Federal Court Cour fédérale

**Date: 20200522**

**Docket: T-821-19**

**Citation: 2020 FC 634**

**Ottawa, Ontario, May 22, 2020**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**RODNEY GENE TORRANCE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] On August 29, 1998, the Applicant, Mr. Rodney Gene Torrance, was seriously injured in an accident. He became quadriplegic with a severe and prolonged disability. Since then, Mr. Torrance has been trying to obtain disability benefits from the Canada Pension Plan [CPP Disability Pension], but has been unsuccessful. In this application for judicial review, Mr. Torrance challenges the most recent decision issued on April 17, 2019 [April 2019 Decision or

Decision] by Ms. Jessica Clark, a senior legislation officer and delegate of the Minister of Employment and Social Development [Minister's Delegate]. In her decision, the Minister's Delegate confirmed that Mr. Torrance had not shown, on a balance of probabilities, that he was denied disability benefits under the Canada Pension Plan [CPP] as a result of erroneous advice or administrative error by officials employed at the Department of Employment and Social Development Canada [ESDC].

[2] Mr. Torrance claims that, in rendering the April 2019 Decision, the Minister's Delegate failed to properly conduct the new facts review and reconsideration he had applied for under subsections 66(4), 81(2) and 84(2) of the *Canada Pension Plan*, RSC 1985, c C-8 [CPP Act]. He asks this Court to quash the April 2019 Decision, to conduct the new facts review he had requested, to determine whether the correct legislation was used to establish the date of his Minimum Qualifying Period [MQP], and to establish whether the year 1998 should have been taken into account as a contributory qualifying year for his entitlement to a CPP Disability Pension.

[3] The sole issue to be determined in this judicial review is whether the April 2019 Decision was reasonable.

[4] For the reasons that follow, and even though I have sympathy for Mr. Torrance's unfortunate situation, I will dismiss his application. Mr. Torrance clearly believes that he is the victim of an injustice, and his repeated attempts to re-litigate the issues and challenge the decisions having gone against him since 1998 are understandable. However, I am satisfied that

the April 2019 Decision is justified and intelligible, and that the findings made by the Minister's Delegate are reasonable in light of the evidence and the applicable law. The detailed reasons demonstrate that the Decision is based on an internally coherent and rational chain of analysis and that it is justified in relation to the facts and law constraining the Minister's Delegate. The Minister's Delegate properly noted that, in 2013, the Federal Court of Appeal [FCA] has already ruled on the question of whether there was an administrative error in the processing of Mr. Torrance's application for a CPP Disability Pension in 1998 and 1999 [CPP Application]. In addition, the Minister's Delegate reasonably concluded that this Court had also already confirmed, back in 2008, that Mr. Torrance was statute-barred from establishing valid contributions to the CPP for the year 1998. While Mr. Torrance may not be satisfied with previous decisions of EDSC, this Court and the FCA, these cannot be ignored. Mr. Torrance's claims amount to a continuing disagreement with the rulings made by the relevant authorities in relation to his CPP Application, and this constitutes no grounds to justify the Court's intervention.

## II. Background

### A. *Factual context*

[5] Mr. Torrance was a self-employed bicycle courier. On August 29, 1998, he fell and suffered a spinal injury that left him a quadriplegic. The time and place of his fall are such that he apparently did not have any recourse in tort or under worker's compensation legislation to lessen the severe and prolonged impact of his accident.

[6] In November 1998, Mr. Torrance applied for a CPP Disability Pension under the CPP Act. A month later, in December, his CPP Application was rejected by Human Resources and Skills Development Canada – as ESDC was then named –, because he had not made sufficient contributions to the CPP over the years. The CPP is a contributory plan which means that both eligibility for benefits and the amount of benefits are determined by a person's contributions to the CPP. In order to be eligible for disability benefits, Mr. Torrance needed to have contributed to the CPP in at least four of the last six years prior to his accident, but he had only contributed in two years between 1993 and 1998. At that time, Mr. Torrance had not filed his 1996, 1997 and 1998 tax returns.

[7] Because of two errors in the address to which ESDC's denial letter was mailed, Mr. Torrance did not become aware that his CPP Application had been denied until 2007.

[8] In the meantime, in February 1999, Mr. Torrance requested by letter that ESDC keep his file open until he was able to file his 1996, 1997 and 1998 tax returns. Mr. Torrance's letter provided a return address at G.F. Strong Rehabilitation Centre – Spinal Cord Rehab [GF Strong], where he was residing at the time. In March 1999, ESDC acknowledged receipt of Mr. Torrance's request and advised him that a review would be conducted. In a letter sent to Mr. Torrance in care of GF Strong, ESDC invited him to submit any additional evidence in support of his CPP Application.

