

Docket: 2023-1297(OAS)

BETWEEN:

EDDIES L.K. CHAN,

Appellant,

and

THE MINISTER OF EMPLOYMENT, WORKFORCE  
DEVELOPMENT AND OFFICIAL LANGUAGES,

Respondent.

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Reference heard on March 13, 2024 at Toronto, Ontario

Before: The Honourable Justice John C. Yuan

Appearances:

Agent for the Appellant: Ivan Wong

Counsel for the Respondent: Audrey Turcotte

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**JUDGMENT**

In accordance with the attached Reasons for Judgment this Court makes the following findings with respect to the Appellant's income or income from a particular source (or sources) insofar as they relate to the Appellant's appeal of the Minister's decision under section 27.1 of the *Old Age Security Act* ("**OAS Act**") on the following basis:

1. For purposes of section 14 of the OAS Act, the Appellant is not required to include his 2018 or 2019 lump sum withdrawals from his RRIF in computing his estimated income under subsection 14(2), or paragraphs 14(5)(a) and (b), and that his estimated income under those provisions are \$6,160.00 of 2018 estimated income under subsection 14(2), \$90.00 of 2018 estimated income under paragraph 14(5)(b), and \$162.84 of 2019 estimated income under paragraph 14(5)(a);

2. For purposes of sections 12 and 12.1 of the OAS Act, the Appellant's incomes for the base calendar years are, as follows: (i) for months in the payment period June 2017 to July 2018, income for the base calendar year is the \$56,909.00 income for the 2016 calendar year, (ii) for months in the payment period June 2018 to July 2019, income for the base calendar year is the \$42,394.00 income for the 2017 calendar year, and (iii) for months in the payment period July 2019 to June 2020, income for the base calendar year is the \$4,117.84 income for the 2018 calendar year; and
3. For purposes of section 18 of the OAS Act, the Appellant's "actual income" is, as follows: (i) in relation to the GIS benefits paid pursuant to an estimate of income for the 2018 calendar year under subsection 14(2), actual income is \$4,117.84 income for the 2018 calendar year, (ii) in relation to the GIS benefits paid pursuant to an estimate of income for the 2018 calendar year made under paragraph 14(5)(b), actual income is \$4,117.84 income for the 2018 calendar year, and (iii) in relation to the GIS benefits paid pursuant to an estimate of income for the 2019 calendar year made under paragraph 14(5)(a), actual income is \$3.00 income for the 2019 calendar year.

In accordance with Section 45 of the *Old Age Security Regulations*, there will be no award as to costs.

Signed at Toronto, Ontario, this 6<sup>th</sup> day of June 2024.

"John C. Yuan"

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Yuan J.

Citation: 2024 TCC 83  
Date: 20240606  
Docket: 2023-1297(OAS)

BETWEEN:

EDDIES L.K. CHAN,

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THE MINISTER OF EMPLOYMENT, WORKFORCE  
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Respondent.

**AMENDED REASONS FOR JUDGMENT**

Yuan J.

[1] The Appellant, Mr. Chan, appealed to the Social Security Tribunal (“SST”) pursuant to subsection 28(1) of the *Old Age Security Act* (“OAS Act”) from a March 2, 2022 reconsideration decision of the Minister of Employment and Social Development (predecessor to the Respondent). The reconsideration decision responds to the Appellant’s request under section 27.1 of the OAS Act for the Minister to reconsider the determination reflected in a letter to the Appellant dated January 28, 2020.

[2] The Minister’s January 28, 2020 letter concerned the Appellant’s entitlement to monthly guaranteed income supplement (“GIS”) benefits for months within three twelve-month periods – namely, July 1, 2017 to June 30 2018, July 1, 2018 to June 30, 2019, and July 1, 2019 to June 30, 2020 – having regard for the Appellant’s retirement from employment with Carstar Markham on January 19, 2018. The Minister’s reconsideration decision confirmed the position reflected in the Minister’s January 28, 2020 letter.

[3] Since one of the grounds (and, in fact, the only ground) of the Appellant’s appeal to the SST was the correctness of the Minister’s determination of the Appellant’s income or the Appellant’s sources of income for months occurring in

the three periods, the SST was required by subsection 28(2) of the OAS Act to initiate a reference to this Court for a decision.

[4] What follows are the Court's reasons for decision on the matters associated with the Appellant's appeal that subsection 28(2) of the OAS Act required the SST to refer to this Court.

## **I. BACKGROUND**

[5] The GIS is a monthly non-taxable, monetary supplement that can be received by Canadian-resident individuals who receive Old Age Security pension and have low annual incomes.

[6] Conceptually, the OAS Act targets the GIS towards low-income individuals by (i) looking at the annual income earned in a recent calendar year, (ii) expressing the income from the prior year as a monthly amount by dividing it by twelve, and (iii) then clawing back the GIS amount payable for a month by one dollar for every two or four dollars of the individual's monthly income from the prior year, depending on whether the portion of the person's GIS monthly entitlement is being computed under section 12 or 12.1 of the OAS Act.

[7] An individual's GIS entitlement is normally income-tested using his or her income from the full calendar year that precedes the twelve-month period beginning on July 1 of a year that includes the particular month. In the OAS Act, the twelve month period that begins on July 1 of a year and ends on June 30 of the following year is defined as a "payment period" and the calendar year that immediately precedes a payment period is regarded as the "base calendar year" in relation that payment period. So, on this basis, an individual's GIS entitlement is normally income-tested using the person's annual income for a calendar year that ended between six and 18 months before the month for which his or her GIS entitlement is being computed.

[8] However, once an individual reaches retirement age and ceases working or carrying on a business, the GIS regime recognizes that it would be inappropriate to have post-retirement GIS benefits income-tested using annual income that was earned in a year throughout which the individual was working. Consequently, the GIS regime has always included special rules that changed the way the claw back is computed for persons who retire, so that the income-testing is based on their reduced monthly income as a retiree. While these special rules initially contemplated only

retirement scenarios, they were expanded to include situations where a person would be receiving less pension income than he or she was enjoying in prior years. These special rules are often described as the “option method”, even though they are not described as such in the OAS Act.

[9] As far as the Appellant and the Minister are concerned, their appeal is about the application of the option method regime as a consequence of the Appellant’s retirement from employment on January 19, 2018 and, more particularly, the extent to which the Appellant’s post-retirement lump sum withdrawals from a registered retirement income fund affected his GIS entitlements for payment periods covered by the applicable option method rules in the GIS regime.

## **II. THE OPTION METHOD**

[10] As mentioned earlier, the claw back to a person’s monthly GIS entitlement is based on the individual’s income for the relevant base calendar year. By virtue of the definition of “income of a person for a calendar year” in section 2 of the OAS Act, that income is computed in accordance with the rules for calculating the income of individuals under the *Income Tax Act* (Canada) (“ITA”) subject to certain express modifications.

[11] The OAS Act contemplates that, in the usual case (*i.e.*, situations not covered by the option method), an individual would make a new GIS application for each twelve-month payment period and such application would include a statement of the individual’s income for the base calendar year in relation to that period. However, as a practical matter, GIS applicants do not submit a statement of income for the base calendar year with their application because income information for the relevant base calendar year is usually available to the Minister before the start of the particular payment period through the applicant’s tax filings with the Canada Revenue Agency.

[12] Subsections 14(1) and (1.01) are the provisions of the OAS Act that establish the requirement for a GIS applicant to file a statement of income for the base calendar year and the Minister’s authority to waive this requirement where the information is already available to the Minister. And, subsections 14(1.1) and (1.2) of the OAS Act allow the Minister to estimate a person’s income for a base calendar year where the Minister has waived the requirement that the person make a GIS application under subsection 11(3.1) or (4).

[13] The remaining parts of section 14 of the OAS Act, namely subsections 14(2) to (7), comprise the rules for the option method. Subsections 14(2), (3), and (5) cover situations where an individual has retired from an office or employment or ceased to carry on a business. Subsections 14(4) and (6) cover situations where an individual has stopped receiving income from a pension that was previously providing income. Subsection 14(7) ensures that a person does not receive GIS monthly benefits based on the income computed pursuant to an option method rule before the month that follows the start of retirement from employment or business or reduction of pension income, as the case may be.

[14] Each of subsections 14(2) to (6) contemplates that the individual who wants the option method applied would provide an estimate of annual income and the Minister would pay GIS benefits for the relevant period with the claw back based on the estimated income thus calculated rather than the annual income for the base calendar year for that payment period.

[15] There are multiple option method rules for computing estimated income for a payment period because the reduction to an individual's income due to retirement or reduction/loss of pension income would normally not have an impact on the GIS claw back for a month until the year of retirement or reduction/loss of pension income becomes the base calendar year for the payment period in which the month occurs. Having several estimated income formula under the option method addresses the fact that there is a lag of two or more twelve-month payment periods between (i) the year of retirement or reduction/loss of pension income, and (ii) the start of the first payment period that uses the year of retirement or reduction/loss of pension income as its base calendar year.

### **III. APPELLANT'S RETIREMENT: ESTIMATED INCOME**

[16] The Appellant retired from employment with Carstar Markham on January 19, 2018.

[17] The Appellant was eligible under Section 14 of the OAS Act to elect to have the Minister apply three rules under the option method by virtue of his retirement. Each rule applied to a different payment period and allowed the Appellant to provide a statement of estimated income to determine his post-retirement GIS entitlement for the period.

***Subsection 14(2) – Retirement During Payment Period***

[18] First, subsection 14(2) of the OAS Act allowed the Appellant to provide a statement of estimated income for the 2018 calendar year for use in determining his GIS entitlement for the July 1, 2017 to June 30, 2018 payment period in which he retired from Carstar Markham, which payment period has the 2016 calendar year as its base calendar year. (Subsection 14(7) applied to ensure that the Appellant only received monthly GIS payments based on estimated income computed in accordance with this rule for the five months in the payment period after his January 19, 2018 retirement.)

[19] Subsection 14(2) required the Appellant's estimated income for the year to include (i) any pension income received between February 1, 2018 to December 31, 2018 divided by 11 and multiplied by 12, (ii) income from any business or income from any office or employment received in 2018 other than his employment with Carstar Markham, and (iii) his income from the 2016 base calendar year but excluding all pension income, any income from a business, and any income from an office or employment.

***Paragraph 14(5)(b) – Retirement in Prior Payment Period***

[20] Next, paragraph 14(5)(b) of the OAS Act allowed the Appellant to provide a statement of estimated income for the 2018 calendar year for use in determining his GIS entitlement for the July 1, 2018 to June 30, 2019 payment period, which is the payment period that followed the one in which he retired from Carstar Markham. The July 1, 2018 to June 30, 2019 payment period has the 2017 calendar year as its base calendar year.

[21] Paragraph 14(5)(b) required the Appellant's statement of estimated income for the year to include (i) any pension income received between February 1, 2018 to December 31, 2018 divided by 11 and multiplied by 12, (ii) any business income or income from an office or employment received in 2018 other than income from his employment from Carstar Markham, and (iii) his income from the 2017 base calendar year but excluding all pension income, any income from a business, and any income from an office or employment.

***Paragraph 14(5)(a) – First Payment Period Starting After Year of Retirement***

[22] Finally, paragraph 14(5)(a) of the OAS Act allowed the Appellant to provide a statement of estimated income for the 2019 calendar year for use in determining

his GIS entitlement for the July 1, 2019 to June 30, 2020 payment period, which is the payment period that began after the end of the 2018 calendar year in which he retired from Carstar Markham. The July 1, 2019 to June 30, 2020 payment period has the 2018 calendar year as its base calendar year which, in the Appellant's case, includes January 2018 employment earnings for the stub period prior to his January 19, 2018 retirement.

[23] Paragraph 14(5)(a) required the Appellant's statement of estimated income for the year to include (i) any pension income received in 2019, (ii) any business income or income from an office or employment received in 2019 other than income from his employment with Carstar Markham, and (iii) his income from the 2018 base calendar year but excluding all pension income, any income from a business, and any income from an office or employment.

