



[TRANSLATION]

Citation: *Estate of A. C. and H. M. v Minister of Employment and Social Development*, 2019 SST 1286

Tribunal File Number: AD-19-666

BETWEEN:

**The Estate of A. C.**

Applicant

and

**H. M.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Decision on Request for Extension of Time by: Jude Samson

Date of Decision: October 25, 2019

## DECISION AND REASONS

### DECISION

[1] An extension of time to apply for leave to appeal is refused.

### OVERVIEW

[2] A. C. and H. M. applied for Old Age Security (OAS) pensions. However, the Respondent, the Minister of Employment and Social Development, denied their applications. The Minister submits that the spouses did not meet the minimum residency requirement to be eligible for a partial OAS pension.

[3] The applicants challenged the Minister's decision in each of their cases. Unfortunately, A. C. passed away in July 2015, but his estate has continued the matter.

[4] First, the General Division dismissed the appeals. Based on an agreement between the parties, I then referred these matters back to the General Division for reconsideration. After holding a new hearing, the General Division dismissed the appeals a second time. This appeal therefore concerns the General Division's second decision, the one dated May 19, 2019.<sup>1</sup>

[5] However, the application for leave to appeal was filed after the deadline. As a result, the applicants have a preliminary hurdle to overcome: they need an extension of time to appeal. I refuse to grant further time for the reasons that follow.

### ISSUES

[6] In determining this matter, I answered the following questions:

- a) Was the application for leave to appeal the General Division decision submitted late?
- b) If so, should an extension of time to appeal be granted?

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<sup>1</sup> The General Division wrote one decision that applies to both files. However, there is an error on the first page of the decision. It is dated May 19, 2016, instead of May 19, 2019. Based on the notice of appeal (ADN1 and ADN1A), I understand that both applicants would like to appeal the General Division decision.

## ANALYSIS

### **Issue 1: Was the application for leave to appeal submitted late?**

[7] Yes, the application for leave to appeal the General Division decision was submitted late.

[8] The Tribunal sent the General Division decision to the applicants on May 21, 2019. The *Social Security Tribunal Regulations* allow me to deem that decision to have been received by the applicants on May 31, 2019, that is, ten days after the day on which it was mailed.<sup>2</sup>

[9] As a result, the application requesting leave to appeal was due 90 days later, on August 29, 2019.<sup>3</sup> However, the Tribunal did not receive the application for leave to appeal until September 12, 2019, and it was incomplete. The application for leave to appeal was not completed until October 3, 2019. As a result, I need to grant an extension of time for the appeal to move forward.

### **Issue 2: Should an extension of time be granted?**

[10] No, the applicants do not meet the criteria for obtaining more time to appeal.

[11] When determining whether an extension of time should be granted, the Tribunal must consider four factors:<sup>4</sup>

- a) Did the applicants have the continuing intention to pursue their appeal?
- b) Did they provide a reasonable explanation for the delay?
- c) Would the extension cause prejudice to the other party?
- d) Does the appeal disclose an arguable case?

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<sup>2</sup> *Social Security Tribunal Regulations*, s 19(1)(a).

<sup>3</sup> *Department of Employment and Social Development Act* (DESD Act), s 57(1)(b).

<sup>4</sup> These four factors are stated in the decision *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

[12] All four factors do not need to be met; the overriding consideration is whether granting an extension of time would be in the interests of justice.<sup>5</sup>

[13] The applicants state that, after receiving the General Division decision, they contacted their lawyer, but she made them wait a long time before flatly refusing to continue representing them. The applicants then tried to engage the services of another lawyer, but they were unable to do so.

[14] I am therefore satisfied that the applicants had the continuing intention to pursue their appeal and that they have provided a reasonable explanation for the delay.

[15] Furthermore, given the relatively short delay and the accessibility of the relevant documents, I find that the Minister's ability to defend itself would not be unduly affected if an extension of time to appeal were granted.

[16] The last factor to consider, namely whether there is an arguable case on appeal, is often the most important. In assessing this factor, I must consider the limited role that the *Department of Employment and Social Development Act* (DESD Act) assigns the Appeal Division. Specifically, the Appeal Division can intervene in a General Division decision only if it is established that one of the three relevant errors has been made.<sup>6</sup>

[17] In support of their application, the applicants argue that too much importance was placed on certain evidence that was submitted to the General Division, whereas too little importance was placed on other evidence. Furthermore, the General Division did not interpret the facts from a cultural context.

[18] In this case, the General Division explicitly referred to the relevant factors the applicants brought to light. Furthermore, it noted the cultural aspects of this matter.

[19] Consequently, I interpret the applicant's arguments to be a request for me to reweigh the evidence in a way that would be more favourable to them. However, that is not part of the

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<sup>5</sup> *Canada (Attorney General) v Larkman*, 2012 FCA 204.

<sup>6</sup> Section 58(1) of the DESD Act specifies the three relevant errors (also known as grounds of appeal).

Appeal Division's role.<sup>7</sup> Given that the applicants' arguments have no basis in the potential errors set out in section 58(1) of the DESD Act, there is no arguable case on appeal.

[20] Nevertheless, I reviewed the record and analyzed the decision under appeal to assess whether the General Division might have misconstrued or overlooked the relevant evidence.<sup>8</sup> I find however that the General Division considered the relevant evidence.

[21] Although three of the above factors support the extension of time to appeal, I have also assessed what the interests of justice might require. In this respect, I acknowledge that the refusal to extend the time to appeal means that the applicants' appeal ends here. However, I must weigh that against the extent to which the interests of justice would be served by allowing an appeal that is bound to fail to proceed.

[22] I am aware of cases in which the Federal Court and Federal Court of Appeal have given particular weight to the arguable case factor, and I have come to the same conclusion in this case.<sup>9</sup>

[23] Having considered the above factors and the interests of justice, I find that the extension of time to apply for leave to appeal must be refused.

## CONCLUSION

[24] An extension of time to apply for leave to appeal is refused.

Jude Samson  
Member, Appeal Division

REPRESENTATIVE:	Y. C., Representative for the applicants
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<sup>7</sup> *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42; *Grosvenor v Canada (Attorney General)*, 2018 FC 36 at para 34.

<sup>8</sup> *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

<sup>9</sup> *McCann v Canada (Attorney General)*, 2016 FC 878; *Maqsood v Canada (Attorney General)*, 2011 FCA 309.