

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20161118**

**Dockets: A-24-16**

**A-25-16**

**A-26-16**

**A-27-16**

**Citation: 2016 FCA 291**

**[ENGLISH TRANSLATION]**

**CORAM: GAUTHIER J.A.  
TRUDEL J.A.  
SCOTT J.A.**

**BETWEEN:**

**GILLES JEAN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Hearing held at Québec, Quebec, on November 18, 2016.

Judgment delivered from the Bench at Québec, Quebec, on November 18, 2016.

**REASONS FOR JUDGMENT OF THE  
COURT BY:**

**SCOTT J.A.**

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20161118**

**Dockets: A-24-16  
A-25-16  
A-26-16  
A-27-16**

**Citation: 2016 FCA 291**

**CORAM: GAUTHIER J.A.  
TRUDEL J.A.  
SCOTT J.A.**

**BETWEEN:**

**GILLES JEAN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT**

**(Delivered from the Bench at Québec, Quebec, on November 18, 2016)**

**SCOTT J.A.**

[1] This court has received four applications for judicial review of four decisions rendered on December 17, 2015 by the Appeal Division of the Social Security Tribunal (the Appeal Division), dismissing the appeals initiated by the appellant against decisions rendered on

December 12, 2014 by the General Division of the Social Security Tribunal (the General Division).

[2] By order dated March 3, 2016, rendered by this Court, the cases in docket numbers A-24-16, A-25-16, A-26-16 and A-27-16 have been consolidated, and docket A-24-16 is considered the lead file. In accordance with this order, these reasons dispose of these four applications for judicial review.

[3] After having applied the six criteria listed in subsection 30(3) of the *Employment Insurance Regulations*, SOR/96-332 (the Regulations), the General Division dismissed the appeal filed by the appellant against a decision rendered on May 16, 2012 by the Canada Employment Insurance Commission (the Commission). The Commission had found that the applicant had made misleading statements by failing to declare his status as a shareholder and partner in the companies he operates, Télédistribution de la Gaspésie (TDG) and Les Placements Gilles Jean Inc., and by saying he was not working, despite the fact that he occupied a management position year-round. According to the Commission, he could not therefore be eligible to receive Employment Insurance benefits from 2008 to 2011 inclusive.

[4] The Appeal Division ruled that the General Division's decision was well founded because the applicant did not refute the assumption of subsection 30(1) of the Regulations according to which he had worked full working weeks because he was actively operating businesses even if he was not receiving a salary during the four periods during which he received a total of \$71,981 in Employment Insurance benefits between 2008 and 2011.

[5] The applicant submits that the Appeal Division erred because he was not the one who operated the TDG company, in which he was recognized as having insurable employment by the Canada Revenue Agency (CRA), but rather 2545-3739 Québec Inc, a company in which he is a shareholder. According to him, *NCJ Educational Services Limited v. Canada (National Revenue)*, 2009 FCA 131, [2009] 4 C.T.C. 290, a case decided by this Court, stands for the suppletive character of the civil law. He argues that under civil law, he could not be simultaneously bound both by an employment contract and a contract for services with TDG. In short, he submits that he could not be considered the operator and an employee of the same company.

[6] He also contends that the Appeal Division erred in refusing to intervene when the General Division failed to explain why it did not accept his testimony and that of his partner, Mr. Mélançon.

[7] The law is well settled: the standard of review applicable to a decision of the Appeal Division is that of reasonableness (*Canada (Attorney General) v. Jean*, 2015 FCA 242 at paragraph 14, 479 N.R. 280; *Thibodeau v. Canada (Attorney General)*, 2015 FCA 167 at paragraph 37, 477 N.R. 104).

[8] We are all of the view that this application for judicial review must be dismissed for the following reasons.

[9] Because the applicant does not meet the Regulations' eligibility criteria, it was not necessary to distinguish between the employment contract and the contract for services binding him to TDG. The civil law is not applicable in this instance because the Regulations, more specifically Section 30, contain a complete code for determining whether a claimant is operating a business within the meaning of the Act, in which case the claimant is deemed not to be unemployed.

[10] In addition, it was reasonable for the Appeal Division to apply the test propounded in *Canada v. d'Astoli*, 1997 CanLII 16849 (FCA) [*D'Astoli*]. The Canada Revenue Agency had determined that the applicant had insurable employment; he had to satisfy the second step of the test by demonstrating his eligibility for employment insurance. In *D'Astoli*, we held that insurability and eligibility to Employment Insurance benefits are two different steps that are assessed at different times. It follows that the CRA's statement on the applicant's insurability under Section 90 of the *Employment Insurance Act*, S.C. 1996, c. 23 cannot bind the Canada Employment Insurance Commission in regard to eligibility to benefits under Section 30 of the Regulations.

[11] In this case, the Appeal Division and the General Division made findings of fact warranted in view of the evidentiary record. It follows that, in the absence of a reviewable error, an intervention by our court is not warranted.

[12] Finally, as mentioned at the hearing, in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [2011] 3 S.C.R. 708, at paragraph

15 and 16, the Supreme Court of Canada confirmed that the administrative decision-maker is not required, in his own particular decision-making context, to provide a detailed explanation and rationale as to why he refused to take a particular testimony into account.

[13] For these reasons, the application for judicial review is dismissed with costs set at \$3000 including disbursements and taxes, and in accordance with the March 3, 2016 Order of this Court, a copy of these reasons must be placed in each docket.

“A.F. Scott”

---

J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKETS:** A-24-16  
A-25-16  
A-26-16  
A-27-16

**APPLICATIONS FOR JUDICIAL REVIEW OF DECISIONS OF THE SOCIAL SECURITY TRIBUNAL OF CANADA RENDERED ON DECEMBER 17, 2015  
DOCKETS AD-15-24; AD-15-25; AD-15-26; AD-15-27.**

**STYLE OF CAUSE:** GILLES JEAN v. THE  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** QUÉBEC, QUEBEC

**DATE OF HEARING:** NOVEMBER 18, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** GAUTHIER J.A.  
TRUDEL J.A.  
SCOTT J.A.

**DELIVERED FROM THE BENCH BY:** SCOTT J.A.

**APPEARANCES:**

Robert Cardinal FOR THE APPLICANT

Carole Vary FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Cardinal Avocat inc. FOR THE APPLICANT  
Québec, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada