

Date: 20080304

Docket: T-456-07

Citation: 2008 FC 292

Toronto, Ontario, March 4, 2008

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JASWANT TOMAR

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Mr. Jaswant Tomar (the “Applicant”) seeks judicial review of the decision of Ms. Betty Farrell, Security Program Advisor with Human Resources and Social Development Canada, as a delegate of the Minister of Social Development (the “Minister”), represented in this proceeding by the Attorney General of Canada (the “Respondent”).

[2] In her decision, dated February 21, 2007, Ms. Farrell determined that there was no basis for the exercise of discretion pursuant to section 32 of the *Old Age Security Act*, R.S.C. 1985, c. O-9

(the “Act”) relative to the Applicant’s request for the award of a full Old Age Security (“OAS”) Pension.

[3] The Applicant seeks the following relief:

1. A writ of *certiorari* quashing the Minister’s decision to refuse to exercise his discretion under s. 32 of the Act.
2. A finding of this Honourable Court that there was erroneous advice provided to the Applicant by the Department or an employee thereof resulting in prejudice to the Applicant and a denial of a full Old Age Security Pension.
3. An order of mandamus requiring the Minister to pay a full Old Age Security Pension to the Applicant, along with retroactive benefits to August 2002.
4. An order of mandamus requiring the Minister to exercise his discretion under s. 32 of the Act and to grant the Applicant a full Old Age Security Pension.
5. Any other appropriate order or relief pursuant to the Federal Courts Act, R.S.C. 1985, c. F-7, as amended, including but not limited to, an order under ss. 18 & 18.1 therein.

II. Background

[4] The Applicant was born in India on July 15, 1937. He came to Canada in 1975, initially establishing himself in Winnipeg, Manitoba. On or about June 24, 1988, he relocated to St. John’s, Newfoundland and Labrador where he was employed by the Government of Newfoundland and Labrador with the Department of Forest Resources and Agrifoods. He was employed with the provincial government in Newfoundland until 1996 when his position was deemed redundant; his

employment ended in June 1996.

[5] Following termination of his employment, the Applicant continued to reside in St. John's until 1995. According to his affidavit, sworn on April 13, 2007, the Applicant returned to India in or about October 1999. His move in this regard was motivated by a number of personal factors including the death of his wife and certain financial pressures.

[6] In May 2002, the Applicant returned to Canada. He intended to work on litigation relative to the termination of his employment with the Government of Newfoundland. He also intended to pursue his claim for Old Age Security pension benefits in light of the approach of his 65th birthday in July 2002. In preparation for submitting his application, the Applicant received material from HRDC, including an "Information Sheet" that provided general information about the requirements to be met for the award of an OAS pension.

[7] The Applicant's application for an OAS pension is dated October 31, 2001; however, it appears that the application was not received by HRDC until May 8, 2002. In that document, he provided information about the length of his residence in Canada and places of employment. The exhibits attached to the Applicant's principal affidavit show that before submitting his pension application, he had reviewed written material from HRDC that addressed the process of applying for an OAS pension. This material included an "Information Sheet". The following note appears on page 2 of that document:

This Information Sheet contains general information concerning the Old Age Security pension, the Allowance and the Allowance for the Survivor. The information reflects the Old Age Security legislation. If there are any differences between what is in the Information Sheet and the Old Age Security Act, the Act is always right.

[8] Among other things, the Information Sheet provides general advice about the qualification for an OAS pension, as follows:

To qualify for a "Full" Old Age Security Pension

You qualify for a full pension if you have resided in Canada for periods totalling at least 40 years after age 18. You can also qualify for a full pension if on July 1, 1977:

- you were at least 25 years of age; and you were resident in Canada or had a valid Immigration Visa to Canada; or
- you had some prior residence in Canada after age 18; and
- you resided in Canada for the 10 years immediately before your application is approved; or
- you resided in Canada for the year immediately before your application is approved and you had been in Canada for periods that equal 3 times the length of any absences during the 10 years before your application is approved.

[9] According to his principal affidavit, the Applicant received a letter dated July 26, 2002, from HRDC. The copy of this letter, which is attached as an exhibit to the Applicant's principal affidavit, is unsigned but the name "D. Foote" is type-written. This letter advised the Applicant that he could be eligible for a full pension benefit in June 2003 if he lives in Canada until that time and that, otherwise, he may be eligible for a partial OAS pension in August 2002. The relevant part of the letter reads as follows:

As of today, we have calculated that you lived in Canada for 24 years and 7 months after your 18th birthday. You could be eligible for a **full** Old Age Security pension in June 2003, if you live in Canada until that time. The current amount of a full Old Age Security pension is \$443.99.

However, you may be eligible for a **partial** Old Age Security pension as early as August 2002.

Please choose *one* of the options on the attached statement. Please sign it, have it signed by a witness and return it to us in the envelope we have provided. Keep a copy of this statement for your records.
[Emphasis in original]

[10] The letter of July 26, 2002 also advised the Applicant that prior to approval by HRDC of his pension application, he must choose between receipt of a full or a partial pension.

[11] By letter dated August 7, 2002, counsel for the Applicant requested HRDC to review the Applicant's pension application. Counsel suggested that the wording of the Information Sheet that had been sent to the Applicant in 2001 was misleading, in comparison with the language of the Act, relative to the requirement that an applicant for a full pension must have been resident in Canada for the year preceding the application. Counsel said that if the Applicant had understood this requirement, he would have returned to Canada earlier than he did.

[12] As well, counsel noted that English was not the first language of the Applicant and that he may have misunderstood the information provided in the Information Sheet.

[13] On October 2, 2002, Mr. Bob Cochrane, Service Delivery Manager, Income Security Programs with HRDC, replied to the letter from the Applicant's lawyer. He advised that, following a review of the Applicant's file, he was confirming the position set out in the letter of July 26, 2002 from HRDC. The relevant part of Mr. Cochrane's letter reads as follows:

We have reviewed your file and find that the options outlined in our letter dated July 26th, 2002 are still accurate. The earliest date that you can meet the eligibility requirements for a full pension is June 2003, provided you establish your residency in Canada until that time. Therefore, we are unable to offer you a full pension effective August 2002 as requested.

You can decide to take any of the options presented in our letter of July 26th 2002. If you are not satisfied with the effective date of payment, you may request a formal reconsideration at that time.

Should you decide to request a full pension effective June 2003, a confirmation of your residence and Canadian Citizenship or legal residence status will be required prior to the approval of your application (as outlined in our letter dated August 1, 2002 – copy attached).

We endeavour to make our communication with clients clear and easy to understand. We believe the wording outlining the requirement to “reside in Canada for the year immediately before your application is approved” has been stated clearly. Although you did not take the same interpretation, the requirements of the legislation must still be met before your application can be approved. Subsection 3(1)(b)(iii) of the Old Age Security Act states that an applicant must have resided in Canada for at least one year immediately preceding the day on which that person's application is approved. Therefore, the earliest possible date that you can receive a full pension is June 2003.

[14] On October 11, 2002, the Applicant himself wrote directly to HRDC in St. John's. His letter was addressed to both Mr. Bob Cochrane and Ms. D. Foote. In this letter, the Applicant said that he

wished to change the date for receipt of his pension. The letter reads, in part, as follows:

On October 8, 2002, I offered my choice to delay payment of my Old Age Security pension until June 2003 to qualify for a full pension.

I now realize that due to my health and financial situation I may not be able to delay it until that time.

In view of the above reasons, I wish the above mentioned choice be treated cancelled.

Under the circumstances, I choose to receive a partial Old Age Security Pension starting in August 2002. [Emphasis in original]

In this letter, the Applicant purported to reserve the right for a further “formal consideration” of the award of a partial pension.