### ***Pension Income***

[24] As should be evident from the above descriptions of the components for estimated income, pension income received during the relevant calendar year is to be included under each computation.

[25] Section 14 of the *Old Age Security Regulations* ("**OAS Regulations**") defines the meaning of the expression "pension income" when used in section 14 of the OAS Act, as follows:

#### **Definition of Pension Income**

- 14.** For the purposes of section 14 of the Act, "pension income" means the aggregate of amounts received as
- (a) annuity payments;
  - (b) alimony and maintenance payments;
  - (c) employment insurance benefits;
  - (d) disability benefits deriving from a private insurance plan;
  - (e) any benefit, other than a death benefit, under the Canada Pension Plan or a provincial pension plan as defined in the Canada Pension Plan;



- (f) superannuation or pension payments, other than a benefit received pursuant to the Act or any similar payment received pursuant to a law of a provincial legislature;
- (g) compensation under a federal or provincial employee's or worker's compensation law in respect of any injury, disability or death;
- (h) income assistance benefits under a formal agreement referred to in subsection 33(1) of the Department of Human Resources Development Act by reason of a permanent reduction in the work force as described in that subsection; and
- (i) income assistance benefits under the Plant Workers' Adjustment Program, the Fisheries Early Retirement Program or the Northern Cod Adjustment and Recovery Program by reason of permanent reduction of the workforce.

[26] The foregoing language establishes an exhaustive (rather than inclusive) definition for "pension income" when applying the option method rules in section 14 of the OAS Act. Also, since the text of Section 14 does not use the expression "or similar payment" as an add-on to any of the enumerated payment types, a payment cannot be included as pension income simply because it shared some characteristics with the expressly enumerated payment types.<sup>1</sup>

#### **IV. THE PARTIES' POSITIONS**

[27] The dispute between the Appellant and the Minister concerns the treatment of discretionary amounts that the Appellant withdrew from his registered retirement income fund (RRIF) after his January 19, 2018 retirement from Carstar Markham – the Appellant made lump sum withdrawals from his RRIF of \$7,200.84 in 2018 and \$7,684.00 in 2019 – and whether such amounts are pension income for purposes of section 14 of the OAS Act and therefore within the scope of income that the option method rules required him to include when preparing his statements of estimated income.

[28] The Appellant submitted statements of estimated income for the 2018 calendar year to the Minister for purposes of computing his GIS entitlement under the option method for the period February 2018 to June 2018 (within the July 2017 to June 2018 payment period) and the July 2018 to June 2019 payment period. His

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<sup>1</sup> Paragraph 212(1)(d) of the ITA is an example of a provision that used this type of language to impose Part XIII tax on "rent, royalty or similar payment".

statements of 2018 estimated income did not include an anticipated 2018 withdrawal of the \$7,200.84 lump sum amount from his RRIF as pension income. The Minister initially accepted the Appellant's statements of 2018 estimated income for purposes of computing his GIS entitlement for the two periods.

[29] The Appellant then submitted a statement of estimated income for the 2019 calendar year to the Minister in support of using the option method for purposes of computing his monthly GIS entitlement for the July 2019 to June 2020 payment period. His statement of 2019 estimated income did not include an anticipated 2019 withdrawal of the \$7,684 lump sum amount from his RRIF as pension income.

[30] At some point, the Minister learned through the Appellant's tax filings that he withdrew \$7,200.84 as a lump sum from his RRIF in 2018. The Minister then made the determination that the Appellant's estimated income for 2018 should have included the \$7,200.84 payment from his RRIF for purposes of determining his monthly GIS entitlement for the seventeen-month period beginning February 2018 and ending June 2019.

[31] Based on the Appellant's representation to the Minister that no RRIF payments would be received in 2019 and to be consistent with the Minister's overall position that payments from the Appellant's RRIF are pension income for purposes of the option method rules, the Minister appears to have made a unilateral decision to apply the option method rule under subsection 14(6) of the OAS Act – available for situations where a person has suffered a loss/reduction of pension income from one year to the next – to make and use a statement of estimated income for the 2019 calendar year. However, after the Minister learned that the Appellant made a further \$7,684.00 lump sum withdrawal from his RRIF in 2019, the Minister reversed position on the availability of the subsection 14(6) option method rule because the Minister was now aware that the Appellant's RRIF payments continued into 2019. The Respondent advised at the hearing that the Minister currently takes the position that the Appellant's GIS entitlement for the July 2019 to June 2020 payment period should be based on a statement of estimated income for the 2019 calendar year computed in accordance with the rules in paragraph 14(5)(a) of the OAS Act and the Appellant was ineligible to use the option method rules under subsection 14(6).

[32] Based on the parties' oral submissions at the hearing and materials filed with the Court, the tables below reflect their respective positions on the required components for estimated income for purposes of determining monthly GIS entitlement for payment periods under the applicable option method rules that were

available to the Appellant due to his January 19, 2018 retirement from Carstar Markham.

***Subsection 14(2) – 2018 Estimated Income: July 2017 to June 2018 Payment Period***

	<b>Appellant</b>	<b>Respondent</b>
s. 14(2)(a) – any pension income received by the person in that part of that [2018] calendar year that is after the month in which the person ceases to hold that office or employment...divided by the number of months in that part of the calendar year and multiplied by 12	2018 CPP: \$6,160.00	2018 RRIF lump sum: \$7,200.84 2018 CPP: \$6,160.00
s. 14(2)(b) – the income from any office or employment or any business for that [2018] calendar year other than income from the office, employment or business that has ceased	Nil	Nil
s. 14(2)(c) – the person’s income for the [2016] base calendar year calculated as though, for that year, the person had no income from any office or employment or any business and no pension income	Nil	Nil
<b>Total 2018 Estimated Income</b>	\$6,160.00	\$13,360.84

***Paragraph 14(5)(b) – 2018 Estimated Income: July 2018 to June 2019 Payment Period***

	<b>Appellant</b>	<b>Respondent</b>
s.14(5)(b)(i) – any pension income received by the person in that part of that [2018] calendar year that is after the month in which the person ceases to hold that office of	2018 CPP: \$6,160.00	2018 RRIF lump sum: \$7,200.84 2018 CPP: \$6,160.00

employment...divided by the number of months in that part of the calendar year and multiplied by 12		
s. 14(5)(b)(ii) – the income from any office or employment or any business for that [2018] calendar year other than income from the office, employment or business that has ceased	Nil	Nil
s. 14(5)(b)(iii) – the person’s income for the [2017] base calendar year calculated as though, for that year, the person had no income from any office or employment or any business and no pension income	2017 interest income: \$12,987.00 2017 RRSP deduction: \$(19,057.00)	2017 interest income: \$12,987.00 2017 RRSP deduction: \$(19,057.00)
<b>Total 2018 Estimated Income</b>	\$90.00	\$7,290.84

***Paragraph 14(5)(a) – 2019 Estimated Income: July 2019 to June 2020 Payment Period***

	<b>Appellant</b>	<b>Respondent</b>
s. 14(5)(a)(i) – any pension income received by the person in that [2019] calendar year	2019 CPP: \$6,302.00	2019 RRIF lump sum: \$7,684.00 2019 CPP: \$6,302.00
s. 14(5)(a)(ii) – the income from any office or employment or any business for that calendar year other than income from the office, employment or business that has ceased	Nil	Nil
s. 14(5)(a)(iii) – the person’s income for the [2018] base calendar year calculated as though, for that year, the person had no income from any office or employment or any business and no pension income	2018 RRIF lump sum: \$7,200.84 2018 RRSP deduction: \$(13,340.00)	2018 RRSP deduction: \$(13,340.00)
<b>Total 2019 Estimated Income</b>	\$162.84	\$646.00

[33] These tables show how estimated income is impacted by the parties' respective positions on whether a lump sum withdrawal from an RRIF is pension income under the option method rules. Since the Appellant's position is that a lump sum RRIF withdrawal is not pension income, the only appearance of a lump sum RRIF withdrawal in the Appellant's computations of estimated income above is the inclusion of the 2018 withdrawal as part of the income from the 2018 base calendar year under subparagraph 14(5)(a)(iii) when computing estimated income for the July 2019 to June 2020 payment period; the Respondent does not include the 2018 RRIF withdrawal among the items in subparagraph 14(5)(a)(iii) because the Minister's position is that the Appellant's lump sum RRIF withdrawal is pension income and the language in that subparagraph expressly excludes pension income from the 2018 base calendar year from the amounts to be included in 2019 estimated income.

[34] It is also to be noted that the Respondent's positions on the amount to be included in estimated income for the 2018 calendar year pursuant to paragraph 14(2)(a) and subparagraph 14(5)(b)(i) in respect of the 2018 \$2,700.84 lump sum payment do not conform with the express wording of those provisions; the words used in those two provisions clearly require that, in the Appellant's case, any pension income received in 2018 after his retirement is to be divided by 11 months and then multiplied by 12. The Minister's interpretation that the \$7,200.84 lump sum payment is 2018 pension income would correspond to an income inclusion of \$7,854.55 ( $= \$7,200.84 \times 12 / 11$ ) in respect of that item. However, as will be discussed under the next heading, the fact that post-retirement pension income is to be pro-rated in this way under the rules in paragraph 14(2)(a) and subparagraph 14(5)(b)(i) is, in my view, instructive on the issue of whether the option method rules require a lump sum RRIF payment to be included as pension income.

## **V. TREATMENT OF LUMP SUM RRIF WITHDRAWALS**

[35] There appears to have been only two prior reported decisions of this Court that have directly considered the question of whether a lump sum payment from an RRIF qualifies as "pension income" for purposes of the option method rules.<sup>2</sup>

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<sup>2</sup> In *Katz*, 2012 TCC 232, this Court considered the treatment of RRIF payments under the option method rules but on the basis of the parties' agreement that RRIF payments were pension income for the purposes of Section 14 of the OAS Act.

[36] In *Ward*,<sup>3</sup> the appellant made a discretionary lump sum withdrawal from her RRIF in 2005, which was the base calendar year for the payment period under appeal. She wanted to have access to the option method rules and provide a statement of estimated income for 2006 – and thereby exclude the 2005 lump sum RRIF payment from the income that would be used to determine the claw back to her GIS entitlement – on the basis that she suffered a loss/reduction of pension income in 2006. The Court considered the Minister’s position that, as a category, payments from an RRIF are not pension payments under paragraph (f) of the “pension income” definition in section 14 of the OAS Regulations and then stated, “[w]hile these arguments have merit, they fall short of being compelling in my view.” The Court went on to assume (and counsel for the Minister appeared to concede) that the lump sum RRIF payments were pension income but the Court ultimately dismissed the appeal on the basis that, even assuming that the 2005 lump sum RRIF payment was pension income, the appellant did not suffer a loss/reduction of pension income in 2006 to allow her to use the option method for that year.

[37] In *Lévesque*,<sup>4</sup> the appellant retired from his employment in September 2011 and sought to have his GIS entitlement for the first six months of the July 2012 to June 2013 payment period determined on the basis of his post-retirement income situation, rather than his income from the 2011 base calendar year, which included pre-retirement employment income. In computing his estimated income for 2012, the Minister included a lump sum withdrawal made from a life income fund (which the Court found to be an arrangement that qualified as a RRIF under the ITA) on the basis that the payment was pension income pursuant to section 14 of the OAS Regulations. In the course of considering whether the lump sum payment could be an “annuity payment” (caught by paragraph (a) of the “pension income” definition) or a “superannuation or pension payment” (caught by paragraph (f) of the “pension income” definition), the Court stated the following [underlining added]:

[46] I recognize in certain cases, funds from an RRIF could be considered to be pension income. However, I disagree with the Respondent’s generalization. Whether or not something is a pension income within the meaning of the OAS Act is not determined by the financial vehicle; it is a question of law: do the funds in question constitute an annuity or pension payment? Section 14 of the Regulations was written in a restrictive and comprehensive manner; it was therefore Parliament’s intent to fully define what constitutes pension income within the

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<sup>3</sup> 2008 TCC 28.

<sup>4</sup> 2017 TCC 44.

meaning of section 14 of the OAS Act. For this reason, I believe that a generalization based on the nature of the financial vehicle is risky, even wrong.

