[TRANSLATION]

Citation: *JN v Minister of Employment and Social Development*, 2024 SST 235

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. N.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated October 26, 2023 (GP-20-1532)

Tribunal member:	Jude Samson
Decision date:	March 7, 2024
File number:	AD-23-1115

Decision

[1] I am refusing the Applicant, J. N., permission to appeal. This means that the appeal won't proceed.

Overview

[2] The Applicant applied for an Old Age Security (OAS) pension in August 2015. The Minister of Employment and Social Development (Minister) approved his application as of June 2016. But it suspended payment of the Applicant's pension even before he received his first payment.

[3] The Minister's decision was based on section 5(3) of the *Old Age Security Act* (OAS Act). This section says that a person who is incarcerated under a federal law isn't eligible for an OAS pension during their incarceration period.

[4] The Applicant has been trying to dispute the Minister's decision since it was made in 2016. In support of his arguments, he relied on sections 1, 7, 12, 15, 24, 26, 31, and 52 of the *Canadian Charter of Rights and Freedoms* (Charter).

[5] The General Division dismissed the Applicant's appeal after a lengthy written process, as he had requested. The Applicant now wants to appeal the General Division decision to the Appeal Division.

[6] I find that the Applicant hasn't raised an arguable case that the General Division made an error recognized by law. The Applicant also hasn't presented new evidence. So, I have no choice but to refuse permission to appeal.

Issues

[7] The issues are the following:

a) Does the Applicant's application raise an arguable case that the General Division made an error recognized by law?

b) Does the application contain evidence that wasn't before the General Division?

I am not giving permission to appeal

[8] I can grant permission to appeal if, in his application, the Applicant raised an arguable case that the General Division:

- failed to provide a fair process
- decided an issue it didn't have the power to decide, or failed to decide an issue it should have decided
- misinterpreted or misapplied the law
- made an error with respect to the facts[1]

[9] I can also grant permission to appeal if the Applicant's application contains evidence that wasn't before the General Division.[2]

The Applicant's application doesn't raise an arguable case

[10] The Applicant hasn't raised an arguable case that the General Division made an error recognized by law. Instead, his arguments are bound to fail for the following reasons:

- The Applicant relies on significant misunderstandings about the OAS Act.
- There is a lack of evidence to support a Charter challenge.
- The Applicant hasn't established a *prima facie* (at first glance) breach of his rights.

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[1] See sections 58.1(a) and 58.1(b) of the *Department of Employment and Social Development Act* (DESD Act).
[2] See section 58.1(c) of the DESD Act.

- The Tribunal doesn't have the power to award the Applicant much of the relief he is seeking.

– The application is based on significant misunderstandings about the OAS Act

[11] To begin with, the Applicant's main argument is that an incarcerated person who is in a relationship can redirect their OAS pension to a spouse, but that he was wrongly denied this benefit because he was single. In other words, he argues that the OAS Act is discriminatory on the basis of marital status and breaches his equality rights under the Charter.

[12] The Applicant's argument is unfounded.

[13] The OAS Act provides for certain situations that consider the marital status of the person concerned. For example, the amount of the Guaranteed Income Supplement (GIS) depends on a person's marital status and the couple's income (if any).

[14] In addition, if a person is eligible for the GIS, their spouse may be eligible for the Allowance.[3] As a result, if a person is incarcerated, their spouse could be prejudiced and would not be entitled to benefits under the OAS Act.

[15] However, the law protects the spouse of an incarcerated person in this situation. It doesn't allow the incarcerated person to redirect their benefits to their spouse. Instead, it allows for the payment of benefits to which the spouse would be entitled, as if the person weren't incarcerated.

[16] In other words, there is no arguable case that the General Division made an error of law when it made the following findings:

- The Allowance isn't the incarcerated person's OAS pension.[4]

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[3] As the *Old Age Security Act* (OAS Act) says, the Allowance is payable "to the spouse, common-law partner or former common-law partner of a pensioner." To simplify the text of this decision, I am referring instead to the spouse.
[4] See the General Division decision at paragraphs 47 and 48.

