



# Representatives' Bulletin

This newsletter is meant primarily for those who appear as representatives before a Canada Pension Plan or Old Age Security Review Tribunal. We want to keep you informed of developments at the OCRT and articulate our expectations of Appellants and their Representatives. We also hope that the Bulletin will inspire you to learn more about the Review Tribunal process and to tell us how it can be made better for all.

Julie E. Gagnon  
Commissioner

## Filing a Late Appeal

In fiscal year 2010-2011, the OCRT received over 4,400 appeals of which 326 (7.4%) were submitted over the 90-day appeal period prescribed by the *Canada Pension Plan* and *Old Age Security* legislation. While the Commissioner has the authority to accept appeals over the 90-day appeal period, acceptance is not automatic. The Federal Court has provided direction to the Commissioner for the review and acceptance of late appeals.

The Commissioner of Review Tribunals has the authority to extend the appeal period under certain circumstances. The Federal Court in Canada (*Attorney General*) and *Robin Pentney* and the *Office of the Commissioner of Review Tribunals*, 2006 FC 96 concluded that the criteria established in Canada (*Minister of Human Resources Development Canada*) v. *Gattellaro*, 2005 FC 883 are relevant, but are not the only considerations which must be taken in account by the Commissioner when deciding on an application to extend the appeal period.

### CPP – Section 82 (1)

A person who is not satisfied with a decision of the Minister made under section 81 or subsection 84(2), or a person who is dissatisfied with a decision made under the *Old Age Security Act* or, subject to the regulations, any person on their behalf, may appeal the decision to a Review Tribunal in writing within 90 days, or any longer period that the Commissioner of Review Tribunals may, either before or after the expiration of those 90 days, allow, after the day on which the party was notified in the prescribed manner of the decision or the person is notified in writing of the Minister's decision and of the reasons for it.

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## Filing a Late Appeal (continued)

**The criteria established in *Gattellaro* are:**

- a) A continued intention to pursue the application or appeal;
- b) The matter discloses an arguable case;
- c) There is a reasonable explanation for the delay; and
- d) There is no prejudice to the other party in allowing the extension.

If you are aware at the time of submitting the appeal request, that the 90-day appeal period has expired, it is recommended that you address each of the factors noted above and any other information you feel is relevant in your letter of appeal. This will expedite the Commissioner's decision and scheduling of the appeal if accepted. Should the request be refused, you will be notified of that decision by letter with reasons. If you do not provide the information to permit the Commissioner to render a decision, we will contact you.

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## Coming this summer – A Revised OCRT Website

On November 29, 2010, the Federal Court of Canada ruled that all Government of Canada public-facing websites must meet the government's Web Content Accessibility Guidelines within 15 months. The OCRT had already begun to revise its site to conform to the updated Common Look and Feel 2.0 Standards and Guidelines for websites established by the Treasury Board of Canada, including to ensure all its content was accessible to those with visual impairments.

Our new website is expected to be launched this summer and will continue to include a section targeting Representatives before a Review Tribunal.

## Authorization to Disclose

As noted in our December 2009 newsletter, legal Representatives submitting an appeal request on their firm's letterhead are not required to submit an *Authorization to Disclose* form. This contrasts with Human Resources and Skills Development policy which requires a signed "Consent to Communicate" form from the applicant in order for it to release information to any Representative.

However, we ask that the name of the lawyer having carriage of the file be clearly identified in the appeal letter. Appeal letters are often signed by the Representative's assistant without an indication of the lawyer's name. The assistant's name is entered into the OCRT database which means that future correspondence is automatically generated in the name of the assistant. This results in confusion for Appellants who receive a copy of the correspondence with their Representative incorrectly named.

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## MQP, Disability Payment and the Division of Unadjustable Pensionable Earnings (DUPE)

The general rule regarding the calculation of the CPP Disability payment date is that payments start four months after the date of disability. There are two exceptions to this rule. One applies to an Appellant who satisfies the MQP requirement only by reason of a DUPE. This does not happen often but can be problematic if parties are not clear on the rules. The following example illustrates how this exception applies.

Mrs. C. applied for a CPP Disability benefit and a DUPE in March 2008. Without the DUPE i.e., based on her own earnings, Mrs. C. had an MQP of December 1995. With the DUPE, her MQP was extended to December 2001. A Review Tribunal found her disabled and established a

Date of Onset of disability as November 2001.  
In this case, Mrs. C's Date of Onset is after the MQP calculated without the DUPE, but before the MQP calculated with the DUPE. The earnings that Mrs. C. received through the DUPE were necessary to qualify for the disability benefit and the payment date of her disability benefit is governed by subsection 55.2(9) of the CPP.

Subsection 55.2(9) of the CPP states that the disability benefit cannot be paid for the month the division takes place or any earlier. A division takes places the month the DUPE application is received by the Human Resources and Skills Development Canada (section 54.2 of the CPP Regulations). As a result when subsection 55.2(9) applies, payment of the disability benefit will start the month after the DUPE application is received. This is commonly referred to as the "date of attribution" (subsection 54.2(2) of the CPP Regulations). Put more simply, when this exception applies, payment of the disability benefit commences with the date of attribution.

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## OAS Detailed Subject Index

Those of you who have attended an OCRT hosted workshop for Representatives have received a copy of the CPP Detailed Subject Index of case law and the CPP legislation. An OAS Detailed Subject Index and the OAS legislation are now available. If you wish to obtain an updated copy of either Index in CD-Rom format, you may send your request to [info@ocrt-bctr.gc.ca](mailto:info@ocrt-bctr.gc.ca). Be sure to include your name and complete address.

## Contact us

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### Ideas Corner

Do you have a suggestion for an article?  
Is there something you want to know  
or learn more about?  
Contact me with your ideas.

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