[47] Indeed, as mentioned earlier, in order for funds to constitute an annuity or pension income for the purposes of section 14 of the Regulations, the funds must be paid on a recurring or regular basis. Therefore, if the taxpayer received \$1,500 annually from an RRIF, it is my opinion that these funds would constitute an annuity or pension income within the law. However, if the same taxpayer withdrew \$15,000 from the same RRIF within a particular taxation year, this withdrawal would not transform the funds into an annuity or pension within the meaning of section 14 of the Regulations, since the withdrawal is not and will never be made on a recurring or regular basis. It is therefore appropriate to consider each case as being unique rather than assuming that a specific financial vehicle will always produce an annuity or a pension.

[38] The Court went on to conclude that, in the appellant's circumstances, the lump sum payment from his life income fund was not pension income for purposes of computing his 2012 estimated income under the option method.

[39] In this reference, the Respondent embraces the observation in *Lévesque* that a regular stream of annual payments from an RRIF would cause those payments to be pension income and urges me to apply that same reasoning here to find that the Appellant's 2018 and 2019 lump sum RRIF withdrawals were both payments that constituted pension income within the meaning of section 14 of the OAS Regulations.

[40] Factually, the Respondent's position is based on the notion that, to qualify as an RRIF under the provisions of the ITA and *Income Tax Regulations*,<sup>5</sup> the terms of an RRIF must provide for annual minimum withdrawals by the annuitant of a prescribed percentage of the fair market value of all properties held in connection with the fund at the end of the year, starting on the calendar year following the one in which the annuitant established the plan. The prescribed percentage begins at just over 5% of the value of the plan's assets at the end of the year in which he or she turns age 71 and grows each year until topping out at 20% at age 95.

[41] At the hearing, the Appellant's representative provided a helpful chart that showed the minimum mandatory amount that the Appellant was required to withdraw under the terms of his RRIF. The chart showed that the lump sum RRIF withdrawals that the Appellant made in 2018 and 2019 correspond to the minimum

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<sup>5</sup> ITA, section 146.3 and the *Income Tax Regulations*, s. 7308(4).

amount that he was required to receive from his RRIF by statute. The chart also showed that the Appellant continued to make only the minimum mandatory withdrawal from this RRIF in each subsequent year until the present. In short, the chart showed that the Appellant's pattern of annual taxable receipts from his RRIF over the six-year period from 2018 was not totally dissimilar to what one might expect to see in a six-year window when a person is entitled to benefits under a typical employment-related pension plan.

[42] Having regard for the purpose underlying the option method regime – which is to allow an individual's GIS entitlement to be recomputed for a year solely to take into account income reductions in that year due to retirement or a loss/reduction of previously enjoyed pension benefits – it is arguably consistent with that purpose to include the minimum amount that the individual is required to withdraw from the RRIF in the year in accordance with the plan terms when estimating income for the year of retirement or loss/reduction of pension income. However, for the reasons discussed below, I have concluded that the Appellant's payments from his RRIF are not pension income, as defined in section 14 of the OAS Regulations.

### ***Dictionary and Other Meanings of the Relevant Terms***

[43] First, as this Court observed in *Lévesque*, the definition of “pension income” in section 14 of the OAS Regulations was written to be “restrictive and comprehensive.” As mentioned earlier, it is not enough that a payment shares common characteristics with one or more of the enumerated payment categories for the particular payment to be included in the scope of the “pension income” definition; rather, the payment must have all the indicia that one would expect to identify in an amount that is one of the enumerated “pension income” payment types.

[44] I note that, while pensions are arrangements that one normally associates with the receipt of benefits following retirement from employment, some of the enumerated payment types in section 14 of the OAS Regulations have nothing to do with employment or retirement whatsoever, such as alimony or maintenance payments or disability benefits and, in the case of annuity payments, there is nothing about an annuity contract that makes it inherently (or even typically) an arrangement that is associated with employment or retirement. This serves to emphasize the point that, for purposes of computing estimated income in section 14 of the OAS Act, the classes of payments that are “pension income” for purposes of section 14 of the OAS Act are entirely a creation of statute and, the question of whether a lump sum payment has the features of a pension is only relevant for determining whether the



payment is, in fact, a “pension payment” within the meaning of paragraph (f) of the definition of “pension income”.

[45] With this framework in mind, there are only two payment categories described in section 14 of the OAS Regulations under which a lump sum withdrawal from an RRIF could possibly qualify: an annuity payment (paragraph 14(a)), and a superannuation or a pension payment (paragraph 14(f)).

### **(i) Paragraph 14(a) – Annuity Payments**

[46] Starting with annuity payments, the term “annuity” is not defined in the OAS Regulations or the OAS Act. While “annuity” is among the definitions in subsection 248(1) of the ITA, the ITA does not purport to exhaustively define the term but rather ensures that its scope “includes an amount payable on a periodic basis payable at intervals longer or shorter than a year and whether payable under a contract, will or trust or otherwise.”

[47] However, a canvas of dictionary definitions for the term suggests that an annuity contemplates an arrangement under which periodic payments of a fixed amount are made to the recipient. For example, *The Oxford Dictionary of English* (3<sup>rd</sup> edition) defines an annuity as “a fixed sum of money paid to someone each year, typically for the rest of their life. a form or insurance or investment entitling the investor to a series of annual sums.” Similarly, *Black’s Law Dictionary* (11<sup>th</sup> edition) provides that an annuity is “[a]n obligation to pay a stated sum, usu. monthly or annually, to a stated recipient...A fixed sum of money payable periodically...A right often acquired under a life-insurance contract, to receive fixed payments periodically for a specific duration.”

[48] While the mandatory minimum withdrawal requirement under the terms of an RRIF might ensure that the plan’s owner (perhaps, ironically, a person that the ITA defines as the “annuitant”) will receive a stream of annual payments from the plan while there are still assets in the plan, the payment each year is not a fixed amount. Consequently, the mandatory minimum withdrawal requirements of an RRIF do not cause such arrangements to be an annuity and, accordingly, a payment from the RRIF is not within the scope of paragraph (a) of section 14 of the OAS Regulations.

### **(ii) Paragraph 14(f) – Superannuation or Pension Payments**

[49] I now turn to superannuation or pension payments.

[50] Neither the OAS Act nor the OAS Regulations contain a definition for “superannuation”.

[51] There is no definition for “pension” in the OAS Regulations. Section 2 of the OAS Act defines pension as “a monthly pension authorized to be paid under Part I [of the OAS Act]” but, since this provision was obviously included to create a short form reference for pension payable under the OAS Act rather than establishing the scope of arrangements to be considered a pension for purposes of the OAS Act, the section 2 definition is of no assistance for present purposes.

[52] Dictionary definitions for “superannuation” suggest that the expression is a synonym for “pension”, or that it is a type of pension. For example, the *Oxford Dictionary of English* (3<sup>rd</sup> edition) defines superannuation as “regular payment made into a fund by an employee towards a future pension. a pension of this type paid to a retired person.”

[53] Dictionary definitions for “pension” are more descriptive and typically reflect the concept that pension benefits are paid upon retirement from working life and often with contributions from the government or a former employer. For example, the *Oxford Dictionary of English* (3<sup>rd</sup> edition) defines a pension as “[a] regular payment made by the state to the people of or above the official retirement age and to some widows and disabled people. A regular payment made during a person’s retirement from an investment fund to which that person or their employer has contributed during their working life.” Similarly, *Black’s Law Dictionary* (11<sup>th</sup> edition) provides that a pension is “[a] regular series of payments made to a person (or the person’s representatives or beneficiaries) for past services or some type of meritorious work done; esp., such a series of payments made by the government... [a] fixed sum paid regularly to a person (or to the person’s beneficiaries), esp. by an employers as a retirement benefit.”

[54] The term “superannuation” is not defined in the ITA and, as discussed below, there is an ITA definition of “pension” whose use is restricted to subsection 118(1) of the ITA. Interestingly, the terms “superannuation” and “pension” appear together as part of a definition in subsection 248(1) of the ITA for “superannuation and pension benefit” but, like the definition for annuity in the ITA, this definition is not an exhaustive one and is directed at ensuring that its scope include not just benefits but any amount received out of such plans.

[55] In *Abrahamson*, 91 TCC 213, this Court had the opportunity to consider the scope of “superannuation or pension benefits” and whether the expression included

an individual's lump sum withdrawals from an individual retirement account (IRA) established under U.S. law.

[56] The IRA was a trustee plan in which the taxpayer and his spouse were the only beneficiaries. It was the vehicle to which the taxpayer transferred his entitlements under a pension plan relating to his former employment in the United States prior to his relocation to Canada in 1975. The taxpayer withdrew a \$85,126 lump sum amount from the IRA in 1986 and took the position that the amount was a distribution of capital from an *inter vivos* trust and, therefore, a non-taxable receipt under the ITA. The Minister reassessed the taxpayer on the basis that the lump sum payment from the IRA was a taxable receipt by virtue of being within the scope of "superannuation or pension benefits" in subparagraph 56(1)(a)(i) of the ITA.

[57] In the course of considering the ambit of "superannuation or pension benefits", the Court canvassed the English and French dictionary definitions of both expressions and then stated the following [underlining added]:

[23] Hence, the words "superannuation or pension benefit"...contemplate a payment of a fixed or determinable allowance paid at regular intervals to a person usually, but not always, as a result of termination of employment for the purpose of providing the person with a minimum means of existence; the formal program for the payment of the specified benefits, or the way the benefits are to be carried out, must be organized or promoted by a person other than the beneficiary since the beneficiary's right to receive the superannuation or pension benefits is determined by the superannuation or pension plan contemplated by subparagraph 56(1)(a)(i). In other words, the regularity and amount of the payments are made in accordance to the terms of the plan and not at the discretion or direction of the beneficiary.

[58] The Court first rejected the Minister's argument that the lump sum payment from the IRA should be regarded as pension benefits because the source of the funds used to establish the IRA was the taxpayer's entitlements under his pension plan with his former employer. The Court then decided that the lump sum payment from the IRA was not superannuation or pension benefits, as follows [underlining added]:

[30] The IRA was not a superannuation or pension plan as those words are used in the Act and the amounts received by Abrahamson from an IRA in 1986 were not on account of or in lieu of payment of or in satisfaction of a superannuation or pension benefit. The beneficiary of the IRA may have demanded the balance in his IRA at any time; payments out of the IRA were neither fixed, determinable nor paid at any regular intervals as are pension or superannuation benefits. For a payment to have been made out of an IRA at any particular time was the beneficiary's decision. The Act does not consider benefits from a RRSP to be superannuation benefits even when property from a pension plan was transferred to the RRSP and neither are

benefits from an IRA. The Act deals with pension and superannuation benefits separately from other retirement funds such as a RRSP.

[59] The Court thus found that an arrangement provides superannuation or pension benefits if it provides for payments that are (i) fixed or determinable, (ii) paid at regular intervals, and (iii) not at the discretion of the beneficiary.

[60] The indicia for superannuation or pension benefits identified in *Abrahamson* can be applied to the payments from the Appellant's RRIF. While the Appellant's RRIF terms may provide for periodic payments in the form of minimum mandatory withdrawals, the terms do not contemplate payments that are fixed or determinable and, moreover, the Appellant always retained the right to demand payment of the value of the assets under the plan. Consequently, according to the criteria from *Abrahamson*, the Appellant's lump sum withdrawals from his RRIF cannot be treated as superannuation or pension benefits under subparagraph 56(1)(a)(i) of the ITA and, similarly, are not superannuation or pension payments under paragraph 14(f) of the OAS Regulations.

### ***RRIF is a Discrete Income Category in ITA***

[61] Second, having regard for (i) the relationship between the provisions of the OAS Act governing the option method and section 14 of the OAS Regulations, and (ii) the fact that the OAS Act expressly applies the rules under the ITA when computing the claw back of an individual's GIS entitlement, some meaning should be attached to the fact that, when computing income under the ITA, payments from an RRIF are included pursuant to a specific ITA provision (*i.e.*, paragraph 56(1)(t)), covering those types of payments and that each of the described categories of payments in section 14 of the OAS Regulations have their own ITA provision that clearly applies to that type of payment.

[62] This was among the arguments that counsel for the Minister advanced in *Ward*<sup>6</sup> (discussed earlier) that the Court found to have merit but fell short of being compelling. However, as discussed below, my view is that the relationship between the GIS claw back regime and the income computation rules under the ITA makes for a compelling argument against including RRIF payments as a superannuation or

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<sup>6</sup> *Supra*, note 2.

pension payment under paragraph 14(f) of the OAS Regulations or any other paragraph of that section.

[63] The preamble to section 14 of the OAS Regulations restricts the use of that definition to the option method rules in section 14 of the OAS Act. Since implementation of the GIS, the OAS Act has used the rules under the ITA as the basis for measuring an individual's income when computing the claw back to monthly GIS benefits. Each of the enumerated payment types in section 14 of the OAS Regulation has a clear corresponding ITA provision that requires its inclusion in the computation of income for income tax purposes, as follows

<b>Section 14 (OAS Regulations) Payment Category</b>	<b>Corresponding ITA Income Inclusion</b>
(a) annuity payment	s. 56(1)(d) or (d.2)
(b) alimony and maintenance	s. 56(1)(b)
(c) employment insurance benefits	s. 56(1)(v)
(d) disability benefits deriving from a private insurance plan	s. 6(1)(f)(iii) if pursuant to employer-paid disability insurance plan, but otherwise non-taxable
(e) any benefit (other than death benefit) under the Canada Pension Plan	s. 56(1)(a)(i)(B)
(f) superannuation or pension payments	s. 56(1)(a)(i)
(g) compensation under worker's compensation law in respect of any injury, disability, or death	s. 56(1)(v)
(h) income assistance under a formal agreement referred to in s. 33(1) of the Department of Human Resources Development Act by reason of permanent reduction in the work force	s. 56(1)(r)(iv)
(i) income assistance benefits under the Plant Workers' Adjustment Program, the Fisheries Early Retirement Program or the Northern Cod Adjustment and Recovery Program by reason of permanent establishment of the workforce	s. 56(1)(r)(iv)

[64] It seems inconceivable that the persons who drafted the pension income definition would not have carefully considered each of the payment types that the ITA enumerates and expressly brings into an individual's income and then simply selected the types that should be treated as pension income under the option method to suit the objectives of those rules. With that in mind, it speaks volumes that RRIF

payments were not expressly included as part of the pension income definition in section 14 of the OAS Regulations, given that paragraph 56(1)(t) is a discrete ITA provision that specifically identifies payments from an RRIF as an amount to be included in computing an individual's income under the ITA.

[65] It is also instructive for present purposes to see that the ITA contains a definition of "pension income" in subsection 118(7) for use that is limited to subsection 118(1). That definition is relevant for identifying the categories of taxable receipts that are eligible for the pension credit for individuals under subsection 118(3) and for pension income-splitting between spouses under section 60.03 of the ITA. Under that definition, a payment from a superannuation or pension plan is included under subparagraph (a)(i) whereas payments from an RRIF are a standalone category of receipts that are included under subparagraph (a)(iii) of the definition of "pension income" in subsection 118(7) of the ITA. Consequently, when Parliament wanted to include RRIF payments within the scope of provisions that were designed for sources of income that were treated as pensions under the ITA, it enacted an extended definition to expressly include payments from an RRIF.

[66] In my view, the foregoing is part of a compelling case for excluding payments from an RRIF from pension income under section 14 of the OAS Regulations on the basis of structure in the ITA, which treats an RRIF as a separate source of income from a pension.

### ***Implications for Option Method Rules if Lump Sum RRIF Payments are Treated as Pension Income***

[67] Third, the nature of an individual's rights under his or her RRIF are not very compatible with how the option method rules are intended to operate with respect to pension income, both in regards to (i) the computation of the appropriate amount of pension income to include when computing estimated income, and (ii) evaluating whether the individual has suffered a loss or reduction of pension income.

[68] With respect to the computation of pension income under the option method rules, some of the scenarios under the option method rules require estimated income to include pension income received during part of a year to be first divided by the number of months in that part of the year and then multiplied by twelve months to produce a notional annual receipt for that source of pension income; paragraph 14(2)(a) and subparagraph 14(5)(b)(i) of the OAS Act identified above are two examples of such a provision. Obviously, the underlying assumption with this type

of adjustment is that the pension income received during the relevant period from that source was proportional to the individual's annual entitlement. However, in the case of an RRIF, the owner has discretion to withdraw as much or as frequently as he or she likes anytime while the RRIF continues to exist. To include a lump sum amount that an owner might withdraw from the RRIF in the relevant period and annualizing it in this manner creates the prospect of distorting the amount of the income that is appropriate to include in computing estimated income, depending on how many months there are in the relevant part-year period. As noted earlier, this is exactly what would happen in the Appellant's situation if the 2018 lump sum payment was treated as pension income for purposes of the option method rules in subsection 14(2) and paragraph 14(5)(b): the \$7,200.84 2018 lump sum payment would have to be annualized to \$7,854.55.

[69] With respect to determining whether an individual has suffered a loss or reduction of pension income, one of the main reasons that specific payment types have been enumerated in the definition of "pension income" in section 14 of the OAS Regulations is to give individuals access to the option method rules in the event that the individual suffers a reduction of income from sources that fit the definition of income under section 14 of the OAS Regulations. The Regulatory Analysis Impact Statement that accompanied the amendments to the OAS Regulations that added paragraphs (h) and (i) to the definition of "pension income" clearly make this point, as those notes indicate that the two categories were added solely to give persons who were receiving income-replacement benefits under certain government programs access to the option method rules when benefits under the programs came to an end.<sup>7</sup>

[70] As noted earlier, in the case of an RRIF, the owner of the plan has discretion to determine the amount and timing of withdrawals. Consequently, even though there are minimum withdrawal requirements under the terms of the plan, the individual would still have the ability to dictate whether he or she has a reduction of income from that income source from one year to the next. It is contrary to the intentions of the option method rules that an individual would have the ability to dictate whether they have access to the option method rules based on decisions that are within their own discretion. This problem with including RRIF arrangements as a source of pension income for purposes of the option method rules was on full display in the course of the Appellant's dealings with the Minister on his GIS entitlement for the July 2019 to June 2020 payment period, as the Minister initially

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<sup>7</sup> SOR/2001-148.

allowed the Appellant to use the option method rule under subsection 14(6) of the OAS Act but then changed position when the Minister saw that the Appellant would not be suffering a reduction in RRIF income in 2019 compared to 2018 by virtue of receiving a \$7,684.00 lump sum from his RRIF in 2019 compared to the \$7,200.84 lump sum amount that he received in 2018.<sup>8</sup>

### ***Conclusion on Treatment of Lump Sum RRIF Payments***

[71] For all the reasons outlined above, I have concluded that the 2018 and 2019 lump sum withdrawals from the Appellant's RRIF are not pension income for purposes of section 14 of the OAS Act and are not to be included when computing the Appellant's estimated income (i) for the payment period July 2017 to June 2018 (pursuant to subsection 14(2)), (ii) for the payment period July 2018 to June 2019 (pursuant to paragraph 14(5)(b)), and (iii) for the payment period July 2019 to June 2020 (pursuant to paragraph 14(5)(a)). Consequently, the correct amounts for estimated income are the amounts that were computed by the Appellant, as shown in the tables above: 2018 estimated income of \$6,160.00 (pursuant to subsection 14(2)), 2018 estimated income of \$90.00 (pursuant to paragraph 14(5)(b)), and 2019 estimated income of \$164.84 (pursuant to paragraph 14(5)(a)).

## **VI. SCOPE OF A SUBSECTION 28(2) REFERENCE TO THE TAX COURT OF CANADA**

[72] The sole issue that the parties addressed in their written and oral submissions for the reference in this Court was the treatment the Appellant's lump sum RRIF withdrawals when computing the Appellant's estimated income under the three option method rules the Appellant was eligible to have the Minister apply. As discussed at length above, I have found that the Appellant's position on that issue was the correct one.

[73] However, it is not clear to me that my decision on that issue disposes of the income-related matters associated with the Appellant's appeal that subsection 28(2) of the OAS Act requires this Court to address.

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<sup>8</sup> This is the same issue that was the nature of the dispute in *Katz*, *supra*, note 1.



[74] The context and scope of the reference to this Court as part of the Appellant's appeal to the SST is established by the combined effect of sections 27.1 and 28 of the OAS Act, the relevant portions of which provide the following [underlining added]:

**27.1 (1) Request for Reconsideration by Minister** – A person who is dissatisfied with a decision or determination made under this Act that no benefit may be paid to the person, or respecting the amount of a benefit that may be paid to the person may, within ninety days after the day on which the person is notified in writing of the decision or determination, or within any longer period that the Minister may, either before or after the expiration of those ninety days allow, make a request to the Minister in the prescribed form and manner for a reconsideration of that decision or redetermination.

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**(2) Decision of Minister** – The Minister shall, without delay after receiving a request referred to in subsection (1)...reconsider the decision or redetermination, as the case may be, and may confirm or vary it and may approve the amount of a benefit or determine that no benefit is payable, and shall without delay notify, in writing, the person who made the request of the Minister's decision and of the reasons for it.

**28. (1) Appeal – benefits** – A person who is dissatisfied with a decision of the Minister made under section 27.1...may appeal the decision to the Social Security Tribunal...

**(2) Reference as to income** – If, on appeal to the Social Security Tribunal, it is a ground of the appeal that the decision made by the Minister as to the income or income from a particular source or sources of an applicant...was incorrectly made, the appeal on that ground must, in accordance with the regulations, be referred for decision to the Tax Court of Canada, whose decision, subject only to variation by that Court in accordance with any appeal under the *Tax Court of Canada Act* relevant to the appeal in the Social Security Tribunal, is final and binding for all purposes of the appeal to the Social Security Tribunal except in accordance with the Federal Court Act.

**(3) Stay of benefits pending judicial review** – If a decision is made by the Social Security Tribunal in respect of a benefit, the Minister may stay payment of the benefit under the later of

(a) the expiration of the period allowed for making an application under the *Federal Courts Act* for judicial review of the decision, and

(b) where Her Majesty has made an application under the *Federal Courts Act* for judicial review of the decision, the month in which all proceedings in relation to the judicial review have been completed.

[75] A preliminary observation is that an appeal to the SST under section 28 is from a Ministerial decision or determination that no benefit may be paid or concerning the amount of the benefit that may be paid. Also, while the provisions include the Minister's right under subsection 28(3) to stay the payment of benefits under the OAS Act to permit the Minister to seek judicial review of an unfavourable SST decision, section 28 does not contemplate the suspension of the Minister's right to recover an overpayment in the event that an individual seeks judicial review of an SST decision that confirms the Minister's decision or determination establishing an overpayment; this could suggest that an appeal under that section was not intended to deal with disputes concerning the Minister's determination that there was an overpayment of benefits.

[76] If it is true that appeals under section 27.1 and 28 of the OAS Act are only available for disputes concerning benefits under the OAS Act that have yet to be paid, then there is the prospect of a jurisdictional issue if an individual seeks to use section 28 of the OAS Act to appeal the Minister's decision or determination that concerns the computation or recovery of an overpayment of GIS benefits. However, there are many instances of this Court hearing GIS-related references under the OAS Act where the SST accepted jurisdiction to hear an appeal involving a Ministerial decision or determination that created an overpayment.<sup>9</sup> Consequently, for purposes of the reference to this Court as part of the Appellant's appeal to the SST, I simply raise this as an issue for the SST but will nonetheless carry on to consider the nature of the income-related questions that are engaged by the Appellant's appeal.

### ***Nature of the Income-Related Matters in the Appellant's Appeal to the SST***

[77] The subject of the Appellant's appeal to the SST is the Minister's reconsideration decision dated March 2, 2022.

