



Court File No. A-469-15

**FEDERAL COURT OF APPEAL**

**INCOME SECURITY ADVOCACY CENTRE**

**Applicant**

**and**

**PHILIP METTE and ATTORNEY GENERAL OF CANADA**

**Respondents**

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**APPLICATION UNDER section 28(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7**

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TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

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 Ottawa, 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 prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where 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: October 27, 2015

Issued by:

*Charlotte McCullough*  
Regional Office  
Agent in Charge

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(Registry Officer)  
Address of local office:  
180 Queen Street West, Suite 200  
Toronto, Ontario M5V 3L6

TO: Deputy Attorney General of Canada William F. Pentney  
c/o Department of Justice – Ontario Regional Office  
The Exchange Tower  
Box 36  
130 King Street West, Suite 3400  
Toronto, Ontario  
M5X 1K6

Lawyer for the Respondent Attorney General of Canada

AND TO: **Nathan M. Ross**  
Ross & Associates  
869 William Street  
Cobourg, Ontario  
K9A 3A8

Tel: 905-377-8385  
Fax: 905-377-0526

Lawyer for the Respondent Philip Mette

## APPLICATION

**This is an application for judicial review** in respect of a decision made by the Social Security Tribunal (Appeal Division) on September 18, 2015 and communicated to the applicant on September 28, 2015, dismissing an application by the applicant to intervene in the appeal of the Respondent, Philip Mette.

**The applicant makes application for:**

1. If the Social Security Tribunal (Appeal Division) has not yet ruled on the merits of the underlying appeal, an Order granting the application for judicial review and referring the intervention application back to the Tribunal for redetermination before a different Tribunal member with specific directions.
2. If the Social Security Tribunal (Appeal Division) has ruled on the merits of the underlying appeal, a Declaration that the Social Security Tribunal has the jurisdiction to grant interventions in the public interest;
3. Such other relief as counsel may advise and this Honourable Court may permit.

**The grounds for the application are:**

1. The Income Security Advocacy Centre is a specialty legal clinic with a provincial mandate to conduct systemic litigation to improve income security for low-income Ontarians, with a particular emphasis on income security programs. The Centre has been involved in numerous test cases and interventions and the expertise of its staff has been recognized by government. The Centre works with low-income communities, legal clinics and organizations across the province.

**A. Background on the Underlying Appeal**

2. Mr. Mette applied for a disability pension from the Canada Pension Plan. His application was denied. He appealed that decision to the Review Tribunal. The Review Tribunal dismissed his appeal on May 18, 2004.
3. On October 22, 2012, Mr. Mette submitted an application to the Review Tribunal to have the appeal decision “rescinded” or “amended” on the basis of new evidence (“new facts application”). At the time there was no time limit within which such an application had to be brought.
4. The *Jobs, Growth and Long-Term Prosperity Act*, S.C. 2012, c. 19 made significant changes to the appeal processes, including the replacement of the Review Tribunal with the Social Security Tribunal on April 1, 2013.
5. The *Act* included detailed transitional provisions for the transfer of cases already in process to the Social Security Tribunal. The *Act* also established, as of April 1, 2013, a one year time limit for bringing new facts applications.
6. By March 31, 2013, the Review Tribunal had not heard Mr. Mette’s new facts application and it was transferred to the Social Security Tribunal with the rest of the Review Tribunal’s unheard cases.
7. After hearing the appeal, the General Division held that Mr. Mette’s appeal was statute barred. The Tribunal concluded that the new one year time limit applied to on or after April 1, 2013. Because the transitional legislation deemed Mr. Mette’s

to have been made on April 1, 2013, the Tribunal held that the new facts application of time. The Tribunal also found that in any event Mr. Mette had not met the test for evidence.

8. The Appeal Division of the Social Security Tribunal granted leave to appeal on the issue of whether the transitional legislation terminated Mr. Mette's new facts application. Thus, the appeal will directly address a legal question with potential impact far beyond the direct parties to the litigation: whether "new facts" applications filed more than a year before the establishment of the Social Security Tribunal are statute-barred.

