[TRANSLATION]

Citation: *CV v Minister of Employment and Social Development*, 2022 SST 209

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	C. V.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated October 22, 2021 (GP-19-1475)

Tribunal member:	Jude Samson
Decision date:	March 25, 2022
File number:	AD-22-37

Decision

[1] I am refusing permission (leave) to appeal. The appeal will not proceed.

Background

[2] C. V. is the Applicant in this case. He applied for an Old Age Security pension. The Minister of Employment and Social Development (Minister) approved his application and awarded him a full pension effective August 2017, the month after his 65th birthday.[1]

[3] The Applicant then applied for the Guaranteed Income Supplement (GIS). Before approving his application, the Minister wanted to consider the issue of his residence in Canada.[2] According to the Minister, the Applicant had to reside in Canada to be entitled to the GIS. But his application for an Old Age Security pension suggested that he lived outside Canada.[3]

[4] In December 2017, the Minister contacted the Applicant for more information. The Applicant explained that he had re-established residence in Canada from June 2017. He also gave information to support his statement in February 2018. But the Minister seems to have misplaced this information.

[5] Instead of making a decision based on the information the Applicant had given, the Minister investigated the issue of his residence in Canada. The Applicant denounces this investigation as unnecessary, abusive, and a violation of his rights under the *Canadian Charter of Rights and Freedoms*.

[6] After the investigation, the Minister decided that the Applicant was not entitled to the GIS because he lived outside Canada.[4] But this decision was made without

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[1] Service Canada delivers this program for the Minister.
[2] In this context, “residence” has a very specific meaning. Section 21(1) of the *Old Age Security Regulations* defines whether a person **resides** in Canada or is **present** in Canada.
[3] The Applicant’s application for an Old Age Security pension starts at GD2-3.
[4] This decision, dated February 14, 2019, starts at GD2-479.

considering whether he had re-established residence in Canada in June 2017 and without taking into account the documents he had provided in February 2018.[5]

[7] The Applicant then asked the Minister to reconsider its initial decision.

[8] Finally, in August 2019, after reviewing the file in its entirety, the Minister reversed its initial decision and awarded the GIS effective the month after the Applicant's 65th birthday, subject to the maximum allowable income.

[9] On this point, the Minister noted that the Applicant's 2016 income exceeded the maximum allowable, so no GIS could be paid to him from August 2017 to June 2018. But the Minister was able to pay him the GIS in later years because of his 2017 and 2018 income.

[10] The Applicant appealed the Minister's decision to the Social Security Tribunal's General Division.

[11] In the proceedings before the General Division, the Applicant raised Charter arguments.[6] So, the General Division gave the Applicant information about his obligation to submit a notice of constitutional challenge, including the requirements his notice had to meet.[7]

[12] The Applicant did submit a notice of constitutional challenge. But the General Division pointed out some apparent issues with the notice. So, it gave him more time to correct his notice and make submissions.[8]

[13] The General Division reviewed everything and found, in an interlocutory decision dated October 22, 2021, that the Applicant's notice of constitutional challenge did not

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[5] See the Minister's submissions (GD6) at paragraphs 13 and 14.
[6] See GD12 and GD13.
[7] Section 20(1)(a) of the *Social Security Tribunal Regulations* sets out the relevant requirements. See the General Division's December 1, 2020, letter and the documents included with it.
[8] See the General Division member's March 10, 2021, request at GD18.

meet the requirements set out in the law. Because of this, the appeal was treated as a regular appeal.

[14] The Applicant then asked for permission to appeal the General Division's interlocutory decision dated October 22, 2021. That is the only decision being appealed here.

[15] Before this case can proceed, I must first decide whether to give permission to appeal.

[16] The Applicant argues that the General Division made errors of jurisdiction and of law and that it misinterpreted important facts in the case. I find that the Applicant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

Issues

[17] Here are the issues I will consider in this decision:

a) Could the General Division have made an error of jurisdiction by not considering whether the acts attributed to the officials are contrary to Charter principles?

b) Could the General Division have made an error of law by basing its decision on the wrong section of the law?

c) Could the General Division have based its decision on an important mistake about the facts of the case?

Analysis

[18] Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[19] The legal test that the Applicant needs to meet at this step is a low one: Has he raised an arguable case on which the appeal might succeed?[9] If the appeal has no reasonable chance of success, then I must refuse permission to appeal.[10]

[20] To decide this question, I considered whether the General Division could have made an error recognized by the law.[11]

The General Division did not make an error of jurisdiction by ignoring a fundamental issue

[21] The Applicant argues that the General Division did not address a fundamental issue, namely whether the acts attributed to the officials are contrary to Charter principles.

