



Citation: *DK v Minister of Employment and Social Development*, 2022 SST 316

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: D. K.
Representative: M. K.

Respondent: Minister of Employment and Social Development
Representative: Rebekah Ferriss

Decision under appeal: General Division decision dated September 24, 2021
(GP-21-726)

Tribunal member: Neil Nawaz

Type of hearing: Teleconference
Hearing date: March 22, 2022
Hearing participants: Appellant's representative
Respondent's representative

Decision date: April 28, 2022
File number: AD-21-442

Decision

[1] The Appeal is dismissed. The General Division made an error, but my own review of the record indicates that the Claimant was not incapacitated from applying for CPP disability benefits between February 2008 and May 2020.

Overview

[2] The Claimant, D. K., is a former bus driver. In February 2008, a passenger threatened him with a gun, causing him severe psychological distress. He soon left his job, and he later received diagnoses of depression, anxiety, and post-traumatic stress disorder (PTSD). Except for three months as a maintenance worker in 2017, he has not worked since. He is now 51 years old.

[3] In May 2020, the Claimant's mother and authorized representative applied for a Canada Pension Plan (CPP) disability pension on her son's behalf. The Minister approved the application as of June 2019, which she said was the earliest first payment date allowed under the law.¹

[4] The Claimant's representative appealed the start date of her son's pension to the General Division of the Social Security Tribunal. She said that her son had been previously incapacitated from applying for the disability pension.

[5] The General Division held a hearing by teleconference and dismissed the appeal. The General Division found insufficient evidence to show that the Claimant was incapable of forming or expressing an intention to make an application before May 2020. In particular, the General Division relied on evidence that the Claimant had looked for work and consented to medical treatment. The General Division also placed weight on the fact that the Claimant had fathered a child during the period in which he claimed to be incapacitated.

¹ Under section 42(2)(b) of the *Canada Pension Plan*, the earliest a person can be deemed disabled is 15 months before the date of application. Under section 69, payment of an approved disability pension starts four months after the deemed date of disability.

The Claimant's reasons for appealing

[6] The Claimant's representative appealed the General Division's decision to the Tribunal's Appeal Division. She alleged that the General Division made the following errors:

- It relied on selected items of evidence to support its finding that the Claimant had capacity, ignoring numerous items proving otherwise.
- It based its decision on the Claimant's activities and assumed choices, instead of considering the overwhelming medical evidence showing that he has been incapable of applying for CPP disability since February 2008.
- It inferred capacity from the fact that the Claimant signed his application form. In fact, he did not know or care what he was signing—his mother indicated where to write his name with a yellow sticky note.
- It inferred capacity from the fact that the Claimant fathered a child in 2011. In fact, it was the Claimant's former wife who made the decision to have a baby; there was no evidence that the Claimant consented to becoming a parent.

[7] I gave the Claimant permission to appeal because I thought he had an arguable case. Last month, I held a hearing by teleconference to discuss the Claimant's allegations in full.

Issue

[8] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use those powers;
- interpreted the law incorrectly; or

- based its decision on an important factual error.²

My job is to determine whether any of the Claimant's allegations fall into one or more of the permitted grounds of appeal and, if so, whether any of them have merit.

Analysis

[9] I am satisfied that the General Division based its decision on an important factual error when it inferred capacity from the fact that the Claimant fathered a child. Because the General Division's decision falls for this reason alone, I see no need to consider the rest of Claimant's alleged errors.

There is an arguable case that the General Division based its decision on an irrelevant fact

[10] The Claimant's representative argues that the Claimant fathering a child has nothing to do with whether he was incapacitated from applying for benefits sooner. She says that the General Division assumed, without evidence, that her son consented to having a third child.

[11] In my view, the Claimant makes a valid point.

[12] In its decision, the General Division mentions the Claimant's parental status only twice. Nevertheless, its thinking appears to have been influenced by information that the Claimant became a father during the period he was supposedly incapacitated:

I agree with the Minister that the Claimant was able to occasionally drive, occasionally shop, and attend medical appointments from February 2008 to May 2020. The Claimant consented to medical treatment and took medications. His family doctor confirmed that the Claimant could make decisions and judgments in day-to-day situations as of May 2019. **The Claimant had a child in 2011.** He worked in 2017. [Emphasis added]³

² *Department of Employment and Social Development Act (DESDA)*, section 58(1).

