Federal Court  Cour fédérale

Date: 20260112

Docket: T-1393-24

Citation: 2026 FC 36

Ottawa, Ontario, January 12, 2026

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JENNIFER KRYKLYWICZ

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The self-represented Applicant, Ms Jennifer Kryklywicz, seeks judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 of a January 5, 2024 decision of the Appeal Division [AD] of the Social Security Tribunal [SST] denying her leave to appeal a decision of the SST's General Division [GD].

[2] While I acknowledge and am sympathetic to Ms Kryklywicz's circumstances, for the reasons that follow, the application for judicial review [Application] must be dismissed.

II. Background

[3] The Applicant reports that she suffers from a number of medical conditions that caused her to apply for Canada Pension Plan [CPP] disability benefits first in 2011 and then again in 2021.

A. *First Application*

[4] In July 2011, the Applicant submitted her first application for a CPP disability pension. At that time, her minimum qualifying period [MQP] – the date by which it must be established she suffered from a severe and prolonged disability based on her period as a contributor to the CPP – was determined to be December 31, 2013 (*Canada Pension Plan*, RSC 1985, c C-8, s 44(2) [*Canada Pension Plan*]). The MQP is not in dispute.

[5] On December 21, 2011, her application was denied by the then Minister of Human Resources and Skills Development. It was held that although she had "identified limitations" linked to her medical conditions, those limitations did not prevent her from doing some type of work and she had therefore not established a disability that is both severe and prolonged within the meaning of the *Canada Pension Plan* (see s 42(2)). A reconsideration decision confirmed the denial on March 28, 2012.

[6] The Applicant appealed the reconsideration decision to the GD. An oral hearing was conducted in January 2015, and the GD undertook a *de novo* consideration of the application. The GD dismissed the appeal on March 23, 2015 [GD's 2015 Decision]. The GD found, after having considered the evidence – including medical reports disclosed by the Applicant and her testimony – and the applicable statutory requirements, that, on the balance of probabilities, the Applicant had not shown that she had a severe disability within the *Canada Pension Plan* meaning of that term. Having concluded the Applicant had not established she suffered from a severe disability; the GD held it need not make a finding on the "prolonged" criteria.

[7] The Applicant did not seek leave to appeal the GD's 2015 Decision to the SST's AD.

B. *Second Application*

[8] On December 17, 2021, the Applicant re-applied for disability benefits. On March 14, 2022, the Minister for Employment and Social Development Canada [Minister] determined that her second application could not be approved, explaining that the GD's 2015 Decision – where it was found the Applicant did not have a severe and prolonged disability on or before the expiration of her MQP – was final, and that she had not made CPP contributions after December 2013. Following the Applicant's request for reconsideration, the initial decision was upheld on February 21, 2023.

[9] The Applicant again appealed to the GD. Following a teleconference with the Applicant, the GD found in its October 25, 2023 decision that the Applicant was not eligible for CPP disability benefits [GD's 2023 Decision]. The GD noted the Applicant's previous CPP

application had been initially denied by the Minister and then denied again on appeal to the GD (the GD's 2015 Decision). The GD found that the issues raised in the 2023 appeal were the same issues considered and addressed in the GD's 2015 Decision, a decision that was final. Applying *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, the GD found the matter was therefore *res judicata* (had been previously decided), and that in the absence of a denial of natural justice it would be improper to allow the appeal to proceed. The GD therefore dismissed the appeal.

[10] On November 27, 2023, the Applicant sought to appeal the GD's 2023 Decision to the AD.

C. *The SST Appeal Process*

[11] Before setting out the decision in issue, a brief overview of the legislative framework establishing the SST and the process that governs appeals to the AD will provide helpful context.

[12] The *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA] establishes the SST. The SST consists of the GD and the AD (s 44(1)). The GD in turn is made up of two sections, the Income Security Section [ISS] and the Employment Insurance Section (s 44(2)). The Applicant's CPP denial is a matter that was dealt with by the ISS of the GD.