[15] The next correspondence that appears in the Applicant’s application record is a letter dated November 14, 2002, from counsel for the Applicant. In this letter, counsel refers to a “decision” of October 16, 2002, as follows:

Please be advised that we represent Mr. Tomar with regards to his Old Age Security Pension. In that capacity, we write to you asking for a reconsideration of your decision of October 16, 2002 to approve only a partial pension for Mr. Tomar, namely a 24/40 portion thereof. The reasons for this request are the same as those stated in our letter to the Regional Director dated August 7, 2002, a copy of which is enclosed herewith and which we ask you to consider as being the reasons for this request.

[16] The next letter referenced in the Applicant’s application record is dated May 17, 2004, again from counsel for the Applicant. At this time, Mr. Wentzell advised that the Applicant had accepted a

partial pension on the advice of HRDC. He further said that the Applicant remains committed to receiving the full pension and feels that the vague wording of the documents sent to him to apply for his CPP benefits caused his present difficulties.

[17] By letter dated July 6, 2004, HRDC replied to the letter of May 17. At this time, HRDC reviewed the background to the Applicant's decision to request a partial OAS pension. The relevant parts of the letter read as follows:

With regard to Mr. Tomar's acceptance of a partial pension, please note that Mr. Tomar was informed by the Service Delivery Manager, Mr. Bob Cochrane, by a phone call in October, 2002 of the choice to either accept a partial pension at the rate of 24/40 of a full pension effective August, 2002 or to postpone receiving an Old Age Security Pension until he qualified for a full pension in June, 2003.

The decision to receive a partial pension or to opt for a full pension at a later date was a personal decision that was made by Mr. Tomar. We note from his file that on October 9, 2002 we received his statement choosing to delay payment of his Old Age Security Pension until June, 2003 to qualify for a full pension. However in a letter dated October 11, 2002, Mr. Tomar changed his decision and accepted a partial pension of 24/40 effective August, 2002.

We would like to point out that in our letter dated October 16, 2002, Mr. Tomar was informed of the right to request a reconsideration of the decision to grant the partial pension. However as the period of 90 days in which to request reconsideration has well exceeded the time limit, no further action can be taken concerning this matter.

[18] On November 30, 2005, Ms. Farrell from HRDC again wrote to counsel for the Applicant and advised that the October 16, 2002 decision regarding the Applicant's OAS pension would be reconsidered, as requested by the Applicant. She said that the file would be reviewed and a decision

would be made shortly. The reconsideration decision was denied in a letter dated February 16, 2006, to the Applicant.

[19] In the letter of February 16, 2006, HRDC reviewed three possible scenarios under which the Applicant could have qualified for the award of a full pension. In brief, he could have qualified if he had accumulated 40 years of residence in Canada after his 18th birthday. According to their records, HRDC noted that the Applicant acquired the age of 18 years on July 15, 1955 and resided in Canada from May 17, 1975 until October 4, 1999, that is for a period of 24 years and 4 months. He was not entitled to a full pension on the basis of 40 years residency.

[20] However, the Applicant may have qualified for a full OAS pension by an alternative method based on 10 years of Canadian residence accumulated after age 18. In order to qualify on this basis, the Applicant was required to show that he was 25 years of age or older and resident in Canada or had resided in Canada after the age of 18 or held a valid Canadian Immigration Visa and was residing in Canada for the 10 year period immediately preceding approval of his OAS pension application.

[21] The Applicant did not qualify for a full pension on this basis because he did not reside in Canada for the full 10 year period between the ages of 55 and 65.

[22] There was a third alternative basis available for the award of a full OAS pension that is the “3-for-1 rule”. Under this rule, the Applicant could have supplemented any absences that he had had

during the 10 year period immediately preceding the approval of his application with prior periods of residence that totalled at least three times the period of his absence during that 10 year period. However, approval of a full pension under this rule required the Applicant to “have resided in Canada for a continuous period of at least one year immediately prior” to the approval of his application.

[23] Because the Applicant had not resided in Canada for one continuous year prior to approval of his application he did not qualify for a full OAS pension under the 3-for-1-rule.

