Federal Court  Cour fédérale

Date: 20100604

Docket: T-1602-09

Citation: 2010 FC 607

Ottawa, Ontario, June 4, 2010

PRESENT: The Honourable Justice Johanne Gauthier

BETWEEN:

SANDRA AMY GRACE SINGER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mrs. Singer seeks judicial review of the decision of the Review Tribunal (RT) which dismissed her appeal in respect of two reconsideration decisions of the Minister of Human Resources Development (now Minister of Human Resources and Skills Development) denying her entitlement to a full pension under the *Old Age Security Act*, R.S.C. 1985, c. O-9 (the *Act*).

[2] The applicant believes that her situation is quite unique and that mainly the RT failed to construe and apply the *Act* in a manner consistent with its object so as to ensure that she would

benefit of a full pension. Despite the commendable efforts and the perseverance of her counsel, the Court cannot agree that the decision under review should be quashed for the following reasons.

Background

[3] Mrs. Singer was born in Jamaica in June 1943. On July 20, 2007, she applied for an old age security (OAS) pension. In her application, under "residence history", she indicated that she lived in the United States from 1960 to 1964 where she attended college. Otherwise, from 1964 until 1977, she lived in Jamaica. She indicated that she entered Canada on July 24, 1977 but added:

> Actual physical presence, July 24, 1977. However, immigration clearance was given (I believe) May 1977, subject only to medical assessment. Medical clearance was denied in May but granted in July, immigration would have occurred May or June but only for medical assessment. See letter attached.

[4] The letter, as quoted in the RT decision, further explains that on May 27, 1977, the applicant's husband and their two daughters received medical clearance. However, the applicant did not receive such clearance and was required to take further x-rays.

[5] The applicant also wrote:

> In other words, the reason and the only reason that we were not resident in Canada as at July 1, 1977 was the potential that I had, or might have had, a medical condition that might have prevented my immigrating. Obviously, the Government later decided that I had no such condition.

[6] In fact, based on the result of the additional x-rays, Mrs. Singer was apparently cleared or received confirmation that she had passed the medical assessment on or about July 20-21, 1977.

[7] Because of a change in the political climate in Jamaica, the family started in 1976 to take steps in order to immigrate to Canada. The most relevant facts were agreed to be the following during the hearing before me:

- The family finally decided to leave Jamaica for Canada in December 1976.
- Various household items were sent to Canada in December 1976 using the opportunity of Mrs. Singer's cousin moving his own furniture after being accepted as a landed immigrant.
- Because of the changes in the political climate, the applicant and her family were anxious to send their valuables out of the country as quickly as possible. Thus, in that process, they sent their jewellery back to the U.K. with Mrs. Singer's father-in-law and his new bride when they visited Jamaica in December 1976.
- Starting in March 1976 and continuing through the summer of 1977, Mr. Singer sent money from Jamaica to Canada. The first transfer was in the amount of $2,217.00. It reached approximately $15,000.00 in total by the time the applicant came to Canada.
- On or about March 25, 1977, Mr. Singer obtained a job in Yellowknife as Legislative Counsel and Registrar of Regulations to the Government of the Northwest Territories, subject only to him and his family obtaining their status as landed immigrants.
- In May 1977, the Singer family sold their house in Jamaica and they went to live with Mrs. Singer's parents in a small apartment pending their relocation.

- Finally, it is to be noted that the applicant had some connection or ties to Canada in that her brother and sister-in-law lived in Toronto since 1965 and she had a cousin who, as mentioned above, moved to Vancouver early in 1977.

[8] The applicant became a Canadian citizen in 1982. After she filed her application for an old age pension, she was advised by letter dated November 23, 2007 that, as of that date, she had lived in Canada for 30 years, 343 days after her 18th birthday and would thus be eligible to a full old age security pension in July 2018, if she lives in Canada until that time. Also, she was informed that she would be eligible for partial old age security pension as early as July 2008.

[9] By letter dated December 12, 2007, the applicant, as mentioned, asked for reconsideration which was later denied, as outlined in a letter dated January 3, 2008, because she did not meet the eligibility requirements set out in subparagraph 3(1)(b)(i) of the *Act* to qualify for a full pension: "[s]pecifically [she] did not enter Canada prior to July 1, 1977 or [she was] not in possession of a valid immigration visa." According to this letter, the said visa was issued on July 21, 1977 in Jamaica.

[10] By letter dated January 4, 2008, Mrs. Singer requested the Minister to reconsider his decision on a further ground, namely her entitlement to a full pension under the terms of the

Agreement Between the Government of Canada and the Government of Jamaica with respect to Social Security, proclaimed in force on June 3, 1983 (the Agreement).[1]

[11] Once again, by letter dated January 29, 2008, Mrs. Singer was advised that the original decision was maintained given that the Agreement was inapplicable to her, as it only applied to a person who is not entitled to an old age benefit, whereas she was entitled to a partial OAS benefit.

[12] These two decisions were appealed to the RT (a panel of three members who heard this matter *de novo*). The appeal was dismissed on August 24, 2009 on the basis that Mrs. Singer did not qualify for a full pension as she did not meet the requirement of paragraph 3(1)(b) of the *Act*. According to the tribunal, this provision is clear and does not require further interpretation. Based on the definition found in *Old Age Security Regulations*, C.R.C., c. 1246 (*Regulations*), particularly in subsection 21(1) and the case law related thereto, the RT determined that she was not residing in Canada prior to the deadline set in the legislation. She had not established either that she had a valid visa at any time prior to that date.

[13] Because of various arguments it understood had been raised by the applicant's representative in the appeal (Mr. Singer[2], her husband and a lawyer, argued the case on her behalf as he did before this Court), the RT also noted that it had no jurisdiction in equity, nor any jurisdiction

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[1] S.I./97-42; Pursuant to s. 41 of the *Act*, the Governor in Council may declare any such agreement to be in force and to have force of law in Canada. Thus, although the Agreement was originally signed in Kingston in January 1983, it only became law in Canada on its proclamation on June 3, 1983.

[2] Mr. Singer was granted leave by Prothonotary Lafrenière to be solicitor of record to continue to represent the applicant, despite having filed an affidavit, the whole in accordance with Rule 82 of the *Federal Courts Rules*, SOR/98-106.

to deal with the *Canadian Charter of Rights and Freedoms*[3] argument raised in the hearing file (pages 189 and 203 under C – claims for qualifications: Unconstitutionality of decision – discrimination – the *Charter of Rights and Freedoms*) for such issue was not specifically stated in the Notice of Appeal and that no proper notice of constitutional question was received. However, the RT added that it had later been advised by Mr. Singer that the applicant was not raising a constitutional issue but rather was arguing discrimination in this case on a "sub-constitutional basis".

[14] On September 25, 2009, the applicant filed her Notice of Application for judicial review.

