

## PENSIONS

Judicial review of Social Security Tribunal, Appeal Division (AD) decision (2016 SSTADIS 402) allowing applicant's appeal of respondent's decision denying applicant's application for disability benefits under *Canada Pension Plan*, R.S.C. 1985, c. C-8 Social Security Tribunal, General Division (GD) dismissing applicant's appeal — AD finding there was procedural unfairness, referring matter back to GD for new hearing before different member — Applicant suggesting herein that rather than sending matter back to GD, AD should have granted disability benefits sought — AD's decision to send matter back to GD acceptable, defensible, reasonable — AD reasonably assessing that only a hearing in GD would allow applicant to see evidence relevant to her case, call evidence relevant to her entitlement to benefits — Court not having legal authority, jurisdiction to: grant benefits to applicant, uphold her entitlement to benefits under the Ontario Disability Support Program, award her damages — Respondent bringing motion in June 2017 for application to be granted, for a judgment granting *mandamus* requiring AD to grant disability benefits to applicant — Court could not grant motion — First, June 2017 motion not offering any admissible evidence or other permissible sources of fact in support of relief sought — Second, consent dismissal, discontinuance of an application differing from the allowing of an application on consent — In the case of consent dismissal or discontinuance of an application, legal *status quo* not changing — However, legal *status quo* changing when allowing application on consent — Reviewing court having to be persuaded on facts, law before granting application, changing legal *status quo* — In decision on June 2017 motion, Court not satisfied that it should make requested judgment — Respondent of opinion that applicant disabled within meaning of *Canada Pension Plan*, applicant can receive benefits — However, applicant not agreeing, *inter alia*, with respondent's calculation of level of benefits — Given applicant's position, complexity of administrative regime, lack of submissions, Court proposing that AD's decision to remit matter back to GD be left in place — Court not seeking to cause any end result to be dictated to GD through *mandamus* order — Application dismissed.

GARSHOWITZ V. CANADA (ATTORNEY GENERAL) (A-429-16, 2017 FCA 251, Stratas J.A., judgment dated December 28, 2017, 10 pp.)