Federal Court of Appeal | Cour d'appel fédérale

Date: 20251118

Docket: A-371-24

Citation: 2025 FCA 205

CORAM: **MONAGHAN J.A.**
HECKMAN J.A.
WALKER J.A.

BETWEEN:

ARNOLD ABRAMOWITZ

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on November 17, 2025.

Judgment delivered at Toronto, Ontario, on November 18, 2025.

REASONS FOR JUDGMENT BY: MONAGHAN J.A.

CONCURRED IN BY: HECKMAN J.A.
WALKER J.A.

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REASONS FOR JUDGMENT

MONAGHAN J.A.

[1] In May 2019, Service Canada, acting on behalf of the Minister of Employment and Social Development, sent a letter to the appellant, Arnold Abramowitz, advising him that he would be automatically enrolled for the old age security (OAS) pension under the *Old Age Security Act*, R.S.C. 1985, c. O-9 (OAS Act), with payments to commence in June 2020. That letter explained that the appellant had the option of delaying his OAS pension but that, to do so, he should

contact Service Canada as soon as possible. The appellant did not take any action. In May 2020, the appellant received a second Service Canada letter advising him that he had been automatically enrolled to receive OAS pension payments, but that he could apply to have that decision reconsidered within 90 days. The appellant's OAS pension payments began in June 2020. The entire amount was withheld and credited as a payment on account of his income taxes.

[2] In June 2022, the appellant asked the Minister to reconsider the May 2020 decision and stop paying him the OAS pension. The Minister refused for two reasons: the appellant missed the 90-day deadline noted in the May 2020 letter and, under subsection 26.1(1) of the *Old Age Security Regulations*, C.R.C. c. 1246 (OAS Regulations), a request to cancel an OAS pension must be made no later than six months after the day on which payment of the OAS pension begins. The appellant made his request approximately two years after his first OAS pension payment.

[3] The appellant appealed the Minister's reconsideration decision to the General Division of the Social Security Tribunal, but it denied his appeal. The appellant then applied to the Appeal Division for permission to appeal the General Division's decision. In his application, the appellant alleged the General Division made three errors:

1. It failed to consider the problems automatic enrollment causes to those who continue working and so will have their OAS pension clawed back. Conversely, if

the OAS pension payments were deferred, the appellant and others like him would enjoy higher OAS payments in later years.

2. It ignored the appellant's explanation for his delay in requesting reconsideration of the Minister's May 2020 decision to automatically enroll him—he was very busy with work and the second letter arrived at the height of the COVID-19 pandemic.

3. It ignored or failed to consider the time the Minister took to respond to his reconsideration request—approximately seven months.

[4] The Appeal Division concluded that the appellant had not raised an arguable case—that none of his arguments had a reasonable chance of success. While noting that it could grant him permission to appeal if his application set out new evidence not presented to the General Division, he did not offer new evidence. Accordingly, the Appeal Division refused the appellant permission to appeal the General Division's decision.

[5] This led the appellant to apply for judicial review of the Appeal Division's decision in the Federal Court, which dismissed his application finding "the Appeal Division reasonably concluded that the [appellant's] arguments had no reasonable chance of success on appeal": *Abramowitz v. Canada (Attorney General)*, 2024 FC 1793 at para. 34 (*per* Turley J.).

[6] The appellant now appeals that decision to this Court. I agree with the parties that the Federal Court correctly chose reasonableness as the standard of review: *Cecchetto v. Canada*

(Attorney General), 2024 FCA 102 at para. 4; *Bhamra v. Canada (Attorney General)*, 2023 FCA 121 at para. 3. Therefore, the only issue on this appeal is whether the Appeal Division's decision is reasonable. To decide that this Court must step into the shoes of the Federal Court, re-do the analysis, and draw its own conclusions: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47.

