



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. C. B.*, 2018 SST 1197

Tribunal File Number: AD-16-1211

BETWEEN:

Minister of Employment and Social Development

Appellant

and

C. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: November 23, 2018

DATE OF CORRIGENDUM: December 18, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The Claimant's claim based on a breach of the *Canadian Charter of Rights and Freedoms* is dismissed. The remainder of the appeal is referred back to the General Division for consideration.

OVERVIEW

[2] C. B. (Claimant) began to work in 1965 and contributed to the Canada Pension Plan for a number of years. In April ~~1993~~ **1983** she began to receive a Canada Pension Plan survivor benefit because her husband passed away. She later began to receive a Canada Pension Plan retirement pension before she turned 65. The Minister of Employment and Social Development (Minister) recalculated the amount of benefits payable to the Claimant when she turned 65 and began to receive the retirement pension, which resulted in a reduction in the total amount of benefits the Claimant received.

[3] The Claimant appealed the Minister's decision that reduced her total benefits to the Social Security Tribunal. She also claimed that her rights under sections 7, 10, 11, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (Charter) were breached. The Minister requested that the General Division summarily dismiss the portion of her appeal based on the Charter. The General Division refused this request. The Minister appealed this decision. The appeal is allowed because the General Division erred in law when it refused to dismiss the Charter portion of the appeal, and the Appeal Division grants the decision that the General Division should have.

PRELIMINARY MATTER

[4] The Minister made the request that the Claimant's claim under the Charter be summarily dismissed, and that the appeal also be summarily dismissed because without any Charter claim the appeal has no reasonable chance of success under to the Regulations. I decided that the Minister was required to obtain leave to appeal the decision that refused to summarily dismiss the Charter portion of the appeal and the appeal on its merits. This was because, when sections 53 and 56 of the Department of Employment and Social Development Act (DESD Act) are read

together, an appellant who is the appellant at both the General Division and the Appeal Division need not obtain leave to appeal from a summary dismissal decision. In this case, the Claimant was the appellant at the General Division and the Minister is the appellant at the Appeal Division.

[5] However, the nature of the decision in question is one of summary dismissal. The appeal is considered in this context below.

ISSUES

[6] Did the General Division err in law when it refused to dismiss the Charter claim and decided that the Claimant's Charter record was sufficient?

[7] Did the General Division fail to provide sufficient reasons for deciding that the Charter record was sufficient, for refusing to dismiss the Charter portion of the appeal, or for concluding that summary dismissal was not appropriate?

[8] Did the General Division fail to observe a principle of natural justice by requiring the Minister to file a Charter record in light of a deficient record from the Claimant?

ANALYSIS

[9] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides only three grounds of appeal that the Appeal Division can consider. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.¹ Therefore, to succeed on this appeal, the Minister must prove that the General Division erred in one of the ways set out above.

¹ Subsection 58(1) of the DESD Act

Issue 1: Did the General Division err in law?

[10] The *Canada Pension Plan* (CPP) sets out how the amount of a survivor benefit payable to a claimant is to be calculated.² The calculation changes when the recipient begins to receive a CPP retirement pension.³ The Claimant argues that the recalculation of her total CPP benefits upon reaching age 65 and beginning to receive a retirement pension resulted in a 40% reduction in the amount she received, and that this violated her Charter rights.

[11] The *Social Security Tribunal Regulations* provide that when the constitutional validity, applicability or operability of a provision of the CPP is to be put at issue, the party raising the issue must file a notice that sets out the provision at issue, and contains any submissions in support of the issue.⁴ The General Division further directed that the parties file Charter records, and set out what each record was to contain.⁵ In this case, the Claimant put at issue the validity of section 58 of the CPP. She filed numerous detailed and lengthy documents to support her claim. The Minister contends that these documents are not legally sufficient and that the General Division erred in law when it refused to dismiss this part of her claim.

[12] The Federal Court teaches that the General Division may require parties to file a Charter record.⁶ The Ontario Court of Appeal instructs that in a Charter case it is not unreasonable to insist on the crystallization of the issue by an applicant so the Minister can respond to it and the decision maker understand it.⁷ Similarly, the Supreme Court of Canada teaches that decisions involving the Charter must not be made in a factual vacuum.⁸ This means that a claimant must provide a sufficient factual basis for the Charter claim so that the Minister and the Tribunal can understand what legislative provision is called into question, and the legal basis for the claim under the Charter.

[13] The Claimant alleges that her rights under sections 7, 10, 11, 12, and 15 of the Charter were violated. She makes no other statement in the volumes of documents filed regarding any

² Section 58 of the CPP

³ Subsection 58(2) of the CPP

⁴ Paragraph 20(a) of the *Social Security Tribunal Regulations*

⁵ GD 18

⁶ *Canada (Attorney General) v. Stewart* 2018 FC 768

⁷ *Re Danson and Attorney General of Ontario*, 1987 CanLII 4068

⁸ *Mackay v. Manitoba*[1989] 2SCR 357

penalty or punishment that she has suffered. There is no way to know how sections 10 (rights on arrest or detention), 11 (rights if charged with an offence) or 12 (right not to be subjected to cruel or unusual punishment) of the Charter are engaged. These provisions of the Charter are normally engaged in criminal proceedings. No such proceedings have been initiated.

[14] Section 7 of the Charter provides that everyone has the right to life, liberty and security of the person. The Claimant argues that her security has been compromised by the reduction in the amount of benefits she receives. However, security of the person does not include financial security⁹. So, it is not clear how this Charter provision is engaged.

[15] Section 15 of the Charter provides that every person is equal before and under the law and has the right to equal protection and benefit of the law without discrimination based race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The Claimant contends that she was discriminated against because she is a widow. She claims that it is unfair that as a widow her benefits were reduced when she turned 65 and began to receive a retirement pension.

