada agents along the way, such inconsistency had no bearing on their application timing and the resulting effective dates; and
d) to any extent that an administrative error affected the Smiths' benefits' effective dates, such error was remedied in the decision, accounting precisely for the Smiths' own admitted interpretation from the Service Canada website: to apply first to an OAS Pension, and then wait for its approval to apply for the GIS and Allowance.

[63] The Respondent indicate that the website gives general advice and if there is specific concerns after reviewing it, or further questions, then it is reasonable that the Applicants should have contacted Service Canada—as directed to by the website. The Federal Court of Appeal [FCA] in *Mauchel v Canada (Attorney General)*, 2012 FCA 202 [*Mauchel*] held exactly that in an Employment Insurance [EI] case. In that decision, the applicant argued he relied on the website and concluded that "EI eligibility was true and as authoritative…" (*Mauchel* at para 5) to his determent. He wanted to then backdate his case. Justice Evans held:

> …A reasonable person who relies on the website for information must do more thorough research than Mr Mauchel apparently

> undertook. A reasonable person would not have been so misled by its initial general statements about eligibility as to be deterred from looking for more specific information relevant to his or her situation. The statements early in the website that EI is for those who lose employment through no fault of their own are general enough to include those who are longer employed because they voluntarily quit their job with just cause.
>
> 14 In my view, the website contained enough information to have alerted a reasonable person in Mr Mauchel's position to wonder whether he or she might be eligible for benefits and to contact the Commission to find out or to make an application for benefits. **The question is not whether a particular claimant found the information clear and unambiguous, and decided that further search of the website was pointless, but whether a reasonable person would have so regarded it.** It is not alleged that the website contained erroneous material.
>
> **15 Since the website does not purport to deal with the specifics of every person's particular situation, claimants cannot reasonably treat information on it as if it were personally provided to them by an agent in response to an inquiry about their eligibility on given facts.**
>
> (*Mauchel* at paras 13-15, my emphasis)

This logic can be transposed to the present case as well.

[64] Similarly, in the case of the Smiths, the decision is reasonable when it was held that the Applicants did not rely on E/A. The jurisprudence of the FCA currently holds there must be two-way advice, and there was not any erroneous two-way advice given to the Applicants because it was only one way and that was themselves reviewing of the S/C website, instruction sheets and application. Looking at this pragmatically, the only possible erroneous advice that the Applicants relied on was from themselves.

(3) Erroneous finding of no erroneous err resulting in a of denial of benefits

[65] The Applicants argued that, in the alternative, if there was no erroneous advice given by the Minister based on an erroneous finding of fact, then there was an administrative error made in the sense that inaccurate or misleading information was released on the S/C website, application and information sheet. They argue that this error comes from the fact that the Minister is responsible for the administration of the *OAS Act*, and part of that administration is communicating effectively.

[66] The Applicants argue that there were no findings of fact other than that the Applicants' interpretation of the S/C website and materials was wrong. The Applicants argue that they utilized and relied on that information and were lead to believe there was a chronological order in the application process. The Applicants argue "…. that if there was no erroneous advice given by the Minister based on erroneous finding of fact by the Minister , which the applicant does not admit, but denies, then there was an administrative error made by the minister based on an erroneous finding of fact by the Minister."

[67] This very confusing argument can be encapsulated as follows. The Applicants expressing that "the most egregious evidence of this administrative error is the OAS Pension Application Form". The Applicants declare that the E/A in the application form is a result of an administrative decision. Mr. Smith appears to say once again that the form says it is a chronological exercise and that is the error he relied on. The evidence he relies on is once again the fact that Service Canada, subsequently to the Applicants' application, has make changes to

their forms (in November of 2018) and have changed their program to have automatic enrolment for GIS and OAS (in November of 2017).

[68] The Applicants submitted in their submissions that the materials support his interpretation. They argue that the Minister is responsible for the form and content of the application form. Further, during the Applicants' various legal matters related to these applications, the Applicants has now been told Service Canada is amending their forms to have a dual application form and beginning in November 2017 and that there is an automatic enrolment in both the OAS and GIS. This leads the Applicants to argue that their interpretation was not wrong.