[24] The letter went on to refer to the letter of July 26, 2002 in which HRDC outlined the options available to the Applicant in requesting a partial pension. It referred to the fact that by letter dated October 9, 2002, the Applicant requested the payment of a partial pension of 24/40ths, effective from August 2002.

[25] The letter of February 16, 2006 went on to say that the choice to receive a partial OAS pension was the responsibility of the Applicant. If he had wished to change his mind in that regard, he was required to advise HRDC in writing before the date his benefit became effective. A review of the file showed that no such request was made by the Applicant prior to the first pension payment on October 16, 2002. HRDC maintained its decision to award a partial OAS pension of 24/40ths, rather than a full pension.

[26] By letter dated January 23, 2007, the Applicant requested the Minister of HRDC to review his situation pursuant to the authority granted by section 32 of the OAS Act. In this letter, counsel for the Applicant submitted that the Applicant had been denied a full OAS pension on the basis of two instances of erroneous advice, as follows:

- (1) vague and erroneous wording in the information pamphlet entitled “How to Apply for the Old Age Security Pension Allowance and Allowance for the Survivor” which was sent to him prior to making his application; and
- (2) Erroneous advice given to Mr. Tomar by Bob Cochrane, Service Delivery Manager, Income Security Programs

[27] By letter dated February 21, 2007, Ms. Betty Farrell informed counsel for the Applicant that the Applicant’s file had been reviewed pursuant to the request made on January 23, 2007. She concluded that it had been “determined that Mr. Tomar did not receive erroneous advice from either the department or Mr. Cochrane”. Accordingly, the request for a different decision upon the award of a full OAS pension was denied.

[28] Ms. Farrell completed an “Erroneous Advice / Administrative Error Submission” in the course of reviewing the Applicant’s request for a review pursuant to section 32 of the Act. After providing details about the Applicant’s request in section A of the form, she restated the issues and

factual background in section B. Section C contains general information about the Applicant.

Section D, entitled “Analysis”, sets out factors to be considered in conducting a section 32 review.

Was the alleged error/erroneous advice made by someone acting in an official capacity in the administration of the OAS/CPP?

Was there a loss of benefits/credit split?

Was the applicant / beneficiary entitled to those benefits if the error had not been made?

Ms. Farrell responded “yes” for the first question and “no” for the remaining two questions. She also recorded the following comment:

Pensioner [the Applicant] is not eligible for a full pension due to insufficient residence, therefore, it cannot be said that there has been a loss of benefits.

[29] Section E of the Form is entitled “Recommendation”. Here, Ms. Farrell gave a positive answer to the question whether her Department is “satisfied on the balance of probabilities that Administrative Error/Erroneous Advice has occurred”. She then set out the following rationale for her decision.

At the time of his application for Old Age Security, the pensioner stated he was residing in Canada. It has since been learned that, although he has visited Canada on a number of occasions since 1999, he has not, to date, re-established Canadian residency.

As Mr. Tomar resided in Canada for 24 years only from 1975 to 1999, he would not have been eligible for a full pension until he had returned to live in Canada for the year immediately preceding approval of his application. At the time that the pension choices were offered to him in July 2002, the choices were based on the

information provided by the pensioner; that is, he stated he was now a resident of Canada as of May 2002. Using the residency information on the application, it was determined that the earliest that Mr. Tomar would have been eligible for a full pension was June 2003, provided he remained a resident of Canada for the period from May 2002 to May 2003. Documents obtained since the pension choices were offered in July 2002 now show that while Mr. Tomar has visited Canada on a number of occasions, he has not been a resident of Canada since his departure in October 1999.

The erroneous advice/administrative error provision of the legislation is used in those situations where the person has been denied a benefit or part of a benefit for which the individual was eligible. Based on the information on his file, Mr. Tomar is not eligible for a full pension as he has not fulfilled the appropriate residency requirements for a full pension to be granted. Therefore, the erroneous advice provision cannot be applied in this case.

