Federal Court  Cour fédérale

Date: 20220302

Docket: T-826-21

Citation: 2022 FC 281

Ottawa, Ontario, March 2, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

PAULINA GREGORIO

Respondent

JUDGMENT AND REASONS

[1] There are no exceptional circumstances that would warrant this Court's intervention to review a April 19, 2021, decision [the Leave Decision] of a member of the Appeal Division of the Social Security Tribunal granting leave to appeal a decision of the General Division [the General Division Decision].

[2] This application is premature. Moreover, even if the application were timely, the relief sought would not be granted, as the decision sought to be reviewed is reasonable. Furthermore,

on the facts before the Court, equitable relief setting aside the Leave Decision would not be granted.

Background

[3] The Respondent, Paulina Gregorio, filed an application for Canada Pension Plan disability benefits in 2013. The Respondent's application eventually came before the General Division of the Social Security Tribunal [the General Division].

The General Division Decision

[4] On December 21, 2020, the General Division found that the Respondent had provided insufficient evidence that she was disabled as of the relevant date, December 31, 2011.

[5] The General Division had concerns about Ms. Gregorio's evidence. The General Division noted her inability to remember key information, while still being able to answer very specific questions from her representative. The General Division found that her inconsistent memory made it "hard to rely on her evidence" and, therefore, held that documentary evidence was especially important in determining the facts. Later in its decision, the General Division found that it could not rely on her evidence regarding her employment or her work capacity. The General Division pointed to several inconsistencies between her evidence and the medical documents provided and found that the medical documents ought to be preferred as "multiple medical professionals would have no reason to fabricate her work activity."

The Leave Decision

[6] Ms. Gregorio appealed the General Division Decision to the Appeal Division of the Social Security Tribunal [the Appeal Division] and on April 19, 2021, the Appeal Division granted leave to appeal. It is this decision that is under review in this application.

[7] The Appeal Division noted that Ms. Gregorio had raised many alleged errors by the General Division. However, the Appeal Division decided to address only the argument that, in its view, offered the best chance of success. The Appeal Division noted that the other arguments could still be raised at the full appeal hearing.

[8] The Appeal Division found that "[a] case can be made that the General Division doubted the Claimant's credibility for no good reason" and noted that "the General Division seemed to almost suggest that the Claimant was actively attempting to deceive it." The Appeal Division noted that more than a decade had passed since the end of Ms. Gregorio's coverage period and that human memory is imperfect. In light of this, the Appeal Division "wonder[ed] whether it was fair to discard an important component of the Claimant's case simply because there were some gaps and discrepancies [in] her recollection."

The Appeal Decision

[9] On May 19, 2021, the Applicant, the Attorney General of Canada, applied for judicial review of the Leave Decision. However, neither the Applicant nor the Minister of Employment and Social Development [the Minister] sought a stay of the Leave Decision from this Court or a

suspension of proceedings from the Tribunal. The Appeal Division held a hearing on the appeal on June 22, 2021.

[10] On July 15, 2021, after the Appeal Division hearing, the Minister requested that the appeal be suspended pending this application, indicating that the Minister had understood the proceedings to be suspended by the Appeal Division pending judicial review.

[11] On July 22, 2021, the Appeal Division issued its decision on the merits of the appeal [the Appeal Decision].

[12] In the Appeal Decision, the Appeal Division denied the Minister's request to suspend the proceedings. The Appeal Division noted that nothing in the law required proceedings to be suspended pending an application for judicial review. The Appeal Division found that the Minister knew or ought to have known that the hearing was coming and did not request a suspension until after it had occurred. Furthermore, at paragraphs 14-15 of the Appeal Decision, the Appeal Division found that the Minister was not prejudiced by the appeal going forward:

> [14] Moreover, I don't see how pushing on with this appeal damages the Minister's interests. If I proceed and then dismiss the Claimant's appeal on its merits, the Minister's attempt to invalidate my leave to appeal decision will be moot. On the other hand, if I proceed and then allow the Claimant's appeal, the Minister's attempt to invalidate my leave to appeal decision will ultimately be no worse off than if I suspend proceedings. Under both scenarios, the Claimant benefits because she doesn't have to wait a year or so for the Federal Court to do its work, and she gets a result from the Appeal Division sooner rather than later.
>
> [15] Furthermore, if the Minister ultimately succeeds at the Federal Court, then my decision granting leave to appeal will be quashed, but than so will this decision on the merits. But if the

> Minister fails at the Federal Court, then it remains free to challenge the outcome of this decision.