[13] Any decision of the GD may be appealed to the AD but only where an application for leave to appeal has been made and granted by the AD.

[14] Section 58.1 of the DESDA details in what circumstances leave to appeal a decision of the ISS is to be granted:

Leave to appeal — Income Security Section	**Permission d'en appeler — section de la sécurité du revenu**
58.1 Leave to appeal a decision made by the Income Security Section is to be granted if the application for leave to appeal	**58.1** La demande de permission d'en appeler d'une décision rendue par la section de la sécurité du revenu est accordée dans les cas suivants :
(a) raises an arguable case that the Section failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;	**a)** la demande soulève une cause défendable selon laquelle la section n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;
(b) raises an arguable case that the Section erred in law, in fact or in mixed law and fact, in making its decision; or	**b)** elle soulève une cause défendable selon laquelle la section a rendu une décision entachée d'une erreur de droit, de fait ou de droit et de fait;
(c) sets out evidence that was not presented to the Section.	**c)** elle présente des éléments de preuve qui n'ont pas été présentés à la section.

[15] In effect, section 58.1 of the DESDA provides that leave is to be granted only if the application for leave:

A. raises an arguable case that the ISS:

i. failed to observe a principle of natural justice,

ii. committed a jurisdictional error,

iii. erred in law, fact, or mixed law and fact, or

B. sets out evidence in the application for leave that was not before the ISS.

[16] An arguable case is one that discloses a reasonable chance of success (*Abramowitz v Canada (Attorney General)*, 2024 FC 1793 at para 32 [*Abramowitz*], citing *Mélinard-Beaulieu v Canada (Attorney General)*, 2023 FC 1680 at para 11 and *Leblanc v Canada (Human Resources and Skills Development)*, 2010 FC 641 at para 24).

III. Decision under Review

[17] On January 5, 2024, the AD dismissed the application for leave to appeal. The AD found the Applicant had not met the requirements set out in section 58.1 of the DESDA for granting leave to appeal – specifically, the Applicant had not raised an arguable case nor set out new evidence (evidence that was not before the GD) that would justify granting leave to appeal.

[18] In its decision, the AD first outlined the arguments advanced by the Applicant in seeking leave: (1) she had a severe and prolonged disability, as demonstrated by evidence disclosing her diagnoses, functional limitations, and ongoing treatments; (2) certain evidence placed before the GD in 2015 contained errors, which she only noticed in 2023; and (3) she expected three people to be present at her hearing in January 2015, but only one other person was in attendance. The AD also noted the Applicant had not challenged the GD's *res judicata* analysis.

[19] The AD considered the alleged breaches of fairness in the original proceeding before the GD in 2015 and noted that the GD addressed these matters in its decision and found no breach of

fairness. The AD concluded the GD did not err in finding the evidence failed to demonstrate a lack of fair process in 2015.

[20] The AD acknowledged the Applicant had proffered medical evidence not placed before the GD, but held that the new evidence was not arguably relevant to the issue on appeal which was the finality of the GD's 2015 Decision and the application of the principle of *res judicata* by the GD.

[21] The AD concluded that the Applicant had not demonstrated the GD may have erred in either considering the evidence, concluding the issues and parties before it were the same as those before the GD in 2015, or in finding that no injustice would arise in applying the *res judicata* doctrine.

[22] The AD denied the Applicant leave to appeal.

IV. Procedural History before the Court

[23] The Applicant commenced her Application on June 1, 2024, and has since brought several motions mainly seeking extensions of time to file materials and for disclosure of the complete Certified Tribunal Record [CTR]. A summary follows:

A. On July 30, 2024, the Applicant brought a motion for an extension of time to serve and file her affidavit evidence under Rule 306 of the *Federal Courts Rules*, SOR/98-106 [Rules]. The Applicant also requested the "complete file from the Social Security Tribunal." On August 15, 2024, Associate Judge Kathleen Ring

allowed the Applicant's motion, granting the Applicant an extension of time to September 6, 2024, to serve and file her affidavit evidence.