[22] I admit that the General Division could have looked at the Applicant's allegations more closely. But I cannot accept his argument that the General Division ignored this issue.

[23] On the contrary, the General Division summarized the Applicant's allegations and considered them.[12]

[24] In addition, I point out that the Applicant is mainly unhappy with the investigation into the matter of his residence in Canada. And he attacks the limitations imposed by sections 11(7)(c) and 11(7)(d) of the *Old Age Security Act* as being an unconstitutional violation of his right to freedom of movement.

[25] But an essential factual link is missing between the Applicant's Charter arguments and the decision to deny him benefits.[13] More specifically, the Minister

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[9] See *Osaj v Canada (Attorney General)*, 2016 FC 115; and *Ingram v Canada (Attorney General)*, 2017 FC 259.
[10] This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[11] The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act.
[12] See the General Division decision at paragraphs 12 to 14, 23 to 26, 29, and 30.
[13] According to the Supreme Court of Canada, Charter decisions should not and must not be made in a factual vacuum: *Mackay v Manitoba*, 1989 CanLII 26.

acknowledged that the Applicant had re-established residence in Canada in June 2017 as claimed. In addition, the Minister did not deny the Applicant any benefits because of his absences from Canada; it denied him some benefits because of his income.

[26] Lastly, the Applicant stated his expectations in his notice of constitutional question. More specifically, the Applicant is seeking:[14]

- compensation
- the correction of his taxes by the Canada Revenue Agency
- remedies (unspecified) for the psychological harm suffered

[27] The General Division did not have the authority to grant him these remedies. In addition, the Charter does not expand the remedies that the Tribunal may grant.[15] The Tribunal must not decide Charter issues if it cannot grant the type of relief sought.

[28] Moreover, the Applicant asked to be paid the GIS based on his income, without regard to time or place, which the Minister did.

[29] For all these reasons, I find that the Applicant's argument that the General Division ignored an important issue could not lead to a successful appeal.

The General Division did not make an error of law by basing its decision on the wrong section of the law

[30] The Applicant argues that the General Division made an error by applying section 20(1)(a) of the *Social Security Tribunal Regulations* (Regulations). He says that the General Division's interpretation of this section gives immunity to officials who engage in criminal behaviour.

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[14] See GD14-7.
[15] See the Appeal Division decision in *PM v Minister of Employment and Social Development*, 2021 SST 92 at paragraphs 26 to 40, affirmed by *Mudie v Canada (Attorney General)*, 2021 FCA 239; and *Faullem c Canada (Attorney General)*, 2022 FCA 29 at paragraphs 43 to 48.

[31] Section (20)(1)(a) of the Regulations clearly applies in this situation. To raise a constitutional challenge before the Tribunal, the Applicant first had to meet the requirements set out in this legislative provision.

[32] The obligations under section (20)(1)(a) of the Regulations are not onerous.[16] This provision ensures that constitutional issues are set out clearly and communicated to the relevant parties.

[33] So, a person raising a constitutional challenge has to specify the challenged provision and make submissions that are "sufficiently specific to permit a decision-maker to at least see the outline of a Charter argument."[17]

[34] The General Division has the power to decide whether a person raising Charter arguments would be permitted to pursue their constitutional arguments.[18]

[35] The General Division found that the Applicant had not met this minimum notice requirement. The fact that the Applicant did not make specific enough submissions in a constitutional challenge in no way means that officials can commit criminal acts with impunity. The General Division did not interpret section (20)(1)(a) of the Regulations in that way.

[36] This argument has no reasonable chance of success.

The General Division did not base its decision on an important mistake about the facts of the case

[37] The Applicant argues that the General Division made several important errors of fact.

[38] But not all errors of fact warrant the Appeal Division's intervention. More specifically, the Appeal Division can intervene because of an error of fact only if the

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[16] See the General Division decision at paragraph 8.
[17] See the Appeal Division decision in *Minister of Employment and Social Development v SR and DR*, 2018 SST 786 at paragraph 24.
[18] See *Canada (Attorney General) v Stewart*, 2018 FC 768.

General Division based its decision on that error. In addition, the General Division must have made its erroneous finding of fact in a perverse or capricious manner or without regard for the material before it.

[39] This is not what the Applicant is alleging. The Applicant seems to be criticizing some of the ways the General Division expressed itself, as well as its characterization of some contextual details.

[40] So, these arguments have no reasonable chance of success.

[41] Aside from the Applicant's arguments, I have reviewed the file and examined the General Division decision.[19] But I have not noted other reasons to give permission to appeal.

Conclusion

[42] I find that the Applicant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson
Member, Appeal Division

[19] The Federal Court has said that I must do this in *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.