[13] The Appeal Division granted the appeal, finding that the General Division "crossed the line into error when it assessed the Claimant's overall credibility." The Appeal Division found that the General Division "failed to consider obvious reasons for gaps and discrepancies in the Claimant's recollection." The Appeal Division found that the Respondent's evidence could only be discarded in its entirety "if the decision-maker were satisfied that the witness was lying or otherwise completely non-credible. In this case, the General Division did not explicitly make such a finding and, even if it had, there was nothing on the record that would have justified it."

[14] In addition to this error, the Appeal Division also found that the General Division mischaracterized the Respondent's evidence regarding her reasons for leaving her job.

[15] The Appeal Division found that there was enough evidence on the record to decide the case on its merits, and found that Ms. Gregorio was disabled and entitled to benefits retroactive to April 2015.

Issues

[16] The Applicant raised a single issue in the memorandum: "Is the Appeal Division's decision to grant leave reasonable?"

[17] At the commencement of the hearing, I informed the parties that there were a number of things troubling me about the matter before the Court.

[18] First, the Respondent indicated in her memorandum that the Attorney General did not seek to judicially review the Appeal Decision. His counsel confirmed that this was correct.

[19] Second, I asked if the Attorney General was of the view that if he were successful on the matter presently before this Court and the Leave Decision were set aside, then the Appeal Decision would then become a nullity. His counsel confirmed that this was the position of the Attorney General.

[20] Third, I referenced the decision of Justice Manson in *Canada (Attorney General) v O'Keefe*, 2016 FC 503 [*O'Keefe*]. In *O'Keefe*, the Attorney General raised the issue whether the judicial review of a decision granting leave to appeal a decision of the General Division was premature. The respondent in *O'Keefe* made no submissions on the application (see *O'Keefe* at para 20).

[21] *O'Keefe*, for several reasons which I will later explore, held that judicial review of a positive leave to appeal decision of the Appeal Division was not premature. It appears that the issue of prematurity has not been squarely addressed by any other judge of this Court, and while *O'Keefe* is persuasive authority, I pointed out that it was not binding on me and asked for submissions on the question of whether this application was premature.

[22] Lastly, I observed that even if I were to follow *O'Keefe* and even if the Attorney General were to convince me that the Leave Decision is unreasonable, judicial review is a discretionary remedy, and I expressed concern that Ms. Gregorio, as a result of her successful appeal, has been in receipt of disability benefits retroactive to April 2015. The Attorney General chose not to seek review of the Appeal Decision, but apparently takes the view that, if successful here, it would become a nullity, thus disentitling Ms. Gregorio to the benefits she has been receiving. I asked for submissions as to why, in those circumstances, I ought to exercise my discretion and set aside the Leave Decision as requested by the Attorney General.

The Statutory Scheme

[23] The only grounds of appeal of the General Division Decision are outlined in subsection 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [the DESDA]:

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;	a) a division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;
(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or	b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;
(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.	c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

[24] The Appeal Division must first grant an appellant leave to appeal a decision of the General Division. To be granted leave to appeal, an appellant is only required to demonstrate an "arguable case" based on one of the three grounds of appeal (see *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16).

The Position of the Parties

[25] The Applicant submits that in granting leave, the Appeal Division unreasonably reweighed the evidence before the General Division, which is not a proper ground of appeal. The Applicant submits that the Appeal Division granted leave to appeal to hear the argument that Ms. Gregorio's testimony should not have been accorded little to no weight.

[26] The Applicant further submits that the Appeal Division's finding that "[a] case can be made that the General Division doubted the Claimant's credibility for no good reason" is unreasonable and lacks transparency. The General Division provided reasons why the Respondent's testimony could not be relied upon, and the Appeal Division did not identify any error of law in the General Division's assessment of this testimony, nor any perverse or capricious finding of fact.

