



Citation: *L. D. and J. B. v. Minister of Employment and Social Development*, 2018 SST 508

Tribunal File Number: AD-18-13

BETWEEN:

**L. D.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

and

**J. B.**

Added Party

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Tribunal File Number: AD-18-21

BETWEEN:

**J. B.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

and

**L. D.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Jude Samson

Date of Decision: May 8, 2018

## DECISION AND REASONS

### DECISION

[1] The application is refused.

### OVERVIEW

[2] The Applicants, L. D. and J. B., do not contest the fact that they have been living together in a common-law relationship since January 1, 2012. The Respondent, the Minister of Employment and Social Development (Minister), claims that it was not aware of this change in marital status before 2015.

[3] The Applicants have been collecting the Guaranteed Income Supplement (GIS) for many years. This monthly benefit is provided to Old Age Security pension recipients who have a low income and live in Canada. The GIS amount does vary, however, based on the claimant's marital status. As a result, upon receiving information regarding the change of the Applicants' marital status, the Minister recalculated the amount of the GIS to which the couple was entitled. It sought to recover \$12,241.58 from L. D. and \$5,912.01 from J. B., all for the period from January 2013 to December 2015.

[4] The Applicants requested that the Minister review its initial decisions, but it chose to uphold them. The Applicants then appealed these decisions to the General Division of the Tribunal, but it dismissed their appeals. In January 2018, the Applicants requested leave to appeal to the Tribunal's Appeal Division. The Tribunal sent the parties a letter proposing that the appeals be joined.<sup>1</sup> The Tribunal received no objection to this letter, so appeals AD-18-13 and AD-18-21 were joined.

[5] With regard to the applications for leave to appeal, they were rejected for the following reasons.

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<sup>1</sup> The Tribunal's letter also referred to appeal AD-18-18, but it was discovered that this case had been created in error, so the Tribunal closed it (AD2).

## ISSUE

[6] Is there an arguable ground upon which the appeal might succeed?

[7] The Applicants' primary allegation is that the General Division committed a significant error with regard to the facts. More specifically, they submit that the General Division did not listen to them and did not take into account that they had notified the Canada Revenue Agency (CRA) of their change in marital status in a timely fashion.

## ANALYSIS

### Legal Framework

[8] The Tribunal has two divisions that function fairly differently from one another. At the Appeal Division, the emphasis is on determining whether the General Division committed one or more of the three reviewable errors (grounds of appeal) set out in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act). In general terms, did the General Division:

- a) fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction;
- b) err in law; or
- c) base 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?

[9] There are also differences in procedure between the Tribunal's two divisions. Most appeals to the Appeal Division take place in two stages: the leave to appeal stage and the hearing on the merits stage. This appeal is currently at the leave to appeal stage, which means that the Tribunal must grant permission for the appeal to continue. This preliminary step aims to

eliminate appeals with no reasonable chance of success.<sup>2</sup> At this point, applicants have a minimal legal test to meet: is there any arguable ground on which the appeal might succeed?<sup>3</sup>

[10] Although the Applicants are responsible for showing that the legal test has been met, I am not limited to the precise grounds of appeal that they cited in their applications for leave to appeal.<sup>4</sup> However, if the General Division misinterpreted or mischaracterized some evidence, leave to appeal should normally be granted, regardless of technical deficiencies in the application.

**Are there any arguable grounds upon which the appeals might succeed?**

[11] In my opinion, the Applicants have not made any argument that corresponds to any ground of appeal that might give the appeal a reasonable chance of success.

[12] Because the GIS amount varies based on a claimant's marital status, pensioners must inform the Minister of any change in their marital status without delay.<sup>5</sup> The Applicants submit that they satisfied this requirement when they declared the change to their marital status to the CRA.

[13] Contrary to the Applicants' assertions, the General Division did not ignore this argument: it rejected it.<sup>6</sup> In deciding this issue, the General Division relied on *Barry v. Canada (Attorney General)*,<sup>7</sup> a binding Federal Court decision. This decision emphasizes that the word "Minister" is defined in s. 2 of the *Old Age Security Act* (OAS Act) as the Minister of Employment and Social Development and that it is insufficient to declare a change in marital status exclusively to the CRA.

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<sup>2</sup> DESD Act at s. 58(2).

<sup>3</sup> *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Ingram v. Canada (Attorney General)*, 2017 FC 259.

<sup>4</sup> *Tracey v. Canada (Attorney General)*, 2015 FC 1300, at para. 31; *Griffin v. Canada (Attorney General)*, 2016 FC 874, at para. 20; *Karadeolian v. Canada (Attorney General)*, 2016 FC 615, at para.10.

<sup>5</sup> OAS Act, ss. 15(1) and (9).

<sup>6</sup> General Division decision at paras.14 and 15.

<sup>7</sup> *Barry v. Canada (Attorney General)*, 2010 FC 1307.

[14] In other words, the question of whether the Applicants had declared their change in marital status to the CRA is not relevant to the question of whether they fulfilled their obligations under the OAS Act.

[15] With regard to the fact that the Applicants submit that the Minister committed an administrative error by not obtaining information about their change in marital status from the CRA, the Minister explains in its letters regarding the reconsideration of the decisions that this matter is outside the jurisdiction of the Tribunal.<sup>8</sup>

[16] For the reasons set out above, I cannot accept the Applicants' arguments.

## **CONCLUSION**

[17] Nonetheless, I will still take into account the Federal Court decisions in which it instructed the Appeal Division that it must go beyond written documents and examine whether the General Division might have misinterpreted or mischaracterized some evidence.<sup>9</sup>

[18] After reviewing the cases in question and examining the decisions under appeal, I am convinced that the General Division neither ignored nor misinterpreted significant evidence. In my opinion, the General Division correctly summarized the key aspects of the evidence and explained the conclusion that it reached.

[19] It may not be the answer that the Applicants were hoping for, but the Tribunal is a legislative entity that has only the powers that the law gives it. The Tribunal interprets and applies the provisions set out in the OAS Act. The Tribunal cannot invoke principles of equity or take specific situations into account to override the requirements set out in this legislation.

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<sup>8</sup> GD2-3; *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278; *Canada (Attorney General) v. Vinet-Proulx*, 2007 FC 99.

<sup>9</sup> *Griffin*, *supra* note 4; *Karadeolian*, *supra* note 4.

[20] The applications for leave to appeal are therefore refused.

Jude Samson  
Member, Appeal Division

REPRESENTATIVES:	L. D., self-represented J. B., self-represented
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