- There is no mechanism in the law that makes an incarcerated person's OAS pension payable to their spouse.[5]

[17] In support of his appeal, the Applicant also argues that he should not be deprived of benefits that result from his contributions to the Canada Pension Plan and the Quebec Pension Plan.[6]

[18] But those contributions don't affect the Applicant's entitlement to benefits under the OAS Act.

[19] Instead, entitlement to benefits under the OAS Act depends on other criteria, primarily the number of years a claimant resided in Canada.[7]

[20] So, the Applicant's arguments don't raise an arguable case that the General Division made an error recognized by law.

– **There is a lack of evidence to support a *Charter* challenge**

[21] The General Division found that the Applicant didn't present enough evidence to prove a Charter breach.[8] On this point, the Applicant's arguments don't raise an arguable case that the General Division made an error recognized by law.

[22] It is clear that the General Division didn't make an error when it made the following findings:

- Charter arguments must have a solid factual basis.[9]

- The Applicant hasn't met the burden of proof that must be met by those who want to make a constitutional challenge.

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[5] See the General Division decision at paragraph 52 and section 36 of the OAS Act.
[6] See, for example, page ADX1-26 in the appeal file.
[7] See, for example, sections 3, 11(7)(b), 19(1)(c), and 21(1)(b) of the OAS Act.
[8] See the General Division decision at paragraphs 41, 48, 54, and 55.
[9] See, for example, *Mackay v Manitoba*, [1989] 2 SCR 357; and *Sullivan v Canada (Attorney General)*, 2024 FCA 7.

[23] On the contrary, the evidence in this appeal consists mainly of lengthy (sometimes disjointed) letters from the Applicant. This evidence didn't allow the General Division to conduct the in-depth analysis required to assess a Charter appeal.

[24] In addition, the Applicant didn't offer to introduce new evidence to fill this gap.

– **The Applicant hasn't established a *prima facie* breach of his rights**

[25] The Applicant relies on section 1 of the Charter and argues that the General Division made an error when it failed to assess how section 5(3) of the OAS Act is reasonable in a free and democratic society.

[26] This argument is also bound to fail. This argument reverses the Applicant's primary burden of proof in establishing that the OAS Act breaches a Charter right.

[27] The General Division decision explains the order of the issues that must be assessed in a Charter analysis.[10] First, a person must establish a *prima facie* breach of their Charter rights. Then, the government will have to justify the infringement in question.

[28] The General Division found that the Applicant hadn't established a *prima facie* breach of his Charter rights. So, it wasn't necessary to assess whether section 5(3) of the OAS Act was reasonable in a free and democratic society.[11]

[29] So, this argument doesn't raise an arguable case that the General Division made an error recognized by law.

– **The Tribunal doesn't have the power to award the Applicant much of the relief he is seeking**

[30] Throughout this process, the Applicant asked the Minister (and other government representatives) for a lot of information.

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[10] See the General Division decision at paragraphs 15 to 21.
[11] See *Langlois v Canada (Attorney General)*, 2018 FC 1108 and the presumption of constitutionality.

[31] But any argument that the General Division failed to direct the Minister to provide information to the Applicant is bound to fail. I can't fault the General Division for not making an order it didn't have the power to make.

[32] The Tribunal has repeatedly emphasized that it only has the powers that the law gives it. This doesn't include the power to order the Minister to disclose documents.

[33] I assume that the Applicant attempted to gather this information by making requests under the *Access to Information Act*. This is the right way to proceed. But the Tribunal doesn't have the power to review decisions made under this law.

There is no new evidence in the application

[34] While the Applicant claims to be introducing new evidence, I find that his application contains no new relevant evidence that wasn't before the General Division.[12] This is because the Applicant's application essentially repeats arguments he made before the General Division.

[35] In addition to the Applicant's arguments, I have reviewed the file and the General Division decision. [13] But I haven't found any other reason for granting permission to appeal.

Conclusion

[36] Since the Applicant hasn't raised an arguable case and hasn't presented new evidence, I have to refuse permission to appeal. This means that the appeal won't proceed.

Jude Samson
Member, Appeal Division

[12] See ADX1 in the appeal file.
[13] 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.