

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180510**

**Docket: A-418-16**

**Citation: 2018 FCA 90**

**CORAM: PELLETIER J.A.  
GAUTHIER J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**ROBERT FONTAINE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Toronto, Ontario, on May 9, 2018.

Judgment delivered at Toronto, Ontario, on May 10, 2018.

**REASONS FOR JUDGMENT BY:**

**GAUTHIER J.A.**

**CONCURRED IN BY:**

**PELLETIER J.A.  
DE MONTIGNY J.A.**

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**REASONS FOR JUDGMENT**

**GAUTHIER J.A.**

[1] The applicant, Robert Fontaine, seeks judicial review of a decision of the Appeal Division of the Social Security Tribunal (the Appeal Division) dismissing his appeal, because it concluded that no breach of procedural fairness had occurred before the General Division of the Social Security Tribunal (the General Division).

[2] The applicant applied for Canada Pension Plan Disability Benefits (CPPDB), but his application was denied by the Minister of Employment and Social Development (the Minister) and this decision was maintained upon reconsideration.

[3] The applicant then appealed to the General Division from the Minister's reconsideration decision. In the context of the proceedings before the General Division, the applicant filed an Authorization to disclose any and all information to his representative Tom Troy. Mr. Troy is a labour union representative who has helped the applicant to present various claims arising from the injuries he suffered while working in the construction field as a member of the union.

[4] The evidence and the submissions before the General Division are normally presented in writing. Mr. Troy filed the medical evidence on which the applicant relied in his application for CPPDB and corresponded with the General Division on several occasions. The Minister had submitted that the matter could be determined without hearing. However, Mr. Troy insisted that the applicant be given an opportunity to present his case orally. In his application for CPPDB, the applicant had indicated that English was his preferred language. On November 3, 2015, the General Division held a hearing by telephone conference in English during which the applicant and his wife testified.

[5] On November 5, 2015, the General Division issued its decision concluding that the applicant was employable on the basis of the medical evidence it referred to in its reasons, and that the applicant had failed to prove that his disability is severe, precluding him from all gainful employment.

[6] On January 5, 2016, the applicant filed an application for leave to appeal to the Appeal Division. He only obtained leave to appeal on the ground of a breach of procedural fairness based on his allegation that the General Division should have adjourned the hearing after telling his representative, a labour union representative that, because he was not a licenced paralegal, he could not represent the applicant. The Appeal Division refused to grant leave with respect to the applicant's failure to present all the relevant medical evidence stating that this did not point to any error made by the General Division.

[7] There is thus no need to describe the physical and mental condition of the applicant because the issue of whether he suffers from a severe and prolonged disability that would qualify him for CPPDB is not before us.

[8] The only question in this application is whether the Appeal Division erred when it concluded that, contrary to the applicant's allegation, the General Division did not refuse to hear his representative on the basis that he was not duly licenced as a paralegal. After listening to the audio recording of the hearing, the Appeal Division was satisfied that there was no such breach of procedural fairness. It found that, in fact, the applicant's representative participated throughout the hearing. The Appeal Division also noted that the applicant never signalled his desire to adjourn the hearing so that he could get legal representation as opposed to being represented by Mr. Troy.

[9] I note that Mr. Troy stated that he had 43 years of experience in appearing before administrative decision makers in order to help members of the union in presenting their case.

According to paragraph 1(8)(4) of the *Law Society Act*, R.S.O. 1990, c. L-8, a union representative such as Mr. Troy does not need to be licenced as a paralegal as his services to members of the union before an administrative tribunal are excluded from the definition of “legal services”.

[10] Be it as it may, the qualification of Mr. Troy to represent the applicant before the General Division is not *per se* at issue here.

[11] Having considered the transcript of the hearing, I conclude that the Appeal Division did not make any reviewable error in concluding as it did, that the General Division did not refuse to hear Mr. Troy, and that Mr. Troy was allowed to represent the applicant and intervene during the hearing at any time and in any manner he thought appropriate.

[12] The applicant, who is not represented by counsel, argued in his memorandum that his maternal language was French and that he was illiterate. It appears that these arguments are put forth to indicate how vulnerable his position was when his representative was prevented from representing him. In view of my earlier conclusion, there is no need to address these matters which were never raised before the General Division.

[13] In any event, it is worth noting that the applicant chose English as his preferred language in his application for CPPDB. Also, there is also no evidence that the applicant requested at any time that the proceedings or the hearing be held in French, despite his earlier choice of preferred language. He cannot now fault the General Division for having proceeded in that language.

[14] I would dismiss the application for judicial review without costs.

“Johanne Gauthier”

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J.A.

“I agree

J.D. Denis Pelletier J.A.”

“I agree

Yves de Montigny J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-418-16

**STYLE OF CAUSE:** ROBERT FONTAINE v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 9, 2018

**REASONS FOR JUDGMENT BY:** GAUTHIER J.A.

**CONCURRED IN BY:** PELLETIER J.A.  
DE MONTIGNY J.A.

**DATED:** MAY 10, 2018

**APPEARANCES:**

Robert Fontaine FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Sylvie Doire FOR THE RESPONDENT  
Faiza Ahmed-Hassan

**SOLICITORS OF RECORD:**

Nathalie G. Drouin FOR THE RESPONDENT  
Deputy Attorney General of Canada