Issues

[15] The applicant raised numerous issues in her Memorandum of Fact and Law, her extensive Notice of Application as well as in the Notice of Appeal (68 pages)[4] and the comments made during said appeal which were incorporated by reference in her Memorandum of Fact and Law. During the hearing, Mr. Singer was asked to clarify his position and to focus on his main arguments.

[16] The errors raised can be fairly summarized as follows, the RT:

(a) erred in law by applying the wrong test to determine whether she "resided in Canada" pursuant to subparagraph 3(1)(b)(i) of the *Act*.

[3] Part I of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

[4] Many comments and arguments addressed perceived errors in earlier decisions, matters that were not relevant before the RT and even more so here, where the Court is only concerned with the decision of the RT who reviewed the matter *de novo*.

(b) erred in construing the words “possessed a valid immigration visa” in the said subparagraph.

(c) erred in law in construing the Agreement and paragraph 3(1)(b) of the *Act* in conjunction with the Agreement.

(d) breached procedural fairness or exceeded its jurisdiction by considering paragraph 2 of Article VIII of the Agreement and by failing to give her an opportunity to present arguments in that respect as well as an alternative argument with respect to paragraph 3 of the said Article.

(e) made an incorrect or unreasonable decision by ignoring or misconstruing some of the evidence in respect of the circumstances relevant to determine if she resided in Canada since 1977 and also by failing to discuss in detail all the arguments and the case law raised by the applicant.

The Court will not discuss arguments such as bias of the RT for they are not substantiated by any evidence and therefore do not warrant further comments.

Analysis

[17] With respect to the questions of law and the alleged breach of procedural fairness, the Court will apply the standard of correctness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paras. 57-61 *(Dunsmuir); Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12,

304 D.L.R. (4th) 1 at para. 44; *Canada (Minister of Human Resources Development) v. Stiel*, 2006 FC 466, [2006] 4 F.C.R. 489 at paras. 6-7 (*Stiel*).[5]

[18] With respect to the sufficiency of the reasons, i.e. the failure to refer to all of the evidence or the case law and to the application of the test to the facts of this case, these issues will be reviewed on the standard of reasonableness: *Canada (Minister of Human Resources Development) v. Chhabu*, 2005 FC 1277, 280 F.T.R. 296 at para. 24 (*Chhabu*).

[19] The Court does not understand Mrs. Singer to say that the Tribunal breached its duty to provide reasons but rather that the decision did not meet the standard of reasonableness insofar as it is concerned with the existence of justification, transparency and intelligibility within the decision-making process: *Dunsmuir* at para. 47.

[20] That being said, even if I were to consider the argument put forth in respect of the lack of details in the decision concerning certain issues as an alleged breach of procedural fairness subject to the standard of correctness, it would not change my conclusion for I am satisfied that the reasons given in this 29 page decision enabled the applicant to pursue her right to seek judicial review and the Court to exercise its jurisdiction: *VIA Rail Canada Inc. v. Lemonde*, [2001] 2 F.C. 25, 193 D.L.R. (4th) 357 at para. 19 (F.C.A.). Also, the decision-maker is presumed to have considered all the evidence before it (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (QL) (F.C.A.)). The Court will consider putting aside this presumption only when the

[5] The decision in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 is not relevant when assessing the standard of review in judicial review of an administrative tribunal.

probative value of the evidence that is not expressly discussed is such that it should have been discussed: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 at paras. 14-17 (F.C.). This is not the case here.

The interpretation of subparagraph 3(1)(b)(i)

[21] The RT found paragraph 3(1)(b) clear and unambiguous. However, it made that comment only in reference to the date on which an applicant must qualify (para. 70). Thereafter, the RT used the definition of paragraph 21(1)(a) of the *Regulations* and the case law to define "residence". Finally, it used a version of the *Immigration Regulations*, C.R.C., c. 940 (1978) to construe the expression "possessed a valid immigration visa".

[22] The Court agrees with the applicant that it is necessary in all cases to use the modern approach adopted in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 154 D.L.R. (4th) 193 at paras. 20-22 and described in the often quoted passage from *Drieger on Construction of Statutes*:

> 21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter *"Construction of Statutes"*); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary

> sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.

The applicant submitted what he claims to be all the relevant extracts from *Hansard*. It is now well accepted that the legislative history of an enactment of a statute, including *Hansard* and minutes of standing committees, may be properly considered as evidence of the external context in which the legislation was adopted and of the purpose of the legislation, as long as it is relevant and reliable.[6] However, as mentioned in Ruth Sullivan, in *Sullivan on the Construction of Statutes*, at page 613, courts must not accord undue weight to legislative history:

> In most cases, neither the inferences drawn from the legislative history nor those drawn from the test are compelling and decisive. Ordinarily the court must engage in a weighing and balancing process. The weight accorded particular materials is appropriately assessed in terms of the court's reasons for admitting them in the first place.

[23] The object of the *Act* and of various reciprocal agreements entered into by the Canadian Government pursuant to section 40 of the *Act* were ably described by Justice Judith A. Snider in *Stiel*, at paragraphs 28-29:

> [28] What is the object of the *OAS Act* and the *Canada-U.S. Agreement*? I would describe the OAS regime as altruistic in purpose. Unlike the Canada Pension Plan, OAS benefits are

[6] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis) at 593; 609-612 (*Sullivan on the Construction of Statutes).*

> universal and non-contributory, based exclusively on residence in Canada. This type of legislation fulfills a broad-minded social goal, one that might even be described as typical of the Canadian social landscape. It should therefore be construed liberally, and persons should not be lightly disentitled to OAS benefits.
>
> [29] However, it cannot be ignored that the *OAS Act* provides benefits, first and foremost, to residents of Canada; it has been described as "the building block of the Canadian retirement income system" (House of Commons Debates, 2nd Session, 30th Parliament, Volume III, 1976-1977, February 8, 1977, p. 2834 (Hansard)). That is the legislative scheme appears focussed on the provision of benefits to persons living their retirements in Canada. It is only through the operation of specific, added provisions that non-residents obtain even a partial OAS pension.

[24] When he presented the *Act to Amend the Old Age Security*, S.C. 1976-1977, c. 9, the bill which implemented the current version of section 3 of the *Act*, before the Standing Committee on Health, Welfare and Social Affaires, Minister Lalonde said:

> The bill was motivated by two factors: first immediately to simplify eligibility to pensions in Canada, and to tie in more closely this right to the contributions of persons who by their labour and residence in Canada have helped to build the coun[t]ry.
>
> The second factor, or objective of this bill, is to allow the closer integration of our old age security plan, particularly with the plans of other countries, so that persons immigrating to Canada or Canadians emigrating abroad may more easily receive the benefits to which they are entitled, in Canada as well as abroad, in view of the contributions they have or simply the number of years they have spent in Canada or abroad.[7]

[7] *Minutes of Proceedings and Evidence of the Standing Committee on Health, Welfare and Social Affairs*, No. 23 (24 February 1977) at 23:18 (Hon. Marc Lalonde).