³ General Division decision, paragraph 41.

[13] In this passage, the General Division lists becoming a parent as one of several indicators of capacity. I disagree. Driving a motor vehicle requires a certain level of mental acuity and judgment. So does consenting to medical treatment. Even shopping demands some capacity. But engaging in the procreative act is another matter. As the Claimant's representative notes, it takes two people to produce a child, and it is possible to do so without the informed consent of one of them. Moreover, the mere fact that a person has a child says nothing about their ability to assume the responsibilities of being a parent.

[14] I realize that the General Division did not base its entire decision on the arrival of the Claimant's baby son during his period of claimed incapacity. But the context in which the General Division mentioned this fact leaves no doubt that it played a significant role in its reasoning.

[15] As the General Division rightly noted, the courts have held that the test for incapacity requires decision-makers to consider a claimant's activities.⁴ But those activities must be relevant to the question at hand—that is, whether the claimant has the ability to form or express an intention to apply for benefits. In 2011, the Claimant was still married and living with his now-former wife when she gave birth, but there was no evidence on the record that the Claimant agreed to have a child. In assuming that the Claimant consented to becoming a father for a third time, the General Division based its decision on an erroneous finding of fact without regard for the material before it.

Remedy

There are two ways to fix the General Division's error

[16] When the General Division makes an error, the Appeal Division can address it by one of two ways: (i) it can send the matter back to the General Division for a new hearing or (ii) it can give the decision that the General Division should have given.⁵

⁴ *McDonald v Canada (Attorney General)*, 2013 FCA 37; *Canada (Attorney General) v Kirkland*, 2008 FCA 144; *Canada (Attorney General) v Danielson*, 2008 FCA 78.

⁵ DESDA, section 59(1).

[17] The Tribunal is required to proceed as quickly as fairness permits. The Federal Court of Appeal has stated that a decision-maker should consider the delay in bringing an application for a disability pension to conclusion. It is now two years since the Claimant applied for a disability pension. If this matter goes back to the General Division, it will needlessly delay a final resolution.

[18] At the hearing, the parties agreed that, if I were to find an error in the General Division's decision, the appropriate remedy would be for me to give the decision that the General Division should have given and make my own assessment of the Claimant's incapacity claim. Of course, the parties had different views on the merits of that claim.

[19] The Claimant's representative argued that, if the General Division had considered the evidence properly, it would have found her son incapacitated from making a CPP disability application February 2008 to May 2020. The Minister argued that, whatever the General Division's errors, the available evidence still pointed to a finding that the Claimant had the capacity to form or express an intention to make an application during the relevant period.

The record is complete enough to decide this case on its merits

[20] I am satisfied that the record before me is complete. The Claimant's representative has filed numerous medical reports with the Tribunal, and I have considerable information about her son's psychological condition in the period between 2008 and 2020. The General Division conducted a lengthy oral hearing, in which the Claimant's mother gave evidence about her son's impairments and their effect on his ability to carry out everyday tasks.

[21] As a result, I am in a position to assess the evidence that was available to the General Division and to give the decision that it should have given. In my view, even if the General Division had properly considered the evidence, it would have come to the same result. My own assessment of the record satisfies me that the Claimant was capable of forming or expressing an intention to apply for CPP disability benefits in the roughly 12 years before he actually did so.

The evidence does not point to incapacity

[22] Persons claiming incapacity must prove that they were unable to form or express an intention to apply for disability benefits.⁶ That inability must be continuous from the date that they claim to have become incapacitated to the date that they actually submitted an application.⁷ I have reviewed the information on file, and I have concluded that the Claimant did not meet these tests. I have no doubt that the Claimant suffers from disabling psychological conditions, but I simply did not find enough evidence to suggest that they prevented him from making an application sooner.

[23] The Claimant clearly has significant problems. He has been diagnosed with severe depression, anxiety, and PTSD. He is agoraphobic and is prone to panic attacks in social situations. He has a history of abusing alcohol as a means of helping him cope with stress. In the years following the February 2008 workplace incident that triggered his breakdown, the Claimant has relied on, first his wife, then his parents, to manage his personal and financial affairs. He appears to lack the drive or initiative to perform many of the tasks that are part of everyday life.