[78] The reconsideration decision reflected the Minister's determination that, for the period February 2018 to June 2019, there was an overpayment to the Appellant of his monthly GIS benefits on the basis of the difference between (i) the amount of

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<sup>9</sup> See *Grenier*, 2007 TCC 561, aff'd 2008 FCA 130; *Lankarani*, 2011 TCC 176; *Lévesque*, *supra*, note 3.

GIS benefits that was paid to Appellant based on his statements of estimated income for 2018 which did not anticipate or include a 2018 lump sum withdrawal from the Appellant's RRIF, and (ii) the Minister's computation of the Appellant's GIS benefits for that period under the applicable option method rule based on estimated income for 2108 that included the 2018 lump sum RRIF withdrawal.

[79] The reconsideration decision also reflected the Minister's determination that, for the period January 2019 to June 2020, an adjustment to the monthly GIS benefit in favour of the Appellant should be made to allow him to benefit from the option method rules under subsection 14(4) and paragraph 14(6)(b) for the reduction or loss of pension income in 2019.<sup>10</sup> However, even though the Minister knew at the time of issuing the reconsideration decision that the Appellant had made a lump sum withdrawal from his RRIF in 2019, it does not seem that the reconsideration decision reflected any corresponding change in position on the GIS benefits for that period. It is clear though that the Minister later decided the Appellant did not suffer a reduction or loss of pension income in 2019 and, therefore, the Appellant was not entitled to have subsection 14(4) or paragraph 14(6)(b) apply to adjust his monthly GIS benefits for that period. To the extent that the Minister's change in position would result in a reduction of GIS benefits or the creation of an overpayment for the January 2019 to June 2020 period compared to the amount of GIS benefits for that period allowed under the Minister's reconsideration decision, this may raise a procedural issue as to whether the Minister would be essentially appealing the Minister's own determination of any overpayment in respect of the January 2019 to June 2020 period. However, it seems that this is a procedural question for the SST to consider and would not affect this Court's obligation to come to conclusions on the income-related questions associated with the Minister's determination or decision on GIS benefits for the July 2019 to June 2020 payment period.

[80] Focusing then on the Minister's determination that the Appellant received an overpayment, it would appear that there are three income-related questions that are possibly engaged by the Appellant's appeal of the Minister's reconsideration decision. One question is the computation of the Appellant's estimated income under each of the option method rules that the Appellant was entitled to have applied under section 14 of the OAS Act as a consequence of his January 18, 2018 retirement from Carstar Markham. Another question is the Appellant's income for the base

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<sup>10</sup> This was based on the Minister's position that payments from an RRIF are pension income and the Appellant's representation to the Minister that the lump sum withdrawal from his RRIF in 2018 was not expected to be a recurring payment.

calendar year for purposes of computing his entitlement for monthly GIS benefits under of sections 12 and 12.1 of the OAS Act. Finally, there are income-related questions inherent in the Minister's determination that the Appellant has received an overpayment of GIS benefits for months in the payment periods involved in his appeal.

***History and Interaction of Sections 12 & 12.1, 14, and 18 of the OAS Act***

[81] Before considering the income-related questions engaged by the Appellant's appeal to the SST, I will discuss the history and interaction of the sections that have been used in the OAS Act to implement income-testing under the GIS regime to take into account a reduction of income from retirement or from the loss/reduction of pension income. Those OAS Act provisions are (i) sections 12 and 12.1, which determine the amount of an individual's monthly GIS benefit including the amount, if any, of the income-based claw back, (ii) subsections 14(2) to (7), which provide a set of rules that allow an individual to make an estimate of income that reflects the loss of employment or business income due to retirement or the loss/reduction of pension income and should cause the claw back for GIS benefits to be based on sources of income used to make the estimate, and (iii) section 18 of the OAS Act, which creates an adjustment mechanism where the individual's ultimate GIS entitlement for the period is more or less than the GIS benefits that were previously paid on the basis of the estimate.

[82] If one accepts that part of the purpose and function of sections 12, 12.1, 14 and 18 of the OAS Act are as described in the preceding paragraph, then how those sections interact with one another should be some version of the following: (i) if an individual is in a situation that allows for GIS benefits to be paid under section 14 on the basis of an estimate, the Minister would pay his or her GIS benefits using the estimate made by the individual, (ii) the sources of income that are required by statute to be included in making the estimate would become the sources of income that would determine the amount of GIS benefits that the individual was ultimately entitled to receive for the period covered by the estimate, and (iii) once the amount of income actually received from the sources used to make the estimate are known, the adjustment mechanism is available to the Minister to ensure that the amount of GIS benefits that the individual received for the period covered by the estimate reflected the actual income earned from the sources that were included in making the estimate.

[83] Sections 12, 12.1, 14 and 18 (and their predecessor provisions) of the OAS Act have mostly interacted with one another in this way since the start of the GIS regime. However, as will be discussed below, section 14 of the OAS Act was amended in 2007 such that an individual's request to have the Minister compute and pay GIS benefits on the basis of an estimate no longer affected the annual income that was being used to compute the individual's ultimate entitlement to GIS benefits (under sections 12 and 12.1 of the OAS Act) for the period covered by the estimate.

[84] Sections 12 and 12.1 of the OAS Act together establish the aggregate amount of an individual's entitlement to monthly GIS benefits. Both sections set the maximum amount that an individual can receive under that section as GIS benefits for a month and then apply a claw back particular to each individual based on his or her income for the base calendar year in relation to the month for which the benefit is being computed. In the case of section 12, the claw back is based on the individual's "monthly base income" which is defined in subsection 12(6) as one-twelfth of the individual's income for the base calendar year. Section 12.1 does not use the concept of monthly base income but nonetheless reduces an individual's entitlement to additional GIS benefits that are payable under that section by implementing a claw back in the formula in subsection 12.1(1) which uses the individual's income for the base calendar year. Accordingly, in the case of both section 12 and 12.1, the individual's income for a base calendar year is used to determine the extent of the individual's claw back from the maximum GIS benefit that is payable to the individual under each of the two sections.

[85] One would expect that the claw back under sections 12 and 12.1 of the OAS Act would be computed differently when an individual elected for one of the option method rules in section 14 and, indeed, this was the case until section 14 was amended in 2007. Previously, subsections 14(2) and (4), and paragraphs 14(5)(b), and (6)(b) each expressly modified how the individual's income for the base calendar year was to be calculated, and subsection 14(3), and paragraphs 14(5)(a) and (6)(a) of the OAS Act each deemed the individual's income computed in accordance with the applicable option method rule to be the individual's income for the base calendar year. This version of the option method rules was enacted in 1998<sup>11</sup> and replaced a version of section 14 that deemed the estimated income to be the "income for the base calendar year" under every scenario in which an individual was permitted to provide an estimate of income under that section. If one looks through

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<sup>11</sup> S.C. 1998, c. 21. Former subsections 14(2) and (5) of the OAS Act are reproduced in the Appendix.

the history of amendments to section 14 and its predecessor provisions, it can be seen that the deeming of the individual's estimated income to be income from the base calendar year or the deeming of the income from a source used to make the estimate to be the amount of income from that source when computing income for the base calendar year can be traced back to the start of the GIS regime when it was introduced in 1966.<sup>12</sup>

[86] As previously noted, section 14 of the OAS Act was amended in 2007 (with effect from July 1, 2008) for the purpose of simplifying the computation of an individual's estimated income under the option method rules.<sup>13</sup> But the package of amendments to the option method rules also removed the language in prior versions of subsections 14(2) to (6) that connected the computation of income under those rules to the individual's income for the base calendar year in relation to the payment period for which the estimate was being applied. Accordingly, it would seem that post-amendment, even where an individual opted to provide an estimate of income under one of the option method rules in section 14, the amount of an individual's GIS entitlement under sections 12 and 12.1 for the payment period covered by the

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<sup>12</sup> See Section 10 under the original amendments to the OAS Act to implement the GIS regime enacted by S.C., 1966, c. 65, s. 2.

<sup>13</sup> S.C. 2007, c. 11. With respect to purpose underlying the amendments to the option method rules, see testimony of Susan Scotti, ADM Social Development Sectors Branch, Department of Human Resources and Social Development before the House of Commons Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities on February 20, 2007, at paragraphs 1554 to 1556:

The next slide is on simplifying the reporting of income for couples and seniors. This is something that we call options. It is a complicated provision at the moment, which we are trying to simplify. The legislation currently allows seniors who retire or who suffer a loss of earnings or a reduction in pension in a given year to provide an estimate of their current income in order to qualify for the low-income benefits. Applicants are required right now to estimate income from all sources, whether it's employment, interest from investments, or pension income. This process can be very cumbersome because it is difficult to accurately predict all of your income from all sources.

The proposed legislation would limit the estimated income to pension and employment income only, which is much easier to predict on an annual basis and predict accurately.

It will also extend the time for seniors to submit an estimate of their income, because the current deadlines can be very tight. This change, we think, will be very welcomed by low income seniors, because it will mean fewer adjustments, and it will simplify the administration by greatly reducing the complexity of this provision.

estimate would continue to be computed on the basis of the individual's income for the base calendar year in relation to the payment periods covered by the estimate. In other words, the election to have an option method rule apply no longer automatically adjusted the individual's ultimate entitlement to GIS benefits for the payment period that was supposed to be governed by the estimate.

[87] Parliament's motivations for removing the link between estimated income and income from the base calendar year in section 14 are unclear. The change could have been directed at addressing a concern that deeming estimated income to be income from the base calendar year or otherwise dictating how income from a base calendar year would be computed would, as a matter of statutory construction, preclude the Minister from recovering an overpayment under section 18, since it could be argued that estimated income would always be equal to actual income (*i.e.*, income from the relevant base calendar year). However, the 2007 amendment also implemented a change to the nature of the operative language for the option method rules from earlier versions; previously, subsections 14(2) to (6) each identified the circumstances that would allow an individual to provide a statement of estimated income and the balance of the text was directed at determining how income from the base calendar year would be computed in light of the individual's election to use an estimate of income. Following the 2007 amendments, there are no longer any references to "income for the base calendar year" in subsections 14(2) to (6). Currently, the text in those provisions mostly cover how estimated income should be computed. To me, what this suggests is that, in the course of considering how section 14 might be revised to simplify the concept of estimated income for purposes of the option method rules, the persons responsible for drafting the amendments lost sight of the fact that a key role played by the pre-2007 version of subsections 14(2) to (6) was to replace what would otherwise be the individual's income for the base calendar year for the relevant payment period with an income computation that reflected the individual's reduction in income due to retirement or reduction/loss of pension income. Whatever Parliament's reasons for making those amendments, the changes to the operative language and the removal of references to income for the base calendar year were done repeatedly (*i.e.*, in each of the option method rules) and one can only assume deliberately, even if the impact of those changes was not fully appreciated at the time.

[88] As mentioned earlier, section 18 of the OAS Act contains the adjustment mechanism for determining whether the GIS benefits that were previously paid to an individual exceed his or her ultimate entitlement for a particular month.

[89] Currently, section 18 of the OAS Act provides, as follows [underlining added]:

**18. Adjustment of payments of supplements** – Where it is determined that the income for a base calendar year (in this section referred to as the “actual income”) of an applicant for a supplement does not accord with the income of the applicant (in this section referred to as “shown income”) calculated on the basis of a statement or an estimate made under section 14, the following adjustments shall be made:

(a) if the actual income exceeds the shown income, any amount by which the supplement paid to the applicant for months in the payment period exceeds the supplement that would have been paid to the applicant for those months if the shown income had been equal to the actual income shall be deducted and retained out of any subsequent payments of supplement or pension made to the applicant, in any manner that may be prescribed; and

(b) if the shown income exceeds the actual income, there shall be paid to the applicant the amount by which the supplement that would have been paid to the applicant for the months in the payment period if the actual income had been equal to the shown income exceeds the supplement paid to the applicant in those months.

[90] The nature of section 18 is the following: if the preamble requirement of “actual income” being different from “shown income” – which is the income or estimated income on which GIS benefits were previously paid – is met, then there is to be a retroactive adjustment to an applicant’s GIS entitlements for the prior periods under either paragraph 18(a) or (b), depending on whether there was an overpayment or a shortfall.

