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(Court File No.)

FEDERAL COURT

BETWEEN:

The Estate of Yvonne Bennett

Neil Bennett

Applicant

And

Minister of Employment and Social Development Canada

Respondent

APPLICATION for JUDICIAL REVIEW

Section 18.1 of the Federal Courts Act

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of

hearing will be as requested by the applicant. The applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date)

Issued by:

Address of local office:

TO: Minister of Employment and Social Development Canada
Canada Pension Plan- Legal Unit
PO Box 2013 STN Main
Timmins, ON P4N 8C8
Phone: 1 800 277 9914

AND TO: Social Security Tribunal of Canada
PO Box 9812
Station T
Ottawa, ON, K1G 6S3
Email : info.sst-tss@canada.gc.ca
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Application

1. This is an application for judicial review in respect of the Social Security Tribunal (SST) decision to refuse leave to appeal to the Appeal Division: Tribunal file AD-22-824.
2. The email from the SST Appeal Division was received December 16, 2022. It contained a cover letter *Application for leave to Appeal - Refused.pdf* dated December 16, 2022 and a decision letter *Leave to Appeal Decision.pdf* dated December 15, 2022

The applicant makes application for:

3. Payment of the Canada Pension Plan death benefit for the estate of Yvonne Bennett who died on February 11, 2020

The grounds for the application are:

4. The argument presented to the SST in letters AD01 and GD06 was not addressed in the decision and remains unresolved:
5. **If** the Minister of ESDC calculated the contributory period correctly in November 1995 for payment of the Canada Pension, that contributory period would remain intact until the contributor dies. The contributory period should have been retained to determine the minimum qualification period (section 44(3) of the Act) for the death benefit.
6. The contents of letter GD06 provided references to 57(3) and 48(2),(4) of the Act with calculations to support the arguments for the death benefit.
7. The following statement was made by the SST member during the hearing of July 19, 2022: section 57 (3) “doesn’t establish the contributory period”¹. That statement overlooks the reference to and application of section 48(2),(4) where the initial step is to determine the number of month’s that are removed from the contributory period established in section 49.

¹ In the audio recording starting at 51:28 minutes

8. Nothing changed after November 1995. However, the contributory period established in 1995 was discarded and not used for the death benefit. A new contributory period was created under more restrictive conditions. Section 49 defined the start and end dates for the contributory period and was never disputed. The dispute is the application of the Child Rearing [subsections 48(2) and 49(d)] and General [subsection 48(4), (5)] provisions/exclusions that reduce the contributors contributory period. They were not applied correctly to the contributory period. If they were, the estate would meet the “minimum qualification period” for payment of the death benefit.
9. There’s a conflict with the SST statement in paragraph 16 of the “*General Division Income Security Decision.pdf*” letter (AD01A) which stated provisions make it easier for the applicant to qualify for benefits when they have low periods of income. In this situation provisions were excluded to make it more difficult to qualify for the death benefit.
10. The death benefit application was submitted February 27, 2020 and denied on March 25, 2020 (GD02-10). The reconsideration application was submitted July 21, 2020 and denied on January 27, 2021 (GD01-10). The minister never acknowledged the Child Rearing and General provision in the denial letters.
11. A General Division appeal was submitted to the Social Security Tribunal on April 30, 2021. (GD01).
12. The minister never provided any information about the Child Rearing and General provisions when the SST requested all CPP documents for Yvonne Bennett on May 6, 2021(GD02).
13. The minister submitted a “Recommendation to Summarily Dismiss” letter to the SST dated June 30, 2021 (GD03). Within that letter there was disclosure that the Child Rearing had been applied to the contributory period in November 1995; the years 1966 and 1967 were removed from the contributory period. Six months from 1968 were not mentioned. The General provision did not receive any consideration.
14. The “*General Division Income Security Decision.pdf*” letter dated August 14, 2022 (AD01A) supported the removal of two full calendar years from the

contributory period and excluded the six months from 1968. The argument remains that the Child Rearing provision is determined in months not truncated to the next full year.

15. The *General Division Income Security Decision.pdf* (AD01A) followed the analysis and conclusions presented in a case identified as *Abbott v Minister of Social Development, 2005 CP21427*. That reference was disputed in the application *Request for Leave to Appeal.pdf* (AD01-9) and was discounted when the application for leave was refused (*Leave to Appeal Decision.pdf*).
16. *Abbott v Minister of Social Development, 2005 CP21427* is about a Child Rearing provision for a disability claim. In that case (in paragraph 14), the application of full calendar years (instead of months) for subsection 44(2)(b)(iv) was validated by making reference to the text in subparagraph 44(2)(a)(i). The refusal decision letter (*Leave to Appeal Decision.pdf*) stated that subsection 44(2)(b)(iv) and 49(d) “is worded almost identical” and concluded the meaning was the same.

Paragraph 19 from the “*Leave to Appeal Decision.pdf*” letter that refused leave:

[19] I disagree. The General Division appropriately cited a case called *Abbott*, which held that a contributor who receives family allowance for only part of a year is not entitled to drop any portion of that year out of the contributory period.¹⁰ Although *Abbott* is about a claim for the CPP disability pension, rather than the death benefit, its principle applies just as well to this case. That is because it addresses a child-rearing exclusion that is worded almost identically to the one at issue here.¹¹

¹⁰ See *Abbott v Minister of Social Development, 2005 CP21427* (PAB).