[27] The Respondent submits that the arguable case was that the General Division erred by doubting Ms. Gregorio's credibility and notes that making a credibility finding based on incorrect findings of fact is an error in law, as is discarding evidence without proper support.

[28] The Respondent submits that the Appeal Division did not find that there was a case that the evidence was improperly weighed. Rather, it found that there was an arguable case that the General Division, by dismissing the Respondent's testimony, did not have regard for the material before it, which is the test stipulated in paragraph 58(1)(c) of the DESDA. She says that the Appeal Division found that the General Division had "discarded" her testimony and did not merely place less weight on it as suggested by the Applicant.

[29] The Respondent lastly notes that the Applicant's position has been proven incorrect, since the Respondent was successful on the appeal, thus demonstrating that her arguments on leave had a reasonable chance of success.

Analysis

Is this Application Premature?

[30] As a general rule, "absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted": *Canada (Border Services Agency) v CB Powell Ltd*, 2010 FCA 61 [*CB Powell*] at para 31. The purpose of this rule is to prevent fragmentation of the administrative process and piecemeal court proceedings, and to avoid the waste of hearing an interlocutory judicial review when the applicant may succeed in the end (see *CB Powell* at para 32).

[31] The Federal Court of Appeal in *Herbert v Canada (Attorney General)*, 2022 FCA 11 [*Herbert*] has recently had the occasion to apply this general principle and at paras 12 and 13, reinforced that "exceptional circumstances" will rarely be found:

> [12] These principles were reiterated with vigor in the recent case of *Dugré v. Canada (Attorney General)*, 2021 FCA 8, [2021] F.C.J. No. 50 (QL/Lexis) *(Dugré*), where this Court, raising the issue on its own motion, held that the non-availability of interlocutory relief was "next to absolute" (*Dugré* at para 37). It underscored the fact that the "very rare" circumstances that would allow a party to bypass the administrative process "require that the consequences of an interlocutory decision be so 'immediate and radical' that they call into question the rule of law" (*Dugré* at para. 35, quoting *Wilson v. Atomic Energy of Canada Limited*, 2015 FCA 17, [2015] 4 F.C.R. 467 at paras 31-33).
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> [13] The Court warned against a "less stringent criterion" that "would only encourage premature forays into courts and a resurgence of the ills identified in *C.B. Powell*". In particular, it pointed to "certain recent attempts by the Federal Court to restate the settled test by refining criteria for exceptions", holding that they were "ill-advised and should not be viewed as authoritative" and that they "only serve[d] to muddy the waters and compromise the rigour of the principle of non-interference" (*Dugré* at para 37) (emphasis added).

[32] In *O'Keefe*, Justice Manson considered prematurity in the context of a leave decision of the Appeal Division. As in the present case, the Appeal Division had granted leave and an application for judicial review was brought. However, unlike in the present case, the appeal in *O'Keefe* had not been heard.

[33] Justice Manson found that judicial review of a positive leave decision is not premature. He gave seven reasons in support of this finding, which I shall discuss in turn.

[34] First, he noted that section 68 the DESDA states that the decision of the Social Security Tribunal on any application is final. Therefore, "[u]pon granting or refusing leave, the [Appeal Division] is *functus officio*" (*O'Keefe* at para 26).

[35] I note that section 68 of the DESDA, which provides that a decision of the Social Security Tribunal on any application is final, is but a privative or preclusive clause. Such clauses are commonplace in statutes establishing administrative tribunals. Their intent is to signal that decisions of the tribunal are entitled to deference. They do not, however, oust judicial review of their decisions. Indeed, as was noted in *O'Keefe*, decisions of the Social Security Tribunal are reviewable by the Federal Court of Appeal. In my view, saying that decisions are final should not be interpreted as saying that all tribunal decisions are to be characterized as final decisions and none as interlocutory in nature.

[36] I do not share the view that the Appeal Division's role is necessarily ended after rendering a leave decision. A decision refusing leave is clearly a final decision of the Appeal Division and its role is then ended, as is the appeal. An appellant who is denied leave to appeal has no path to continue their claim other than applying for judicial review in the Federal Court.