B. On September 12, 2024, the Applicant brought a second motion for an extension of time to serve and file her affidavit evidence. On September 20, 2024, Associate Judge Ring allowed the Applicant's motion, granting the Applicant a further extension of time to October 1, 2024, to serve and file her supporting affidavit.

C. On November 6, 2024, the Applicant brought a third motion for an extension of time to serve and file her affidavit evidence. The motion also requested the disclosure of the "complete file from the Social Security Tribunal." On January 9, 2025, finding it was unclear whether the Applicant was seeking a further extension of time to serve her Rule 306 affidavit, or further disclosure from the SST under Rule 318, or both, Associate Judge Ring ordered the proceeding to continue as a specially managed proceeding and granted the Applicant leave to serve and file an amended motion record not later than January 23, 2025.

D. On January 23, 2025, the Applicant tendered a motion for filing, again asking for the "complete files from the Social Security Tribunal." On February 10, 2025, following a case management conference held on that day, Associate Judge Catherine Coughlan, the Case Management Judge [CMJ], rejected the Applicant's January 23, 2025 motion for filing, finding the Applicant already possessed the requested documents [February 2025 Order].

E. On June 13, 2025, the Applicant brought a motion seeking leave to serve and file new evidence under Rule 312. On June 23, 2025, the Respondent filed a

responding motion record requesting that the Applicant's motion be dismissed. On June 23, 2025, the CMJ directed that the Applicant's motion was accepted for filing, despite the anomalies of the underlying Rule 312 affidavit, and would be heard at the time the Application was heard on its merits. I deal with this motion below as a preliminary matter at paragraphs 50-56.

[24] In addition, by letter dated October 22, 2025, the SST submitted certified copies of certain documents "further to Jennifer Kryklywicz's request dated October 15, 2025." On November 5, 2025, the CMJ directed that the application judge would determine whether this material was to be added to the record.

V. Issues and Standard of Review

[25] Although a number of preliminary matters arise, each of which is addressed below, the sole matter to be determined in respect of the decision under review is whether the AD's denial of the requested leave to appeal the GD's *res judicata* determination was reasonable.

[26] The Respondent submits, and I agree, that the decision to deny leave is to be reviewed on the reasonableness standard (*Abramowitz* at para 19; see also *Cameron v Canada (Attorney General)*, 2018 FCA 100 at para 3 and *Andrews v Canada (Attorney General)*, 2018 FC 606 at para 17).

[27] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker"

(*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]). The party challenging a decision has the burden of demonstrating to a reviewing court "sufficiently serious shortcomings in the decision such that the decision cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100, *Mason* at paras 59–61).

VI. Position of the Parties

A. *Applicant's Submissions*

[28] The Applicant first submits her procedural fairness rights were breached in the context of her first application for CPP disability benefits and the GD's 2015 Decision. In particular, the Applicant asserts: (1) she understood the January 2015 hearing before the GD to be presided by three members, however only one was in attendance; (2) the GD member demonstrated bias against her in stating she was too intelligent to receive CPP disability benefits; (3) the Applicant was unaware of all of the medical evidence and the Minister's delegate did not give her an opportunity to supplement her application narrative prior to rendering the initial refusal and reconsideration decisions.

[29] In her submissions, the Applicant describes her medical history and functional limitations, and opines on her medical diagnoses, prognosis, and treatments. She also contends that certain medical evidence submitted as part of her first application, specifically medical reports dated in 2011 or 2012, contained fundamental errors. She submits this inaccurate medical evidence – which she only noticed in 2023 – is contrary to all the other medical evidence she has

disclosed, notably the medical evidence included in the Applicant's Record [AR]. The Applicant thus submits the Minister, or the GD erred in solely considering certain medical evidence from 2011 or 2012, and ignoring new medical evidence disclosed in the context of her second application.