[7] Having done so, I conclude that the Appeal Division's decision is reasonable for substantially the same reasons as the Federal Court: Federal Court reasons at paras. 36-42. In coming to this conclusion, I have considered the appellant's argument—raised for the first time on appeal—that his OAS pension payments had not begun because they were subject to 100% withholding. Leaving aside that this is a new argument, it is without merit. The payment and withholding, with a corresponding credit to his income tax installment account, is payment to the appellant.

[8] There is one other issue I must address.

[9] In their decisions, the General Division and the Appeal Division refer to the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (CPP) and the regulations thereunder, rather than the OAS Act and OAS Regulations. The Federal Court noticed this error and properly observed that the CPP provisions did not apply because the appellant sought reconsideration of a decision concerning his OAS pension, not a CPP-related decision.

[10] However, the Federal Court concluded the error "is of no consequence to the substance of the Appeal Division's decision" because it "is not a 'sufficiently serious shortcoming' that renders the decision unreasonable", citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 100 (*Vavilov*): Federal Court reasons at para. 26.

[11] On appeal, the appellant argues that the Federal Court erred in its characterization of this error. I disagree.

[12] *Vavilov* teaches that it is not sufficient that a decision be justifiable; it must be justified, transparent and intelligible having regard to the facts and law that constrain the decision-maker: *Vavilov* at para. 85. Here, rather than referring to the relevant constraint—the OAS legislation—the Appeal Division referred to the wrong one—the CPP legislation.

[13] However, a flaw or shortcoming in reasons "must be more than merely superficial or peripheral to the merits of the decision" or "a minor misstep"; it must be "sufficiently central or significant to render the decision unreasonable": *Vavilov* at para. 100. In the circumstances of this case, while regrettable, the error is not central or significant to the Appeal Division's decision.

[14] Critically, in its reasons the Appeal Division set out the test it was applying in considering whether to grant permission to appeal, applied it, and explained why each of the appellant's arguments had no reasonable chance of success. Read in light of the record and the

parties' submissions to the Appeal Division, I conclude the Appeal Division's decision is justified, intelligible and transparent and is reasonable.

[15] How the General Division made the citation error, and the Appeal Division repeated it, is unexplained. I note that the Minister's decision to refuse the appellant's reconsideration request and the Minister's submissions before the General Division both expressly rely on the relevant provisions of the OAS Act and OAS Regulations.

[16] The General Division decision is not the decision under review. Nonetheless, reading the General Division's reasons in light of the record before it, and the submissions the Minister made to it, I am satisfied that it applied the criteria from the OAS Act and OAS Regulations. First, the factors the Minister must consider when asked to extend the 90-day period are the same under both regimes. Second, without citing it, the General Division paraphrased the OAS Regulation that provides a six-month limitation period for requests to stop OAS pension payments: General Division Decision at para. 23. As the Federal Court found, that provision is dispositive: Federal Court reasons at para. 35.

[17] Simply put, neither the General Division's citation error, nor the Appeal Division's repetition of that error has caused me to lose confidence in the Appeal Division's decision: *Vavilov* at paras. 106, 122.

[18] To be clear, I do not condone errors of this kind. To the contrary, they must be admonished. Often such errors will lead to a finding that the decision is not reasonable. But even

where that is not so, careless errors of this nature can “undermine public confidence in administrative decision makers and in the justice system as a whole”: *Vavilov* at para. 131. Therefore, they must be avoided.

[19] The respondent does not seek costs. Accordingly, I would dismiss the appeal without costs.

"K.A. Siobhan Monaghan"
J.A.

“I agree.
Gerald Heckman J.A.”

“I agree.
Elizabeth Walker J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-371-24
STYLE OF CAUSE:	ARNOLD ABRAMOWITZ v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 17, 2025
REASONS FOR JUDGMENT BY:	MONAGHAN J.A.
CONCURRED IN BY:	HECKMAN J.A. WALKER J.A.
DATED:	NOVEMBER 18, 2025

APPEARANCES:

Arnold Abramowitz	FOR THE APPELLANT ON HIS OWN BEHALF
Rebekah Ferriss	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT