

**[TRANSLATION]**

**Citation: *Canada Employment Insurance Commission v. M. T.*, 2015 SSTAD 723**

**Date: June 10, 2015**

**File number: AD-15-121**

**APPEAL DIVISION**

**Between:**

**Canada Employment Insurance Commission**

**Applicant**

**and**

**M. T.**

**Respondent**

**Decision by: Pierre Lafontaine, Member, Appeal Division**

## **REASONS AND DECISION**

### **DECISION**

[1] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

### **INTRODUCTION**

[2] On February 11, 2015, the Tribunal's General Division found that:

- The net profits of a business incorporated under Quebec law, if not paid out by declaring a dividend to shareholders in accordance with the applicable law, cannot be considered earnings received by a claimant within the meaning of the *Employment Insurance Act* and cannot be allocated in accordance with section 36 of the *Employment Insurance Regulations* ("the *Regulations*").

[3] The Applicant filed an application for leave to appeal to the Appeal Division on March 13, 2015.

### **ISSUE**

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

### **THE LAW**

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, "[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted" and the Appeal Division "must either grant or refuse leave to appeal".

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

## ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove its case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that any of the above grounds of appeal has a reasonable chance of success.

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, be able to see a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In its application for leave to appeal, the Applicant submits that the General Division erred in law in making its decision by determining that the net profits of an incorporated business could not be considered earnings received by the claimant if they had not been paid out by declaring a dividend.

[13] The Applicant also argues that the General Division's decision is contrary to its findings of fact. It submits that the Tribunal could not find that the net profits of an incorporated business could not be allocated while recognizing that those amounts were earnings within the meaning of the *Regulations*.

[14] Finally, the Applicant submits that the General Division can apply the rule of complementarity and refer to the rules of Quebec civil law to try to interpret the *Employment Insurance Act* and *Regulations*, but the application of the *Employment Insurance Act* and *Regulations* must take precedence.

[15] After reviewing the appeal file, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant is raising a question relating to the General Division's interpretation and application of sections 35 and 36 of the *Regulations*. The Applicant has therefore raised a question of law or fact the answer to which may lead to the setting aside of the decision challenged.

## **CONCLUSION**

[16] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*  
Member, Appeal Division