[30] The Applicant also argues violations of her human and *Charter* rights (*Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]) arising from the conduct of her employer in or around 2011, and raises the issue of tort liability in cases of medical misdiagnosis.

[31] As a remedy, the Applicant seeks an order "for the Canadian Disability Plan to pay the Applicant from 2011 till age 65," the "review of medical evidence from the Applicant," and costs.

B. *Respondent's Submissions*

[32] The Respondent first submits the AD reasonably denied the Applicant leave to appeal in the absence of an arguable case that the GD committed an appealable error. The Respondent argues the AD considered the Applicant's arguments and reasonably concluded these did not have a "reasonable chance of success (arguable case) on appeal" because they did not challenge the GD's *res judicata* finding – the main issue that was before the AD. In particular, the Respondent contends that the Applicant's submissions to the effect that certain medical documents in the record were not her own or that she expected more people to attend her 2015 hearing – submissions made before both the AD and this Court – are irrelevant.

[33] The Respondent further submits the Applicant's assertion that the AD ignored evidence is without merit. The Respondent argues the AD considered the evidence in the record and reasonably found that the GD did not misinterpret any evidence in applying the doctrine of *res judicata*.

[34] Regarding the new medical evidence the Applicant sought to place before the AD, the Respondent argues the AD did not err in finding that the evidence was not relevant because (1) it does not disclose a special circumstance that may justify an exception to application of the *res judicata* doctrine, and (2) the evidence postdates the Applicant's MQP and the GD's 2015 Decision.

[35] In addition, the Respondent raises a series of preliminary matters. First, the asserted incompleteness or deficiency of the CTR. Second, the human rights, *Charter*, and tort arguments advanced by the Applicant. Third, the admissibility of new evidence disclosed in the AR.

VII. Analysis

A. *Preliminary Matters*

[36] In addition to the preliminary matters identified above, two further matters arise. First, as noted above at paragraph 24, the SST, by letter dated October 22, 2025, submitted additional certified copies of documents to the Court. This package of documents is identified as Filing #3 below and is considered in concert with preliminary matter #1 (whether the CTR is complete).

[37] Second, the motion brought by the Applicant on June 13, 2025, seeking to file an additional affidavit.

(1) Is the CTR Complete?

[38] The Applicant asserts she has "tried on numerous occasions" over the course of the proceedings to obtain the "complete underacted [*sic*] file from the Social Security Tribunal" but has yet to receive it. The Respondent disputes the Applicant's assertion that documents are missing from the CTR, noting that the CTR is included in the Respondent's Record [RR] and that the CMJ has concluded that the Applicant is in possession of all the requested documents (February 2025 Order). The Respondent also notes the Applicant has failed to clarify which documents are missing.

[39] CTR document production in this matter was initially incomplete in the sense that all documents before the AD were identified but only those not shared with the Parties during the appeal were produced. This appears to have caused some confusion and may explain the Applicant's view that she has not received the full CTR. It may also have resulted in what has been repetitive production by the SST.

[40] To address the issue of whether the CTR is complete, it is necessary to first review the history of CTR production and identify those SST filings that are duplicative.

(a) *CTR Production*

[41] By letter dated June 20, 2024, the SST served on the Parties and filed with the Court certified documents relevant to the Application in accordance with Rules 317 and 318 [Filing #1]. The package consisted of: (1) an Index of Materials [Index] listing all material before the AD at the time of the decision; (2) the Applicant's June 1, 2024, Notice of Application; and (3) a copy of the material before the AD and identified in the Index but that had not been shared with the Parties in the course of the appeal. The Index enumerates 49 items. It indicates 31 of the items are attached to the letter (presumably those items before the AD that had not been previously shared with the Parties) and provides a description of the remaining 18 items, including the number of pages in each item.

[42] By letter dated July 11, 2024, the SST served on the Parties and filed with the Court certain additional certified documents requested by the Respondent and relevant to the Application, again in accordance with Rules 317 and 318 [Filing #2]. This package consisted of three documents, each of which was produced.

[43] The RR, filed on April 9, 2025, and served on the Applicant, includes all the items identified in the Index contained in Filing #1. This material is set out at Exhibits "A" and "B" to the August 7, 2024, Affidavit of Nadine Lavoie [Lavoie Affidavit].

[44] By letter dated October 22, 2025, the SST submitted a third package of certified documents [Filing #3], this reportedly in response to a request dated October 15, 2025, from the

Applicant. The CMJ acknowledged receipt of Filing #3 and directed that it be left to the application judge to determine if the further material was to be added to the record.

[45] In the course of the hearing of this judicial review, the Parties advised that they had not reviewed Filing #3, which appears duplicative of the documents identified in the Index and included in the contents of RR. This being so, the Court proposed for reasons of efficiency, and the Parties agreed, that the Court review Filing #3 and issue further direction only if the contents were found to include documents not previously available to the Parties as part of the RR.

[46] Filing #3 has been reviewed. None of the documents contained therein are new. As demonstrated in the table of concordance appended to this Reasons and Judgment as Appendix "A", each document included in Filing #3 forms part of the RR.

[47] Filing #3 is fully duplicative of material in the record and is of no assistance to the Parties nor the Court in considering the Application. Although Filing #3 is duplicative and has not been considered, it will be accepted for filing for the purpose of completeness.

(b) *The CTR is Complete*

[48] Despite the manner in which the CTR has been produced, the Applicant's non-specific assertions that the full record has not been received is simply not sufficient to satisfy the Applicant's burden of demonstrating a deficient or incomplete CTR (*Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 at para 16).

[49] It has not been established that Filings #1 and #2 failed to identify the complete record before the AD. The RR reproduced all the documents identified or provided in those filings, and that record was served on the Applicant. I therefore share the CMJ's conclusion that the Applicant is, and has been, in possession of all the requested documents. It has not been demonstrated that the CTR is incomplete.

(2) The Applicant's June 13, 2025 Motion

[50] The Applicant brought a motion on June 13, 2025, seeking leave to file additional affidavit evidence under Rule 312. The additional affidavit, affirmed by the Applicant, was originally tendered for filing on March 13, 2025 [March 13, 2025 Affidavit]. The March 13, 2025 Affidavit includes (1) a radiology report from Mayfair Diagnostics Regina dated September 15, 2024; (2) a physiotherapist report dated February 26, 2024; and (3) excerpts from the website of "sask docs" (https://www.saskdocs.ca/work/familyphysicians/imgfamilyphysician/sippa/) indicating certain eligibility criteria required to practice as a family physician in Saskatchewan.

[51] In response to the motion, the CMJ directed [June 2025 Direction] it be heard with the merits of the Application. In the June 2025 Direction, the CMJ also noted that although originally tendered on March 13, 2025, the affidavit was purportedly affirmed on March 13, 2024 – predating the filing of the Notice of Application and certain of the appended documents. I am satisfied that the jurat reference to 2024 is a typographical error and the affidavit was affirmed by the Applicant on March 13, 2025.

[52] The Respondent opposes the motion submitting the Applicant has not met the test for admitting an additional affidavit under Rule 312.

[53] In *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88, the Federal Court of Appeal set out the test for the filing of additional evidence on judicial review pursuant to Rule 312:

> [4] At the outset, in order to obtain an order under Rule 312 the applicants must satisfy two preliminary requirements:
>
> > (1) The evidence must be admissible on the application for judicial review. As is well known, normally the record before the reviewing court consists of the material that was before the decision-maker. There are exceptions to this. *See Gitxsan Treaty Society v. Hospital Employees' Union*, [2000] 1 F.C. 135 at pages 144-45 (C.A.); *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22.
> >
> > (2) The evidence must be relevant to an issue that is properly before the reviewing court. For example, certain issues may not be able to be raised for the first time on judicial review: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association,* 2011 SCC 61 (CanLII), [2011] 3 S.C.R. 654.
>
> [5] Assuming the applicants establish these two preliminary requirements, they must convince the Court that it should exercise its discretion in favour of granting the order under Rule 312. The Court exercises its discretion on the basis of the evidence before it and proper principles.

[54] Regarding the admissibility and relevance preliminary requirements, the Respondent submits the evidence appended to the March 13, 2025 Affidavit is inadmissible because it does not fall within the recognized exceptions to the general rule against admitting new evidence on

judicial review, and is irrelevant to the issue properly before the Court – the reasonableness of the AD's decision to deny leave on the basis of *res judicata*. I agree.

[55] As for whether the interests of justice would be served by allowing the Applicant to file the March 13, 2025 Affidavit, I note the Applicant stated she is seeking leave to introduce the evidence appended to the March 13, 2025 Affidavit because "[t]he new evidence did not come into the Applicant [*sic*] possession until after Rule 306 was initially filed." The Applicant does not elaborate further, and it is therefore difficult to conclude or infer the medical evidence which predates the filing of the Applicant's AR and that could not have been available with the exercise of due diligence. Moreover, in my view, the evidence appended to the March 13, 2025 Affidavit does not assist the Court because it is not relevant to the merits of the Application.

[56] I therefore conclude that the evidence appended to March 13, 2025 Affidavit is neither admissible, nor relevant, and that the Applicant's June 13, 2025 motion must be dismissed.

(3) The Applicant's Human Rights, *Charter* and Tort Submissions are beyond the Scope of this Application

[57] Citing subsection 15(1) of the *Charter* and provisions of the *Saskatchewan Human Rights Code*, 2018, c S-24.1, the Applicant advances arguments of workplace discrimination and harassment in the 2011 time period, and asserts these circumstances contributed to her diagnosis of depression and anxiety. She further argues that alleged medical errors affected the outcome of the GD's 2015 Decision and suggests these errors raise issues of tort liability. The Respondent

argues that the Applicant's allegations against her doctors and employer are beyond the scope of this judicial review.

[58] These additional matters are not properly before the Court in this Application for two reasons. First, these matters were not raised before the AD or the GD. Instead, they arise for the first time in this Application. In this regard, Justice William Pentney's comments in *Sturgeon v Canada (Attorney General)*, 2024 FC 1888 are of direct application:

> [45] […] [U]nder the long-accepted approach to judicial review, a party cannot raise new arguments on judicial review as a basis for finding a decision to be unreasonable subject to very limited exceptions, none of which apply here: *Klos v Canada (Attorney General)*, 2023 FCA 205 at para 8, citing *Alberta Teachers*. The rationale for this approach is laid bare by the following question: how can a decision be unreasonable for failing to deal with an argument that was never put forward in the previous proceeding?

[59] Second, issues relating to employer conduct and tort liability are well beyond the scope of this Application where the sole issue before the Court is the AD's decision to deny leave to appeal of the GD's *res judicata* determination.

(4) New evidence in the AR is inadmissible

[60] The Respondent submits that much of the documentary evidence found in the AR is not properly before the Court as it was not before the AD. I agree.

[61] A review of the CTR as reproduced in the RR discloses that many of the documents included in the AR were not before the AD. Those documents that were before the AD are identified in Appendix "B". Evidence that was not before a decision-maker, again, is only

admissible on judicial review where it falls within one of the recognized exceptions to the general rule against accepting new evidence on judicial review.

[62] It has not been demonstrated that the new evidence contained in the AR – which is principally comprised of medical test results from March 22, 2010, to January 27, 2024, EI and income tax statements for 2010-2012, receipts of prescriptions between 2010 and 2022, and medical reports for consultations in 2016 and 2024 – falls within one of the recognized exceptions to the general rule (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20). More specifically, it has not been shown that the evidence will assist the Court in understanding either the *res judicata* issue or the record that is before it. Nor is the new evidence relevant to an issue of procedural fairness that could not have previously been raised before the AD (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 25).