[25] Thus, new principles were introduced in the *Act*. The right to a pension was to be linked mainly to years of residence in Canada after the age of 18[8]. Full pensions were to be available only to those having 40 years of residence in Canada as an adult (paragraph 3(1)(c) of the *Act*). However, Parliament chose to implement these changes over a very long period of time. It granted certain categories described in paragraph 3(1)(b) of the *Act*[9] a very long grace period. A person falling into one of the three categories set out in that provision could receive a full pension with fewer than the 40 years of residence referred to in paragraph 3(1)(c) so long that he or she met the requirements set out in subparagraphs 3(1)(b)(ii) and (iii) – the so-called 3 to 1 rule referred to in *Stachowski v. Canada (A.G.)*, 2005 FC 1435, 282 F.T.R. 99 at para. 12.

[26] Years of residence in Canada after the age of 18 are also the main criteria to qualify for the then new partial pension to which one can be entitled if one has more than 10 years but less than 40 years of residence in an aggregate period of time. Also, if the total period of residence of an applicant is inferior to 20 years, that person has to reside in Canada the day preceding the day on which his or her application is approved.

[27] According to the *Act*, the payment of a full or partial pension can be suspended if a pensioner remains outside Canada for a certain period. However, such suspension will not occur if the pensioner has resided in Canada for at least 20 years after attaining the age of 18.

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[8] See *Minutes of Proceedings and Evidence of the Standing Committee on Health, Welfare and Social Affairs*, No. 23 (24 February 1977) at 23:20 (Hon. Marc Lalonde): "[...] Secondly, the eligibility criteria have been simplified. At the moment there are three eligibility criteria which are fairly complex. I shall not describe them; you are already aware of them. They will be replaced by a single criterion, whereby each year of residence in Canada after the age of 18 will account for one-fortieth of the pension". It appears that reference to such age was to ensure that those years would be where a person could most contribute to the economy.

[9] Those who were already receiving a pension kept their rights pursuant to paragraph 3(1)(a) of the *Act*.

[28] Furthermore, recognizing the need for some to work outside of the country without losing their right to a pension and for immigrants not to lose the pension credits accumulated in their country of origin and the desirability of giving the right, under strict conditions, to collect one's pension while residing outside of Canada, Parliament gave the Governor in Council the authority to enter into reciprocal agreements in section 40 of the *Act* (see particularly paragraphs 40(1)(b), (c), (d) and (e)). The concept of "totalization of periods of residence and periods of contribution in a particular country and periods of residence in Canada" was introduced and was to be implemented through such agreements.

[29] July 1, 1977 was chosen as the threshold date to define all exceptions to the intended general rule set out in subsection 3(1) of the *Act*.[10] Therefore, any applicant had to meet the criteria listed at paragraph 3(1)(b) of the *Act*, on July 1, 1977, in order to be granted a full old age security pension. There is no grace period applicable here.

[30] The concept of "residence" is the subject of a full chapter of the *Regulations* starting at section 20. Of particular interest here is the definition found at paragraphs 21(1)(a)[11] and (b):

21. (1) For the purposes of the Act and these Regulations,	21. (1) Aux fins de la Loi et du présent règlement,

[10] *House of Commons Debates*, (March 9, 1977) at 3813. It is also the date on which the Act, even if it was adopted/assented months earlier, was proclaimed in force.

[11] The applicant argued that the fact that the RT reproduced all of subsection 21(1) of the *Regulations* in its decision indicates that it mistakenly believed that presence in Canada was part of the definition of residence. The Court cannot agree. It is not unusual to reproduce the whole section of a provision cited. See, for example, *Chhabu* at para. 15.

(*a*) a person resides in Canada if he makes his home and ordinarily lives in any part of Canada; and	*a)* une personne réside au Canada si elle établit sa demeure et vit ordinairement dans une région du Canada; et
(*b*) a person is present in Canada when he is physically present in any part of Canada.	*b)* une personne est présente au Canada lorsqu'elle se trouve physiquement dans une région du Canada.
[Emphasis added]	[mon souligné]

[31] This definition has been applied to a variety of circumstances. As noted by Justice James Russell in *Canada (Minister of Human Resources Development) v. Ding*, 2005 FC 76, 268 F.T.R. 111 (*Ding*), one can refer to many factors to determine if a person has made her home and ordinarily lives in Canada as of the date set out in the *Act*.

[32] Also, as noted by Justice Carolyn Layden-Stevenson in *Chhabu*, the list of factors enumerated in *Ding* is not exhaustive. There may well be other factors which become relevant according to the particular circumstances of a case.

[33] It is important to emphasize however that the use of precedent is dangerous in that weight might be given to a factor in a particular set of circumstance that is inappropriate in a different context. Mrs. Singer appears to have fallen in this "trap" for she referred the Court to various summaries of decisions of the RT to support her position. These really have little precedential value in the present context. For example, she noted that in *W-76940 v. Minister of Human Resources*

Development (December 19, 2003), the RT determined that the appellant's Canadian residence began on the day she formalized her intention by applying for permanent residence.

[34] However, she fails to mention that in that case, the appellant had lived in Canada under a tourist visa which had been extended several times and the RT was really looking for indicia as to whether she had made Canada her home[12] despite having been absent from the country when her son was working in England.

[35] In *S-59142 v. Minister of Human Resources Development* (November 2, 2000), the RT found that the appellant had decided to make her home in Canada when she first extended her visitor's visa in 1990. Again, the appellant had already lived in Canada for a year and she extended her visa four times before applying for landed immigrant status because during that period her son was not in a position to sponsor her.

[36] Although each case cited was carefully reviewed by the Court, there is no need to comment further on them for, as mentioned, they do little more than confirm that the test is a fluid one. Sometime the fact that a person has obtained or applied for a permanent status will be relevant while in others it will not. This is true for most factors.

[37] However, presence in Canada at some point in time appears to be of particular importance if not crucial in all cases. There is no doubt that continuous presence is not required. The *Regulations*

[12] She had moved her personal effects.

as a whole make that very clear as does the case law. But it is difficult to imagine how one can be said to "ordinarily live" in Canada if this person has never actually been in Canada.[13] In fact, looking at the overall scheme, including particularly the fact that Parliament thought it appropriate to also provide for a third category of persons in subparagraph 3(1)(b)(i) of the *Act* that does not rely at all on the concept of residence (those who possess a valid immigrant visa) as well as exceptions in the *Regulations* for persons as spouses who married a Canadian or permanent resident while they worked outside of the country (paragraph 22(c) in the *Regulations*), there is little doubt in my mind that presence is, at some point in time, an essential element of this definition.