[24] However, none of these things necessarily mean that the Claimant was unable to form or express an intention to make an application for disability benefits.

The test for incapacity is strict

[25] Under the *Canada Pension Plan*, disability and incapacity are two different concepts. One is an inability to regularly pursue a substantially gainful occupation; the other is an inability to form or express an intention to make an application for disability benefits. The second is generally much harder to prove than the first.

[26] The *Canada Pension Plan's* incapacity provision is precise and focused. It does not require consideration of the capacity to make, prepare, process, or complete an application for benefits but only the ability to make or communicate a decision to do so.⁸

⁶ *Canada Pension Plan*, section 60(8).

⁷ *Canada Pension Plan*, section 60(10).

⁸ See *Canada (Attorney General) v Danielson*, 2008 FCA 78.

Capacity is to be considered in light of the ordinary meaning of the term and determined based on the medical evidence and on the claimant's activities. That capacity is similar to the capacity to form or express an intention with respect to other life choices that present themselves to a claimant.⁹

[27] At the hearing, we discussed a recent Federal Court of Appeal case called *Blue*, which involved a claimant who was functional in many ways (for instance, she was raising her young daughter as a single mother) yet was still found to be incapacitated for CPP purposes.¹⁰ The Claimant's representative argued that her son was no less incapacitated than Ms. Blue, but in my view the two cases differ in one key aspect. Ms. Blue introduced specific psychiatric evidence that the very thought of having to formally document her mental health issues before a government authority sent her into a paralyzing dissociative state. The Claimant in this case has no comparable evidence.

[28] The Court made it clear that *Blue* was exceptional:

Before concluding, it must be noted that this is a most unusual case. In many cases, the ability of an individual to carry on ordinary life activities may well be indicative of their capacity to formulate or express the intent to apply for a disability pension. However, in this case, Ms. Blue's disability, while severe, is narrowly focussed, with both her trauma and her mental health issues arising out of or relating to engagement with hospitals, the medical profession and persons in authority.¹¹

[29] As if to reinforce that point, the Federal Court of Appeal soon issued a decision in a case called *Walls* that upheld a finding of capacity even though the claimant suffered from physical and mental impairments that put him into a "vegetative zombie-like mental state."¹² In that case, the Court found that Mr. Walls, unlike Ms. Blue, did not produce the kind of psychological evidence needed to discount his day-to-day activities during his claimed period of incapacity.

⁹ See *Sedrak v Canada (Social Development)*, 2008 FCA 86

¹⁰ See *Blue v Canada (Attorney General)*, 2021 FCA 211.

¹¹ *Blue*, *supra*, paragraph 45.

¹² See *Walls v Canada (Attorney General)*, 2022 FCA 47, paragraph 12.

[30] That is true of this case too. The Claimant has produced a considerable volume of psychiatric and other medical evidence indicating that he is severely depressed and anxious, but it does not show that he lacked the ability, when presented with specific options, to make informed life choices during the relevant period. As we will see, the Claimant may not have had the **desire** or the **will** to manage his life, but those are not the same things as **capacity**.

[31] The available written and oral evidence suggests that the Claimant was capable of everyday activities and life choices that were akin to forming an intention to make an application for benefits:

The family doctor's declarations do not determine this matter

[32] On several occasions, the Claimant's family doctor has declared the Claimant either incapable or incapacitated.¹³ Dr. Coodin has written that the Claimant is unable to manage his daily functions due to PTSD, agoraphobia, severe depression, and panic attacks. Dr. Coodin has also written that the Claimant's mother handles his finances and does all his shopping and that he cannot leave his house without her assistance.

[33] I realize that Dr. Coodin knows the Claimant as well, or better, than any of his other treatment providers, but I can only give his reports so much weight. First, his opinions are among many that I must consider, including several that show the Claimant to be more functional than he admits.¹⁴ Second, Dr. Coodin himself has made findings that raise questions about the extent of the Claimant's incapacity. For example, in a questionnaire that he completed as part of an application for a Disability Tax Certificate, Dr. Coodin noted that the Claimant "lives alone" and affirmed that he could "make appropriate decisions and judgements for day to day situations" and had the "capacity and insight to take his medication independently."¹⁵ This particular questionnaire largely attributed the Claimant's disability to a severe case of social

¹³ See Declaration of Incapacity dated November 18, 2020 (GD2-23); Certificate of Incapability dated May 3, 2020 (GD2-35); CPP Medical Report dated May 1, 2020 (GD2-139); letter dated June 24, 2021 (GD4-17).