[63] I have therefore not considered evidence contained in the AR beyond that which was before the AD.

B. *Was the AD's Decision Reasonable?*

[64] As set out at paragraphs 14 and 15 above, leave to appeal a decision of the GD is to be granted where an appellant raises an arguable case that the GD failed to observe the principles of natural justice, committed a jurisdictional error or committed an error of law, fact, or mixed law and fact (DESDA, paras 58.1 (a) and (b)). Leave to appeal is also to be granted where evidence is set out in the application for leave that was not before the ISS (DESDA, para 58.1 (c)). Where

evidence is provided that was not before the ISS, paragraph 58.1 (c) of the DESDA does not require the appellant raise an arguable case.

[65] Having considered the Applicant's arguments and submissions, I am satisfied that it was reasonably open to the AD to conclude for the reasons it sets out that the Applicant failed to identify an arguable case that there had been a breach of natural justice or that the GD had otherwise erred in concluding the doctrine of *res judicata* was of application and that the matter was to be dismissed on that basis.

[66] However, the Applicant did place evidence before the AD that was not before the GD. This evidence consisted of a Mayo Clinic report dated July 2017. The AD acknowledged the new evidence but found it not to be "arguably relevant" to the *res judicata* issue on appeal and therefore could not form the basis for granting leave to appeal.

[67] It is unfortunate that the AD fails to address, even briefly, the broad language of paragraph 58.1(c) of the DESDA – "[l]eave to appeal… is to be granted if the application for leave to appeal…sets out evidence that was not presented to the Section" – in adopting the position that the evidence "not presented to the Section" must be relevant or indeed arguably relevant. However, I am not prepared to conclude the AD's failure to do so undermines the reasonableness of the decision in this instance.

[68] *Vavilov* teaches that a reviewing court is only to intervene on issues relating to the interpretation of a statutory provision where an omission causes it to lose confidence in the

outcome of a decision (para 122). The AD's omission in this instance does not undermine my confidence in the decision. It is a basic or bedrock concept of law that for evidence to be admissible in a proceeding it must be relevant (*R v Blackman*, 2008 SCC 37 at para 29; David M. Paciocco et al, *The Law of Evidence*, 8th Ed (Toronto: Irwin Law, 2020) at 32). This concept of relevance is not only contextually applicable when considering the AD's decision but also acts as a legal constraint that must be recognized in undertaking a reasonableness review (*Vavilov* at para 85). Although it would have been preferable for the AD to have addressed the interpretation of paragraph 58.1 (c) of the DESDA, the failure to do so in this specific context does not render the decision unreasonable.

[69] I am also satisfied that it was reasonably open to the AD to conclude, as it did, that the fresh medical evidence was irrelevant to the issue before it – the GD's *res judicata* determination.

[70] On the basis of the above, I conclude the AD's decision was reasonable.

VIII. Conclusion

[71] The Application is dismissed.

[72] The Respondent does not seek costs and none are awarded.

JUDGMENT in T-1393-24

THIS COURT'S JUDGMENT is that:

1. The Applicant's June 13, 2025 motion is dismissed.
2. The Social Security Tribunal letter dated October 22, 2025, and attachments are to be accepted for filing.
3. The application for judicial review is dismissed.
4. No award of costs.

"Patrick Gleeson"
Judge

APPENDIX "A"