[69] I do not agree, and find that it was reasonable for the decision-makers to find that the Applicants were wrong. Throughout the process, it was never in doubt that the Applicants were wrong in their interpretation that Mr. Smith had to wait for his application to be accepted before applying for GIS and Mrs. Smith's allowance. If the Applicants had sought two-way advice, that is what they would have been told. Tellingly when they did speak to someone at S/C, that is what they were told.

[70] The error that the decision-maker did find was that the application forms for the GIS and allowance were not mailed out immediately when box 11 on the application was checked off. The fact that there have been changes made to the form and application process after their application was submitted does not make the decision made unreasonable.

(4) Limit of benefits

[71] The Applicants indicate once again that the whole purpose of answering question 11 on the application form indicates he wants to apply for GIS makes it logical that the process is a chronological procedure. This error by the Minister the Applicants argued has the opposite effect of what the Minister says they intended and that this is "an administrative error to the fullest extent possible." This, the Applicants submitted, means they should not be denied any portion of the GIS he should have been if the Minister had properly indicated you could apply for the OAS and GIS at the same time. This relates to the month of April that they were not paid when they received the positive decision currently under review.

[72] It is evident from my above findings, that I do not find that the decision-maker's finding of fact unreasonable. That is, the finding that the Applicants made an error in there interpretation that the process was chronological. Without this underlying premise, the Applicants' argument must fail once again.

[73] This entire application is based on the Applicants' not receiving an additional one month in retroactive pay. As set out in the decision in great detail, the reason for them not receiving that month is as follows:

> As your Old Age Security application was received March 29, 2017 by our office, an application for the Guaranteed Income Supplement should have been sent to you without delay as there was a possibility of retroactive entitlement. This means that your application for the Guaranteed Income Supplement could have been received in April 2017. As Service Canada can only pay a maximum 11 months retroactively from the date an application is received, you could have been approved for the Guaranteed

> Income Supplement benefit in May 2016. As you can see, even if the administrative error had not been made, Service Canada would not have been able to send you an application and have it returned in time to have your benefit start April 2016.
>
> I am pleased to inform you that the information provided has allowed the Minister to take the remedial action necessary to place you in the position you would have been under the Old Age Security program had an administrative error not been made. Your application for the Guaranteed Income Supplement has been deemed as received in April 2017 and you are therefore, eligible for payment of the Guaranteed Income Supplement commencing from May 2016, instead of September 2016.

[74] This is a reasonable decision especially when it is considered that the Applicants' application was received in Victoria (at Service Canada) on March 29, 2017, and then if there had been no administrative error the GIS and allowance forms would have been mailed to the Applicants in Kelowna. This means that it is an impossibility that the forms could have arrived in Kelowna before April. So, whether the decision-maker found there had been an E/A (of which he did not) and or an A/E the remedy would have been the same. Further, the determination of the decision-maker that they were to be given retroactive pay from May 2016 is reasonable. The remedy provided the Applicants with the 11 months of retroactive loss of benefits that they were entitled to under the statutory authority.

[75] These two applications will be dismissed.

[76] The Respondent did not seek costs and none are ordered.

JUDGMENT in T-1265-19 and T-1266-19

THIS COURT'S JUDGMENT is that:

1. Both Applications are dismissed;

2. No costs are ordered.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1265-19
STYLE OF CAUSE:	BRIAN SMITH v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-1266-19
STYLE OF CAUSE:	MICHELLE SMITH v ATTORNEY GENERAL OF CANADA

HEARING HELD BY CONFERENCE CALL ON AUGUST 20, 2020 FROM VANCOUVER, BRITISH COLUMBIA (COURT) AND KELOWNA, BRITISH COLUMBIA (PARTIES)

DATE OF HEARING:	AUGUST 20, 2020
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	OCTOBER 22, 2020

APPEARANCES:

Michelle Smith Brian Smith	FOR THE APPLICANTS, ON THEIR OWN BEHALF
Tiffany Glover	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT