



Citation: *SM v Minister of Employment and Social Development*, 2022 SST 694

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

# **Leave to Appeal Decision**

**Applicant:** S. M.

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

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**Decision under appeal:** General Division decision dated March 22, 2022  
(GP-21-1548)

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**Tribunal member:** Neil Nawaz

**Decision date:** August 2, 2022

**File number:** AD-22-414

## Decision

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

## Overview

[2] The Claimant was married to N. C., a contributor to the Canada Pension Plan (CPP), for 24 years. They separated in March 2018 and divorced in October 2018. N. C. died on May 30, 2020.

[3] Service Canada refused the Claimant's application for a CPP survivor's pension. It found that the Claimant was not married to N. C., nor was she in a common-law relationship with him when he died.

[4] The Claimant appealed Service Canada's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It accepted that the Claimant continued to have a relationship with NC after they divorced but found insufficient evidence that she lived with him in the year prior to his death.

[5] The Claimant is now asking the Appeal Division for permission to appeal the General Division's decision.<sup>1</sup> She disagrees with the General Division's decision and makes the following points:

- N. C.'s medical condition near the end of his life affected him mentally and caused him to make decisions that he later regretted;
- After their divorce, although they lived in separate places, they continued to present themselves as a couple, and she continued to cook N. C.'s meals and do his laundry;
- Toward the end of 2019, they began looking for an apartment in which to live together once again, but then the Covid crisis hit and rentals suddenly became few and far between;

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<sup>1</sup> See Claimant's application for leave to appeal to the Appeal Division dated June 30, 2022, AD01.

- She looked after N. C. during his final illness and was responsible for laying him to rest; and
- She asks the Tribunal to focus on their 24 years of marriage and not on the brief, hard period at the end of N.C.'s life.

[6] 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 Claimant's appeal does not have a reasonable chance of success.

## Issue

[7] 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 them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.<sup>2</sup>

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.<sup>3</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>4</sup> This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.<sup>5</sup>

## Analysis

[8] The Claimant's submissions suggest that she is seeking a new hearing on the substance of her claim that she was N. C.'s common-law spouse at the time of his death. Unfortunately, I can't fulfill this request. That is because the Appeal Division can only consider whether the General Division committed an error that falls within one of four precisely defined categories. This limitation prevents me from considering new

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

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

<sup>4</sup> DESDA, section 58(2).

<sup>5</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

evidence or evidence that was already assessed by the General Division. In short, an appeal to the Appeal Division is not meant to be a “redo” of the General Division hearing.

[9] When determining whether a common-law relationship exists, a decision-maker must take into account many factors. In a case called *Hodge*,<sup>6</sup> the Supreme Court of Canada said that what matters is the intention of the parties, which can be deduced from their words and actions. Since *Hodge*, a long line of cases has held that there is no exhaustive definition for a common-law relationship and that each case must be decided according to its own particular facts.

[10] When I reviewed this file, I saw no indication that the General Division ignored, or gave inadequate consideration to, any significant aspect of the Claimant’s submissions. The Claimant may not agree with the General Division’s conclusions, but it was within its authority to weigh the available evidence and draw reasonable inferences from it.<sup>7</sup> For instance:

- The General Division noted that the Claimant and N. C. had been married for 24 years but correctly found that their divorce rendered those years irrelevant for the purpose of determining eligibility for the survivor’s pension;
- The General Division acknowledged that the Claimant and N. C. took steps to get back together again but found that they did not come until shortly before N. C.’s death and, in any event, fell short of establishing a common-law relationship; and
- The General Division was aware that the Claimant and N. C. continued to present themselves as a couple after their divorce but found that it was more important that they maintained separate residences during the 12 months leading up to N. C.’s death.

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<sup>6</sup> *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65.

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

For the General Division, this last finding was crucial, because the law requires common-law partners to have lived together for at least a year at the time of the contributor's death.

[11] I don't see an arguable case that the General Division erred in its analysis. The *Canada Pension Plan* defines "common-law partner," in relation to a contributor, as "a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a **continuous period of at least one year**. For greater certainty, in the case of a contributor's death, the 'relevant time' means the time of the contributor's death [emphasis added]."<sup>8</sup> Since the Claimant plainly testified that she maintained her own residence until N. C.'s death, this no reasonable chance of success for her argument that the General Division erred in finding her ineligible for the survivor's pension.

## Conclusion

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

[13] Permission to appeal is therefore refused.



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Member, Appeal Division

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<sup>8</sup> See section 2(1) of the *Canada Pension Plan*.