[37] On the other hand, if leave is granted, the application for leave turns into the Notice of Appeal (see ss 58(5) of the DESDA) and the appeal is heard on the merits. If leave is granted where it ought not to have been, this can be argued at the full hearing on the merits and at any judicial review of that decision. This is not unlike cases of alleged breaches of procedural

fairness, where applicants are expected to continue to participate in the administrative process and raise their fairness concerns before the original decision maker (see *CB Powell* at para 33).

[38] Second, Justice Manson noted in *O'Keefe* that paragraph 28(1)(g) of the *Federal Courts Act*, RSC 1985, c F-7 provides that the Federal Court of Appeal has jurisdiction to hear judicial reviews of Appeal Division decisions, yet it expressly excludes decisions made under subsection 57(2) of the DESDA (granting an extension of time to apply for leave) and section 58 of the DESDA (governing grounds of appeal and the granting of leave to appeal) (see *O'Keefe* at para 27).

[39] Inability to apply for judicial review of a positive leave decision is not necessarily inconsistent with these statutory provisions. As long as this Court hears judicial reviews of negative leave decisions, these provisions still have meaning.

[40] Third, it was stated that a leave decision "demarcates the issues on appeal that have a reasonable chance of success" (*O'Keefe* at para 28, citing *Belo-Alves v Canada (Attorney General)*, 2014 FC 1100 [*Belo-Alves*] at paras 71-73).

[41] A leave decision does not demarcate the issues on appeal that have a reasonable chance of success. *Belo-Alves*, which is the authority cited for this proposition, is no longer good law. In *Hillier v Canada (Attorney General)*, 2019 FCA 44, the Federal Court of Appeal held at para 28 that "[t]he provisions of section 58, cited above, show that unless an appeal has no merit at all, the Appeal Division should take the appeal on all grounds provided that those grounds fall

within the categories of subsection 58(1)." Contrary to *Belo-Alves* and *O'Keefe*, the leave decision does not serve to demarcate issues that have a chance of success.

[42] Fourth, subsection 58(1) of the DESDA sets out the only three grounds of appeal to the Appeal Division, and it was stated that, because there are only three grounds of appeal, it would be an error to grant leave to appeal or an appeal in other circumstances. If judicial review were premature, there would be no way to correct such an error (see *O'Keefe* at paras 29 ~~&~~ 34).

[43] I do not agree that there would be no way to correct such an error. If the Appeal Division improperly grants leave for a reason other than the grounds set out in subsection 58(1) of the DESDA, this can be argued at the full hearing. If the appeal was ultimately allowed on a ground other than those in subsection 58(1), this would constitute a reviewable error that could be addressed on judicial review of the appeal decision. While Rule 302 of the *Federal Courts Rules* provides that in normal cases only one decision may be the subject of a judicial review, in its reasons regarding a final appeal decision, the Court could still provide guidance to decision-makers and raise concerns as to whether leave should have been granted in the first place. Accordingly, I do not share the view that, where there is an error made in granting leave to appeal in circumstances not provided by the DESDA, judicial review of the leave decision is the only way to correct such an error.

[44] Fifth, it was stated that concerns about fragmentation are negated by the fact that leave is a discernible step that results in a final decision (see *O'Keefe* at para 31).

[45] As set out above, in my opinion, a positive leave decision is not properly characterized as a final decision. While a positive leave decision is a discernable step in the administrative process, the final decision it results in is the decision on the merits of the appeal.

[46] Sixth, it was stated that refusing to hear judicial review of a leave decision would run contrary to the principles of efficiency and judicial economy, as a full hearing of the merits of the appeal can be avoided (see *O'Keefe* at para 32).

[47] Refusing to hear judicial review of a positive leave decision does not necessarily run contrary to the principles of efficiency and judicial economy, as a full hearing of the merits of the appeal may not be avoided.

[48] In almost all circumstances, not hearing a judicial review of a positive leave decision minimizes the number and length of proceedings. I accept that if a leave decision were clearly unreasonable and found by the Court to be so, then applying for judicial review of it would avoid an unnecessary appeal. However, if the application were unsuccessful, the appeal will have been delayed (assuming it was suspended), a full hearing would still occur, and there may be a second judicial review of the final decision. This is less efficient than simply applying for judicial review at the end of the process.