[9] Shortly after in 1999, Mr. Torrance filed his 1996 tax return with the help of a family member. Mr. Torrance claims that he was unable to file his 1997 and 1998 returns at the time. In

May 1999, despite not having received Mr. Torrance's 1997 and 1998 tax returns, ESDC wrote a letter to Mr. Torrance to inform him that "earnings information up to the year 1997" had been received. ESDC further informed Mr. Torrance that only his notice of assessment from the tax authorities was required for the year 1998. That information was requested "as soon as possible". The letter was again sent to Mr. Torrance in care of GF Strong.

[10] In June 1999, Mr. Torrance left the long-term hospital care at GF Strong and moved into an apartment. A forwarding address was left with GF Strong. After receiving confirmation that Mr. Torrance was still at GF Strong, ESDC sent another letter advising Mr. Torrance that additional information was required in order to determine his eligibility for a CPP Disability Pension. A response was required within 45 days. In late July 1999, Mr. Torrance's application for a CPP Disability Pension was again denied by ESDC, on the basis that he did not meet all the requirements of the CPP. The letter further provided information on the process to be followed for a reconsideration request.

[11] In February 2007, following long-term rehabilitation and hiring of a caregiver with tax returns experience, Mr. Torrance contacted ESDC to renew his efforts at obtaining a disability pension. His first step was to request a copy of his CPP Disability Programs file. In this file, he discovered the undelivered letters from 1999. In May 2007, Mr. Torrance therefore requested that the Minister reconsider his decision denying his CPP Application, given that he had not received the decision letters denying his requests for a CPP Disability Pension. In his letter, Mr. Torrance submitted that his application for a disability pension ought to be allowed based on new facts, pursuant to subsection 84(2) of the CPP Act. Relying on subsection 66(4) of the CPP Act,

he also claimed that his CPP Application had been denied as a result of erroneous advice and administrative error by officials at ESDC.

[12] In 2006, Mr. Torrance filed his income tax returns in respect of his self-employed earnings for the years 1997 and 1998. However, further to an assessment of his 1998 taxation year, the Canada Revenue Agency [CRA] advised Mr. Torrance that he could not make CPP contributions on his self-employed earnings for that year because he had not filed his income tax return within the four-year deadline prescribed under subsection 30(5) of the CPP Act. Therefore, as Mr. Torrance was statute-barred to make valid CPP contributions, the year 1998 could not be considered as a contributory year in his CPP Application, and CRA deemed Mr. Torrance's CPP contribution for that year to be zero.

[13] Mr. Torrance challenged this CRA determination before this Court. However, in September 2008, the Court upheld CRA's decision that Mr. Torrance could not make valid CPP contributions for the year 1998, because subsection 30(5) of the CPP Act overrides any discretion that the Court may have (*Torrance v Minister of National Revenue and Canada Revenue Agency*, 2008 FC 1083 [*Torrance 2008*]). Mr. Torrance did not appeal the *Torrance 2008* decision.

[14] In June 2010, Mr. Torrance once again claimed that officials at ESDC had provided erroneous advice and committed administrative errors regarding his CPP Application. In August 2010, the Minister accepted Mr. Torrance's request for extension of time for reconsideration, and invited Mr. Torrance to submit any additional evidence to support his claims of erroneous advice

and administration error in the handling of his file. An investigation was commenced under subsection 66(4) of the CPP Act, to determine whether any error had been made in connection with Mr. Torrance's CPP Application.

[15] In October 2010, Mr. Torrance identified the alleged erroneous advice and administrative errors as follows: i) insufficient and inaccurate information was provided in the May 1999 letter from ESDC; ii) CPP officials failed to ensure that the letters of June and July 1999 were delivered to him in a timely fashion; and iii) CPP officials made decisions with respect to his CPP Application and request for reconsideration on the basis of insufficient information.

[16] On November 8, 2011, the Minister determined that no erroneous advice was given and no administrative errors were made by CPP officials in handling Mr. Torrance's CPP Application [November 2011 Determination]. The Minister concluded that "Mr. Torrance was not denied a benefit as a result of erroneous advice/administrative error" for reasons which can be summarized as follows. First, it was Mr. Torrance's responsibility to file his income tax returns in a timely fashion, and CPP officials were not responsible for informing Mr. Torrance of the consequences of the failure to file his income tax. Second, CPP officials did not make an administrative error when they denied Mr. Torrance's claim within the 45 days provided for supplying additional medical information. The information received from GF Strong confirmed that Mr. Torrance was not disabled until after 1997, as established from the information on hand as of July 1999. This decision was made approximately five months after Mr. Torrance had asked for an extension of time to file his income tax returns.