[91] I will be discussing the current version of section 18 of the OAS Act in greater detail later in these reasons (in the context of the determinations that this Court is required to make as part of this reference). However, it will be useful at this point to look at a previous version of the preamble to section 18 because it underscores the idea that the option method rules, the adjustment mechanism, and the entitlement sections were intended to work together.



[92] Previously, “actual income” in the section 18 preamble meant “income from a base calendar year, calculated as required by this Part [II – Monthly Guaranteed Income Supplement]”, as follows [underlining added]:<sup>14</sup>

**18. Adjustment of payments of supplements** – Where is determined that the income for a base calendar year, calculated as required by this Part (in this section referred to as the “actual income”), of an applicant for a supplement does not accord with the income of the applicant (in this section referred to as the “shown income”) calculated as required by this Part on the basis of a statement or an estimate made under section 14, the following adjustments shall be made:

[93] Even this earlier version of the section 18 preamble does not make an express link between actual income and any rules in section 14 relating to income from a base calendar year. But, this version of the preamble clearly acknowledges that income from the base calendar year may be subject to adjustment under provisions within the part of the OAS Act that deals with the GIS, such as pre-2007 versions of subsections 14(2) to (6) when they were still law. This type of language in the preamble to section 18 can be traced back to the predecessor provision that was enacted as section 15 of the OAS Act at the start of the GIS regime when it was introduced in 1966.<sup>15</sup>

[94] I have taken the time to go over the interaction and relevant legislative history of the OAS Act sections that have traditionally been part of the implementation of the GIS option method to show how I came to the unavoidable conclusion that, as a consequence of the 2007 amendments to subsection 14(2) to (6) of the OAS Act, the relevant sections of the OAS Act have ceased to work properly, at least from a technical statutory construction perspective, for delivering the intended benefit of causing an individual’s ultimate GIS entitlement to be determined on the basis of the timing and sources of income that were used to make the estimate under subsections 14(2) to (6) of the OAS Act.

[95] I will now carry on to discuss the income-related questions that are engaged by the Appellant’s appeal to the SST, having regard for the fact that the words used in the OAS Act for implementing the option method do not, on their face, seem to

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<sup>14</sup> S.C. 1995, c. 33, s. 9(1).

<sup>15</sup> See section 15 under the original amendments to the OAS Act to implement the GIS regime, enacted by S.C. 1966, c. 65, s. 2 and reproduced in the Appendix.

adjust an individual's ultimate entitlement to GIS benefits where he or she made an estimate of income pursuant to subsections 14(2) to (6).

***Income-Related Question – Section 14 of the OAS Act***

[96] The first income-related question is the one the parties identified themselves and that has been the subject of the dispute between the Minister and the Appellant from the outset: the amount of the Appellant's estimated income in accordance with subsection 14(2), paragraphs 14(5)(a), and 14(5)(b) of the OAS Act.

[97] As discussed earlier, the finding of this Court is that the Appellant's estimated incomes under subsection 14(2) for the July 2017 to June 2018 payment period, paragraph 14(5)(b) for the July 2018 to June 2019 payment period, and paragraph 14(5)(a) for the July 2019 to June 2020 payment period are \$6,160.00 for 2018, \$90.00 for 2018, and \$162.84 for 2019, respectively.

[98] However, I pause here to observe that, where GIS benefits have already been paid on the basis of a statement of estimated income furnished by the individual and the Ministerial determination under appeal concerns an overpayment arising under section 18, it seems to me that the correctness of the computation of estimated income at the time the GIS benefits were previously paid should be largely irrelevant to the Minister's determination under that section. This is because the amount of the upward or downward adjustment under paragraphs 18(a) and (b) simply starts with the amount of GIS benefits that were previously paid, irrespective of how estimated income was computed at that time, and compares that amount with what the GIS benefits would have been if the individual's income was the amount of "actual income", which is defined as income of a base calendar year in relation to the previously paid GIS and, as discussed earlier, the language currently used in the OAS Act does not reflect a relationship between (i) estimated income computed in accordance with an option method rule in section 14, and (ii) income from a base calendar year under sections 12, 12.1 or 18.

[99] My closing thought on this topic is that, when the pre-2007 versions of section 14 were still in force, the option method provisions in that section would have been clearly relevant to the determination of actual income under section 18 because actual income is simply income from the base calendar year and the pre-2007 text contained language that specifically directed how income from a base calendar year would be computed in circumstances where section 14 allowed estimated income to be used.

***Income-Related Question – Subsections 12(6) and 12.1(1) of the OAS Act***

[100] If the nature of the Minister’s determination under appeal by the Appellant is the individual’s ultimate entitlement to GIS benefits from the payment periods covered by the determination, sections 12 and 12.1 seem to be the only OAS Act provisions that fix the amount of GIS benefits that an individual is entitled to receive for a month in a payment period.

[101] As discussed earlier, there are income-related questions that arise under sections 12 and 12.1 in connection with the claw back mechanism used to implement income-testing for the GIS. The claw back in each section uses “income from the base calendar” in relation to a payment period; as previously noted, the concept of “estimated income” is nowhere to be found in those two sections.

[102] This issue concerning an individual’s ultimate entitlement to GIS benefits under section 12 for a payment period for which the individual has elected to use the option method was raised by this Court in *Moskal*, 2010 TCC 5, as follows:

[18] The respondent suggest that paragraph 14(6)(a) permits an alternative method for computing income for purposes of section 12. On its face, paragraph 14(6)(a) does not clearly override the requirement to use income for the base calendar year, but the respondent’s position is favourable to Mr. Moskal and therefore I will accept it.

[103] *Moskal* involved the current version of paragraph 14(6)(a) of the OAS Act. The Court did contrast the language used in the current and pre-2007 amendment versions of paragraph 14(6)(a) with respect to how income was computed under each version but did not attach any significance to the removal of references to income from the base calendar year from post-2007 version of that provision. Accordingly, it would be inappropriate to consider this to be a case which held that an election to provide an estimate under one of the option method rules under the current version of section 14 displaces the requirement to use income for the base calendar year under section 12 of the OAS Act.

[104] At the hearing of this reference, the parties agreed that, for purposes of the OAS Act, the Appellant’s incomes for the 2016, 2017, and 2018 calendar years computed in accordance with section 2 of the OAS Act were, as follows:

<b>2016</b>	<b>2017</b>	<b>2018</b>
CPP - \$5,813.00	CPP - \$6,069.00	CPP - \$6,160.00

Employment - \$51,096.00	Interest - \$12,987.00	RRIF - \$7,200.84
	Employment - \$42,395.00	Employment - \$4,097.00
	RRSP deduction – \$(19,057.00)	RRSP deduction - \$(13,340.00)
\$56,909.00	\$42,394.00	\$4,117.84

[105] Based on the parties' agreement, this Court finds, for purposes of determining the amount of GIS benefits that may be paid to the Appellant pursuant to sections 12 and 12.1 of the OAS Act for the periods covered by the Minister's March 2, 2020 reconsideration decision, as follows: (i) for months in the payment period June 2017 to July 2018, income for the base calendar year is the \$56,909.00 income for the 2016 calendar year, (ii) for months in the payment period June 2018 to July 2019, income for the base calendar year is the \$42,394.00 income for the 2017 calendar year, and (iii) for months in the payment period July 2019 to June 2020, income for the base calendar year is the \$4,117.84 income for the 2018 calendar year.

[106] My findings on the question under this heading obviously run counter to the clear and obvious purpose for making the option method rules available to individuals in the situations covered by subsections 14(2) to (6) of the OAS Act. But, I am unable to come to a different conclusion in light of the fact that the 2007 amendments intentionally and systematically deleted the many instances of language in former section 14 that would have applied to avoid this result. Moreover, as I have previously noted, it is not clear to me that the amount of an individual's ultimate entitlement to GIS for a period under sections 12 and 12.1 are actually relevant in the context of the Appellant's appeal to the SST, since the Minister has already paid GIS benefits to the Appellant for the payment periods contemplated by the Minister's determination under appeal and the reconsideration decision under appeal in section 28 of the OAS Act is supposed to be from a Ministerial decision or determination about the "amount of a benefit that may be paid to the person."

***Income-Related Question – Section 18 of the OAS Act***

[107] The most likely characterization of the Appellant's section 28 appeal to the SST is as an appeal of the Minister's determination under section 18 of the OAS Act that an overpayment of GIS benefits arose as a consequence of the Appellant's actual income not according with the Appellant's shown income.

[108] There are two income-related questions under section 18: First, what is the applicant's actual income? Second, what is the applicant's shown income?

**(i) Shown Income**

[109] In the present context, the preamble of section 18 defines “shown income” as the Appellant’s income calculated on the basis of an estimate made under section 14 of the OAS Act.

[110] With respect to the GIS benefits that were paid for the period February 2018 to June 30, 2019, shown income would be the estimate of income the Appellant made in accordance with subsection 14(2) and paragraph 14(5)(b) and that the Minister initially accepted and used to compute the GIS benefits paid to the Appellant for months in that period. Those estimates of income are \$6,160.00 for the GIS benefits paid for February 2018 to June 2018 and \$90.00 for July 2018 to June 2019.

[111] For the period July 2019 to June 2020, the situation is more complex, as the Minister issued the original January 28, 2020 determination partway through that period. At that time, I presume that seven months of GIS benefits would have already been paid on the basis of the estimate of income submitted by the Appellant in accordance with paragraph 14(5)(a) and, through the January 28, 2020 determination, the Minister advised the Appellant that the GIS benefits were being adjusted for that payment period to reflect a revised estimate of income that took into account the loss/reduction of pension income which, now, the Minister considers to have not occurred. The Minister’s March 2, 2022 reconsideration decision letter seems to suggest that the net impact of the Minister’s adjustments and computations for that payment period was as a result of treating \$232.00 as the Appellant’s estimate of income for that period, such that this amount would be his shown income in respect of the GIS benefits that were paid in that payment period.

**(ii) Actual Income**

[112] “Actual income” is defined in the preamble of the current version of section 18 of the OAS Act to mean “the income for a base calendar year...for a supplement.” In the case of a supplement that has already been paid on the basis of an estimate of income made under section 14, I interpret this to mean the income for a base calendar year for the payment period in which one finds the month for which the supplement was previously paid. As discussed previously, there is nothing in section 18 to suggest that, in determining actual income, the computation of income for a base calendar year would be modified or adjusted by the making of an estimate of income under section 14.

[113] The fact that the election to use estimated income under section 14 has no impact on how one calculates the income for the relevant base calendar year — and, by implication, actual income for purposes of section 18 — is, of course, problematic for fulfilling the well-established purpose of the option regime in section 14, since the determination of whether there has been an overpayment is being made by comparing the benefits that were paid to the benefits computed using the individual's income for the base calendar, as computed under section 2 of the OAS Act, rather than the income from the sources used to make the estimate under section 14.

[114] In *Lévesque* (discussed earlier)<sup>16</sup>, the Court identified and resolved this very problem inherent with the application of section 18 in the context of the option method rules, on the following basis:

[24] In the Minister's opinion, the appellant's "actual income" within the meaning of this provision, would be appellant's true income based on his statement of income computed in accordance with subsection 14(5) of the OAS Act, while the "shown income" would be the income that the appellant had expected to receive in his initial application, also in accordance with subsection 14(5) of the OAS Act.

\* \* \* \*

[26] With respect, even though this interpretation has been used by the Minister for some time, it is not clear, on a *prima facie* basis, that this is allowed under the OAS Act.

[27] Indeed, the Act does not give the concept of "actual income" the same meaning given the Minister. According to section 18 of the OAS Act, what is in fact defined as actual income is the appellant's income for the base calendar year, rather than his true income calculated under subsection 14(5) of the OAS after the production of his statement of income. In my opinion, this is indeed made clear by the following words: "the income for a *base calendar year* (in this section referred to as the "actual income") of an applicant for a supplement".

[28] The term "base calendar year" is defined in section 10 of the OAS Act as "the last calendar year ending before the current payment period...."