[38] Mrs. Singer raised what she called "a sub-constitutional interpretative argument" claiming that to construe residence to require some presence would discriminate between immigrants and non-immigrants. Here again, the Court cannot agree. In fact, by providing for a category of persons that possess a valid immigrant visa on the same date that others are required to have resided or to reside in Canada addresses this very issue. It is of interest to note that in two cases this Court and the Court of Appeal confirmed the constitutionality of paragraph 3(1)(b) of the *Act* vis-à-vis section 15 of the *Charter*.[14]

[39] Before looking at the category of those who possess a valid immigrant visa, it is appropriate to examine the Agreement to determine what role, if any, it plays in construing subparagraph 3(1)(b)(i) and the concept of residence.

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[13] Obviously, in this case, Mrs. Singer's visit for a brief holiday in 1973 is irrelevant.
[14] See *Pawar v. Canada* (1999), 247 N.R. 271, 67 C.R.R. (2d) 284 (F.C.A.); *Shergill v. Canada*, 2003 FCA 468, 313 N.R. 377.

[40] The Agreement deals with various situations.[15] A first general principle is set out in Article IV - subject to articles VIII (old age pension), IX (past allowances), X (survivor, invalidity, children and death benefits), XI (general provisions), the pensions or benefits **acquired** under the legislation of either Canada or Jamaica should not be reduced, modified, suspended, cancelled by reason only of the fact that the beneficiary resides in the territory of the other party **and** they shall be payable in the territory of the other party. Then, once a pension is payable under this Agreement by one party in the territory of the other, it also is payable in the territory of a third party (Article V).

[41] As noted, that basic principle is subject to the details provided for in the articles mentioned above. In such provisions, various situations are dealt with in different manners. Under Article VIII it is clear that full pensions are not dealt with in the same manner as partial pensions. For example, if a person qualifies under the Canadian legislation for a full pension **without recourse to the provisions of the Agreement**, it can only continue to receive and be paid the full pension in Jamaica if it accumulated at least 20 years of residence in Canada (as defined under the Canadian *Act*). On the other hand, if a person is entitled to a partial pension under the Canadian *Act* without recourse to the Agreement, the partial pension will be payable in Jamaica whether the person accumulated 20 years of residence in Canada or the periods of residence in the territory of the two parties totalized, in accordance with the Agreement, at least 20 years.

[15] Although the Court reviewed the whole Agreement, my comments will be limited to what may have some relevance here.

[42] The concept of totalization only enables the person entitled to a full pension under paragraphs 3(1)(a) and (b) **without recourse to the provisions of the Agreement**, that does not meet the requirement for 20 years of residence **in Canada**, **to the payment of a partial pension calculated in accordance with the Canadian legislation**, outside of Canada.

[43] The Agreement also deals in paragraphs 3 to 6 of Article VIII with persons who would not qualify for an old age pension under the legislation of either one of the parties. But paragraph 2 of the said Article clearly specifies that these provisions do not apply to full pensions payable under subsection 3(1) of the *Act*. Where paragraphs 3 to 6 apply, the benefit of "totalization" can be used to qualify for a pension (paragraph 3 (entitlement)) as well as to calculate the amount of the said pension (paragraph 5).

[44] There is little benefit in discussing the other provisions of the Agreement. My complete review of the overall scheme of the Agreement, read in a liberal and generous way, indicates that it has nothing to do and does not deal at all with how one qualifies for a full old age pension pursuant to subparagraph 3(1)(b)(i) of the *Act*. This means that Mrs. Singer will have to qualify under the Canadian legislation *per se* to be entitled to the full pension she is seeking.[16]

[45] Having dealt with the statutory definition of "residence", the Court now turns to the third category of persons listed in subparagraph 3(1)(b)(i), those who "possessed a valid immigration visa" on July 1, 1977.

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[16] It is not disputed that Mrs. Singer is not entitled to any benefits under the Jamaican legislation.

[46] In its decision, the RT accepted the applicant's argument that this expression must be construed in accordance with the immigration legislation in force on or before July 1, 1977. The RT used a 1978 consolidated version of the *Immigration Regulations* which was provided to it by Mrs. Singer's representative. The Court did ascertain that there was no material difference between this version and the regulations in force on July 1, 1977 (the old regulations).[17] Some of the relevant provisions were renumbered further to the 1978 consolidation but there were no material amendments that could impact on the RT's conclusions.

[47] In order to perform its task and as a matter of law, the Court also had to look at the *Immigration Act*, R.S.C. 1970, c. I-2 as amended as of July 1, 1977. In light of the arguments put forth by the applicant and of the issues to be determined, the Court noted that the term "immigrant" was then defined as follows:

"immigrant" means a person who seeks admission to Canada for permanent residence	"immigrant" signifie une personne qui cherche à être admise au Canada en vue d'une résidence permanente

[48] Section 5 provided for various prohibited classes of persons that could not be admitted. These included persons with various mental or physical "deficiencies" (see subsections 5(a), (b), (c), (s)), many of which involved certification by a medical officer following an examination. Section

[17] SOR/62-36, as amended as of July 1, 1977.

20 mandated that where so required under the regulations, “a person seeking admission to Canada shall undergo mental and physical examination or both by a medical officer”. According to section 21, an immigration officer could order the rejection of a person who could not properly be examined for various reasons. Finally, subsection 57(c) gave the Governor in Council the power to regulate respecting:

the terms, conditions and requirements with respect to the **possession** of means of support or of passports, **visas** or other documents pertaining to admission;	les conditions et prescriptions relatives à la **possession** de moyens de subsistance, ou de passeports, **visas** ou autres documents portant sur l’admission
[Emphasis added]	[mon souligné]

[49] In the old regulations the term “visa” was defined as follows:

“visa” in the expressions “immigrant visa” and “non-immigrant visa” means (i) an impression stamped by a visa officer on a passport, a certificate of identity or any prescribed form, or (ii) a prescribed form or portion thereof entitled “visa or letter of pre-examination” and signed by a visa officer	«visa» dans les expressions «visa d’immigrant» et «visa de non-immigrant» signifie (i) une empreinte apposée par un préposé aux visas sur un passeport, un certificat d’identité ou tout autre formulaire prescrit, ou (ii) un formulaire prescrit ou une partie de ce formulaire intitulé «visa ou lettre de pré-examen» et signé par un préposé aux visas

[50] Subsection 28(1) of these regulations provides that:

28. (1) Every immigrant who seeks to land in Canada, including an immigrant who reports pursuant to subsection (3) of section 7 of the Act, shall be **in possession of a valid and subsisting immigrant visa** issued to him by a visa officer and bearing a serial number which has been recorded by the officer in a register prescribed by the Minister for that purpose and unless he is in possession of such visa, he shall not be granted landing in Canada.	28. (1) Tout immigrant qui cherche à être reçu au Canada, y compris un immigrant qui signale certains faits conformément au paragraphe (3) de l'article 7 de la Loi, devra être **en possession d'un visa d'immigrant valable** et non périmé qui lui aura été délivré par un préposé aux visas et portant un numéro de série qui a été inscrit par ledit préposé dans un registre prescrit par la Ministre à cette fin, et, à moins qu'il ne soit en possession d'un tel visa, il n'obtiendra pas la réception au Canada.
[Emphasis added]	[mon souligné]

