

THE TAX COURT OF CANADA
IN THE MATTER OF The *OLD AGE SECURITY ACT*

BETWEEN:

OLIVETTE LARIVIÈRE

Appellant

- and -

THE MINISTER OF HUMAN RESOURCES DEVELOPMENT

Respondent

[OFFICIAL ENGLISH TRANSLATION]

Heard before the Honourable Justice Paris of the
Tax Court of Canada

DECISION

APPEARANCES:

Madeleine Larivière for the Appellant

Sonia Bellerive (Student-at-Law) for the Respondent

HELD AT:

The Tax Court of Canada
Motions Room, 2nd floor
200 Kent Street
Ottawa, Ontario

Wednesday, March 14, 2007

1 --- Upon commencing on Wednesday, March 14, 2007, at
2 9:31 a.m.

3 **THE REGISTRAR:** This Sitting of the
4 Tax Court of Canada, at Ottawa, is now resumed. Justice
5 Paris is presiding.

6 The Court will now deliver its
7 decision in file number 2006-1897(OAS) between Olivette
8 Larivière, Appellant, and the Minister of Human
9 Resources Development, Respondent.

10 For the Appellant, Madeleine
11 Larivière, and for the Respondent, Suzanne Bellerive.

12 **JUSTICE PARIS:** Good day.

13 **Ms. LARIVIERE:** Good day.

14 **JUSTICE PARIS:** You may be seated.

15 This matter is before me by way of a
16 reference under subsection 28(2) of the *Old Age*
17 *Security Act* (the Act).

18 The issue is whether the Respondent,
19 the Minister of Human Resources and Skills Development,
20 correctly determined the income of the Appellant for
21 the 2002 and 2003 reference years for the purpose of
22 calculating her Guaranteed Income Supplement for the
23 period from January 2004 to June 2005.

24 In calculating the Appellant's income

1 for reference years 2002 and 2003, the Respondent
2 relied on the income tax returns filed by the Appellant
3 to the Minister of National Revenue for those years.

4 The calculations for 2002 and 2003
5 determined the amount of the supplement to which the
6 Appellant was entitled for the payment periods of July
7 2003 to June 2004 and July 2004 to June 2005
8 respectively.

9 However, in January 2004, the
10 Appellant incurred a reduction in income from her
11 registered retirement savings fund, which entitled her
12 to file a statement of her estimated income with the
13 Respondent for the year 2004, pursuant to
14 subsection 14(4) of the Act.

15 This statement should have been used
16 to calculate the Appellant's income for reference years
17 2002 and 2003 for the purposes of calculating the
18 Guaranteed Income Supplement, and the Appellant should
19 have been entitled to a larger supplement as of
20 January 2004.

21 The relevant part of subsection 14(4)
22 reads as follows:

23 Where in a current payment period a
24 person who is an applicant . . . may,

1 not later than the end of the payment
2 period immediately after the current
3 payment period, in addition to making
4 the statement of income required by
5 subsection (1) . . . file a statement
6 of the person's estimated income for
7 the calendar year in which the loss is
8 suffered other than pension income
9 received by that person in that part
10 of that calendar year that is before
11 the month in which the loss is
12 suffered . . .

13
14 Yet, the Appellant did not file a
15 statement of estimated income for the year 2004 until
16 October 10, 2005.

17 The Respondent refused to accept this
18 statement on the grounds that it had been received
19 after the deadline of June 30, 2005, set out in
20 subsection 14(4) of the Act.

21 The Appellant claims that as of
22 March 28, 2005, the Respondent had all the information
23 necessary to recalculate her Guaranteed Income
24 supplement, which would have been before the deadline

1 set out in subsection 14(4).

2 The agent for the Appellant filed with
3 the Court a copy of the Appellant's Notice of
4 Assessment for taxation year 2004, sent by the Canada
5 Customs and Revenue Agency on March 21, 2005.

