

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120116

Docket: A-125-11

Citation: 2012 FCA 13

**CORAM: LÉTOURNEAU J.A.
PELLETIER J.A.
MAINVILLE J.A.**

BETWEEN:

SALOMON DAOUD

Appellant

and

**ATTORNEY GENERAL OF CANADA
(MINISTER OF HUMAN RESOURCES AND
SKILLS DEVELOPMENT CANADA)**

Respondent

Hearing held at Montréal, Quebec, on January 16, 2012.

Judgment delivered from the Bench at Montréal, Quebec, on January 16, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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Appellant

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(MINISTER OF HUMAN RESOURCES AND
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Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on January 16, 2012)

LÉTOURNEAU J.A.

[1] In the particular circumstances of this case, we are of the opinion that the Court should intervene and extend the prescribed time to file an application for judicial review of a decision

dated November 4, 2010, of the Review Tribunal (Tribunal) constituted in accordance with section 82 of the *Canada Pension Plan*, R.S.C., 1985, c. C-8.

[2] By that decision, the Tribunal confirmed a previous decision of Service Canada, dated June 23, 2009, which not only denied the appellant's application for renewal of the Guaranteed Income Supplement for the period from July 2008 to June 2009, but also claimed reimbursement of an Old Age Security pension overpayment in the amount of \$97,893 that had been made to him.

[3] It is common ground that the appellant has demonstrated a continuing intention to pursue his application for renewal of the Guaranteed Income Supplement and his application for judicial review of the Tribunal's negative decision.

[4] As to whether the appellant made a diligent effort to act within the prescribed time, the appellant found himself in an exceptional set of circumstances. He had no money. He promptly applied for and finally obtained assistance from Legal Aid. Thirty (30) days after learning of the Tribunal's decision, the appellant retained counsel and instructed him to contest the decision. Once the application for judicial review had been drafted, he went to his lawyer's office on December 30, 2010, to sign the supporting affidavits. The motion was mistakenly filed in the Court of Appeal on December 30, 2010, when it should have been filed in the Federal Court, as was done on January 12, 2011. We are of the opinion that the appellant was reasonably diligent in the circumstances.

[5] The decisions of Service Canada and the Tribunal declared that the appellant was not entitled to Old Age Security benefits for the period from May 2001 to March 2009 because his principal residence was in Lebanon, not Canada.

[6] Although determining the place of residence involves questions of fact and credibility, which are subject to a very stringent standard of review, the appellant in this case raises errors of law regarding the interpretation and scope of the *Old Age Security Act*, R.S.C., 1985, c. O-9, and regarding the burden of proof that applies when establishing place of residence. Without any prejudice whatsoever to the merits of the appellant's allegations, we must acknowledge that his position is arguable and is worthy of consideration.

[7] Given the appellant's advanced age, the large amounts at issue, his diligence in instituting review proceedings, the shortness of the extension of the prescribed time, the seriousness of the challenge and the lack of harm to the respondent owing to the delay, we are of the view that it is in the interests of justice that the appellant be allowed to pursue his challenge of the Tribunal's decision.

[8] For these reasons, the appeal will be allowed with costs, the order of the Federal Court dated February 11, 2011, in docket 11-T-5 will be set aside, and the motion for an extension of time to file an application for judicial review will be allowed.

[9] The appellant shall, within twenty (20) days of this decision, serve and file in the Federal Court Registry his application for judicial review.

“Gilles Létourneau”

J.A.

Certified true translation
Michael Palles

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-125-11

**APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE CRAMPTON
OF THE FEDERAL COURT DATED FEBRUARY 11, 2011, DOCKET NO. 11-T-5.**

STYLE OF CAUSE: SALOMON DAOUD. v.
ATTORNEY GENERAL OF
CANADA (MINISTER OF
HUMAN RESOURCES AND
SKILLS DEVELOPMENT
CANADA)

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 16, 2012

REASONS FOR JUDGMENT OF THE COURT BY: LÉTOURNEAU J.A.
PELLETIER J.A.
MAINVILLE J.A.

DATED: January 16, 2012

APPEARANCES:

André Legault FOR THE APPELLANT

Myles J. Kirvan FOR THE RESPONDENT

SOLICITORS OF RECORD:

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