



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. J. v. Minister of Employment and Social Development*, 2017 SSTADIS 20

Tribunal File Number: AD-17-21

BETWEEN:

**R. J.**

Applicant

and

**Minister of Employment and Social Development  
(formerly known as the Minister of Human Resources and Skills  
Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Janet Lew

Date of Decision: January 25, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated October 11, 2016, which determined that the Respondent had appropriately calculated the Applicant's Guaranteed Income Supplement under the *Old Age Security Act*. The Applicant filed an application requesting leave to appeal on January 8, 2017, alleging that the General Division failed to address the "true rational" (*sic*) upon which his appeal was based.

### ISSUE

[2] The issue before me is whether the appeal has a reasonable chance of success.

### ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (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, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[4] Before granting leave, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The Applicant argues that the General Division should have focused on whether he had received erroneous or misleading advice from Service Canada and on whether the forms for application for the Guaranteed Income Supplement were also misleading, rather than on whether an individual can have a negative income for the purposes of calculating the supplement.

[6] The Applicant alleges that he received erroneous or misleading advice and claims that, had he not received this advice, he and his spouse would have organized their financial affairs differently and this would not have resulted in a reduced overall Old Age Security pension and supplement.

[7] If indeed the Applicant received any erroneous advice, neither the General Division nor the Appeal Division has any jurisdiction in any event to undertake any remedial action, although under section 32 of the *Old Age Security Act*, the Minister is required to “take such remedial action as the Minister considers appropriate”. The subsection reads:

32. *Where person denied benefit due to departmental error, etc.* - 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 a benefit, or a portion of a benefit, to which that person would have been entitled under this Act, 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.

[8] The Applicant may ask the Minister to consider taking remedial action under section 32 of the *Old Age Security Act*, but I do not have any jurisdiction to provide the relief sought by the Applicant.

[9] Although the General Division may not have addressed the issue which the Applicant describes as the “true rational [*sic*]” or basis of his appeal, it would have been moot nonetheless, as the General Division lacks the jurisdiction to provide any remedial relief. I am therefore not satisfied that the appeal has a reasonable chance of success on this ground.

## **CONCLUSION**

[10] The application requesting leave to appeal is dismissed.

Janet Lew  
Member, Appeal Division