

Court File No: T-198-23

## FEDERAL COURT OF APPEAL

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
F I L E D	November 27, 2023 Y. Pataroo
D E P O S E	
OTTAWA, ON	1

BETWEEN:

WEI CHEN

Appellant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

## NOTICE OF APPEAL

## APPEAL UNDER (section 27 of the Federal Court Act)

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at (TORONTO - *where Federal Court of Appeal ordinarily sits*).

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the [Federal Courts Rules](#) and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the [Federal Courts Rules](#) instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by:

**Yovana Pataroo**

---

Address of local office: 180 Queen Street West  
Toronto M5V3L6

**TO: ATTORNEY GENERAL OF CANADA**

**FROM: WEI CHEN**

311-6 Henry Street Toronto, ON MST 1 X 1

Tel: 647-874-8930 **Email: [applausechen1997@gmail.com](mailto:applausechen1997@gmail.com)**

Appellant – Wei Chen

## **APPEAL**

THIS APPELLANT, WEI CHEN APPEALS the judgment of Honourable Mr. Justice Make O’Rilly of the Federal Court dated Sept 25, 2023, actually received on or around Oct 25, 2023. Mr. Chen’s Ground below for an appeal of the decision.

### **I. Preliminary Issues Unaddressed by the Honorable Mr. O'Reilly’s decision**

I. The Motion for adjournment disregarded - During the initial stages of the hearing, Mr. Chen sought an adjournment for two crucial reasons: the sudden unavailability of the interpreter’ sick and the belated submission of extensive documentation by the respondent's counsel. Regrettably, Judge Mr.O'Reilly failed to address Mr. Chen's legitimate request, thereby committing an error by not adjourning the hearing and neglecting to address the untimely material submitted by the opposing counsel.

### **II. Judge's Significant Errors in Assessing the SST’s Decisions**

2. Violation of Natural Justice Principles - The Social Security Tribunal (SST) rendered four decisions (including two by GD and two by AD) without affording Mr. Chen an opportunity to respond. This egregious oversight directly contravenes Section 18(4)(b) of the Federal Court Act, which mandates the observance of principles of natural justice. Contrary to the Judge's assertion, “the Appeal Division held a fair hearing”. Actually, the AD didn’t hold any hearing for both times, It was only reviewed by the papers. The SST failed to offer a chance for a fair hearing, that was the core of core of dispute. The Judge’s finding was significant error, as well he also ignored the core evidence before him.

3. Lack of Hearing in SST - The AD’s decision to remit the matter to the General Division for a new hearing duo to the first GD member failing to observe a principle of Justice was not followed diligently. The subsequent GD member did not consider Mr. Chen's evidence and submissions as specifically directed by the AD, demonstrating a clear deviation from procedural fairness.

### **Commission's Role and Use of Fraudulent Evidence**

4. Commission's Failure to Participate - The Commission failed to file any documents including the CRA report or submissions for the alleged new hearing, also didn’t request for dismiss the appeal, displaying a lack of engagement in the proceedings. This negligence further undermines the fairness of the process.

5. Fraudulent Integrity Officer Report -The Commission's integrity officer, Marsha, submitted a fraudulent and perjured report, violating Section 18(4)(e) of the Federal Court Act. This critical issue and substance of Mr. Chen’s argument

presented both in written and oral submissions, was unfortunately overlooked by the Judge and he didn't address this core issue in his decision.

### **Tribunal Jurisdictional and Authority Issues**

6. Mr. Chen's appeal was based on the Commission's allegation of fraudulent ROE, not the CRA's ruling. Since the Commission alleged that the ROW was fraudulent allegation, the Tribunal then has jurisdiction to hear the appeal. The Tribunal's failure to recognize this core argument impacted Mr. Chen's right to a fair hearing. However, the Judge overlooked these key arguments.

7. The first GD member exceeded their authority by ordering the Commission to seek a CRA ruling under inappropriate circumstances and relying on outdated regulations and the case law that didn't apply the present case. Subsequently, the member had no give Mr. Chen an opportunity to respond his decision and summarily dismissed the Appeal without due process.

8. The AD member should exercise her authority to remedy the second GD member decision. However, she upheld the second GD's decision by ignoring her own initial decision.

9. The Judge overlooked these jurisdictional and legal issues, further contributing to the overall lack of fairness.

10. The AD member dismissed Mr. Chen's appeal based on section of 58 of the DESD Act, the appeal, had no reasonable chance of success, Not based on the Tribunal had no jurisdiction to hearing this case. The Judge failed to recognize the difference, in fact he failed to act his jurisdiction.

### **Factual finding errors Unaddressed**

11. The AD member made several factual errors in finding that Mr. Chen in her decision, the Judge failed to address these factual errors.

12. And the commission lawyer's allegation that Mr. Chen's employer had a meal-sharing arrangement, which was not in case. Actually, completely ignore Mr. Chen's evidence. The Judge failed to address those factual errors, instead he just simply relied on the counsel statements, without any a piece of evidence to supporting the finding, leading to a flawed decision.

### **Inadequate Review Standards**

13. The AD member applied incorrect standards of review, and the Judge failed to provide clarity on the appropriate standards, affecting the overall fairness of the proceedings.

## **Conclusion**

14. In summary, the grounds for appeal highlight procedural errors, jurisdictional issues, factual inaccuracies, and a lack of fairness throughout the proceedings, necessitating a review and remedy from this Honorable Court.

## **Relief Sought**

15. In the interest of Natural Justice, Mr. Chen respectfully petitions this court penal to overturn Judge O'Reilly's decision dated September 25, 2023, and seeks a remit to the AD or its delegate for a rehearing. It is crucial to note that the SST has already rendered four decisions over the past three years, resulting in a prolonged and unresolved matter. If remit to the AD to determine again, Mr. Chen believe the AD remains the same decision.

16. Given the protracted nature of the proceedings, Mr. Chen now implores this Honourable Court to issue a directive compelling the Commission to disburse his Employment Insurance (EI) benefits and other entitlements. In light of the circumstances, Mr. Chen requests this court to exercise its authority to substitute own order to ensure a just remedy befitting the circumstances as deemed appropriate by this Honorable Court.

## **III. This appeal will be supported by the following materials:**

- 1). Affidavit of WEI CHEN sworn will include to Appeal Record;
- 2). The Appellant wishes the SST to forward material to the Registry, to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the (tribunal) to the applicant and to the Registry:
  - A. The names of interpreters, their respective companies, and the interpreters' licensing information for the hearings held on August 09 and 22, as well as October 2022.
  - B. The AD member, Janet Lew, did not review certain materials before deciding to return the case to GD reconsideration on May 19, 2022. The decision to return the case was influenced by the Claimant's (Appellant) complaint, conveyed via phone calls to Tribunal agent Pierre for 20 minutes and Andre for 15 minutes. Pierre assured the Appellant that he had taken notes into the system and read them aloud for confirmation, but the notes provided were brief and lacked the original detail read out to the Appellant.
  - C. Consequently, the Appellant explicitly requests the detailed notes made by Pierre. On or about May 26, 2022, the AD member directed the addition of materials for GD review, with document coding numbers AD6-1 and 2.

Appellant- Wei Chen

Dated: November 10, 2023