



Citation: *JL v Minister of Employment and Social Development*, 2026 SST 48

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. L.

Representative: I. L.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated December 3, 2025
(GP-25-1056)

Tribunal member: Neil Nawaz

Decision date: January 22, 2026

File number: AD-26-3

Decision

[1] I am refusing the Applicant permission to appeal. I see no basis for this appeal to proceed. These are the reasons for my decision.

Overview

[2] The Applicant was married to M. W., a contributor to the Canada Pension Plan (CPP). M. W. was born in China in May 1969 and came to Canada in September 2004. She passed away in December 2020.

[3] The Applicant applied for a CPP survivor's pension in February 2023.¹ In his application, he said that he had been married to M. W. for 29 years at the time of her death.

[4] The Minister refused the application after finding that M. W. hadn't made enough contributions to the CPP.

[5] The Claimant appealed the Minister's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. The General Division agreed with the Minister that M. W.'s CPP contributions were insufficient. It also noted that, although the Applicant had initially claimed that the *Canada Pension Plan's* contributory requirements discriminated against immigrants like his late wife, he failed to meet the legislative requirements to raise an argument under the Canadian *Charter of Rights and Freedoms* (Charter).

[6] The Applicant is now requesting permission to appeal from the Tribunal's Appeal Division. He says that the General Division made various errors in arriving at its decision:

- It made an error of law by refusing to consider the Applicant's arguments around "Charter values."

¹ See the Applicant's application for a CPP survivor's pension dated February 23, 2023, GD2-12.

- It made an error of law by concluding that it had no discretion in applying the rules governing the minimum qualifying period (MQP).
- It failed to apply jurisprudence on adverse-effects discrimination, specifically whether the rules governing the MQP disproportionately impact immigrants who arrive in Canada later in life and who are therefore unable to contribute to the CPP.
- It made erroneous findings of fact by failing to consider material evidence, specifically the fact that the Applicant's spouse was diagnosed with cancer in 2017 and began receiving the CPP disability benefit the following year, leaving her unable to continue contributing to the CPP.
- It breached procedural fairness by failing to meaningfully consider key evidence and arguments that the Applicant raised at the hearing.

[7] However much I may sympathize with the Applicant, I can't allow his appeal to go forward. That's because he hasn't met any of the grounds of appeal.

Issues

[8] There's no automatic right to appeal a General Division decision. The Appeal Division must first give permission to appeal. It will only do so if an applicant produces new evidence or if they present an arguable case that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers; or
- made an error of law or fact or some combination of the two.²

[9] At this preliminary stage, I have to decide whether the Applicant produced new evidence or presented an arguable case that the General Division made a mistake.

² See section 58.1(b) of the *Department of Employment and Social Development Act*.

Analysis

The Applicant hasn't produced any new evidence

[10] The Applicant hasn't submitted evidence that the General Division didn't already have. Accordingly, there is no new evidence that would justify giving Applicant permission to appeal.

[11] Furthermore, I've reviewed the record, and I'm satisfied that the General Division didn't ignore or misunderstand the available evidence about M. W.'s history.³

There's no arguable case the General Division incorrectly determined the contributory period

[12] The rules governing eligibility for the survivor's pension are set out in sections 44 and 49 of the *Canada Pension Plan*. I don't see an arguable case that the General Division misapplied those rules.

[13] As the General Division noted, a survivor's pension may only be paid if an individual contributed to the CPP for enough years. A contributor can meet this requirement by contributing to the CPP for

- at least 10 years; or
- at least one-third of the years in the contributory period, provided the number of those years is not less than three

[14] A contributory period begins with the later of these two dates:

- January 1966 (when the CPP started)
- the month after the individual turned 18

[15] The General Division noted that the month after M. W. turned 18 was June 1987.

[16] A contributory period ends with the earliest of these three dates:

³ For more on the need for this kind of review, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

- the month before the individual started getting a CPP retirement pension
- the month they turned 70
- the month they died

[17] The General Division noted that the earliest date in this case was December 2020, the month M. W. died.

[18] The General Division then looked at whether any months could be excluded from the contributory period. It determined that, owing to the disability exclusion, the 34 months between February 2018 and December 2020, could be dropped from M. W.'s contributory period. That gave her a final contributory period from June 1987 to January 2018 or 32 whole or partial years. One-third of 32, rounded up, is 11 years.

[19] As the General Division noted, the problem for the Applicant was that M. W.'s record of earnings showed only five years of valid contributions to the CPP.⁴ That was less than either the 10-year minimum or the 11 years that were calculated using her contributory period.

[20] I have reviewed the rules governing CPP survivorship eligibility, as well as the underlying information that the General Division used to calculate M. W.'s contributory period and MQP. I don't see an arguable case that the General Division came to the wrong result.

There's no arguable case that the General Division failed to apply Charter values

[21] The Applicant's reasons for seeking appeal revolve around the General Division's alleged failure to consider so-called "Charter values" when it adjudicated his claim. I don't see an arguable case on these grounds either.

[22] At the General Division, the Applicant initially suggested that the *Canada Pension Plan's* survivorship eligibility rules breached his Charter rights by treating immigrants and native-born Canadians differently. The General Division then informed

⁴ See M. W.'s record of earnings, as generated by Service Canada, GD2-16.

the Applicant that, to raise a Charter argument, he had to meet specific requirements under the Tribunal's rules of procedure.⁵ The General Division set a deadline for meeting those requirements, but the Applicant did not respond in time.

[23] The hearing proceeded without formal Charter arguments, but the Applicant then turned his attention to Charter values. He argued that, by applying principles of equality underlying the Charter, the *Canada Pension Plan* should be interpreted so that the contributory period for immigrants, like M. W., would start when they arrive in Canada and not before.

[24] The Applicant says that he did not seek to invalidate any legislation and only wanted a Charter-consistent interpretation of the *Canada Pension Plan's* survivorship rules. He alleges that the General Division didn't meaningfully engage with binding Supreme Court jurisprudence on adverse-effects discrimination.

[25] However, when I look at its nine-page decision, I see that the General Division devoted nearly half of it to explaining, in some detail, why the Applicant's Charter values argument could not succeed. In my view, the General Division cannot be reasonably accused of failing to grapple with the matter at hand. Indeed, the General Division addressed all the cases that the Applicant cited in his submission to the Appeal Division. The Applicant may not agree with the General Division's interpretation of those cases, but that, by itself, isn't a ground of appeal unless he can demonstrate a clear error of law. He hasn't done so.

[26] As the General Division notes, Charter values are what underpin each Charter right and give it meaning.⁶ However, the Federal Court of Appeal has said that they "cannot be broader than, undercut or do an end run around" the scope of formal Charter rights.⁷ The Applicant insists that he does not seek to overturn any provisions of the

⁵ See the General Division's notice dated September 8, 2025, GD5, which referred to section 1(1) of the *Social Security Tribunal Rules of Procedure*.

⁶ See *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12.

⁷ See *Sullivan v Canada (Attorney General)*, 2024 FCA 7.

Canada Pension Plan, but that is precisely what his arguments would do if taken to their logical conclusion.

[27] The Charter is typically advanced to challenge a law itself. However, the Charter also applies to discretionary administrative decisions. The Charter can be used, not to challenge the law itself, but the way in which the decision-maker exercised their discretion in administering that law.⁸ In this case, the Applicant was barred from mounting a direct challenge to the *Canada Pension Plan*'s survivorship provisions, but he was also effectively barred from challenging how the Minister applied those provisions. That's because sections 44 and 49, as written, permit the Minister no discretion in how to calculate the contributory period and MQP. The language used in these sections is entirely prescriptive and gives the Minister no leeway in assessing entitlement to the survivor's pension.

[28] Since Charter values only come into play when assessing discretionary decisions, the General Division had no choice but to dismiss the Applicant's argument. In doing so, the General Division aptly quoted the Federal Court of Appeal, which said, "Charter values cannot be used to invalidate legislative provisions that administrative decision-makers **must** follow... [my emphasis]"⁹

Conclusion

[29] I understand that this is not the outcome the Applicant wants, but he hasn't raised an arguable case that the General Division committed an error. Accordingly, I'm refusing him permission to appeal.



Member, Appeal Division

⁸ See *Doré v Barreau du Quebec*, 2012 SCC 12 and *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12.

⁹ See *Sullivan supra* note 7.