[51] Subsections 29(1) and (2) (which are identical to subsections 39(1) and (2) of the *Immigration Regulations*, C.R.C., c. 940 (1978)) indicated that a medical certificate was mandatory to show that the person did not fall within one of the prohibited classes described in section 5 of the *Immigration Act*. It also provided that:

(2) Where at an examination of an immigrant under the Act the immigration officer has any doubt as to the physical or mental condition of such person, he may refer the immigrant for **further** medical examination by a medical officer.	(2) Lorsque, pendant l'examen d'un immigrant sous le régime de la Loi, le fonctionnaire à l'immigration a quelque doute sur l'état physique ou mental de ladite personne, il peut renvoyer l'immigrant à un médecin du Ministère pour lui faire subir un **autre** examen.
[Emphasis added]	[mon souligné]

[52] One can reasonably deduce, as did the RT, that the legislator had these provisions in mind when he referred to the possession of a valid immigration[18] visa in subparagraph 3(1)(b)(i) of the *Act*.

[53] The reference to "valid" would, in my view, indicate that even an actual issued visa would not be sufficient to qualify a person under paragraph 3(1)(b) if it was found that the immigrant did not in fact meet the requirement of the *Act*. For example, as provided in section 30[19] of the old regulations (section 40 of the *Immigration Regulations*, C.R.C., c. 940 (1978)) if upon arrival or later an immigrant was found to be inadmissible pursuant to section 5.

[54] Mrs. Singer argues that it makes little sense to link her rights to a full pension to the possession of a physical piece of paper that could be destroyed, lost, etc. She argues that the *Act* must be construed to refer to the "bundle of rights and entitlements" she acquires when she meets the requirements of the *Act*. The construction proposed by the applicant would certainly make her task or any applicant's task very difficult for she would have to be able to establish, many years after the fact, on a balance of probabilities, that she actually met all the requirements of the *Act* and that, at the very least on July 1, 1977, the visa officer had an **enforceable duty** to issue her a valid visa. Obviously, when one bears the burden of proof, this person cannot seek to displace that burden by claiming an impossibility to meet such burden because one failed to secure the appropriate evidence and cannot obtain it 30 years later.

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[18] In the French version, subsection 3(1)(b)(i) uses identical wording to section 28 of the old regulations. In the English version, the term "immigrant" was replaced with no impact, in my view, by "immigration".

[19] This section does not, as proposed by the applicant, mean that the visa is of no value. See: *Espaillat-Rodriguez v. Canada*, [1964] S.C.R. 3; *Podlaszecka v. Canada (Minister of Manpower and Immigration)*, [1972] S.C.R. 733.

[55] In fact, certainty would militate in favour of the interpretation adopted by the RT that one must at least have had a visa duly signed by an immigration officer before one can claim to meet the requirements of the *Act*. Such interpretation certainly avoids the issue of possible loss or destruction of the actual piece of paper alluded to by the applicant for there would at least be proof of registration number, etc.

[56] That said, the visa or pre-examination letter of Mrs. Singer was signed by a visa officer on July 21, 1977.

[57] There is no need for the Court to decide whether the construction proposed by the applicant should be adopted. For even if the Court were to assume that the actual issuance of a visa is not a condition *sine qua non* to be in possession of a valid visa, the applicant would still, as I said, have the burden of establishing that she actually met all the requirements of the Act as of the threshold date.

[58] The RT found at paragraph 82 that, as a matter of fact, she did not establish that she obtained a satisfactory medical assessment until July 21, 1977 (see paras. 24-25, 33 and 35 of the decision). Having carefully reviewed the evidentiary record, the Court is satisfied that this conclusion is reasonable and was open to the RT. The applicant's hypothesis that the date of May 27, 1977 set out in one of the boxes of her visa pre-examination letter, entitled "Date of Med.

Asses./Date de l'Appr. Médicale" is the actual date she was cleared by the medical officer is unsubstantiated and is certainly not sufficient to justify setting aside this finding of fact.[20]

[59] The Court cannot accept either the applicant's argument that the medical examination was simply a procedural or administrative requirement that cannot impact on "her bundle of rights or entitlements" to a valid visa. This was simply not so. Successfully passing a medical examination that will confirm that one did not fall in inadmissible classes pursuant to section 5 of the *Immigration Act* in force at that time was a substantive condition that had to be met in order for Mrs. Singer to qualify for an immigrant visa. It is simply not correct to say that because she was ultimately found to be in good health, the further testing requested by the visa officer should not be considered and she should be entitled to have cleared the medicals on the same date as her husband and the rest of the family did, on or about May 27, 1977.

[60] There is no need to discuss another hypothesis raised by the applicant that the visa officer may well have purposely delayed the issuance of the visa because of the deadline set out in the *Act*. As admitted, there is absolutely no evidence to support this. Nor is there any need to discuss the issue of her promise subject to successfully passing her additional x-ray. As mentioned earlier, she did not meet that condition in any event before the threshold date.

[20] Canadian Immigration Identification Record, p. 144 of the Applicant's Record. Given that the date on the Canadian Immigration Identification Record of Mr. Singer (p. 145 of the Applicant's Record) is also May 27, 1977, one can reasonably infer that it was indeed referring to the date of the medical examination of the whole family.

[61] Although this will not be sufficient to soothe Mrs. Singer's frustration, one must remember that she has no vested right in a full pension until her application is granted (*Ata v. Canada*, [1985] F.C.J. No. 800 (F.C.) (QL) (*Ata*)). In that case, the applicant, a diplomat who lived in Canada for more than 10 years, would have qualified for a pension had he filed his application and been approved weeks before he did. However, by the time he actually applied and his application was reviewed, the regulations had been amended to include an exclusion that applied to him as a diplomat serving in Canada. This set of facts is no less absurd or unjust as Mrs. Singer claims hers to be. Moreover, her situation is most likely not unique. Undoubtedly, other immigrants around the world applied for an immigrant visa well before July 1, 1977 but were not granted it before that date.

[62] The legislator made a clear policy decision when he chose to apply a threshold date. The Court cannot and should not interfere with such a decision. The liberal and purposive construction of the *Act* is meant to enable the Court to construe the statute in accordance with Parliament's intention. It is not meant as a tool to change the will of the legislator.

[63] In view of the foregoing, the Court concludes that the RT made no error of law[21] that would justify quashing the decision.