[29] In light of the foregoing and based on a literal interpretation, the Minister should have calculated the overpayment by comparing the [income for the base calendar year] to the amount of \$5,583.96 and not the amount based on the appellant's true income, as was done by the Minister.

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<sup>16</sup> *Supra*, note 4.

[30] However, even though I consider this interpretation to be appropriate to the letter of the law, it is my opinion that the Minister's interpretation must prevail.

\* \* \* \*

[34] This therefore raises the following question: from this point of view, why would Parliament have enacted subsection 14(2) to (7) of the OAS Act? Why adopt provisions which seek to account for any declines in income if those provisions will inevitably create an overpayment that the Minister must ask to have reimbursed?

[35] In this context, I think it is appropriate here to reiterate the principle of statutory interpretation known as the rule of effectivity. According to author Pierre-André Côté, this rule holds that “an interpretation that gives legislation some effect is preferable to one that does not, because the legislature is presumed not to intervene gratuitously”.

[36] It is my opinion that this rule applies in this case. Indeed, recognizing a literal interpretation of subsections 2 to 7 of section 14 of the OAS Act would be tantamount to denying their fundamental purpose and even their existence, which seems contrary to Parliament's intention.

[37] In any event, in this case, the Minister's interpretation is more advantageous for the appellant than the literal one. Indeed, according to the literal interpretation, the overpayment should be calculated based on the difference between the base calendar year...and the income declared by the appellant in accordance with subsection 14(5) of the OAS Act...However, in this case, the Minister calculated the overpayment by using the appellant's true income for the 2012 taxation year in accordance with subsection 14(5) of the OAS Act...thereby reducing the overpayment.

[38] In light of this information, I therefore believe that there is justification for confirming the Minister's interpretation of section 18 of the OAS Act in terms of the calculation method to be used.

[115] The Court thus held that the Minister's long-standing interpretation – *i.e.*, where an estimate was made under section 14, actual income in section 18 is the individual's true income computed in accordance with the rules in subsection 14(5) – would prevail in that case even though it was not supported by a literal reading of the text in that section.

[116] It bears mentioning that the Minister's position on the interpretation of “actual income” for purposes of section 18 in *Lévesque* aligns with the literal interpretation of the relevant provisions prior to the section 14 amendments discussed earlier; language that dealt with the calculation of income for a base calendar year was a component of the pre-2007 version of the option method rules in Section 14.

*Lévesque* involved paragraph 14(5)(a) of the OAS Act and, prior to the 2007 amendments, the text of that paragraph<sup>17</sup> provided the following [underlining added]:

(5) Where, in the circumstances described in paragraphs (a) and (b), a person who is an applicant...ceases to hold an office or employment or ceases to carry on a business, the person may....,

(a) where the person ceases to hold that office or employment or to carry on that business in the last calendar year ending before the payment period, file a statement of the person's estimated income for the calendar year ending in the current payment period, in which case the person's income for that calendar year is deemed to be the person's income for the base calendar year;...

[117] As previously discussed, the 2007 amendments to the option method rules removed the language under each of the scenarios that was directed at changing the meaning of income for the base calendar year for the period covered by the estimate. The fact that, prior to the 2007 amendments, the option method rules in section 14 traditionally had language that caused the income of the base calendar year to correspond with income computed in accordance with section 14 may explain why the Minister described the position taken in *Lévesque* as a long-standing government interpretation of how section 18 would apply to recover an overpayment where GIS benefits were previously paid on the basis of an estimate made under section 14.

[118] As noted in the excerpt above from *Lévesque*, the Court relied on the “rule of effectivity” to accept the Minister’s interpretation and avoid what would otherwise been an absurd result. However, the effect of the Minister’s interpretation is to restore language to section 14 of the OAS Act that makes a link between estimated income and income from a base calendar year that was intentionally removed under the 2007 amendments to that section. In light of the history and the fact that the 2007 amendments to section 14 of the OAS Act were part of an extensive package of amendment that I presume to have been carefully considered, I do not feel that this an appropriate circumstance to adopt an interpretation that departs from the language used in section 18 (and subsections 14(2) to (6)) solely on the basis that a literal interpretation would produce an absurd result. The Supreme Court of Canada

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<sup>17</sup> S.C. 1998, c. 21, s. 110(2).



cautioned against such an approach in *R. v. McIntosh*,<sup>18</sup> stating (*per* Lamer C.J. for the unanimous Court):

[34] I am the view that the Crown’s argument linking absurdity to ambiguity cannot succeed. I would adopt the following proposition; where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be (*Maxell on the Interpretation of Statues, supra*, at p. 29). The fact that a provision gives rise to absurd results is not, in my opinion, sufficient to declare it ambiguous and then embark upon a broad ranging interpretation.

\* \* \* \*

[36] Thus, only where a statutory provision is ambiguous, and therefore reasonably open to two interpretations, will absurd results flowing from one of the available interpretations justify rejecting it in favour of the other. Absurdity is a factor to consider in the interpretation of ambiguous statutory provisions, but there is not distinct “absurdity approach”.

[119] Consequently, for purposes of this reference, I will not interpret actual income in section 18 to mean estimated income computed in accordance with an applicable option method rule in section 14.

[120] However, the Federal Court of Appeal had the opportunity to interpret the meaning of “actual income” in section 18 in *Grenier*<sup>19</sup>. The Federal Court of Appeal’s interpretation is binding on this Court and I believe it can be applied in a way that avoids an absurd result in the context of the Appellant’s appeal of the Minister’s determination.

[121] *Grenier* was an appeal from a Tax Court decision involving the Minister’s determination of a GIS overpayment arising as a consequence of a difference between (i) the estimate of income of \$11,892 he made for 2005, which was the year after his 2004 retirement from employment, and (ii) his 2005 income of \$16,722, which was known after his 2005 income tax return was filed and assessed. The individual had elected the option method for a payment period following his retirement to have his monthly GIS benefits computed using his \$11,892 estimate of 2005 income instead of his \$20,627 income for 2004, the base calendar year in

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<sup>18</sup> [1995] S.C.R. 686.

<sup>19</sup> *Supra*, note 7.

relation to the payment period. His 2004 income included \$7,065 of employment income and he anticipated having nil employment income in 2005.

[122] The Minister made a determination under section 18 of the OAS Act to recover an overpayment based on the difference between the (i) GIS benefits paid based on Mr. Grenier's \$16,722 estimate of income for 2005, and (ii) the amount of GIS benefits that would have been payable for the period based on his \$16,722 actual income for the 2005 calendar year. The Tax Court confirmed the Minister's determination that there was an overpayment under section 18.

[123] In dismissing the appellant's appeal to the Federal Court of Appeal, the Court stated [underlining in original]:

[4] The Department Minister invoked section 18 of the Act, which reads as follows:

**18.** Where is it determined that the income for a base calendar year (in this section referred to as the "actual income") of an applicant for a supplement does not accord with the income of the applicant (in this section referred to as the "shown income") calculated on the basis of a statement or an estimate made under section 14, the following adjustments shall be made:

(a) if the actual income exceeds the shown income, any amount by which the supplement paid to the applicant for months in the payment period exceeds the supplement that would have been paid to the applicant for these months if the shown income had been equal to the actual income shall be deducted and retained out of any subsequent payments or pension made to the applicant, in any manner that may be prescribed; and

(b) if the shown income exceeds the actual income, there shall be paid to the applicant any amount by which the supplement that would have been paid to the applicant to the applicant for months in the payment period if the actual income had been equal to the shown income exceeds the supplement paid to the applicant for those months.

[5] Because there was a difference between "actual income" (\$16,722) earned in 2005, the reference year chosen by Mr. Grenier under section 14 of the Act, and the "shown income" for Mr. Grenier (\$11,892), an adjustment had to be made under section 18 of the Act. As a result, an overpayment of \$110 was calculated as having been made to Mr. Grenier.

[124] In the excerpt above, the Federal Court of Appeal found that “actual income” for purposes of section 18 was Mr. Grenier’s income for the year that he elected to use for computing his GIS benefits pursuant to section 14 of the Act, as reported in the tax filings he made after the benefits had been paid. While I recognize that *Grenier* would have involved a version of subsection 14 that pre-dated the 2007 amendments and that the option method rule in section 14 Mr. Grenier elected to use would have included language to deem Mr. Grenier’s 2005 income to be his income for the base calendar year, neither the Federal Court of Appeal nor the Tax Court referred to this language in section 14 in their respective reasons for decision.

[125] Accordingly, on the basis of *Grenier*, I will interpret “actual income” under section 18 for purposes of this reference to be the Appellant’s income for the calendar year in respect of which an estimate was made under section 14. Under subsection 14(2), paragraph 14(5)(a) and paragraph 14(5)(b), the Appellant provided an estimate of income for the 2018 calendar year, 2019 calendar year, and the 2018 calendar year, respectively. The parties agreed that the Appellant’s income for the 2018 calendar year for GIS purposes is \$4,117.84 and I find that the Appellant’s income for the 2019 calendar year for GIS purposes is \$3.00, as determined by the Minister and shown in the table on the first page of the Minister’s March 2, 2022 reconsideration decision letter.

## **VII. CONCLUSIONS ON INCOME-RELATED QUESTIONS RELEVANT TO MINISTER’S DETERMINATION UNDER APPEAL TO THE SST**

[126] The conclusions that I have made above concerning the income-related matters that I considered to be relevant to the Appellant’s section 28 appeal of the Minister’s March 2, 2022 reconsideration decision are summarized below.

[127] First, for purposes of section 14 of the OAS Act, I find that, in the context of the Appellant’s circumstances, he was not required to include or anticipate his 2018 or 2019 lump sum withdrawals from his RRIF in computing his estimated income under subsection 14(2), or paragraphs 14(5)(a) and (b), of the OAS Act and that his estimated income under those provisions are \$6,160.00 of 2018 estimated income under subsection 14(2), \$90.00 of 2018 estimated income under paragraph 14(5)(b), and \$162.84 of 2019 estimated income under paragraph 14(5)(a).

[128] Second, for purposes of sections 12 and 12.1 of the OAS Act, I find that the Appellant’s incomes for the base calendar years are, as follows: (i) for months in the payment period June 2017 to July 2018, income for the base calendar year is the

\$56,909.00 income for the 2016 calendar year, (ii) for months in the payment period June 2018 to July 2019, income for the base calendar year is the \$42,394.00 income for the 2017 calendar year, and (iii) for months in the payment period July 2019 to June 2020, income for the base calendar year is the \$4,117.84 income for the 2018 calendar year.

[129] Third, for purposes of section 18 of the OAS Act, I find that the Appellant’s “actual income” is, as follows: (i) in relation to the GIS benefits paid pursuant to an estimate of income for the 2018 calendar year under subsection 14(2), actual income is \$4,117.84 income for the 2018 calendar year, (ii) in relation to the GIS benefits paid pursuant to an estimate of income for the 2018 calendar year made under paragraph 14(5)(b), actual income is \$4,117.84 income for the 2018 calendar year, and (iii) in relation to the GIS benefits paid pursuant to an estimate of income for the 2019 calendar year made under paragraph 14(5)(a), actual income is \$3.00 income for the 2019 calendar year. I decline to make formal findings with respect to “shown income” for purposes of section 18, since these are income amounts on which GIS benefits have already been paid to the Appellant and should not be in dispute.

[130] In accordance with Section 45 of the *OAS Regulations*, there will be no award as to costs.

**These Amended Reasons for Judgment are issued in substitution of the Reasons for Judgment dated June 6, 2024 in order to revise the words underscored in paragraphs 18, 21, 22, 27, 32, and 80 from “Canstar Markham” to “Carstar Markham”, and paragraphs 7, 69, and 124, and Page 1 of the Appendix hereof to correct typographical errors.**

Signed at Toronto, Ontario, this 17th day of June 2024.

“John C. Yuan”

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Yuan J.

## APPENDIX

### Current OAS Act, ss. 2 “income”, 12(1), 12.1(1), 14(2), 14(5), 14(7) and s. 18

**2. Definitions** – In this Act, ...

*income* of a person for a calendar year means the person’s income for the year, computed in accordance with the *Income Tax Act*, except that ...