[17] Mr. Torrance filed an application for judicial review of the November 2011 Determination and, in October 2012, the Court granted his application in *Torrance v Canada (Attorney General)*, 2012 FC 1269 [*Torrance 2012*]. However, in September 2013, the FCA allowed the Minister's appeal and set aside *Torrance 2012* (*Canada (Attorney General) v Torrance*, 2013 FCA 227 [*Torrance FCA*]). The FCA confirmed the Minister's original refusal of Mr. Torrance's CPP Application, and rejected Mr. Torrance's claim that an administrative error caused him to lose his disability benefits. The FCA instead found that the Minister reasonably concluded that the failure of the 1999 letter to reach its destination was not the cause of Mr. Torrance's own failure to file his income tax returns in a timely fashion. The FCA further determined that Mr. Torrance's omission to file his 1997 and 1998 income tax returns within four years of their due date triggered the operation of subsection 30(5) of the CPP Act, and that this in turn led to Mr. Torrance's ineligibility for a CPP Disability Pension (*Torrance FCA* at para 48).

[18] In January 2018, Mr. Torrance again applied to ESDC, this time for disabled contributor's benefits for his two children [DCCB]. In March and May 2018, ESDC requested additional information and statutory declaration from Mr. Torrance. In August 2018, Mr. Torrance submitted another letter once again alleging that he had received erroneous advice from ESDC, and that there had been an administrative error made with respect to his CPP Application. In late October 2018, the Minister's Delegate advised Mr. Torrance by letter that she would be conducting an investigation of his allegations of erroneous advice and administrative errors regarding the denial of his CPP Application, and invited Mr. Torrance to make any new submissions in support of his allegations.

[19] Mr. Torrance did not provide a response to such request and, in December 2018, during a call with the Minister’s Delegate, Mr. Torrance confirmed having no further submissions to support his allegations of erroneous advice and administrative errors. On December 3, 2018, a reconsideration letter was mailed to Mr. Torrance, which upheld the original decision to deny his CPP Application. On April 17, 2019, the letter explaining in detail why the original decision was maintained was sent to Mr. Torrance.

**B. *The April 2019 Decision***

[20] In the April 2019 Decision, the Minister’s Delegate confirmed that Mr. Torrance had not shown on a balance of probabilities that he was denied a CPP Disability Pension as a result of alleged erroneous advice provided by officials at ESCD or administrative errors committed by such officials. The Minister’s Delegate concluded that Mr. Torrance was ineligible for a CPP Disability Pension to start with, because of insufficient contributory qualifying years, and that no erroneous advice or administrative errors occurred. In her Decision, the Minister’s Delegate rejected the four allegations advanced by Mr. Torrance in support of his request.

[21] First, the Minister’s Delegate considered that the correct legislation was used to determine the MQP for the purposes of Mr. Torrance’s CPP Application. Second, the Minister’s Delegate concluded that the issue of alleged administrative errors on Mr. Torrance’s 1998 earnings was *res judicata*, as the FCA had already determined in *Torrance FCA* that there was no administrative error in relation to the treatment of these earnings. Third, the Minister’s Delegate determined that no administrative error was made regarding Mr. Torrance’s 1997 and 1998 self-employment earnings, having noted that this issue had already been addressed by this

Court in *Torrance 2008*. Fourth, the Minister's Delegate established that the "late applicant" provision of the CPP Act was inapplicable to Mr. Torrance's situation.

[22] To reach these conclusions, the Minister's Delegate first laid out in detail the lengthy and complex procedural history of Mr. Torrance's case, beginning with Mr. Torrance's CPP Application in 1998. She then set out the four allegations of erroneous advice and administrative errors advanced by Mr. Torrance. For each of the allegations, the Minister discussed the applicable law, applied the legislation to Mr. Torrance's case using his personal information such as his earnings and contributions to the CPP as provided by CRA. Furthermore, when the Minister's Delegate was relying on the principle of *res judicata*, she indicated the three pre-conditions to be met before applying this doctrine, and she explained how the *Torrance 2008* and *Torrance FCA* decisions had settled the issues raised by Mr. Torrance.

### C. *Relevant statutory framework*

[23] As mentioned above, the CPP is a contributory plan which means that both eligibility for benefits and the amount of benefits are determined by a person's contributions to the CPP. In the case of employees, CPP contributions are deducted at source and remitted by the employer. In the case of those who are self-employed, contributions are remitted together with any tax owing when filing income tax returns. As a result, the failure by a self-employed person to file an income tax return, as and when required, has implications for that person's position under the CPP. Subsection 30(5) of the CPP Act is particularly relevant in this regard. The effect of this provision is that, when persons do not file their income tax returns with respect to their self-

employed earnings within four years of the date they are due, their CPP contributions with respect to those earnings are deemed to be zero.

[24] In order to be eligible to receive a CPP Disability Pension, section 44 of the CPP Act provides that a person must have made contributions for the applicable MQP. For the period starting on January 1, 1998, this MQP was four out of the six calendar years ending at the date the person became disabled.