[21] The argument with respect to comments of the RT on permanent resident status will be discussed under *Unreasonable decision.*

Procedural Fairness / Excess of jurisdiction

[64] The applicant's argument on this issue was not very clear. On the one hand, she says, at page 8 of her Notice of Application, that she advised the RT of the discrepancy between the version of the Agreement her representative had found on the Human Resources Development Canada's website (that apparently does not exist anymore) and the unofficial version of the agreement produced by the respondent at the hearing before the RT (exhibit M-1). Then, she notes later in her Notice of Application that she refrained from raising this issue on the basis of an assurance that the RT would only decide her appeal on the basis of the arguments presented. According to the applicant, paragraph 2 of Article VIII was not discussed although the respondent clearly argued that paragraph 3 of that Article does not apply to Mrs. Singer's case.

[65] In her Memorandum of Fact and Law, at paragraph 27, Mrs. Singer says that this constitutes an excess of jurisdiction as was found in *Ding* at paragraph 52. She further submits that even if the Court was able to consider the official version of the agreement which was not before the RT, it would have to exclude section 2 from its review and not consider it in construing the agreement because she was not given an opportunity to raise an argument expressly set out at page 233 of her Applicant's Record.

[66] I will deal first with the alleged excess of jurisdiction. It is evident that proper construction of paragraph 3 of Article VIII of the Agreement was an issue before the RT. It had been expressly raised by the applicant and was to be used in construing subparagraph 3(1)(b) of the *Act*. As mentioned earlier, the Agreement was made part of Canadian law and, as argued by Mrs. Singer, it

must be construed using the same principle applicable to the *Act* or any other Canadian statutory provisions. The RT was thus bound to look at the overall scheme including Article VIII as a whole. The decision in *Ding* is distinguishable and does not apply to the issue before the Court. Also, it is clear that neither the Court nor the RT can ignore or exclude a legal provision duly adopted. It is bound to apply the law.

[67] In the same manner, even if a party only relies or produces as part of its material the English version of a statutory provision, the Court is bound to consider its French version which, as provided for in section 13 of the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), has equal force and effect. The fact that a party did not consider or even look at the French version does not change that rule for it is not one left to the whim of any party to a proceeding.

[68] This is why, although not formulated exactly that way, this issue can only be considered as an alleged breach of procedural fairness.

[69] The official version of the Agreement (See Annex A) in French and in English is clear.[22] Paragraph 2 states :

[…] subsection 3(1) **of** the *Old Age Security Act* shall not apply to cases set out in paragraphs 3 to 6 of the present Article.	[…] le paragraphe 3(1) **de** la *Loi sur la sécurité de la vieillesse* ne s'appliquera pas aux situations décrites aux paragraphes 3 à 6 du présent Article.
[Emphasis added]	[mon souligné]

[22] The Court is required to take judicial notice of statutory instruments: section 16 of *Statutory Instruments Act*, R.S.C. 1985, c. S-22.

[70] Thus, whether or not the applicant raised what he viewed as a discrepancy is irrelevant and it can have no material effect on the interpretation of the Agreement.

[71] Mrs. Singer further argues that she would have raised alternative arguments as, for example, that even though she was entitled to partial pension, she was still denied the right to a partial pension of 40/40 [23] under subsection 3(2) of the *Act* and thus, she could still qualify for the application of paragraph 3 of Article VIII of the Agreement.

[72] The difficulty with this argument is that it was made before the RT (see page 134 of the Record). Moreover, given the argument of the respondent that paragraph 3 of Article VIII did not apply to Mrs. Singer because she was entitled to a partial pension, it was open to the applicant to make this argument at all times. It was definitely an issue in play before the RT.

[73] Thus, even assuming without deciding that there would have been a breach of procedural fairness, the Court would not set aside the decision for, as a matter of law, the Court is satisfied that it could have no impact on the matter (*Ahani v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 2, [2002] 1 S.C.R. 72 at para. 26; *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore*, [1994] 1 S.C.R. 202, [1994] S.C.J. No. 14 at paras. 51-54). In fact, having considered the proper interpretation of paragraph 3 of Article VIII of the Agreement using the modern approach (see paragraph 22 above), the Court finds that it does not apply to Mrs. Singer who is entitled to "an old age benefit on the basis of periods credited under the legislation of one of the Parties" (est une

[23] In the sense that she could have more years over 40 if totalization provided for in the Agreement applied to her.

personne qui a droit « à une prestation de vieillesse sur la base des seules périodes créditées en vertu de la législation de l'une des Parties »).

Unreasonable decision

[74] Finally, the Court must determine if the decision was reasonable. Here the Court, as mentioned, will look at the intelligibility of the reasons and the decision-making process and will assess whether it falls "within a range of possible, acceptable outcome which are defensible in respect of the facts and law": *Dunsmuir*, para. 47.

[75] In footnote 21 above, I mentioned that I would discuss under this heading the issue of permanent residence and the reference to the decision in *Ata*, which were the subject of abundant comments of the applicant because I am satisfied that the RT applied the proper test (question of law) to determine whether Mrs. Singer resided in Canada prior to or on July 1, 1977 (see particularly paragraphs 72 and 73 of the decision).

[76] As I did not accept the applicant's proposition that reference to such concept indicates that the RT misunderstood the test to be applied, so why then did it refer to it in its decision? It is evident that the applicant referred to permanent resident status in several context in her Notice of Appeal and arguments before the RT and so did the respondent. As mentioned, an "immigrant visa" or "landed immigrant" are expressions that were used in 1977 in section 28 of the old regulations. The term "immigrant" was in turn defined as a person seeking "admission to Canada for <u>permanent residence</u>" [my emphasis].

[77] Such status is also mentioned as a factor considered by the RT in determining whether one resides in Canada in decisions cited by the applicant. The respondent had expressly referred the RT and relied upon *Ata*, one of the few Federal Court of Appeal's decisions dealing with issues before the RT. The decision-maker properly construed this decision at paragraph 69 of the decision when it stated that **permanent residence status** (as opposed to residence) was a status to be obtained by compliance with Canadian immigration laws, not merely by personal intention and lawful presence of whatever duration in Canada.

[78] In this case, the RT used the approach taken by the Federal Court of Appeal in *Ata* by analogy and only to confirm the reasoning and the conclusion it had reached and expressed in paragraphs 74 and 75 using the test set out in paragraphs 72 and 73. There is nothing wrong with this. It certainly does not amount to a reasonable error that vitiates the decision.

[79] The applicant contests the weight given to certain factors over others. She says that the RT put too much weight on factor 6 (whether her living in Canada is substantially deeply rooted and settled) or on her lack of presence in Canada over others. She claims that the RT did not consider her intention and in fact treated as irrelevant most of the facts listed in paragraph 7 above. Finally, she refers to various mistakes such as ignoring the transfer of money made in March 1976, and referring only to those made later in 1977.