¹⁴ This view is endorsed in a case called *Flaig v Canada (Attorney General)*, 2017 FC 531.

¹⁵ Canada Revenue Agency disability tax credit questionnaire completed by Dr. Coodin on March 11, 2019 (GD2-29).

anxiety, but that condition by itself would not necessarily impair an individual from making important life choices.

The Claimant lives by himself

[34] The Claimant's mother confirmed that the Claimant lives alone in the house that he and his family lived in before his wife moved out. The Claimant's mother maintained that her son never leaves the house except to be taken to medical appointments. She emphasized that she lives nearby and visits the Claimant every day to bring him provisions and prepare him meals. However, there was evidence that the Claimant has the capacity to take care of himself at a basic level.

[35] The Claimant's mother testified that he can get up and dress himself in the morning, even if some days he chooses to stay in bed. She said that he had good days and bad days: "If he comes out of his depression, he will do dishes and clean the bathroom. He will do that when he can."¹⁶ Contrary to her testimony, the Claimant's mother wrote a letter on her son's behalf indicating that he occasionally did go shopping: "If I have to go to the store, I will wait until closing time so I don't have to talk to anyone. Sometimes I have to leave before I have finished shopping because I start to panic."¹⁷

[36] The Claimant clearly struggles to manage his life, but his ability to carry out day-to-day activities—inconsistent though it may be—suggests that he has not been continuously incapacitated since 2008.

The Claimant is able to provide some care for his children

[37] The Claimant's representative maintained that her son had almost no interest or interaction with his children during the relevant period. The documentary evidence tells a different story.

¹⁶ Recording of General Division hearing at 51:00.

¹⁷ See undated Claimant's letter to Service Canada, GD1-37.

[38] Dr. Coodin has declared the Claimant incompetent or incapacitated on several occasions. However, the family physician's clinical notes suggest that Claimant takes more than a purely passive role in his children's lives. In May 2018, Dr. Coodin wrote that the Claimant injured his right shoulder while playing basketball with his children. In March 2019, Dr. Coodin relayed that, while the Claimant avoided socializing, he "cares for his children on weekends." In November 2020, Dr. Coodin noted that the Claimant expressed worry "about the pandemic and his kids."¹⁸

[39] This information was consistent with other information on file, which indicated the Claimant's active interest in his children. In January 2010, a neurologist relayed that the Claimant had a seizure while he was "making lunch for the children."¹⁹ In May 2018, a psychiatrist noted that the Claimant's children visited him on the weekends and on two weeknights: "He stated he has difficulty taking them to activities due to his discomfort when leaving home, but he plays with them at home."²⁰ In his application for benefits, the Claimant himself wrote that he tried to "rent kids party bouncers but I was unable to leave the house or interact with people."²¹ The Claimant may have been confined to his house, but that did not prevent from forming an intention to do something that would benefit his children. That holds true even if he was subsequently unable to follow through on that intention.

[40] Taken together, this evidence shows that the Claimant was able to engage with his children at a higher level than indicated by his mother's testimony.

The Claimant consented to medical treatment

[41] The Claimant's representative maintains that her son cannot manage his health or consent to medical treatment. She testified that she or her husband transports the

¹⁸ Dr. Coodin's clinical notes were not included in the file, but they were evidently available to Service Canada. A detailed summary of them, prepared by a Service Canada medical adjudicator, is at GD2-105.

¹⁹ See summary of consultation note dated January 18, 2010 by Dr. Barnes, neurologist, GD2-105.

²⁰ Report dated May 23, 2018 by Dr. Sara Rusen, psychiatrist, GD2-181.

²¹ Claimant's application for CPP disability benefits dated April 14, 2020, GD2-90.

Claimant to all his medical appointments and attends all his consultations. She said that the Claimant is indifferent to medical advice and does whatever she tells him to do.²²

[42] However, the evidence suggests otherwise. In June 2009, the Claimant was referred to a psychiatrist, James Bolton, who noted that the Claimant's thought processes were "linear and organized" and his cognition "grossly intact." Consent to treatment does not appear to have been an issue:

Mr. Kemp is interested in both pharmacologic and psychotherapeutic approaches in treating his Post-traumatic Stress Disorder. I will continue to follow him in clinic for a limited period of time in order to conduct a trial of individual Cognitive Behavioural Therapy and manage his medications. We have initiated a trial of Sertraline, which we will titrate upwards in dose and observe for benefit.²³

[43] The Claimant's mother testified that she sat in on all his medical appointments. However, Dr. Coodin's clinical notes indicate that, while the Claimant's mother was present for a number of visits, she was not present for all of them.²⁴ Even so, the Claimant was apparently able to discuss his mental health issues with Dr. Coodin, who documented what appear to be the Claimant's express wish to refuse treatment. In 2016, he declined a psychiatric referral and, two years later, he refused his family physician's offer to adjust his medications.²⁵ Whether these were wise decisions is beside the point. However, they do demonstrate that the Claimant was, at least to some extent, engaged with, and in control of, his medical care.

[44] On one documented occasion, a consulting psychiatrist asked the Claimant to have his mother leave the examination room. The assessment then proceeded, and the Claimant was able to answer the psychiatrist's questions without assistance:

He was tearful at times during the interview. There was a fair range of affect and it was appropriate to content. Thought processes were logical and organized. There was no evidence of

²² Recording of General Division hearing at 1:03:50.

²³ Initial consultation report by Dr. James Bolton, psychiatrist, GD1-25.

²⁴ Dr. Coodin appears to have made a point of noting who was present during each consultation.

²⁵ See Service Canada's adjudication summary, GD2-105.

a thought disorder or perceptual abnormality. Thought content was vague and included anxious themes of fear and future uncertainty as well themes of blame and devaluation. There was no suicidal or homicidal ideation or plan. Memory and concentration were not formally assessed but appeared to be intact. Insight was fair and judgment was fair.²⁶

[45] The Claimant's capacity can also be detected elsewhere in his health care choices. He attempted to address his substance abuse problems by attending Alcoholics Anonymous and at least one session at the Addictions Foundation of Manitoba.²⁷ In June 2018, the Claimant was diagnosed with skin cancer. The Claimant's mother testified that he was not interested in treatment and had refused body scans and surgery.²⁸ However, the evidence shows that he did not decline all treatment. In October 2018, he submitted to surgical excision of melanoma lesions on his scalp.²⁹ I saw no indication that anyone other than the Claimant consented to this invasive, but medically necessary, procedure.

The Claimant made a decision to attempt to return to work

[46] There are varying accounts about what led the Claimant to take a job as a school custodian. The Claimant's mother testified that his wife threatened to leave him unless he made an attempt to work.³⁰ However, a psychiatric report said that he began an employment search only after his wife left him and he realized he could no longer depend on her. Either way, the Claimant made what appears to be a conscious attempt to pull his life together and get out of his house. It doesn't matter if the Claimant was responding to a threat from his wife or to a suggestion from his mother or if he made the decision himself; what matters is that he responded to internal or external pressures, voluntarily accepted a job, and then made an effort—however unsuccessful it ultimately turned out to be—to fulfill its duties.

²⁶ Dr. Rusen's report, see note 18.

²⁷ See Service Canada's adjudication summary, GD2-105.

²⁸ Recording of General Division hearing at 29:10.

²⁹ See report dated June 6, 2018 by Dr. Alok Pathak, surgical oncologist, (GD2-201) and Claimant's CPP disability application dated April 14, 2020 (GD2-81).

³⁰ Recording of General Division hearing, at 36:50.

[47] The Claimant's mother testified that, on some days, the Claimant drove his truck to his place of work.³¹ This suggests a level of functionality incompatible with the statutory definition of incapacity. The circumstances under which the Claimant left his job also make me doubt that he was incapacitated. He was fired for erratic performance, but that does not necessarily point to an inability to form or express an intention to apply for disability benefits.

[48] There is no question that the Claimant's three months of employment ended badly. But he failed at his job because he was disabled, not because he was incapacitated. The employer's questionnaire, completed by an official from St. Paul's High School, makes it clear that the Claimant was let go, not because of any mental incapacity, but because he was increasingly late to work, possibly due to intoxication.³² Indeed, the questionnaire indicates that the Claimant did relatively well in the early stages of the work trial before his performance suffered a deterioration. The Claimant may be an alcoholic, and he might have been using alcohol to cope with the stress of working among strangers, but I find it unlikely that such abuse would have continuously interfered with his ability to make life decisions.