[25] The CPP Act includes provisions for appeals and reconsiderations with respect to decisions as to eligibility for CPP disability benefits, and the amount of a CPP Disability Pension. There is also a specific provision, at subsection 66(4) of the CPP Act, dealing with remedying the consequences of erroneous advice and administrative errors by officials at ESDC. Subsection 66(4) reads as follows:

| **Where person denied benefit due to departmental error, etc.** | **Refus d’une prestation en raison d’une erreur administrative** |
|---|---|
| **66 (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 | **66 (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)** a benefit, or portion thereof, to which that person would have been entitled under this Act, | **a)** en tout ou en partie, une prestation à laquelle elle aurait eu droit en vertu de la présente loi, |
| **(b)** a division of unadjusted pensionable earnings under section 55 or 55.1, or | **b)** le partage des gains non ajustés ouvrant droit à pension en application de l’article 55 ou |

| | |
|---|---|
| | 55.1, |
| **(c)** an assignment of a retirement pension under section 65.1, | **c)** la cession d'une pension de retraite conformément à l'article 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. | 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. |

[26] Subsection 66(4) requires that the Minister be "satisfied" that erroneous advice has been given or that an administrative error has occurred that resulted in the denial of a benefit. No procedures are prescribed for an investigation under subsection 66(4) of the CPP Act. Instead, the procedures are at the discretion of the Minister, consistent with the discretionary nature of the decision itself. This includes wide discretion on the part of the Minister with regard to an informal determination of the facts.

## D. *Standard of review*

[27] The Attorney General of Canada, acting on behalf of ESDC, submits that reasonableness is the applicable standard of review on a determination by the Minister or his delegate pursuant to subsection 66(4) of the CPP Act, as it is a discretionary decision based on facts (*Torrance FCA* at para 34; *Stenger v Canada (Attorney General)*, 2019 FC 561 at para 6; *Mackeen v*

*Canada (Attorney General)*, 2015 FC 1032 [*Mackeen*] at para 22). Mr. Torrance does not dispute this.

[28] That reasonableness is the appropriate standard has recently been reinforced by the Supreme Court of Canada [SCC] in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In that judgment, the majority of the SCC set out a revised framework for determining the standard of review with respect to the merits of administrative decisions, holding that they should presumptively be reviewed on the reasonableness standard, unless either legislative intent or the rule of law requires otherwise (*Vavilov* at paras 10, 17). I am satisfied that neither of these two exceptions apply in the present case, and that there is no basis for derogating from the presumption that reasonableness is the applicable standard of review for the April 2019 Decision.

[29] Regarding the actual content of the reasonableness standard, the *Vavilov* framework does not represent a marked departure from the SCC's previous approach, as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] and its progeny, which was based on the "hallmarks of reasonableness", namely justification, transparency and intelligibility (*Vavilov* at para 99). The reviewing court must consider "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome", to determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 83, 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at paras 2, 31).

[30] *Vavilov*'s revised framework for reasonableness requires the reviewing court to take a "reasons first" approach to judicial review (*Canada Post* at para 26). Where a decision maker has provided reasons, the reviewing court must begin its inquiry into the reasonableness of the decision "by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion" (*Vavilov* at para 84). The reasons must be read holistically and contextually in light of the record as a whole and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-94, 97). However, "it is not enough for the outcome of a decision to be *justifiable* […] the decision must also be *justified*" (*Vavilov* at para 86).

[31] Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). An assessment of the reasonableness of a decision must be robust, but it must remain sensitive to and respectful of the administrative decision-maker (*Vavilov* at paras 12-13). Reasonableness review is an approach meant to ensure that the reviewing court only intervenes in administrative matters "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). It is anchored in the principle of judicial restraint and in a respect for the distinct role and specialized knowledge of administrative decision makers (*Vavilov* at paras 13, 75, 93). In other words, the approach to be followed by the reviewing court is still one of deference, especially with respect to findings of facts and the weighing of evidence. Absent exceptional circumstances, such as when the decision maker has "fundamentally misapprehended or failed to account for the

evidence before it", the reviewing court will not interfere with an administrative decision maker's factual findings (*Vavilov* at paras 125-126).

## III. Analysis

[32] In his request for reconsideration of his CPP Application, Mr. Torrance was alleging four separate instances of erroneous advices or administrative errors.

[33] Mr. Torrance first submitted that the year 1998 was not included to calculate his MQP, contrary to the applicable requirements of various sections of the CPP Act. He stressed that, without the proper MQP, many benefits under the CPP Act would be denied to him, and upon his death, to his estate. Mr. Torrance argued that, if it had not been for the mistakes made by multiple officials at ESDC, 1998 would have been included in calculating his contributory qualifying years. Mr. Torrance outlined that, because of this mistake, his estate will not be able to receive the death benefit provided by paragraph 44(1)(c) of the CPP Act, no survivor pension under paragraph 44(1)(d) will be paid, and no orphan's benefit will be paid to his children should he die.

[34] Mr. Torrance also alleged that it was unreasonable for the CPP officials to ask for tax documents related to the year 1998 at the time of his CPP Application, as these documents were unavailable to him. Specifically, he argued that it was unreasonable to ask him to provide a notice of assessment for the year 1998, and that the officials should rather have requested business records to assess earnings for that year.