[80] This is simply not acceptable. At paragraph 75, the RT says:

> Overall, in considering **all the factors as outlined above**, the Tribunal finds that, more likely than not, on July 1, 1977, the Appellant did not reside in Canada or ordinarily live in any part of Canada. The most that can be said based on the evidence, is that as of July 1, 1977 the Appellant hoped and **intended** to reside in Canada and ordinarily live in Canada (specially Yellowknife, NWT, where her husband secured employment).
>
> [Emphasis added]

The Court is satisfied that, considering all the circumstances of this case, this conclusion of the RT is one of the acceptable outcomes one could reach considering the facts and the law.

[81] Despite the typos and other flaws raised by the applicant, the Court is satisfied that the decision read as a whole and in the context of the arguments made by the parties, the reasoning of the decision-maker and why it reached its decision is sufficiently clear and cogent to meet the applicable standard of review. The applicant has not satisfied me that there is a reviewable error in that respect.

[82] Again, I say before concluding that, like the RT, I may not have dealt with each and everyone of the many arguments and comments make by the applicant but I have considered them all and those I did not mention were not, in my view, worth mentioning, as they were not accepted by the Court.

[83] In light of the foregoing the application is dismissed. The respondent did not seek costs. None are awarded.

JUDGMENT

THIS COURT ORDERS AND ADJUGES that the application is dismissed.

"Johanne Gauthier"
Judge

ANNEXE A

RELEVANT DISPOSITIONS

- *Old Age Security Act*, R.S.C. 1985, c. O-9

3. (1) Subject to this Act and the regulations, a full monthly pension may be paid to

(*a*) every person who was a pensioner on July 1, 1977;

(*b*) every person who

(i) on July 1, 1977 was not a pensioner but had attained twenty-five years of age and resided in Canada or, if that person did not reside in Canada, had resided in Canada for any period after attaining eighteen years of age or possessed a valid immigration visa,

(ii) has attained sixty-five years of age, and

(iii) has resided in Canada for the ten years immediately preceding the day on which that person's application is approved or, if that person has not so resided, has, after attaining eighteen years of age, been present in Canada prior to those ten years for an aggregate period at least equal to three times the aggregate periods of absence from Canada during those ten years, and has resided in Canada for at least one year

3. (1) Sous réserve des autres dispositions de la présente loi et de ses règlements, la pleine pension est payable aux personnes suivantes :

a) celles qui avaient la qualité de pensionné au 1er juillet 1977;

b) celles qui, à la fois :

(i) sans être pensionnées au 1er juillet 1977, avaient alors au moins vingt-cinq ans et résidaient au Canada ou y avaient déjà résidé après l'âge de dix-huit ans, ou encore étaient titulaires d'un visa d'immigrant valide,

(ii) ont au moins soixante-cinq ans,

(iii) ont résidé au Canada pendant les dix ans précédant la date d'agrément de leur demande, ou ont, après l'âge de dix-huit ans, été présentes au Canada, avant ces dix ans, pendant au moins le triple des périodes d'absence du Canada au cours de ces dix ans tout en résidant au Canada pendant au moins l'année qui précède la date d'agrément de leur demande;

immediately preceding the day on which that person's application is approved; and

(*c*) every person who

(i) was not a pensioner on July 1, 1977,

(ii) has attained sixty-five years of age, and

(iii) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least forty years.

Payment of partial pension

(2) Subject to this Act and the regulations, a partial monthly pension may be paid for any month in a payment quarter to every person who is not eligible for a full monthly pension under subsection (1) and

(*a*) has attained sixty-five years of age; and

(*b*) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least ten years but less than forty years and, where that aggregate period is less than twenty years, was resident

c) celles qui, à la fois :

(i) n'avaient pas la qualité de pensionné au 1er juillet 1977,

(ii) ont au moins soixante-cinq ans,

(iii) ont, après l'âge de dix-huit ans, résidé en tout au Canada pendant au moins quarante ans avant la date d'agrément de leur demande.

Pension partielle

(2) Sous réserve des autres dispositions de la présente loi et de ses règlements, une pension partielle est payable aux personnes qui ne peuvent bénéficier de la pleine pension et qui, à la fois :

a) ont au moins soixante-cinq ans;

b) ont, après l'âge de dix-huit ans, résidé en tout au Canada pendant au moins dix ans mais moins de quarante ans avant la date d'agrément de leur demande et, si la période totale de résidence est inférieure à vingt ans, résidaient au Canada le jour précédant la date d'agrément de leur demande.

in Canada on the day preceding the day on which that person's application is approved

- *Old Age Security Regulations*, C.R.C., c. 1246

21. (1) For the purposes of the Act and these Regulations,	21. (1) Aux fins de la Loi et du présent règlement,
(*a*) a person resides in Canada if he makes his home and ordinarily lives in any part of Canada; and	*a*) une personne réside au Canada si elle établit sa demeure et vit ordinairement dans une région du Canada; et
(*b*) a person is present in Canada when he is physically present in any part of Canada.	*b)*une personne est présente au Canada lorsqu'elle se trouve physiquement dans une région du Canada.

- *Agreement Between the Government of Canada and the Government of Jamaica with respect to Social Security*

ARTICLE IV

1. Subject to the provisions of Articles VIII, IX, X and XI of this Agreement, the pensions, benefits, annuities and death benefits acquired under the legislation of one of the Parties shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only of the fact that the beneficiary resides in the territory of the other Party, and they shall be payable in the territory of the other Party.

2. Where a grant is payable under the National Insurance Act of Jamaica but eligibility for a pension can be established pursuant to Articles VIII, IX, X and XI of this Agreement, such pension shall be paid in lieu of the grant.

ARTICLE V

Any pension, benefit, annuity or death benefit payable under this Agreement by one Party in the territory of the other is also payable in the territory of a third State.

ARTICLE VIII

1.

a. If a person is entitled to an old age benefit under the legislation of Jamaica, without

ARTICLE IV

1. Sous réserve des dispositions des articles VIII, IX, X et XI du présent Accord, les pensions, prestations, rentes et allocations au décès acquises en vertu de la législation de l'une des Parties ne peuvent subir aucune réduction, ni modification, ni suspension, ni suppression, ni confiscation du seul fait que le bénéficiaire réside sur le territoire de l'autre Partie, et elles seront payables sur le territoire de l'autre Partie.

2. Lorsqu'une prestation forfaitaire est payable en vertu de la Loi sur l'assurance nationale de la Jamaïque mais qu'un droit à une pension peut être établi en vertu des articles VIII, IX, X et XI du présent Accord, seule ladite pension sera payable.

ARTICLE V

Toute pension, prestation, rente ou allocation au décès payable en vertu du présent Accord par une Partie sur le territoire de l'autre l'est également sur le territoire d'un État tiers.