The Claimant gave consent and entered into agreements without power of attorney

[49] According to the record, the Claimant has done things over the past decade that usually require a high level of informed consent. As mentioned, when the Claimant had scalp surgery in 2018, he had not yet given power of attorney (POA) to his mother. I find it hard to believe that the surgeon would have proceeded if he had had reason to suspect that his patient was incompetent to give consent. As well, the Claimant cashed in his RRSPs in August 2018.³³ Although the Claimant's mother testified that she was entirely behind this transaction, I find it unlikely that a bank or financial institution would have gone ahead with it if there were any doubt about the Claimant's competence.

³¹ Recording of General Division hearing at 54:00.

³² Employer's questionnaire dated November 27, 2020 and completed by Lorena Aquino of St. Paul's High School, Winnipeg, GD2-41.

³³ See Claimant's letter to Service Canada date stamped May 11, 2020, GD2-187.

[50] The Claimant did not sign a POA until October 2020.³⁴ According to the Claimant's mother, Legal Aid lawyers insisted on it before acting on her son's behalf in family court proceedings with his estranged wife. However, the act itself of signing the POA raises questions about when or whether the Claimant became incapacitated. A POA is a legal document of tremendous import, but it has no legal validity if the person signing it is already incapacitated. A person signs such a document **in anticipation** of becoming incapacitated at a future date or in case they become unavailable or unwilling to manage their affairs in person.

[51] If the Claimant signed a POA in October 2020, that meant, in order for it to be valid, that he was competent as of that date. There was no evidence that the Claimant had regained capacity; in fact, the Claimant's mother argued the opposite—she maintained that her son's mental condition had steadily deteriorated in the years since 2008. If the Claimant were truly incapacitated as of October 2020, the Claimant's mother would properly have had to go to court for an order declaring her guardian of her son's person and property. There is no evidence that has ever happened.

The Claimant formed a specific intention to apply for disability benefits

[52] The *Blue* and *Wall* cases require an assessment of whether a claimant's activities cast light on his or her capacity to form or express an intention to apply for disability benefits.³⁵ The implication is that the activities must **relevant** to the incapacity claimed during the period in question.

[53] In this case, I find that the Claimant's activities—his care for his children, his consultations with his doctors, his effort to resume employment—were relevant to his ability to form or express an intention to apply for benefits. It must be remembered that “forming” an intention calls for mental activity only. The Claimant's diagnosed conditions—PTSD, depression, agoraphobia, alcoholism—may have interfered with the Claimant's **will** to make an application, but I don't see how they diminished his essential

³⁴ Claimant's Power of Attorney dated October 29, 2020, GD2-37.

³⁵ Notes 10 and 12.

cognitive powers to form an intention to make an application. The record shows that, when the Claimant is given options and advised which one to choose, he forms a specific intention to accomplish a specific action.³⁶

[54] I don't deny that the Claimant's mother makes many decisions and performs many tasks on her son's behalf, but those acts by themselves don't prove that he is incapacitated. While the Claimant may not have had the drive or initiative to apply for disability benefits, he did have the mental capacity to do so. Indeed, it appears that the main reason for the delay in applying for CPP disability benefits was the Claimant's ignorance of their existence. The evidence shows that, when Dr. Coodin brought the benefits to their attention, the Claimant and his mother promptly submitted an application.³⁷

[55] Lack of awareness about entitlement to disability benefits does not fall within the scope of incapacity.³⁸ It is true that the Claimant's mother took the initiative by obtaining and filling out the application forms. However, once she told the Claimant that applying for benefits would be in his interest, he formed a specific intention to do so and signed the forms.

Conclusion

[56] I am dismissing this appeal. Although the General Division erred by basing its decision on the Claimant's fathering a child, my own review of the evidence does not convince me that he was incapacitated from making an application for disability benefits between February 2008 and May 2020.



Member, Appeal Division

³⁶ See *Grosvenor v Canada (Attorney General)*, 2018 FC 36.

³⁷ Recording of General Division hearing at 47:50.

³⁸ See *Canada (Attorney General) v Hines*, 2016 FC 112.