[49] Furthermore, if the would-be applicant challenging the leave decision succeeds at the appeal stage, they will obtain a final decision ending the appeal. However, a successful review

of a leave decision will generally result in the decision being remitted for redetermination. Leave may still eventually be granted and the appeal may still be heard.

[50] Also, as this case has demonstrated, the hearing of a full appeal before the Appeal Division may well occur sooner than a review by this Court. The delay caused by suspending a proceeding for a judicial review of a leave decision is likely to be greater than the delay caused by waiting to apply for judicial review until the appeal decision has been rendered.

[51] Lastly, Justice Manson observed that the same arguments against reviewing positive leave decisions could be used to argue against reviewing negative leave decisions, which are reviewable (see *O'Keefe* at para 33).

[52] I simply do not agree that the arguments against reviewing positive leave decisions automatically apply to negative leave decisions. Since a negative leave decision ends an appeal, there is no risk of fragmentation, inefficiency, or mootness.

[53] Justice Manson in *O'Keefe* observed that this Court has previously reviewed positive leave decisions. He points to *Canada (Attorney General) v Hines*, 2016 FC 112, and *Canada (Attorney General) v Hoffman*, 2015 FC 1348. While each of those matters did indeed constitute a judicial review of a positive leave decision, neither is helpful as the issue of whether the matter was premature was not before the Court.

[54] More relevant is the decision of Justice Mactavish, as she then was, in *Layden v Canada (Minister of Human Resources and Social Development Canada)*, 2008 FC 619 [*Layden*]. Ms. Layden sought judicial review of a decision of a member of the Pension Appeals Board granting leave to the Minister to appeal a decision of the Review Tribunal granting Ms. Layden a disability pension under the *Canada Pension Plan*, RSC 1985, c C-8. While not under the legislation before the Court in this matter, the decision is instructive on how the Court ought to deal with applications to review decisions granting leave to appeal an administrative decision.

[55] The issue of prematurity was not raised by the parties; however, Justice Mactavish raised whether the Court ought to intervene "given that all of the substantive arguments raised by Ms. Layden with respect to the merits of the Review Tribunal's decision could be addressed before the Pension Appeals Board." The only prior decision involving a review of a decision granting leave to appeal from a decision of the Review Tribunal was that of Justice Lemieux in *Mrak v Canada (Minister of Human Resources and Social Development)*, [2007] FCJ 909 (TD).

[56] Justice Lemieux referenced the general rule noted above that there should not be immediate review of interlocutory administrative decisions absent special circumstances justifying such action. Justice Mactavish at paras 25 and 26 found that there were special circumstances in the matter before her involving issues of procedural fairness:

> [25] In this case … Ms. Layden's concern with respect to the fairness of the leave process is not a matter that would be dealt with by the Pension Appeals Board, whose mandate, once leave is granted, is to conduct a *de novo* hearing into the merits of her claim for a disability pension, not to revisit the leave process. The case also raises concerns with respect to the integrity of the leave process that may not otherwise be addressed.

> [26] I am therefore satisfied that special circumstances exist in this case that justify the exercise of the Court's discretion to deal with the application for judicial review, despite the fact that it involves an interlocutory decision.

[57] I note that this decision would be unlikely to issue today. In *Herbert* at para 11, the Federal Court of Appeal indicated that such circumstances do not justify an early hearing:

> Thus, procedural fairness concerns, which are what the applicant is voicing regarding the impugned interlocutory decision, do not meet the high threshold of exceptionality; important legal, jurisdictional or constitutional issues do not either.

[58] In any event, I am of the view that where the decision before this Court is not the final decision of the administrative tribunal on the merits, the approach taken by Justice Mactavish is that which the Court ought to take. The Court should only intervene in such a decision in exceptional circumstances and where there would be no opportunity for concerns with the decision to be addressed. This is the approach taken in this matter.

[59] The only issue the Attorney General has with the Leave Decision is that the Appeal Division erred in granting leave for a reason that was not within the grounds set out in section 58 of the DESDA. Whether there was an error in the General Division Decision falling within section 58 is an issue the Attorney General may raise on the appeal on the merits. That view of the Attorney General can hardly be said to rise to the height of an exceptional circumstance. It will, I suspect, be the position taken on every claimant's appeal.

[60] For these reasons, the application for judicial review is premature and will be dismissed.