[35] Furthermore, relying on the *ISP Policy Guideline* which states that there is normally no burden of proof upon a client, Mr. Torrance also submitted it was unreasonable for the Minister to impose the burden of proof to demonstrate an administrative error upon him. On the "late applicant" provision of the CPP Act, Mr. Torrance argued that the Minister's Delegate unreasonably concluded that this provision was inapplicable to his situation. Furthermore, Mr. Torrance advanced that the April 2019 Decision erroneously failed to thoroughly summarize and respond to his detailed letter dated August 9, 2018 [August 2018 Letter].

[36] Finally, Mr. Torrance disagrees with the application of the principle of *res judicata* made by the Minister's Delegate. On this front, Mr. Torrance relied more particularly on authorities suggesting that the Minister is not bound by this principle, such as the comments of the Honourable Gordon Killeen, Q.C. and Andrew James who noted, while referring to *Canada (Minister of Human Resources Development) v MacDonald*, 2002 FCA 48, that "there is no statutory or common law support for the proposition that the Minister is bound by the doctrine of res judicata" (*Annotated Canada Pension Plan and Old Age Security Act*, $17^{th}$ ed (Toronto: LexisNexis Canada Inc, 2018) at p 34).

[37] I am not convinced by Mr. Torrance's arguments and I am not persuaded that they are sufficient to make the April 2019 Decision unreasonable.

[38] The April 2019 Decision is extensive and detailed. Throughout her reasons, the Minister's Delegate identified and applied the applicable law and policies, conducted a thorough review of all relevant documents in ESDC's possession, and did not find any evidence to

substantiate Mr. Torrance's assertions that erroneous advice was provided or administrative errors were committed during the adjudication of his CPP Application.

[39] The Minister's Delegate determined that Mr. Torrance was alleging four separate instances of erroneous advice or administrative errors, and provided expansive reasons in dealing with each of them, namely:

1. That incorrect legislation was used to determine the MQP for the purposes of Mr. Torrance's CPP Application.
2. That Mr. Torrance's 1998 earnings were "dismissed as not being a qualifying year before the information was available to [CRA]".
3. That CPP officials overlooked the fact that Mr. Torrance had reported having self-employment earnings for 1997 and 1998 on his CPP Application.
4. That the "late applicant" provision of the CPP Act was incorrectly applied in the adjudication of Mr. Torrance's CPP Application.

[40] Regarding the first allegation, the Minister's Delegate reasonably concluded that the correct legislation was used to determine Mr. Torrance's MQP. The CPP Act establishes the required minimum number of calendar years with valid contributions in order to qualify for disability benefits. This requirement has evolved over time, and the April 2019 Decision explained to Mr. Torrance, using a detailed chart, the years of required contributions needed depending on the calendar year in which the disability date of onset would begin. In the case of Mr. Torrance, that date was August 1998, meaning that the legislative provision applicable on January 1, 1998 and onward covered his situation. The Minister's Delegate thus appropriately considered the "4 out of 6 years" rule pursuant to the legislation in effect as of January l, 1998. She concluded that since Mr. Torrance did not have the required earnings and contributions in

either 1993, 1994 or 1998, he did not meet the requirements to qualify for a CPP Disability Pension, as he was missing one year of valid contributions.

[41] In the Decision, the Minister's Delegate listed Mr. Torrance's valid earnings and contributions to the CPP for each of the years 1987 to 1998. Mr. Torrance only had three years of valid contributions in the period of six years ending in 1998. Had he had valid earnings and contributions for any of the years 1993, 1994 or 1998 (where he had none), he would have met the 4 out of 6 years rule.

[42] On Mr. Torrance's second and third allegations related to his 1997 and 1998 earnings, the Minister's Delegate considered the principle of *res judicata* or issue estoppel as developed by the SCC in *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 [*Danyluk*]. This decision establishes that three conditions must be met before issue estoppel can apply: 1) the same question has been decided; 2) the judicial decision which is said to create the estoppel was final; and 3) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies (*Danyluk* at para 25).

[43] With respect to Mr. Torrance's allegation that the 1998 earnings were dismissed as not being a qualifying year before the information was available to CRA, the April 2019 Decision explained that, in *Torrance FCA*, the FCA already upheld the November 2011 Determination made by ESDC under subsection 66(4) of the CPP Act, which found that no administrative error had been committed with regards to the treatment of Mr. Torrance's 1998 earnings. Mr. Torrance had already alleged an administrative error in relation to his 1998 earnings back in November

2011, and the FCA determined there was none. As explained above, the year 1998 could not be counted as a contributory qualifying year since there were no CPP contributions because of Mr. Torrance's lateness in filing his tax returns.

[44] In her Decision, the Minister's Delegate reviewed the principle of *res judicata* and how an appeal or further judicial determination of an issue can be dismissed on the basis that the matter has already been decided. I detect no error in this finding made by the Minister's Delegate.