ARTICLE VIII

1.

a. Si une personne a droit à une prestation de vieillesse en

recourse to the following provisions of this Article, the benefit payable under the legislation of Jamaica shall be payable in the territory of Canada.

b. If a person is entitled to an old age benefit under the *Old Age Security Act* of Canada, without recourse to the following provisions of this Article, this benefit shall be payable in the territory of Jamaica if that person has accumulated, in all, under that Act at least twenty years of residence in Canada.

c. If a person is entitled to an old age benefit under the rules set out in subsections 3(1)(a) and (b) of the *Old Age Security Act*, without recourse to the following provisions of this Article, but has not accumulated twenty years of residence in Canada, a partial benefit shall be payable to him outside the territory of Canada if the periods of residence in the territory of the two Parties when totalized according to the rules set out in paragraph 4(a) of this Article, represent at least twenty years. The amount of old age benefit payable shall, in this case, be calculated in accordance with the principles governing the payment of the partial pension payable, according to subsections 3(1.1)

vertu de la législation de la Jamaïque sans recourir aux dispositions suivantes du présent article, la prestation payable sous la législation jamaïquaine sera payable en territoire canadien.

b. Si une personne a droit à une prestation de vieillesse en vertu de la *Loi canadienne sur la sécurité de la vieillesse*, sans recourir aux dispositions suivantes du présent article, ladite prestation lui sera payable en territoire jamaïquain pour autant, toutefois, que ladite personne ait accompli en tout sous ladite Loi canadienne, au moins vingt ans de résidence au Canada.

c. Si une personne a droit à une prestation de vieillesse d'après les règles des sous-paragraphes 3(1)(a) et (b) de ladite *Loi sur la sécurité de la vieillesse*, sans recourir aux dispositions suivantes du présent article, mais n'a pas au moins vingt ans de résidence au Canada, une prestation partielle lui sera payable à l'extérieur du Canada pour autant, toutefois, que les périodes de résidence dans le territoire des deux Parties, lorsque totalisées selon les règles énoncées au paragraphe 4(a) du présent article, représentent au moins vingt ans. Le montant de la prestation de vieillesse payable dans ce cas sera calculé selon les principes du paiement de la

to 3(1.4) inclusive of the *Old Age Security Act*.

d. If a person is entitled to a partial pension according to the rules in subsections 3(1.1) to 3(1.4) inclusive of the *Old Age Security Act*, without recourse to the following provisions of this Article, the partial pension shall be payable outside the territory of Canada if the periods of residence in the territory of the two Parties when totalized according to the rules set out in paragraph 4(a) of this Article equal at least twenty years.

2. Notwithstanding any other provision of this Agreement, subsection 3(1) of the *Old Age Security Act* shall not apply to cases set out in paragraphs 3 to 6 of the present Article.

3. If a person is not entitled to an old age benefit on the basis of the periods credited under the legislation of one of the Parties, entitlement to that benefit shall be determined by totalizing these periods and those stipulated in the following paragraph of this Article, provided that these periods do not overlap.

pension partielle payable, d'après les paragraphes 3(1.1) à 3(1.4) inclusivement de ladite *Loi sur la sécurité de la vieillesse*.

d. Si une personne a droit à une pension partielle d'après les règles du paragraphe 3(1.1) à 3(1.4) inclusivement de la *Loi sur la sécurité de la vieillesse* sans recourir aux dispositions suivantes du présent article, la pension partielle lui sera payable à l'extérieur du Canada pour autant toutefois, que les périodes de résidence dans le territoire des deux Parties, lorsque totalisées selon les règles énoncées au paragraphe 4(a) du présent article, représentent au moins vingt ans.

2. Nonobstant toute autre disposition du présent Accord, le paragraphe 3(1) de la *Loi sur la sécurité de la vieillesse* ne s'appliquera pas aux situations décrites aux paragraphes 3 à 6 du présent article.

3. Si une personne n'a pas droit à une prestation de vieillesse sur la base des seules périodes créditées en vertu de la législation de l'une des Parties, l'ouverture du droit à ladite prestation sera déterminée en totalisant ces périodes avec celles stipulées au paragraphe suivant du présent article, en autant que ces périodes ne se

4.

a. For purposes of establishing entitlement to an old age benefit payable by Canada under paragraph 5 of this Article, residence in the territory of both Canada and Jamaica, beginning on or after January 1, 1966 and after the age specified and determined in the administrative arrangement with respect to the legislation or Canada, shall be counted as residence in the territory of Canada.

b. For purposes of establishing entitlement to an old age benefit payable by Jamaica under paragraph 6 of this Article,

i. a contribution which has been made to the *Canada Pension Plan* for the year 1966 shall be accepted as 39 weeks of contributions under the legislation of Jamaica;

ii. a year in which a contribution has been made to the *Canada Pension Plan*, or in which a disability pension is payable thereunder, commencing on or after January 1, 1967, shall be accepted as 52 weeks of contribution under the

superposent pas.

4.

a. En vue de l'ouverture du droit à la prestation de vieillesse payable par le Canada en vertu du paragraphe 5 du présent article, la résidence en territoire canadien et jamaïquain commençant le ou après le 1er janvier 1966 et après l'âge spécifié et déterminé dans l'arrangement administratif, eu égard à la législation du Canada, sera assimilée à la résidence en territoire canadien.

b. En vue de l'ouverture du droit à la prestation de vieillesse payable par la Jamaïque en vertu du paragraphe 6 du présent article,

i. une cotisation qui a été versée au *Régime de pensions du Canada* durant l'année 1966 sera assimilable à 39 semaines de cotisations en vertu de la législation jamaïquaine;

ii. une année où une cotisation a été versée au *Régime de pensions du Canada*, ou pour laquelle une prestation d'invalidité est payable en vertu dudit Régime, commençant le ou après le 1er janvier 1967, sera assimilable à 52

legislation of Jamaica, but where an event occurs during that year which gives rise to a claim under the legislation of either Party, only the number of weeks preceding that event shall be accepted as weeks of contributions under the legislation of Jamaica;

semaines de cotisations en vertu de la législation jamaïquaine, mais lorsqu'un événement, à l'origine d'une demande en vertu de la législation de l'une ou l'autre Partie, survient au cours de cette année, seules les semaines qui auront précédé cet événement seront assimilables à des semaines de cotisations en vertu de la législation jamaïquaine;

iii. a week commencing on or after April 4, 1966 which would be a week of residence for the purposes of the *Old Age Security Act* and in relation to which no contribution has been made under the *Canada Pension Plan* shall be accepted as a week of contributions under the legislation of Jamaica.

iii. toute semaine commençant le ou après le 4 avril 1966, qui serait une semaine de résidence sous la *Loi sur la sécurité de la vieillesse* et pour laquelle aucune cotisation n'a été versée sous le *Régime de pensions du Canada*, est assimilable à une semaine de cotisation sous la législation jamaïquaine.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1602-09
STYLE OF CAUSE:	SANDRA AMY GRACE SINGER v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	May 19, 2010
REASONS FOR ORDER:	GAUTHIER J.
DATED:	June 4, 2010

APPEARANCES:

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