



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *The Estate of C. R. v. Minister of Employment and Social Development and M. R.*,  
2018 SST 1022

Tribunal File Number: AD-18-393

BETWEEN:

**The Estate of C. R.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

and

**M. R.**

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: October 18, 2018

## DECISION AND REASONS

### DECISION

[1] Leave to appeal a decision rendered by the General Division of the Tribunal is refused.

### OVERVIEW

[2] C. R. (Applicant) applied for the Guaranteed Income Supplement under the *Old Age Security Act*. The Respondent, the Minister of Employment and Social Development (Minister), approved the application initially, and benefits were paid based on the Applicant's claimed marital status as a single person. However, the Minister then determined that the Applicant had been married until March 21, 2012, and that he should therefore have been paid at a lower rate and based on the couple's income. As a result, the Minister calculated that it had overpaid the Applicant \$36,801.00 during the period from July 2005 to March 2012 and insisted that the Applicant pay this amount back.

[3] The Applicant asked for the decision to be reconsidered, but the Minister maintained its initial decision. The Applicant then appealed the reconsideration decision to the General Division, but, unfortunately, he passed away before his case could be heard. Finally, the General Division dismissed the appeal because it had not received the information needed to determine the estate's representative.

[4] After the General Division rendered its decision, the Applicant's daughter came forward as the executor. However, before the matter can move forward, I must decide whether to grant leave to appeal the General Division's decision. Leave to appeal is refused for the reasons stated below.

## **PRELIMINARY MATTER**

[5] A. R., the Applicant's daughter, filed a solemn affirmation with the Tribunal attesting that she is authorized to administer the deceased's estate.<sup>1</sup> This declaration is corroborated by a May 25, 2017, entry in the register of personal and movable real rights (RPMRR).<sup>2</sup>

[6] I therefore accept that A. R. is entitled to represent the Applicant's estate before the Tribunal.

## **ISSUES**

[7] In deciding this matter, I addressed the following questions:

- a) Is there an arguable ground that the General Division made an error of law or fact in dismissing the Applicant's appeal?
- b) Is there another arguable ground based on which the appeal might succeed?

## **ANALYSIS**

### **The Appeal Division and its Legal Framework**

[8] At the Appeal Division, the emphasis is on determining whether the General Division made at least one of the three errors (or grounds of appeal) set out in section 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 make an error of jurisdiction;
- b) make an error of 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?

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<sup>1</sup> AD1A-1 to 2.

<sup>2</sup> AD1A-3.

[9] Most appeals before the Appeal Division take place in two stages: the leave to appeal stage and 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 is intended to filter out appeals that have no reasonable chance of success.<sup>3</sup> At this point, applicants have a minimal legal test to meet: is there any arguable ground based on which the appeal might succeed?<sup>4</sup>

**Issue 1: Is there an arguable ground that the General Division made an error of law or fact in dismissing the Applicant's appeal?**

[10] I have found that the answer to this question is no.

[11] First, it is worth summarizing the procedure that the General Division followed after being informed of the Applicant's death.

[12] On March 8, 2017, the Tribunal received a notice confirming the Applicant's death.<sup>5</sup> According to this notice, the Added Party was the Applicant's spouse and the executor of his estate.<sup>6</sup> The next day, the General Division sent a letter to the Applicant's estate care of the Added Party, asking for documents to confirm the name of the person who intended to continue the appeal and had the authority to represent the deceased's estate.

[13] Instead of the requested information, the General Division received a request for an extension of time from the Applicant's daughter on April 12, 2017. The General Division therefore granted further time, until June 9, 2017, to provide the documents it had previously requested.

[14] On June 12, 2017, the Applicant's daughter sent the General Division the following: "Although you have granted additional time, this is to inform you that the requested additional documents will not be sent and that we do not wish to pursue the [Applicant's] ongoing appeal."

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<sup>3</sup> *Department of Employment and Social Development Act*, s 58(2).

<sup>4</sup> *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Ingram v. Canada (Attorney General)*, 2017 FC 259.

<sup>5</sup> GD4.

<sup>6</sup> Although the name appearing on the notice was M. I., the address and social insurance number on the notice were the same as those of the Added Party.

[15] On September 15, 2017, the General Division informed the parties that the appeal had been put in abeyance.<sup>7</sup> On November 30, 2017, the General Division received a second letter from the Applicant's daughter stating that she still had no intention of pursuing the appeal.<sup>8</sup>

[16] These letters aside, the appeal was left in abeyance until March 22, 2018, the date on which the General Division dismissed the appeal because the estate's representative had not come forward.

