



Citation: *SL v Minister of Employment and Social Development and The Estate of RC*, 2022 SST 502

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** S. L.

**Respondent:** Minister of Employment and Social Development

**Added Party:** The Estate of R. C.  
**Representative:** P. C.

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**Decision under appeal:** General Division decision dated December 20, 2021  
(GP-20-1170)

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**Tribunal member:** Neil Nawaz

**Decision date:** June 6, 2022

**File number:** AD-22-146

## Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

## Overview

[2] S. L. (the Applicant), claims that she was the common-law spouse of R. C. (the deceased), who died in August 2015.

[3] For years, the Minister, through her Service Canada arm, paid the deceased a Guaranteed Income Supplement (GIS) at the single rate, rather than the lower married rate. After the deceased passed away, the Applicant applied for a Canada Pension Plan survivor's pension. She claimed that she and the deceased had cohabited in a conjugal relationship for 24 years.

[4] The Minister granted the Applicant a survivor's pension. At the same time, the Minister concluded that the deceased had benefitted from GIS overpayments totalling nearly \$40,000.

[5] The deceased's estate (the Estate) appealed the Minister's reassessment to the Social Security Tribunal's General Division. The General Division held a hearing and found that the Applicant and the deceased were never in a common-law relationship. This prompted the Minister to revisit the Applicant's survivor's pension. The Minister concluded that the Applicant was not entitled to nearly \$10,000 in survivor's pension payments that she received from September 2015 to June 2019.

[6] The Applicant had not been part of the GIS hearing at the General Division. The Appeal Division later found that the failure to include the Applicant in a proceeding that affected her interests was procedurally unfair. The Appeal Division ordered the matter to be returned to the General Division for a new hearing—one that would also consider the Applicant's entitlement to the survivor's pension.

[7] The General Division held another hearing, this one involving both the Applicant and the Estate. The General Division again decided that the Applicant was not in a common-law relationship with the deceased contributor from 1998 to the date of his

death in 2015. The General Division found that the Applicant's and the deceased's respective GIS entitlements should have been based on each of them being single during the relevant period. It also found that the Applicant was not eligible to receive a CPP survivor's pension.

[8] On February 9, 2022, the Applicant submitted an application requesting leave (or permission) to appeal from the Appeal Division. In it, she expressed her disagreement with the General Division's decision and insisted that she was the deceased's common-law partner for many years. The Tribunal then sent the Applicant a letter asking her to elaborate on her reasons for appealing.

[9] The Applicant responded in a letter dated May 2, 2022. She made the following points:

- She and the deceased lived like a married couple for 32 years;
- She and the deceased shared a room; he was not her boarder; and
- The deceased's children refused to acknowledge her relationship with their father.

[10] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Applicant's appeal does not have a reasonable chance of success.

## **Issue**

[11] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

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

- based its decision on an important error of fact.<sup>1</sup>

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.<sup>2</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>3</sup> This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.<sup>4</sup>

## Analysis

[12] The Applicant comes to the Appeal Division making essentially the same arguments that she made at the General Division. She claims that the General Division disregarded her evidence. She maintains that she and the deceased were not merely landlord and tenant or boyfriend and girlfriend, but long-time common-law partners. She insists that the deceased's children had no knowledge about their relationship.

[13] I don't see an arguable case for these submissions. First, the Appeal Division does not consider new evidence or rehear evidence that has already been heard at the General Division. Second, the General Division is presumed to have consider all the evidence before it.

## The Appeal Division does not rehear evidence

[14] To succeed at the Appeal Division, an applicant must do more than simply disagree with the General Division's decision. An applicant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law. It is not enough to present the same evidence and arguments to the Appeal Division in the hope that it will decide your case differently.

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<sup>1</sup> See *Department of Employment and Social Development Act* (DESDA), section 58(1).

<sup>2</sup> DESDA, sections 56(1) and 58(3).

<sup>3</sup> DESDA, section 58(2).

<sup>4</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## **The Appeal Division does not consider new evidence**

[15] The Applicant submitted a number of documents with her leave to appeal application, most of them written testimonials from people who were close to her and the deceased.<sup>5</sup> Some of these documents were prepared before the General Division's December 2021 decision, some of them after.

[16] Either way, I cannot consider them. The Applicant is asking the Appeal Division to consider these new documents and find that she had a common-law relationship with the deceased. Unfortunately, that is not how the Appeal Division works. As noted, I can only consider specific types of error that the General Division may have committed. An appeal at the Appeal Division is not meant to be a "redo" of the General Division hearing. There is nothing in the law that allows me to consider new evidence, nor is there any way for me to reconsider evidence that the General Division has already considered. I don't see a reasonable chance of success on appeal for any argument that relies on the admission of fresh evidence.<sup>6</sup>

## **The General Division is presumed to have considered all available evidence**

[17] One of the General Division's jobs is to make findings of fact. In doing so, it is presumed to have considered all the evidence before it.<sup>7</sup> In this case, I don't see any indication that the General Division disregarded the Applicant's testimony. In fact, the General Division discussed her testimony at length in its decision. However, the General Division ultimately found that testimony less than convincing.

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<sup>5</sup> See ADN01.

<sup>6</sup> Once a hearing has concluded, there is a way to raise new or additional information. Under section 66 of the DESDA, an applicant may apply to the General Division to rescind or amend its decision based on new facts, but they must do so within one year of the issuance of the decision. The applicant must also demonstrate that the allegedly new facts are material and that they could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

<sup>7</sup> See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

## **The General Division considered the Applicant's evidence**

[18] Whether a common-law relationship exists depends on many factors.<sup>8</sup> In this case, the General Division found that the Applicant was not in a common-law relationship with the deceased from 1998 to 2015, the year of his death. It came to this conclusion for the following reasons:

- Although the Applicant and the deceased lived under the same roof for many years, that did not necessarily mean they were in a common-law relationship for the entire time;
- The Applicant had previously declared on various declarations and government forms that she was single;
- The deceased listed his marital status as common-law in his tax returns from 1992 to 2008 but then described himself as single after that period;
- The deceased's son and daughter credibly testified that, before and after their father's death, the Applicant was looking for ways to be deemed his common-law spouse in anticipation of qualifying for a survivor's pension;
- Although there was some evidence of mutual financial support, the majority of the available documents did not indicate a common-law relationship;
- The deceased named his son, and not the Applicant, as the executor of his estate; and
- Cancelled cheques indicated that the deceased paid the Applicant a monthly rent, suggesting their relationship was that of a landlord and tenant.

[19] Parties in a common-law relationship must show, by their acts and conduct, a mutual intention to live together in a marriage-like relationship of some permanence.<sup>9</sup> I see nothing to suggest that the General Division misapplied the law by basing its decision on the above factors.

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<sup>8</sup> See *Hodge v Canada (Minister of Human Resources and Development)*, 2004 SCC 65.

<sup>9</sup> See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

[20] One of the General Division's roles is to establish facts. In doing so, it is entitled to some leeway in how it weighs evidence. The Applicant may believe that her witness testimony proved her case, but it was just one of many factors that the General Division had to consider.

[21] The Federal Court of Appeal addressed this point in a case called *Simpson*,<sup>10</sup> in which the claimant argued that the tribunal attached too much weight to selected evidence. In dismissing the application for judicial review, the Court held:

[A]ssigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact.

[22] In this case, the General Division made a full and genuine effort to sort through the relevant evidence and assess its quality. I see no reason to second-guess the General Division's decision to give some items of evidence more weight than others.

## Conclusion

[23] The Applicant has not identified any grounds of appeal that have a reasonable chance of success.

[24] Permission to appeal is therefore refused.



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Member, Appeal Division

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<sup>10</sup> See *Simpson v Canada (Attorney General)*, 2012 FCA 82.