[30] The Respondent filed an affidavit from Ms. Farrell as part of his Record in this proceeding. In her affidavit, Ms. Farrell deposed that her positive answer to the question concerning the provision of erroneous advice or occurrence of administrative error was a mistake. Paragraphs 4, 5 and 6 of the affidavit provide as follows:

4. At para. 5 of the Affidavit of Jaswant Tomar, reference is made to Mr. Tomar changing is [*sic*] mind and deciding to opt for a partial OAS pension. This request was made by letter dated October 11, 2002 and addressed to Human Resources Development Canada. Attached and marked as Exhibit "A" is a true copy of the letter sent by Mr. Tomar to Human Resources Development Canada.
5. At para. 12 of the Affidavit of Jaswant Tomar, reference is made to a document signed by me and entitled "Erroneous Advice / Administrative Error Submission". Upon reading this document, I realized that I answered "Yes" in Section E to the question "is the Department satisfied on the balance of probabilities that Administrative Error / Erroneous Advice has occurred?"

6. However, I obviously checked the “Yes” box in error since it is in contradiction with all the reasoning laid out in Section E of this document. Moreover, I made my position clear in my letter dated February 21, 2007 found at Exhibit 17 of the Affidavit of Jaswant Tomar that no erroneous advice / administrative error had been made by the department.

[31] On March 15, 2007, the Applicant commenced this application for judicial review of that decision.

III. Submissions

A. *The Applicant*

[32] The Applicant first addressed the applicable standard of review, upon a pragmatic and functional analysis, and submitted that the appropriate standard of review in this case is reasonableness *simpliciter*.

[33] The Applicant then advanced arguments that the information pamphlet and Mr. Cochrane provided misleading and erroneous advice relative to his eligibility for a full OAS pension. He submitted that he believed that he need only return to Canada when he turned 65 years of age in order to qualify. If he had not been misled by the Information Sheet, he would have returned to Canada earlier.

[34] He also argued that after reading the correspondence from Mr. Cochrane that he understood that his request for the award of a partial OAS pension could be re-visited in the future and that he could request a full OAS pension in the future.

[35] The Applicant further submitted that he was disadvantaged in his dealings with HRDC because his first language is not English. This factor, according to him, should have been taken into account by the Minister and his delegate in assessing his request for reconsideration pursuant to section 32 of the Act.

[36] Finally, the Applicant raised a general argument concerning breach of a duty of fairness that was owed to him, in his dealings with HRDC. He submitted that he was not given the opportunity to provide information to support his claim that he had been given erroneous advice.

B. The Respondent

[37] The Respondent took the position that, upon a pragmatic and functional analysis, the appropriate standard of review in this case is patent unreasonableness. The Respondent characterizes the decision in issue as a discretionary one that is subject to review on the standard of patent unreasonableness.

[38] The Respondent refers to the statutory conditions for the award of a full OAS pension, as set out in subsection 3(1) of the Act. The Respondent submits that according to the Information Sheet

provided to the Applicant, it was clear that the award of a full pension, in his circumstances, required that he be resident in Canada for at least one year prior to approval of his application. The Information Sheet stated that “you resided in Canada for the year immediately before your application is approved”, not that “you resided in Canada at any time” during the year.

[39] The Respondent also argues that the letter of October 2, 2002 from Bob Cochrane to the Applicant was not misleading or erroneous. This letter referred to the earlier letter of July 26, 2002, in which the options available to the Applicant were identified. The letter of October 2, 2002 only confirmed those options and did not indicate that the Applicant could receive a partial pension and later request a full pension.

[40] The Respondent submits that no misleading or erroneous advice was provided to the Applicant and that the decision of February 21, 2007, following review of his application pursuant to section 32 of the Act, was not patently unreasonable.

[41] The Respondent also addressed the Applicant’s arguments concerning procedural fairness, arising from the alleged lack of opportunity to render oral and written submissions in support of the review pursuant to section 32 of the Act. The Respondent refutes these submissions and notes that counsel for the Applicant presented lengthy correspondence outlining the grounds for the Applicant’s claim that he had been prejudiced by the receipt of misleading or erroneous advice.