¹¹ Section 42(2)(b)(iv) excludes periods of child rearing from the disability contributory period. Section 49(d) excludes periods of child rearing from other contributory periods.

17. It’s an error for the SST to state the *Abbott* case was “appropriately cited”. The context of 44(2)(b)(iv) in *Abbott v Minister of Social Development* changed when it was referenced to subparagraph 44(2)(a)(i), a paragraph which made reference to calendar years. The context of section 49(d) in the Act is therefore different and the two cannot be compared when the wording is almost identical. The context of subparagraph 44(2)(a)(i) and subsection 44(2)(b)(iv) do not

apply to this estate, there is no disability claim. Section 48(1) identifies the contributory period as “*the total number of months in his contributory period*”. Child Rearing should be calculated in month’s as stated section 48 (2) and 49(d) then removed from the contributory period. This should have been the situation in November 1995 then carried forward for the death benefit.

18. Application of the General provision, subsection 48(4), has not been resolved. The appellant’s argument was never discussed in the context presented (GD06) with reference to November 1995. The appellant’s argument to include the general provision for the death benefit was discussed in GD06-3 with reference to subsection 57(3) where subsection 48(2) and (4) reduced the contributory period before calculating the minimum qualification period for a death benefit. Subsection 48 (4)(a)(i) was subject to subsection 48(5).

48(4)(a)

(i) subject to subsection (5), if the retirement pension or **other benefit** becomes payable commencing with a month before January 2012, fifteen per cent of the number remaining...

During the hearing the appellant asked about the application of Section 48(5) and was told “that could be a retirement benefit²”;

Subsection 48(5)

Exception — same percentage

(5) **The percentage** used in a calculation of the amount of average monthly pensionable earnings under subsection (4) **is to be used in the calculation of other benefits** based on that amount.

R.S., 1985, c. C-8, s. 48; R.S., 1985, c. 30 (2nd Supp.), s. 16; 1997, c. 40, s. 70; 2009, c.31, s. 34; 2012, c. 31, s. 196.

In subsection 48(4)(a) and 48(5) the use of the words “other benefits” doesn’t suggest it applies only to a retirement benefit and it doesn’t exclude a death benefit. As emphasized, “**The percentage... is to be used in the calculation of other benefits**”. This supports the argument that the contributory period established in November 1995 should be retained for the death benefit.

² in the audio recording starting at 35:10 minutes.

19. The argument moves to section 2(1) of the Act.

20. In the application “*Request for Leave to Appeal.pdf*“, the paragraph listed below from AD01-10 never received a response. There was a tendency in the *General Division Income Security Decision.pdf* (AD01A-5 paragraph 20) to interchange words:

The words “average monthly pensionable earnings” were substituted with the words “amount of benefit a person will receive”. It appears the word “benefit” was used to define a retirement pension. In section 2(1) of the Act, the word “benefit means a benefit payable under this Act and includes a pension”. Are the words “average monthly pensionable earnings”; “retirement pension” and “benefit” used as synonyms thorough out the Act?

Clarification:

21. A misunderstanding surfaced in letters AD01A and *Leave to Appeal Decision.pdf* (paragraph 14). The 15% general provision was correctly quoted in letter GD06 for the time period of November 1995³. The decisions makers did not take that into consideration.

22. The calculations for child rearing provision were missing six month’s for 1968 and the estate did not request a deduction of an entire year from the contributory period as stated in paragraph 14 of “*Leave to Appeal Decision.pdf*”. The SST decision remained focused on the interpretation in case of *Abbott v Minister of Social Development*.

23. This application will be supported by the following material:

- i. *Application for Leave to Appeal - Refused.pdf* (cover letter dated December 16, 2022)
- ii. *Leave to Appeal Decision.pdf* (refused December 15, 2022)
- iii. AD01 *Request for Leave to Appeal.pdf* (November 13, 2022)

³ 48 (4)(a)(i) shown above bottom of page 5

- iv. AD01A *Copy of General Division Income Security Decision.pdf (August 14, 2022)*
- v. GD06 *Appellant Submission.pdf (March 7, 2022)*
- vi. GD05 *ESDC NOR + Submissions.pdf (August 25, 2021: Notice of readiness)*
- vii. GD04 *Tribunal member decision- Respondents Request for summary dismissal.pdf (July 30, 2021: request not suitable for summary dismissal)*
- viii. GD03 *ESDC Recommendation to Summarily Dismiss.pdf (June 30, 2021)*
- ix. GD02 *Reconsideration file.pdf (May 28, 2021)*
- x. GD01 *Notice of Appeal.pdf (April 30, 2021)*
- xi. *cp21427-e.pdf* Abbott v Minister of Social Development, 2005 CP21427
- xii. A 90 minute audio recording of the July 19, 2022 hearing not formatted for E-Filing. SST File is “ROH GP-21-1028 July 19, 2022_01.mp3”.

24. The applicant requests the Social Security Tribunal send a certified copy of the materials that are in the possession of the Social Security Tribunal to the Registry. The materials are listed above as items 23 “i” through “xii” inclusive. Most of the material contains confidential information of the applicant.

January 15, 2023



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[SOR/2021-151, s. 22](#)