Table of concordance between Filing #3 and the CTR as reproduced in the RR

Item #	Description	Pinpoint in SST letter dated October 22, 2025, and attachments (Filing #3)			Pinpoint in RR
		1st bundle	2nd bundle	3rd bundle	
1	Letter dated January 5, 2024 and Leave to Appeal Decision dated January 5, 2024 rendered by Kate Sellar, Member of the Appeal Division (5 pages).	pdf pp 4-9			pp 11-16
2	Letter dated December 20, 2023 and Correspondence of the Appellant received on December 19, 2023 (1 page). – **AD01C**	pdf pp 10-12			pp 19-21
3	Letter dated December 14, 2023 and Additional Document of the Appellant received on December 13, 2023 (3 pages). – **AD01B**	pdf pp 13-17			pp 24-28
4	Letter dated December 5, 2023 requesting additional information.	pdf pp 18-20			pp 32-34
5	Acknowledgement letter dated November 30, 2023 and Application for Leave to Appeal received on November 27, 2023 (8 pages & 5 pages). – **AD01 & AD01A**	pdf pp 21-30			pp 41-50
6	Letter dated October 25, 2023 and Decision dated October 25, 2023 rendered by Adam Picotte, Member of the General Division (5 pages).	pdf pp 31-35; 36-42			pp 51-55; 60-66
7	Summary of Case Conference letter dated October 16, 2023 (3 pages). – **GD09**	pdf pp 43-45			pp 69-71
8	Recording of Case Conference held on October 13, 2023.				
9	Invitation to Case Conference letter dated September 20, 2023 (2 pages). – **GD08**	pdf pp 46-47			pp 76-77
10	Decision from Tribunal member letter dated September 20, 2023 (3 pages). – **GD07**	pdf pp 48-50			pp 80-82
11	Letter dated September 12, 2023 and Submissions of the Appellant received	pdf pp 51-54			pp 88-91

	on September 7, 2023 (2 pages). – **GD06**				
12	Letter dated September 11, 2023 and Submissions of the Minister received on September 6, 2023 (14 pages). – **GD05**	pdf pp 55-71			pp 92-108
13	Letter dated August 22, 2023 and Additional Documents of the Appellant received on August 17, 2023 (3 pages). – **GD04**	pdf pp 72-76			pp 112-116
14	Letter dated August 17, 2023 with respect to filing periods for the appeal (3 pages). – **GD03**	pdf pp 77-79			pp 119-121
15	Letter dated August 17, 2023 granting extension of time to file appeal.	pdf pp 80-82			pp 125-127
16	Letter dated August 16, 2023 with respect to documents filed by the Minister.	pdf pp 83-85			pp 131-133
17	Request Under Section 46 letter dated August 4, 2023 and Reconsideration File received on August 3, 2023, Volume 1 (62 pages). – **GD02**	pdf pp 86-131	pdf pp 1-131	pdf pp 1-109	pp 149-434
18	Reconsideration File received on August 3, 2023, Volume 2 (220 pages). – **GD02**				
19	Acknowledgement letter dated August 4, 2023 and Notice of Appeal received on August 1, 2023 (17 pages). – **GD01**			pdf pp 110-129	pp 437-456

APPENDIX "B"

Evidence included with the AR that was before the SST's AD in rendering the decision under review

Description	**Pinpoint in AR**	**Pinpoint in the RR (reproducing the CTR)**
Mayo Clinic Results dated July 27, 2017	pp 19, 21, 165, 167	pp 27-28
Regina Qu'Appelle Health Region, Special Biochemistry Report dated August 13, 2011	p 52	p 405
Saskatchewan Disease Control Laboratory, Chemistry Result collected August 12, 2011	pp 53-54	pp 406-407
Regina Qu'Appelle Health Region, Outpatient Report dated August 13, 2011	p 55	p 408
Hospitals In-Common Laboratory Inc Report dated August 22, 2011	p 56	p 409
Lab Report – Iron Studies Panel collected on December 16, 2011	p 63	pp 410-411
Lab Results dated November 14, 2014	pp 124-125	pp 219-221

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1393-24
STYLE OF CAUSE:	JENNIFER KRYKLYWICZ v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	REGINA, SASKATCHEWAN
DATE OF HEARING:	NOVEMBER 13, 2025
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JANUARY 12, 2026

APPEARANCES:

Jennifer Kryklywicz	FOR THE APPLICANT (ON HER OWN BEHALF)
Ian McRobbie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Gatineau, Québec	FOR THE RESPONDENT