



Citation: *PY v Minister of Employment and Social Development*, 2025 SST 1334

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: P. Y.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 23, 2025
(GP-24-1235)

Tribunal member: Kate Sellar

Decision date: **December 12, 2025**

File number: AD-25-662

Decision

[1] I'm refusing to give the Claimant, P. Y., leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

Overview

[2] The Claimant's spouse died in 1995. In late 2021, the Claimant applied for the Allowance for the Survivor under the Old Age Security Act (OAS Act). The Minister of Employment and Social Development (Minister) approved his application. The Claimant started receiving the Allowance for the Survivor (the Allowance) in June 2022, the month after he turned 60.

[3] As the General Division explained:

- Usually, the Minister calculates a claimant's entitlement to the Allowance using the Claimant's income from the calendar year before the payment period starts. This is called the "base calendar year."
- However, the OAS Act allows people who retire or have a loss of pension income in the year after the base calendar year to file a statement of estimated income (I'll call this a statement). In that case, the Minister must calculate entitlement based on the statement but also the applicant's actual income from all other sources during the base calendar year.¹

[4] In May 2023, the Claimant filed a statement. He stated that his only income was his CPP income. He also said that he retired in May 2022, and that his pension income reduced or stopped in April 2022.

[5] In August 2023, the Minister wrote to the Claimant explaining that he was eligible for a monthly benefit of \$390.28 as of July 2023. This was based on his actual income for 2022, which totalled \$19,142.00. Most of that income was RRSP income. The Minister also sent the Claimant a questionnaire about his statement.

¹ See paragraphs 3 to 5 in the General Division decision.

[6] As the General Division explained:

- In the Questionnaire, the Claimant said he retired from self-employment in May 2022. He explained that he had a pension reduction in 2023, but when asked the date of the reduction he said it happened in May 2022. He explained that he considered his RRSP to be his pension, and he stopped making monthly withdrawals from his RRSP in April 2022.
- The Minister told the Claimant that his statement wasn't helpful to him. The Minister tried to explain why but used wording that was hard to understand. The Minister said the Claimant's estimated income for 2023 (\$19,363.80) was higher than his actual income for 2022 (\$19,142.00).
- The Claimant asked the Minister to reconsider its decision. He said that he reported his income for 2023 as \$305.40 a month, and so he didn't understand how the Minister calculated his estimated income as \$19,363.80.
- The Minister explained that the law about income estimates changed in July 2008. Before July 2008, all income was estimated when calculating the amount of a benefit. However, as of July 1, 2008, only pension income and employment income from the current year is estimated. All other income from the prior calendar year is added to the estimated income.²

[7] The Claimant appealed to this Tribunal. The Claimant wanted to raise a Charter issue, but the General Division didn't allow that part of the appeal to proceed. In an interlocutory decision, the General Division explained that the Claimant's Charter Notice didn't meet the requirements in the Tribunal's rules.

[8] The General Division found that the Claimant was only disputing the formula used to decide his estimated income for 2023, not the Minister's findings about his

² See paragraphs 8 to 11 in the General Division decision.

income. The General Division found that the Minister followed the law about estimating the Claimant's income for 2023, so it dismissed the Claimant's appeal.

Issues

[9] In this decision, I will deal with all of the arguments the Claimant is making about the General Division decisions, both about the interlocutory decision about the Charter, and the final decision about the calculation of the Allowance. I'm doing this in one decision because I need to proceed in a way that is as simple and quick as fairness allows.³

[10] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error in its final decision about its power to decide the amount of an adjustment from actual income and shown income according to the OAS Act?
- b) Is there an arguable case that the General Division made an error in its interlocutory decision by finding that a Charter argument about discrimination must involve a distinction based on an enumerated ground?
- c) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[11] I can give the Claimant permission to appeal if the application raises an arguable case that the General Division:

³ See section 8(1) in the *Social Security Tribunal Rules of Procedure*.

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error applying the law to the facts.⁴

[12] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.⁵

[13] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

There's no arguable case that the General Division made an error about its power to decide the amount of an adjustment from actual income and shown income according to the OAS Act.

[14] I understand the Claimant to be arguing that the General Division failed to exercise its powers under section 18 of the OAS Act. He says that since his shown income was \$3,665 and his actual income was \$19,142, the General Division had to adjust and pay him additional allowance.⁶

– **The General Division explained that his actual income for 2022 was \$19,142 and when calculated correctly, his shown income was \$19,363.80.**

[15] The General Division explained that it cannot change or amend the law.⁷

[16] The General Division confirmed that the Claimant's actual income for 2022 was \$19,142.00, in part because it included the RRSP, which isn't considered pension income under the law.

⁴ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

⁵ See section 58.1(c) of the Act.

⁶ See AD1-9.

⁷ See paragraph 27 in the General Division decision.

[17] The General Division confirmed that the estimated income from 2023 was \$19,363.80, because it included the RRSP income from 2022. The General Division explained that this approach is consistent with what the law requires.

[18] Section 14(5) of the OAS Act says that when a person retires before a payment period (as is the case here), then the Minister is to calculate the estimated income by totalling:

- any pension income received in the calendar year ending in the current payment period;
- employment income (except employment income from the job that was stopped) for the calendar year ending in the current payment period; and
- other income - the person's income for the base calendar year calculated as though, for that year, the person had no employment income and no pension income.

[19] The General Division didn't discuss adjustments under section 18 of the OAS Act.

– **The Claimant hasn't raised an arguable case for the General Division making any error about its powers.**

[20] The Claimant hasn't raised an arguable case that the General Division refused to exercise its powers under section 18 of the OAS Act.

[21] Given the General Division's findings about the correct calculation of the actual income and the shown income, there was no need to apply section 18 of the OAS Act to make any adjustment.

There's no arguable case that the General Division made an error of law by finding that a Charter argument about discrimination must involve a distinction based on an enumerated ground.

[22] The Claimant argues that the interlocutory decision about his Charter argument contains an error of law. The Claimant says that in order to rely on the Charter section

15, there is no requirement for claimants to show that the challenged distinction the law creates is based on any of the enumerated grounds of discrimination, including race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.⁸

[23] The Claimant provides no legal basis for this argument. He provided no other section of the Charter he wished to rely on, nor did he explain that he was relying on a ground analogous to any of the enumerated grounds.

– **The General Division explained what the two-step test is for a section 15 Charter argument**

[24] The General Division explained that to prove a Charter violation under section 15, Claimants have to show that the challenged law:

- Creates a distinction based on enumerated or analogous grounds, on its face or in its impact; and
- Imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.

[25] The General Division stated that it's not enough for a claimant to show that the law creates a distinction. A claimant must show that the distinction is based on an enumerated (listed) or analogous ground.⁹

[26] Since the Claimant didn't rely on any enumerated or analogous ground, the General Division considered whether the ground he was really referring to was economic status (as the Minister argued). Economic status isn't a recognized analogous ground so the Claimant didn't identify a valid ground of discrimination on which he could rely. Without that, he didn't show a legal argument with at least a sliver of a chance of

⁸ See AD1-9.

⁹ See paragraphs 37 to 48 in the General Division's interlocutory decision for the analysis about the requirements for a section 15 Charter argument. The General Division relied on paragraph 28 in the Supreme Court of Canada's decision in *R v Sharma*, 2022 SCC 39 for the requirement for an enumerated or analogous ground of discrimination.

success, so his Notice didn't comply with the Social Security Tribunal Regulations, 2022. The Charter aspect of the appeal wasn't allowed to continue.

- **The Claimant hasn't raised an arguable case for an error of law about the requirements for an equality argument under the Charter.**

[27] The Claimant has no arguable case for an error of law. It's settled law that section 15 of the Charter is specifically about the right to equal treatment under the law without discrimination based on the enumerated (or analogous) grounds. It is not about unequal treatment generally.

[28] The Claimant hasn't raised an arguable case for an error of law in the General Division's interlocutory decision about his Charter Notice.

There's no new evidence.

[29] The Claimant hasn't provided any new evidence. Accordingly, new evidence also cannot form the basis for giving the Claimant permission to appeal.

[30] I've reviewed the written record.¹⁰ I'm satisfied that there's no arguable case that the General Division overlooked or misunderstood any other evidence that could change the outcome of the appeal.

Conclusion

[31] I've refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

¹⁰ For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.