[17] In rendering its decision, the General Division did not assess the appeal on the merits. Instead it seems to have followed "Practice Direction 2017-02: Process for dealing with appeals from deceased appellants" and the Chair's directive to Tribunal members entitled "Process for dealing with deceased appellants."<sup>9</sup> According to these directives, which are published on the Tribunal's website, the Tribunal will dismiss an appeal from a deceased appellant unless a representative for the deceased's estate who wants to pursue the appeal communicates with the Tribunal in the year following the date of the appellant's death.

[18] I would like to note in passing that the Tribunal must, in accordance with section 3(1)(a) of the *Social Security Tribunal Regulations*, ensure that appeals proceed as informally and as quickly as circumstances, fairness, and natural justice permit.

[19] In her notice of appeal, the estate's representative now claims that the General Division made an error of law when it decided that the Applicant's estate did not have a representative. In addition, she claims that the General Division clearly made an error. In support of this second proposal, the executor intends to show that she and the Added Party have renounced their rights to the Applicant's estate. In her view, the relevant information was recorded in the RPMRR, a public register that the General Division could have consulted.

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<sup>7</sup> GD7.

<sup>8</sup> GD8.

<sup>9</sup> Government of Canada online: Social Security Tribunal  
<<https://www1.canada.ca/en/sst/rdl/gdpd2017eideceased.html>> and <<https://www1.canada.ca/en/sst/rdl/006-deceased-appellants.html>>.

[20] First of all, the General Division did not dismiss the appeal because the Applicant's estate did not have a representative but because a representative who intended to pursue the appeal had not come forward in the year following the Applicant's death.

[21] While this difference may seem subtle, it should be noted that the Tribunal is not required to look for a representative with such an intention. The Applicant's daughter has presented no legal basis to support her proposition that the General Division should have consulted the public register before rendering its decision (and I know of no legal basis of this kind). If a representative wants to pursue an appeal on behalf of an estate, that person must come forward and show that they are empowered to do so.

[22] The appeal became "irregular" after the Applicant's death, and the General Division was therefore entitled to dismiss it in the absence of a representative for the estate who intended to pursue the appeal.<sup>10</sup> The Applicant's daughter has not persuaded me that there is an arguable case that the General Division made an error of law by proceeding as it did.

[23] In this case, it should be noted that the Tribunal did in fact communicate with the executor, who was informed of the documents she would need to pursue the appeal on behalf of the estate, was granted an extension of time to provide those documents, and ultimately refused to do so. The consequences of that decision appear in a number of documents published on the Tribunal's website.

[24] Furthermore, even if the Tribunal knew that the Applicant's daughter was the executor at the time she wrote the June 8 and November 28, 2017, letters, the outcome of the matter would have been the same. The appeal would have been dismissed or withdrawn because the executor stated very clearly that she did not intend to pursue the appeal, and no other representative who intended to pursue the appeal came forward in the year following the Applicant's death.

[25] In terms of the renunciation of the estate by the Applicant's daughter and the Added Party, the General Division cannot be faulted for failing to consider documents that were never presented to it.

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<sup>10</sup> *R. v Smith*, 2004 SCC 14, at paras 26 and 29.

[26] For reasons unknown to me, the Applicant's daughter clearly changed her mind about her decision to not pursue the appeal. However, my role is to determine whether one of the arguments she has advanced is an arguable ground on which the appeal might succeed. In my opinion, this legal test has not been met.

**Issue 2: Is there another arguable ground based on which the appeal might succeed?**

[27] Although the onus is on applicants to raise arguable grounds on which their appeals might succeed, I am not limited to the precise grounds of appeal that they cite in their applications for leave to appeal. However, if the General Division could have misinterpreted or failed to consider some evidence, leave to appeal would normally be granted, regardless of technical deficiencies in the application.<sup>11</sup>

[28] After reviewing the file and the decision under appeal, I am satisfied that the General Division considered the relevant evidence.

**CONCLUSION**

[29] This may not be the answer that the Applicant was 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 legislative provisions as they are set out and cannot use the principles of equity or consider extenuating circumstances to grant applications for leave to appeal.

[30] Leave is refused.

Jude Samson  
Member, Appeal Division

REPRESENTATIVE:	A. R., self-represented
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<sup>11</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.