[42] Finally, the Respondent argues that the change in the Applicant's personal circumstances that led him to move from Canada to India are not relevant for the purposes of the award of a pension under the Act.

IV. Discussion and Disposition

[43] The Applicant seeks judicial review of the decision of Ms. Betty Farrell, acting as the delegate of the Minister, made pursuant to section 32 of the Act. Section 32 of the Act provides as follows:

32. Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied a benefit, or a portion of a benefit, to which that person would have been entitled under this Act, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

32. S'il est convaincu qu'une personne s'est vu refuser tout ou partie d'une prestation à laquelle elle avait droit par suite d'un avis erroné ou d'une erreur administrative survenus dans le cadre de la présente loi, le ministre prend les mesures qu'il juge de nature à replacer l'intéressé dans la situation où il serait s'il n'y avait pas eu faute de l'administration.

[44] The criteria of obtaining a full OAS pension are set out in subsection 3(1) of the Act as follows:

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| <p>3.(1) Subject to this Act and the regulations, a full monthly pension may be paid to</p> <p>(a) every person who was a pensioner on July 1, 1977;</p> <p>(b) every person who</p> <p>(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,</p> <p>(ii) has attained sixty-five years of age, and</p> <p>(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 immediately preceding the day on which that person's application is approved; and</p> <p>(c) every person who</p> <p>(i) was not a pensioner on July 1, 1977,</p> <p>(ii) has attained sixty-five years</p> | <p>3. (1) Sous réserve des autres dispositions de la présente loi et de ses règlements, la pleine pension est payable aux personnes suivantes :</p> <p>a) celles qui avaient la qualité de pensionné au 1er juillet 1977;</p> <p>b) celles qui, à la fois :</p> <p>(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,</p> <p>(ii) ont au moins soixante-cinq ans,</p> <p>(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;</p> <p>c) celles qui, à la fois :</p> <p>(i) n'avaient pas la qualité de pensionné au 1er juillet 1977,</p> <p>(ii) ont au moins soixante-cinq ans,</p> <p>(iii) ont, après l'âge de dix-huit</p> |
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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.

ans, résidé en tout au Canada pendant au moins quarante ans avant la date d'agrément de leur demande.

[45] The first matter to be addressed is the applicable standard of review. Counsel for the parties advised that section 32 has not yet received reported judicial consideration but recourse can be had to decisions made involving the application of a similarly worded provision in the *Canada Pension Plan*, R.S.C. 1995, c. C-8.

[46] Subsection 66(4) of that legislation confers a discretionary power upon the Minister to intervene in the event that a person has suffered prejudice, with respect to the award of a pension, as the result of erroneous advice or administrative error. Subsection 66(4) provides as follows:

(4) Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied
(a) a benefit, or portion thereof, to which that person would have been entitled under this Act,

(4) Dans le cas où le ministre est convaincu qu'un avis erroné ou une erreur administrative survenus dans le cadre de l'application de la présente loi a eu pour résultat que soit refusé à cette personne, selon le cas :
a) en tout ou en partie, une prestation à laquelle elle aurait eu droit en vertu de la présente

(b) a division of unadjusted pensionable earnings under section 55 or 55.1, or

(c) an assignment of a retirement pension under section 65.1,

the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

loi,

b) le partage des gains non ajustés ouvrant droit à pension en application de l'article 55 ou 55.1,

c) la cession d'une pension de retraite conformément à l'article 65.1,

le ministre prend les mesures correctives qu'il estime indiquées pour placer la personne en question dans la situation où cette dernière se retrouverait sous l'autorité de la présente loi s'il n'y avait pas eu avis erroné ou erreur administrative.