\* \* \* \*

**12. (1) Amounts on April 1, 2005** - The amount of the supplement that may be paid to a pensioner for any month in the payment quarter commencing on April 1, 2005 is,

(a) in the case of a person other than a person described in paragraph (b), five hundred and sixty-two dollars and ninety-three cents, and

(b) in the case of a person who, on the day immediately before that payment quarter, had a spouse or common-law partner to whom a pension may be paid for any month in that payment quarter,

(i) in respect of any month in that payment quarter before the first month for which a pension may be paid to the spouse or common-law partner, five hundred and sixty-two dollars and ninety-three cents, and

(ii) in respect of any month in that payment quarter commencing with the first month for which a pension may be paid to the spouse or common-law partner, three hundred and sixty-six dollars and sixty-seven cents,

minus one dollar for each full two dollars of the pensioner’s monthly base income.

\* \* \* \*

**12.1.(1) Additional amount – paragraph 12(1)(a)** - The amount that may be added to the amount of the supplement that may be paid under section 12 for any month in a payment quarter beginning after June 30, 2011 is the amount determined by the formula

**A X B – C/4**

Where

A is \$50

B is the pensioner's special qualifying factor for the month; and

C is

(a) in the case of a pensioner who has no spouse or common-law partner,  $1/12$  of the pensioner's income for the base calendar year in excess of \$2,000 rounded, if it is not a multiple of four dollars, to the next lower multiple of four dollars, and

(b) in the case of a pensioner who, on the day immediately before the current payment period, had a spouse or common-law partner to whom no benefit may be paid for any month in the current payment period,  $1/24$  of the aggregate of the income of the pensioner and his or her spouse or common-law partner for the base calendar year in excess of \$4,000 rounded, if it is not a multiple of four dollars, to the next lower multiple of four dollars.

\* \* \* \*

**14.(2) Additional statement if retirement in current period** - If in a current payment period a person who is an applicant, or is an applicant's spouse or common-law partner who has filed a statement as described in paragraph 15(2)(a), ceases to hold an office or employment or ceases to carry on a business, that person may, not later than the end of the second payment period after the current payment period, in addition to making the statement of income required by subsection (1) in the case of the applicant or in addition to filing a statement as described in paragraph 15(2)(a) in the case of the applicant's spouse or common-law partner, file a statement of the person's estimated income for the calendar year in which the person ceased to hold that office or employment or ceased to carry on that business, which income shall be calculated as the total of

(a) any pension income received by the person in that part of that calendar year that is after the month in which the person ceases to hold that office or employment or to carry on that business, divided by the number of months in that part of that calendar year and multiplied by 12,

(b) the income from any office or employment or any business for that calendar year other than income from the office, employment or business that has ceased, and

(c) the person's income for the base calendar year calculated as though, for that year, the person had no income from any office or employment or any business and no pension income.

...

**(5) Additional statement if retirement before current payment period** - If, in the circumstances described in paragraphs (a) and (b), a person who is an applicant, or is an applicant's spouse or common-law partner who has filed a statement as described in paragraph 15(2)(a), ceases to hold an office or employment or ceases to carry on a business, the person may, not later than the end of the payment period that is immediately after the current payment period, in addition to making the statement of income required by subsection (1) in the case of the applicant or in addition to filing a statement as described in paragraph 15(2)(a) in the case of the applicant's spouse or common-law partner,

**(a)** if the person ceases to hold that office or employment or to carry on that business in the last calendar year ending before the payment period, file a statement of the person's estimated income for the calendar year ending in the current payment period, which income shall be calculated as the total of

**(i)** any pension income received by the person in that calendar year,

**(ii)** the income from any office or employment or any business for that calendar year, other than income from the office, employment or business that has ceased, and

**(iii)** the person's income for the base calendar year calculated as though, for that year, the person had no income from any office or employment or any business and no pension income; and

**(b)** if the person ceases to hold that office or employment or to carry on that business in a month that is before the payment period and after the last calendar year ending before the payment period, file a statement of the person's estimated income for the calendar year ending in the current payment period, which income shall be calculated as the total of

**(i)** any pension income received by the person in that part of that calendar year that is after the month in which the person ceases to hold that office or employment or to carry on that business, divided by the number of months in that part of that calendar year and multiplied by 12,

**(ii)** the income from any office or employment or any business for that calendar year, other than income from the office, employment or business that has ceased, and

**(iii)** the person's income for the base calendar year calculated as though, for that year, the person had no income from any office or employment or any business and no pension income.

...

(7) Where under subsection (2), (3) or (4) a statement of estimated income is filed by an applicant or an applicant's spouse or common-law partner, no supplement calculated on the basis of that statement may be paid to the applicant for any month in the current payment period before

(a) the month immediately following the month shown in the statement as the month in which the applicant or the applicant's spouse or common-law partner, as the case may be, ceased to hold the office or employment or ceased to carry on the business, or

(b) the month shown in the statement as the month in which the applicant or the applicant's spouse or common-law partner, as the case may be, suffered the loss of income due to termination or reduction of pension income,

whichever is applicable.

\* \* \* \*

**18. Adjustments of payments of supplements** - Where it is determined that the income for a base calendar year (in this section referred to as the "actual income") of an applicant for a supplement does not accord with the income of the applicant (in this section referred to as the "shown income") calculated on the basis of a statement or an estimate made under section 14, the following adjustments shall be made:

(a) if the actual income exceeds the shown income, any amount by which the supplement paid to the applicant for months in the payment period exceeds the supplement that would have been paid to the applicant for those months if the shown income had been equal to the actual income shall be deducted and retained out of any subsequent payments of supplement or pension made to the applicant, in any manner that may be prescribed; and

(b) if the shown income exceeds the actual income, there shall be paid to the applicant any amount by which the supplement that would have been paid to the applicant for months in the payment period if the actual income had been equal to the shown income exceeds the supplement paid to the applicant for those months.

**Former Subsections 14(2) and (5) of the OAS Act, as enacted by S.C. 1998. c. 21, s. 110(2).**

**14.(2) Additional statement where retirement in current payment period** - Where in a current payment period a person who is an applicant, or who is an applicant's spouse who has filed a statement as described in paragraph 15(2)(a), ceases to hold an office or employment or ceases to carry on a business, that person may, not later than the end of the payment period immediately after the current payment period, in addition to making the statement of income required by subsection (1) in the case of the applicant or in addition to filing a statement as described in paragraph 15(2)(a) in the case of the applicant's spouse, file a statement of the person's estimated



income from that office or employment or from that business, as the case may be, for the calendar year in which the person ceased to hold that office or employment or ceased to carry on that business, in which case the person's income for the base calendar year shall be calculated as the total of

(a) the person's income for that calendar year, calculated as though the person had no income from that office or employment or from that business, as the case may be, and no pension income for that calendar year, and

(b) any pension income received by the person in that part of that calendar year that is after the month in which the person ceased to hold that office or employment or ceased to carry on that business, divided by the number of months in that part of that calendar year and multiplied by 12.

...

**(5) Additional statement where retirement before current payment period** - Where, in the circumstances described in paragraphs (a) and (b), a person who is an applicant, or who is an applicant's spouse who has filed a statement as described in paragraph 15(2)(a), ceases to hold an office or employment or ceases to carry on a business, the person may, not later than the end of the current payment period, in addition to making the statement of income required by subsection (1) in the case of the applicant or in paragraph 15(2)(a) in the case of the applicant's spouse,

(a) where the person ceases to hold that office or employment or to carry on that business in the last calendar year ending before the payment period, file a statement of the person's estimated income for the calendar year ending in the current payment period, in which case the person's income for that calendar year is deemed to be the person's income for the base calendar year; and

(b) where the person ceases to hold that office or employment or to carry on that business in a month that is before the payment period and after the last calendar year ending before the payment period, file a statement of the person's estimated income for the calendar year ending in the current payment period showing also any income actually received by the person in that calendar year from that office or employment or from that business, as the case may be, in which case the person's income for the base calendar year shall be calculated as the total of

(i) the person's income for that calendar year, calculated as though the person had no income from that office or employment or from that business, as the case may be, and no pension income for that calendar year; and

(ii) any pension income received by person in that part of that calendar year that is after the month in which the person ceases to hold that office or employment or to carry on that business, divided by the number of months in that part of that calendar year and multiplied by 12.

**Former Sections 8, 10, 15 of the OAS Act, as enacted by S.C. 14-15 Elizabeth II, c. 65, s. 3.**

**8. (1) Amount of Supplement** - The amount of the supplement that may be paid to a pensioner for a month

(a) in the year 1967, is thirty dollars, and

(b) in any year after 1967, is forty per cent of the amount of the pension that may be paid to him for that month, minus one dollar for each full two dollars of his monthly base income, being one-twelfth of his income for the preceding year.

(2) For the purposes of subsection (1) and section 9, the amount of the pension that may be paid to a pensioner for any month is the amount thereof determined under section 3<sub>A</sub> without regard to any deduction therefrom or other adjustment thereof that may be made under this or any other Act.

\* \* \* \*

**10. (1) Statement or Estimate of Income** - Every person by whom an application for a supplement in respect of any year is made shall, in his application, make a statement of his income for the preceding year.

(2) Where in any year for which a statement of his income is required by this section to be made by an applicant in his application, the applicant has ceased to hold an office or employment previously held by him or ceased to carry on a business previously carried on by him, if the applicant in his application so elects he may, in addition to making the statement of his income for that year so required to be made in his application, file a statement of his estimated income from prescribed sources for the following year, in which case his income from those sources for the following year and not for that year shall be deemed to be his income from those sources for the year for which the statement of his income is so required to be made in his application.

\* \* \* \*

(3) Where in any year in respect of which an application for a supplement is made by an applicant, the applicant has ceased to hold an office or employment previously held by him or ceased to carry on a business previously carried on by him, if the applicant in his application so elects he may, in addition to making the statement of his income for the preceding year required by this section to be made in his application, file a statement of his estimated income, other than his estimated income from that office or employment or from that business, as the case may be, for the year in respect of which the application is made, in which case

(a) his income for that year and not the preceding year, calculated as described in section 9 as though he had no income from that office or employment or from that business, as the case may be, and no private pension income for that year, and

received no benefit under the *Canada Pension Plan* or a provincial pension plan as defined in that Act in the following year,

plus

(b) any private pension income any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in that Act, received by him in that year during or after the first month for which a supplement may be paid to him pursuant to his application, divided by the number of months in that year for which the supplement may be so paid and multiplied by twelve,

shall be deemed to be his income for the preceding year.

(4) Where in an application for a supplement in respect of any year an election under subsection (2) or (3) is made by the applicant, the application shall be deemed not to have been received and shall not be considered or dealt with until such time as the applicant has filed the statement of estimated income referred to in subsection (2) or (3), as the case may be, and where the election is an election under subsection (3) no supplement may be paid to him pursuant to the application for any month in that year preceding the month following the month stated in the application as the month in which the applicant ceased to hold the office or employment or ceased to carry on the business referred to in that subsection.

(5) No more than one election under subsection (2) and no more than one election under subsection (3) may be made by or on behalf of any one applicant.

\* \* \* \*

**15. Adjustments of Payments of Supplement** - Where an application for a supplement in respect of any year has been approved, and it is subsequently determined that the income of the applicant for the preceding year calculated as required by this Part (hereinafter referred to as his “actual income”) does not accord with his income (hereinafter referred to as his “shown income”) calculated as required by this Part on the basis of the amount shown as his income or estimated income in the statement thereof required or permitted by section 10 to be made or filed by him, the following adjustments shall be made:

(a) if his actual income exceeds his shown income, any amount by which the supplement paid to him for months in that year exceeds the supplement that would have been paid to him for those months if his shown income had been equal to his actual income shall be deducted and retained out of any subsequent payments of supplement or pension made to him, in such manner as may be prescribed; and

(b) if his shown income exceeds his actual income, there shall be paid to him any amount by which the supplement that would have been paid to him for months in that year if his actual income had been equal to his shown income exceeds the supplement paid to him for those months.



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APPEARANCES:

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