Is the Leave Decision Reasonable?

[61] Even if the application were not premature, in my view, the Leave Decision was reasonable.

[62] As set out above, the parties disagree as to what arguable case that the Appeal Division found. The Applicant submits that the Appeal Division found that there was an arguable case that the evidence was improperly weighed, which is not a ground of appeal. The Respondent submits that the arguable case was that the General Division made an improper credibility finding and therefore did not have regard for the material before it.

[63] I agree with the Respondent that the Appeal Division did not find that the arguable case was that the evidence was improperly weighed. The Appeal Division's finding was that there was an arguable case that the General Division had made a flawed credibility assessment.

[64] While being mindful that an appeal to the Appeal Division operates on different principles than a judicial review at this Court, I believe that the treatment of credibility assessments by this Court is informative. Paragraph 18.1(4)(d) of the *Federal Courts Act* provides that this Court may grant relief if a decision is based on "an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it", the same standard for factual errors as that found in paragraph 58(1)(c) of the DESDA.

[65] Like the Appeal Division, on judicial review this Court is not entitled to reweigh evidence. However, this Court can quash a decision due to a flawed credibility assessment. In

doing so, this Court is not reweighing the evidence; it is finding that the credibility finding was unreasonable, and thus it was unreasonable to give the evidence in question no weight.

[66] This is exactly what the Appeal Division did in this case. It found that the General Division appeared to have made an adverse credibility finding against the Respondent. This is reasonable, as in my view the General Division Decision does heavily imply that the Respondent attempted to deceive the General Division.

[67] The Appeal Division then found that there was an arguable case that this credibility finding was not properly made. While this necessarily would result in a finding that the Respondent's testimony was improperly given no weight, it is not a true reweighing of the evidence. The Appeal Division did not simply feel that had it been making the decision it would have weighed things differently. It found that there was an arguable case that the approach taken in assessing the evidence and assigning weight was fundamentally flawed.

Should the Court Order an Equitable Remedy?

[68] Even if this Court were to find that the Leave Decision is unreasonable, on the facts here, I would not have awarded any equitable remedy as is sought.

[69] The usual order is to set aside the unreasonable decision and to send it back to be decided by a different decision-maker. However, that order would have the effect of nullifying the Appeal Decision and reversing the payments of the disability pension the Respondent has received.

[70] The Attorney General has not directly attacked the Appeal Decision, as he has not applied to the Federal Court of Appeal for judicial review. In my view, in seeking to set the Leave Decision aside, the Attorney General is seeking to do indirectly what he chose not to do directly. While I would not ascribe any *mala fides* to him, that conduct does not sit well with a court of equity, such as the Federal Court.

[71] While the Attorney General did not seek his costs of this application, Ms. Gregorio did. She seeks her costs on a "full indemnity" basis, being $17,700.00.

[72] She notes in support of this request that the Appeal Division granted her the benefits sought, which "obviously addresses whether there was an 'arguable case' to support the decision to grant leave, making the entire judicial review of the leave decision effectively moot, wasting not only valuable Federal Court resources but also the Respondent's who can ill afford the extra legal fees involved in a proceeding such as this."

[73] She further points to the fact that the "Minister inexplicably failed to bring an application for the court to review the [Appeal Division's] merits decision" and to the extensive materials filed on this application.

[74] The Court appreciates that the Respondent may hav e financial challenges in meeting the full costs of this litigation. The Court also appreciates that it would have been better for all had the Applicant considered its position in bringing or maintaining this application after it received the decision of the Appeal Division on the merits.

[75] Nevertheless, it is a rare situation that this Court finds that costs are warranted on the scale sought by the Respondent. This is not such a case.

[76] In exercising my discretion and considering all of the relevant facts, including that this application was set down for three hours, the Applicant's Record was in excess of 650 pages, and the Respondent was fully successful, I will award the Respondent her costs fixed at $7,500.00.

JUDGMENT IN T-826-21

THIS COURT'S JUDGMENT is that this application is dismissed, with costs to the Respondent fixed at $7,500.00.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-826-21
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA *v* PAULINA GREGORIO
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 24, 2022
JUDGMENT AND REASONS:	ZINN J.
DATED:	MARCH 2, 2022

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