**B. The application to intervene**

9. Mr. Mette's appeal has the potential to impact upon the substantive and access to justice rights of vulnerable litigants who are seeking benefits from a social insurance scheme that they are required to contribute to and upon which they rely in the event that they can no longer work due to disability. The community that the Income Security Advocacy Centre works with and serves will be affected by the outcome of the appeal.
10. While the *Social Security Tribunal Regulation*, SOR/2013-60 has made provision for the addition of parties who have a "direct" interest in an appeal, it is silent on the granting of interventions in the "public interest." However, the *Regulation* provides that procedural questions not addressed in the *Regulation* should be approached by way of analogy to the *Regulation*. The Tribunal also has broad power to control its own process.

11. Relying upon these procedural powers and in light of the public interest issues, the Income Security Advocacy Centre submitted an application seeking leave to intervene in the appeal as a public interest intervener. The Centre did not request to be added as a party.
12. The Centre stated it would limit its participation to legal submissions on one issue: whether the new facts application was statute-barred. In response, the Tribunal set a timeline for the Respondents to make written submissions in response to the application. Ultimately, the Respondent Mr. Mette supported the application. The Respondent Attorney General of Canada opposed the application.
13. Despite a request by the Income Security Advocacy Centre, the Tribunal did not establish a process by which the Centre could reply to the submissions of the parties. While the Centre filed a written reply, the reply was not referenced or considered by the Tribunal in its decision.

### **C. The Tribunal's Decision**

14. On September 18, 2015, the Social Security Tribunal (Appeal Division) denied the application on the basis that the Tribunal lacks jurisdiction to allow a public interest intervention and that the Income Security Advocacy Centre lacked the necessary direct interest to establish the right to be added as a party. That decision was received by the Income Security Advocacy Centre on September 28, 2015.
15. The grounds of this application for judicial review include:
  - a) In concluding that the legislation governing the Tribunal does not provide for the granting of public interest intervener status, the Tribunal erred in law in its

interpretation of the *Department of Employment and Social Development Act* and the *Social Security Tribunal Regulations*.

- b) The Tribunal adjudicated the application as though it was a request to be added as a party with a direct interest in the appeal. As a result, the Tribunal applied the wrong legal test. As noted above, the Centre never sought to be added as a party under the *Regulation*, but as a public interest intervener.
  - c) The Tribunal violated the principles of natural justice by ignoring a request by the applicant to respond in writing to the parties and by failing to consider the reply submissions that were made.
  - d) Such other grounds as counsel may advise and this Honourable Court may permit.
16. *Federal Courts Act*, R.S.C., 1985, c. F-7, ss. 18, 18.1, 28(1).
17. *Canada Pension Plan*, RSC 1985, c. C-8, s. 84(2) (version in force October 22, 2012).
18. *Jobs, Growth and Long-Term Prosperity Act*, S.C. 2012, c. 19, cl. 223- 225, 229, 252, 255-270, 281.
19. *Department of Employment and Social Development Act*, SC 2005, c 34, ss. 66(1)(b), 66(2).
20. *Social Security Tribunal Regulations*, SOR/2013-60, ss. 3(2), 10, 42-44.
21. Such other grounds as counsel may advise and this Honourable Court may permit.

**INCOME SECURITY ADVOCACY CENTRE**

Applicant

- and -

**PHILIP METTE and ATTORNEY GENERAL OF  
CANADA**  
Respondents

Court File No.

**FEDERAL COURT OF APPEAL**

**APPLICATION**

**Income Security Advocacy Centre**  
425 Adelaide Street West, 5<sup>th</sup> Floor  
Toronto, ON M5V 3C1

**Jackie Esmonde (LSUC # 47793P)**

Tel: 416-597-5820

Fax: 416-597-5821

E-mail: [esmondja@iao.on.ca](mailto:esmondja@iao.on.ca)

**Lawyer for the Applicant**