6 The agent also filed part of a letter
7 from the Agency specifying *inter alia* that the Agency
8 provided income information to the Canadian Department
9 of Social Development, which at the time was
10 responsible for administering the Guaranteed Income
11 Supplement, for clients who were required to provide
12 this information to the Department in order to continue
13 receiving their supplementary benefits.

14 The letter also stated that the
15 information in question was provided to the Agency on a
16 weekly basis.

17 The agent for the Appellant therefore
18 argues that the Respondent had received the details
19 respecting the Appellant's income for 2004 one week at
20 the latest after the Assessment Notice dated March 21,
21 2005, was sent.

22 However, this exchange of information
23 between the two departments does not render it
24 unnecessary for a beneficiary to file the statement

1 described in subsection 14(4) under the circumstances
2 contemplated therein.

3 The Act expressly requires the
4 beneficiary to file this statement, and to file it no
5 later than the end of the payment period immediately
6 after the current payment period.

7 It is common ground that the statement
8 filing deadline was June 30, 2007. It is also common
9 ground that the statement in question was not filed
10 until October 10, 2005.

11 The agent for the Appellant also
12 claims that she had contacted the Department of Human
13 Resources Development every year to find out whether
14 her mother (the Appellant) was required to file a new
15 application for the supplement and that she was told no
16 every time. Moreover, nobody from the Department had
17 ever told her about the requirement to file a statement
18 of estimated income following a reduction in the
19 Appellant's income.

20 Accordingly, the agent asks that the
21 Court apply section 32 of the Act, which reads as
22 follows:

23 Where the Minister is satisfied that,
24 as a result of erroneous advice or

1 administrative error in the
2 administration of this Act, any person
3 has been denied a benefit, or a
4 portion of a benefit, to which that
5 person would have been entitled under
6 this Act, the Minister shall take such
7 remedial action as the Minister
8 considers appropriate to place the
9 person in the position that the person
10 would be in under this Act had the
11 erroneous advice not been given or the
12 administrative error not been made.

13
14 First, the Minister's power under
15 section 32 is a discretionary power over which this
16 Court has no jurisdiction.

17 The decision regarding whether to
18 apply this provision is not related to the calculation
19 of income by the Minister of National Revenue, but
20 rather is made by the Respondent after the calculation
21 of income by the Minister of Revenue.

22 Only these calculations fall within
23 the jurisdiction of the Tax Court of Canada.

24 However, even if the Court could

1 decide that issue, the Appellant has failed, in my
2 opinion, to demonstrate that section 32 would apply in
3 this case.

4 Among the documents filed for this
5 Court are the notices sent by the Respondent to the
6 Appellant in July 2004, 2005 and 2006 with respect to
7 her Guaranteed Supplement.

8 These notices state the Appellant's
9 income for the relevant reference year, as well as the
10 amount of the monthly benefit for the current year.

11 On the back of the statement dated
12 July 2006, under the heading "2004 Income", the
13 following is written:

14 We usually use the amount of your
15 income from the **previous year** as
16 reported on you income tax return
17 (2004) or your application. However,
18 if you retire from your job, close
19 your business, or if your income from
20 another pension you receive goes down
21 or stops, please contact us.

22 We may be able to recalculate your
23 benefit using an estimate of your 2005
24 income.

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The backs of the 2004 and 2005 notices were not filed for the Court, but I have no reason to believe that the instructions would have been any different in those notices.

It therefore seems to me that the Appellant was aware of the need to contact the Department in the case of a reduction in her pension income and that she was first informed of this in July 2004.

In light of all the evidence, there was no administrative error by those in charge of the Department of Development that prevented the Appellant from filing a statement of estimated income pursuant to subsection 14(4) of the Act.

For this reason, section 32 of the Act does not apply in this case.

While I have sympathy for the Appellant in the circumstances of this case, I see no error in the Minister's refusal to accept the statement of estimated income filed by the Appellant for reference years 2002 and 2003. Accordingly, the appeal must be dismissed.

1 **THE REGISTRAR:** This hearing is now
2 adjourned.
3
4 Translation certified true
5 on this 30th day of July 2007.
6
7 Francie Gow