[45] Regarding Mr. Torrance's third allegation advancing that officials at ESDC overlooked his reported self-employment earnings in 1997 and 1998 for the purposes of evaluating his CPP Application, I am satisfied that the April 2019 Decision again reasonably concluded that *res judicata* also applied. The same issue had been decided in a previous case involving the same parties, namely *Torrance 2008*. In that decision, the Court had determined that CRA did not commit a reviewable error in rejecting Mr. Torrance's April 2007 notice of objection to his tax assessment for 1998. This notice of assessment had found that Mr. Torrance was statute barred from making CPP contributions on his earnings for 1998.

[46] Turning to Mr. Torrance's final allegation on the "late applicant" provision, the Minister's Delegate concluded that no administrative error was made regarding the non-application of the provision to Mr. Torrance's case. The Minister's Delegate correctly outlined the provision's purpose and the requirement that an applicant must have enough years of valid CPP contributions when they first become disabled in order for the "late applicant" provision to

apply. I find that it was reasonable for the Minister’s Delegate to determine that, since Mr. Torrance was not in such a situation, the “late applicant” provision could simply not apply to his file.

[47] Much of Mr. Torrance’s complaints revolve around the alleged administrative error in relation to the year 1998, which was found not to be a qualifying year for his MQP. It is not disputed that, had the year 1998 been retained, Mr. Torrance would have qualified for a CPP Disability Pension. But, regrettably for Mr. Torrance, this issue has been finally determined by the FCA and the Court, and the Minister’s Delegate simply had no choice but to acknowledge that Mr. Torrance needed the year 1998 as a contributory year in order to qualify for CPP disability benefits, that he was statute barred from making CPP contributions in that year because of his own lateness in filing his tax return, and the no administrative error caused a denial of his request for a CPP Disability Pension. I note that, at the hearing, Mr. Torrance often referred to his earnings for 1997 but what effectively prevented him from qualifying for a CPP Disability Pension was the year 1998, not 1997.

[48] The 2013 decision by the FCA clearly stated that no administrative error caused the loss of Mr. Torrance’s disability benefits. This loss of benefits resulted from the year 1998 not being a contributory qualifying year. And, unfortunately, it was Mr. Torrance’s own failure to file his 1997 and 1998 tax returns in time that was the reason why the year 1998 could not be counted as a contributing year. Put another way, no errors committed by officials at ESDC resulted in a denial of disability benefits to Mr. Torrance.

[49] In essence, the Minister's Delegate based her decision on a comprehensive review of the entire file, and on the lack of any additional evidence produced by Mr. Torrance (who was given ample opportunities to do so) in support of his claim that erroneous advice was given or administrative errors were made with respect to his CPP Application submitted in 1998. However regrettable the denial of Mr. Torrance's disability benefits may be, I cannot detect any arbitrariness or bad faith in the April 2019 Decision. The reconsideration of the denial of Mr. Torrance's disability benefits was a reasonable and well-founded decision which was not hampered by any erroneous advice or administrative error committed by ESDC.

[50] Subsection 66(4) of the CPP Act requires that the Minister be satisfied that a certain state of facts exists. Indeed, the Minister must first satisfy himself that an error has been made. The duty to take appropriate remedial action arises only once the Minister is satisfied that the error resulted in the denial of a benefit to which the person would have been entitled. The absence of a causal connection between the erroneous advice or administrative error and the denial of a benefit is fatal to a claim under that provision. It is not disputed that certain type of actions such as seeking information about contributions for incorrect years or sending a denial letter to the wrong postal address can amount to administrative errors. However, the role of the Court on judicial review is not to reweigh the evidence, but rather to assess whether the Minister applied the proper factors and followed appropriate procedures (*Mackeen* at para 27; *Raivitch v Canada (Minister of Human Resources Development),* 2006 FC 1279 at para 18). I am satisfied that this is the case here.

[51] Having regard to all of the above, I find that it was reasonable for the Minister's Delegate to conclude that, on a balance of probabilities, Mr. Torrance had not demonstrated the existence of an erroneous advice or administrative error by ESDC. In my view, the April 2019 Decision is well founded, and it is both justifiable and amply justified in the reasons. The detailed reasons provided by the Minister's Delegate demonstrate that the decision on Mr. Torrance's request was based on an internally coherent and rational chain of analysis and that it conforms to the relevant legal and factual constraints that bear on the Minister and the issue at hand (*Canada Post* at para 30; *Vavilov* at paras 105-107).

[52] Further to *Vavilov*, the reasons given by a decision maker are the starting point of the analysis. They are the principal tool allowing the administrative decision makers "to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner" (*Vavilov* at para 79). In the present case, the April 2019 Decision explains the conclusions reached by the Minister's Delegate in a transparent and intelligible manner (*Canada Post* at paras 28-29; *Vavilov* at paras 81, 136; *Dunsmuir* at para 48), and the reasons allow me to understand the basis on which she concluded that Mr. Torrance was not denied a disability benefit as a result of erroneous advice provided or administrative error committed by ESDC.

[53] The standard of reasonableness requires the reviewing court to pay "[r]espectful attention to a decision-maker's demonstrated expertise" and specialized knowledge, as reflected in their reasons (*Vavilov* at para 93). A reasonableness review is an approach meant to ensure that the reviewing court only intervenes in administrative matters "where it is truly necessary to do so in

order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). It is anchored in the principle of judicial restraint. The reviewing court must show deference to the decision maker as it is "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at para 33; *Dunsmuir* at paras 48-49). Under a reasonableness review, when a question of mixed fact and law falls squarely within the expertise of a decision maker, the reviewing court's role is not to impose an approach of its own choosing (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 57). Of course, a reviewing court should ensure that the decision under review is justified in relation to the relevant facts, but deference to decision makers includes more specifically deferring to their findings of facts and assessment of the evidence. Reviewing courts should refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Canada Post* at para 61; *Vavilov* at para 125).

[54] The Minister's Delegate has a broad discretion when rendering decisions under the CPP Act and her decision is entitled to a high degree of deference from the Court given her specialized expertise. Here, the Minister's Delegate has thoroughly reviewed the evidence before the CPP officials, including all submissions made by Mr. Torrance, and Mr. Torrance has not persuaded me that the conclusions of the Minister's Delegate were not based on the evidence that was actually before her (*Vavilov* at para 126). This is not a situation where the decision maker has fundamentally misapprehended or failed to account for the evidence. I am instead satisfied that the Minister's Delegate has meaningfully grappled with the key issues and central arguments raised by Mr. Torrance regarding his CPP Application and that she was alert and sensitive to the

evidence. A judicial review is not a "line-by-line treasure hunt for error" and a reviewing court must instead approach the reasons and outcome of a tribunal's decision as an "organic whole" (*Vavilov* at para 102; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 54). When the reasons are considered as a whole, it is clear that that the Minister's Delegate engaged in a thorough and detailed assessment of the evidence before concluding to an absence of erroneous advice or administrative error in the treatment of Mr. Torrance's CPP Application. There is no reason for the Court to intervene.

[55] At the hearing, Mr. Torrance alleged with insistence that some elements of his August 9, 2018 Letter had been left unaddressed in the April 2019 Decision. He additionally asserted that the Minister's Delegate performed her own evaluation, rather than reviewing the alleged erroneous advice and administrative errors by ESDC officials on his CPP Application. I have reviewed Mr. Torrance's August 2108 Letter thoroughly and I am satisfied that the April 2019 Decision reasonably addressed all of the main allegations put forward by Mr. Torrance in these submissions.

[56] In his 10-page-long August 2018 Letter, Mr. Torrance advanced the following erroneous advice and administrative errors: 1) an allegation of using the incorrect legislation and his claim that the legislation in effect in 1998 when he suffered his injury (namely, with the 4 out of 6 years rule) needed to be used in order to determine his contributory qualifying years; 2) an allegation of failing to consider the year 1998 containing self-employment earnings reported to CRA and the required CPP contributions paid; 3) an allegation of using the incorrect legislation

(i.e. a MQP ending in December 1997) as opposed to the correct legislation that came into effect 1998; and 4) an allegation of not considering his earnings and contributions for the years 1997 and 1998.

[57] Contrary to Mr. Torrance's submissions, the April 2019 Decision confirmed that Mr. Torrance was ineligible for a CPP Disability Pension after considering and analyzing each of these four allegations. For the first and third allegations, the Minister's Delegate expressly concluded that the correct legislation was used for the purposes of Mr. Torrance's CPP Disability Pension. Regarding the second and fourth allegations, the Minister's Delegate determined that both issues were already disposed of by final decisions of this Court and the FCA, in *Torrance 2008* and in *Torrance FCA*.

[58] It is well recognized that decision makers are presumed to have weighed and considered all the evidence presented to them unless the contrary is shown (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). A failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16), and decision makers are not required to refer to each and every piece of evidence supporting their conclusions. It is only when an administrative decision maker is silent on evidence squarely contradicting its findings of fact that the Court may intervene and infer that the decision maker overlooked the contradictory evidence when making its decision (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez v Canada*

*(Minister of Citizenship & Immigration)*, [1998] FCJ No 1425 (QL), 157 FTR 35 [*Cepeda-Gutierrez*] at para 17). The failure to consider specific evidence must be viewed in context and may be sufficient to a decision being overturned, but only when the non-mentioned evidence is critical and contradicts the decision maker's conclusion, and where the reviewing court determines that its omission means that the tribunal disregarded the material before it. This is not the case here, and Mr. Torrance has not pointed the Court to any evidence that would fit this exceptional situation.

[59] In his oral submissions, Mr. Torrance also criticized the April 2019 Decision, asserting that rather than addressing his allegations of erroneous advice and administrative errors, the Minister's Delegate focused on the mistakes Mr. Torrance had made. I do not agree. The fact that the decision discussed Mr. Torrance's failings does not warrant this Court's intervention. In the context of *Torrance FCA*, Mr. Torrance had advanced the same argument in front of the FCA, alleging that the decision letter which was contested in that case did not deal with the alleged administrative errors, but focused instead on Mr. Torrance's failings. However, the FCA explained that officials may identify a claimant's failings while pursuing an examination under subsection 66(4) of the CPP (*Torrance FCA* at para 23):

> [23] Counsel for Mr. Torrance was critical of this letter, saying that it did not deal with the administrative errors that had been identified but focussed instead on Mr. Torrance's failings. Counsel points out, correctly, that subsection 66(4) requires an examination of the officials' behaviour not that of Mr. Torrance. That said, subsection 66(4) also requires that any administrative error have deprived a claimant of benefits to which he would otherwise have been entitled. It is therefore not inappropriate for officials to identify the reason the claimant was not entitled to benefits in order to show that any administrative error which may have occurred was not the cause of the claimant's ineligibility for benefits.

[60] I finally point out that the “new facts” alleged by Mr. Torrance in his August 2018 Letter were already existent prior to the FCA rendering its *Torrance FCA* decision. In his letter, Mr. Torrance notably alleged that new facts relating to the year 1997 existed, and that these new facts were material because the year 1997 would become a contributory qualifying year, changing the outcome of his CPP Application. He specified that his official CPP sheet entitled “Your Statement of Contributions” showed $3527 for 1997, and this new material fact whereby 1997 was becoming a contributory qualifying year changed the outcome of his CPP Application. However, contrary to Mr. Torrance’s assertion, the new facts relating to the years 1997 and 1998 were already existent prior to the FCA rendering the *Torrance FCA* decision. As such, the FCA recognized that Mr. Torrance’s 1997 and 1998 income tax returns technically allowed him to qualify for a disability pension, as he had sufficient contributory earnings in those years. However, it considered that CRA validly exercised its discretion under subsection 30(5) of the CPP, to conclude that Mr. Torrance’s contributions for 1997 and 1998 were deemed to be zero (*Torrance FCA* at para 17). The FCA was therefore well aware of the fact that Mr. Torrance “had sufficient contributory earnings in 1997 and in 1998 to qualify for a disability pension” (*Torrance FCA* at para 17).

## IV. <u>Conclusion</u>

[61] For the reasons detailed above, Mr. Torrance’s application is dismissed. A reviewing court must be satisfied that any alleged shortcomings or flaws relied on by the party challenging a decision are not sufficiently central or significant to render the decision unreasonable (*Vavilov* at paras 96-97, 100). Fundamental flaws would include a failure of rationality internal to the reasoning process or a decision which in some respect would be untenable in light of the relevant

factual and legal constraints. Here, I am not persuaded that this is a situation where there is a flawed logical process by which the facts were drawn from the evidence, or where the Minister's Delegate has fundamentally misapprehended or failed to account of the relevant evidence, or made a finding that was contrary to the overwhelming weight of the evidence (*Vavilov* at para 126; *Dunsmuir* at para 47). The Minister's Delegate had all the facts before her and considered all the relevant evidence.

[62] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). I am satisfied that this is the case here, and Mr. Torrance has not persuaded me that there are sufficiently serious shortcomings in the April 2019 Decision such that it could be said to lack the requisite degree of justification, intelligibility and transparency. In an application for judicial review like this one, the role of the Court is to review the legality of the decision at stake and to determine whether it was reasonable and based on a fair process. The April 2019 Decision bears the hallmarks of reasonableness, and I do not find any serious shortcomings in the Decision causing me to lose confidence in the outcome reached by the Minister's Delegate.

[63] Having regard to all the circumstances of this matter and the parties, and upon consideration of the factors set forth in Rule 400(3) of the *Federal Courts Rules*, SOR/98-106, there will be no award of costs.

## JUDGMENT in T-821-19

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.

2. No costs are awarded.

"Denis Gascon"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | T-821-19 |
| **STYLE OF CAUSE:** | RODNEY GENE TORRANCE v ATTORNEY GENEAL OF CANADA |
| **PLACE OF HEARING:** | VANCOUVER, BRITISH COLUMBIA |
| **DATE OF HEARING:** | MARCH 4, 2020 |
| **JUDGMENT AND REASONS:** | GASCON J. |
| **DATED:** | MAY 22, 2020 |

**APPEARANCES:**

| | |
|---|---|
| Rodney Gene Torrance | FOR THE APPLICANT (ON HIS OWN BEHALF) |
| John Unrau | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Attorney General of Canada<br>Vancouver (British Columbia) | FOR THE RESPONDENT |