[16] The Claimant has set out some facts so that her claim under s. 15 of the Charter is understood. However, the facts must be sufficient to prove that allegations of discrimination under the law create a distinction between groups of people based on an enumerated or analagous ground set out in s. 15,¹⁰ and there must be some evidence of a *prima facie* breach of the Charter.¹¹ The Claimant has not produced this. She has made only a bare allegation of discrimination. Her statements that to recalculate her total benefits is “unfair” and “unjust” are insufficient.

[17] The DESD Act requires that the General Division summarily dismiss claims that have no reasonable chance of success.¹² It is not for the General Division, when deciding whether to summarily dismiss a claim, to weigh the evidence or assess the merits of the claim, only to decide if the claim is bound to fail. The General Division did not do so in this case. A cursory look at the materials that the Claimant filed reveals that although voluminous, the documents do

⁹ *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28

¹⁰ *Law v. Canada*[1999] 1SCR 497

¹¹ *Kahkewistahaw First Nation v. Taypotat* [2015] 2 SCR 548, 2015 SCC 30

¹² DESD Act s. 53

not speak to the constitutional issues the Claimant raises. They refer to a number of alleged wrongs done to the Claimant by other bodies including the courts and the police. The Charter claims cannot succeed on the basis of this information.

[18] The General Division failed to consider the requirement to summarily dismiss a claim that has no reasonable chance of success, which is an error in law. Based on the wording of section 58 of the DESD Act no deference is owed to the General Division when an error in law is made. The appeal must succeed on this basis.

Issue 2: Did the General Division provide sufficient reasons for its decision?

[19] The General Division must provide written reasons for its decisions.¹³ These reasons, when read in context with the written record, must permit the reader to know what decision was made and why it was made.¹⁴ The General Division decision regarding the sufficiency of the Claimant's Charter record states:

The direction letter dated May 13, 2016 was sent after a review of the [Claimant's] factum (GD22) and a determination that the [Claimant] had met her burden to provide a sufficient Charter Record. Although many of the [Claimant's] submissions relation to her interactions and challenges against other parties, her factum includes sufficient submissions and challenges relating to the CPP.¹⁵

This does not explain why the General Division concluded that the Claimant's Charter record sufficient, or permit the Minister to understand and respond to her claim that her Charter rights had been violated. The reasons are therefore insufficient.

[20] The Minister requested that the General Division summarily dismiss the Claimant's Charter claim.¹⁶ The General Division refused this request. In the decision that granted leave to appeal I determined that the request was properly made under the *Social Security Tribunal*

¹³ Subsection 54(2) of the DESD Act

¹⁴ *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62

¹⁵ GD 27

¹⁶ GD 28

Regulations.¹⁷ It was therefore not a request for summary dismissal¹⁸. For the reasons set out above, I am satisfied that the General Division erred in law when it refused this request.

[21] The Minister also contends that the General Division's reasons were insufficient because they did not explain why the General Division refused to dismiss the Charter portion of the appeal. However, when the request was made to the General Division it was framed as a request to summarily dismiss the Charter claim. The test for summary dismissal is set out specifically in the DESD Act.¹⁹ The General Division applied this test. It wrote that summary dismissal of the Charter claim was not appropriate because it asked the Tribunal to weigh the sufficiency of the evidence on its merits at that stage of the proceeding.²⁰ As the General Division answered the request that was made to it at the time, it made no error by doing so.

Issue 3: Did the General Division fail to observe a principle of natural justice?

[22] The principles of natural justice are concerned with ensuring that all parties to a legal proceeding have an opportunity to present their case, know and answer the case against them, and have a decision made by an impartial decision maker based on the law and the facts. The Minister contends that because the Claimant did not provide a sufficient Charter record, it cannot know the case that it has to meet. It cannot properly respond to the Claimant's arguments because it does not know the basis upon which they are made.

[23] The material filed by the Claimant does not provide any particulars regarding how her rights under a number of Charter provisions were breached. At most there is a bare allegation that s. 7 was breached, but it is not clear how. There is an insufficient factual basis for a claim of discrimination under s. 15 of the Charter. The Minister cannot reasonably be expected to know what case it has to meet in these circumstances. The General Division's failure to dismiss the Charter claim under these circumstances is a failure to observe the principles of natural justice. The appeal must succeed on this basis as well.

¹⁷ Section 4 of the Social Security Tribunal Regulations

¹⁸ Summary dismissal is provided for in s. 53 of the DESD Act

¹⁹ Section 53 of the DESD Act

²⁰ GD 21-1

[24] The Minister also argues that by requiring it to file its own Charter record, the General Division also, in effect, reversed the burden of proof. It argues that because the Claimant's record was insufficient, it effectively required the Minister to prove that the Claimant's Charter rights had not been breached, when the Claimant is the party who must prove that her Charter rights had been violated. However, because the Minister has not filed a Charter record, I cannot assess this argument.

CONCLUSION

[25] The appeal is allowed for the reasons set out above.

[26] The DESD Act sets out what remedies the Appeal Division can give.²¹ In this case, there are no facts in dispute. The Claimant has filed numerous documents setting out her position on the issues, and the Minister has filed detailed written submissions in response. In addition, there has been a considerable delay in these proceedings. Accordingly, I give the decision that the General Division should have.

[27] For these reasons I find that the Claimant has not filed a Charter record that contains a sufficient factual basis for adjudication. Therefore, her claims based on the Charter are dismissed.

[28] The remainder of the appeal is referred back to the General Division for consideration because the appeal has not been considered on its merits.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	March 12, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. B., Appellant

²¹ Section 59 of the DESD Act

	Sylvie Doire, Counsel for the Respondent
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