[47] In *Kissoon v. Canada (Minister of Human Development Resources)*, 245 F.T.R 152, aff'd. at 329 N.R. 232 (F.C.A.), Justice Snider decided that the applicable standard of review of the exercise of discretion by the Minister or his delegates is subject to review on the standard of patent unreasonableness. She said the following at paragraphs 4 and 5:

The decision of the Minister under section 66(4) of the CPP is discretionary. Although the Minister "shall" take remedial action that it considers appropriate, this duty arises only once the Minister is satisfied that erroneous advice has been given or that an administrative error has occurred. The requirement to take remedial action is conditional and, therefore, does not fetter the Minister's discretion to first satisfy herself that an error has been made (*Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2). Given the discretionary nature of the Minister's decision, the standard of review

is patent unreasonableness (*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at 24). This means that the Minister's decision should only be set aside if it is "made arbitrarily or in bad faith, it cannot be supported on the evidence, or the Minister failed to consider the appropriate factors" (*Maple Lodge Farms, supra*).

A finding of erroneous advice or administrative error is one of fact, which also signals to a court that deference should be accorded to the Minister. Evidence should not be reweighed nor findings tampered with merely because this Court would have come to a different conclusion. (*Suresh, supra* at 24-25).

[48] I refer, as well, to the decision in *Leskiw v. Canada (Attorney General)*, 233 F.T.R. 182 (T.D.), aff'd. 320 N.R. 175 (F.C.A), where Justice Snider applied the standard of patent unreasonableness, on the grounds that the issue of whether erroneous advice had been given or an administrative error had been committed was principally a question of fact.

[49] Findings of fact require consideration of the evidence that was before the decision-maker. The question then becomes whether the evidence before Ms. Farrell supports her decision.

[50] It is obvious that, having regard to the length of time that the Applicant actually resided in Canada, he was ineligible for a full OAS pension pursuant to paragraph 3(1)(c), that is on the basis of 40 years residence in Canada. The Applicant was not a pensioner on July 1, 1977, as described in paragraph 3(1)(a). He falls within the category described in paragraph 3(1)(b)(iii). Subparagraph 3(1)(b)(iii) clearly and unambiguously requires that a person falling within that category requires at least one year's residence in Canada "immediately preceding the day on which that person's

application is approved”.

[51] The Information Sheet that was given to the Applicant specifically stated the following:

This Information Sheet contains general information concerning the Old Age Security pension, the Allowance and the Allowance for the Survivor. The information reflects the Old Age Security legislation. If there are any differences between what is in the Information Sheet and the Old Age Security Act, the Act is always right.

[52] In my opinion, this paragraph put the Applicant on notice about the residency requirements for the award of a full OAS pension and clearly directed the Applicant to the Act if there were any doubts about the conditions to be met for the award of benefits under this Act.

[53] The Information Sheet gave no information that was inconsistent with the statutory requirements. In my opinion, the letter of October 2, 2002 likewise gave no inconsistent information with the statute. The conclusion that no misleading or erroneous information was provided is not patently unreasonable.

[54] In my opinion, the evidence before Ms. Farrell, consisting of the Information Sheet, correspondence from HRDC and correspondence from and on behalf of the Applicant, provides a basis for her decision that no erroneous advice had been given nor an administrative error committed by the servants and employees of HRDC. It appears that the Applicant misunderstood

the requirements for obtaining a full pension but, in the opinion of Ms. Farrell, that misunderstanding was not the result of any action by HRDC.

[55] In the circumstances and having regard to the evidence before Ms. Farrell, I cannot conclude that her decision was patently unreasonable. The record discloses no reviewable error. There is no basis for judicial intervention and this application for judicial review is dismissed.

[56] The Respondent, in his written submissions, did not seek costs. In the exercise of my discretion, pursuant to Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, I make no order as to costs.

JUDGMENT

The application for judicial review is dismissed, no order as to costs.

“E. Heneghan”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-456-07

STYLE OF CAUSE: Jaswant Tomar v. Attorney General of Canada

PLACE OF HEARING: St. John's, Newfoundland and Labrador

DATE OF HEARING: January 17, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Heneghan, J.

DATED: March 4, 2008

APPEARANCES:

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