



Citation: *HF v Canada Employment Insurance Commission*, 2023 SST 373

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: H. F.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (526818) dated September 1, 2022 (issued by Service Canada)

Tribunal member: Nathalie Léger
Type of hearing: Teleconference
Decision date: February 8, 2023
File number: GE-22-3088

Decision

[1] The Appellant did not satisfy the requirements to raise constitutional issues in her appeal. This means that the Appellant's appeal can only be considered under the rules of the regular appeal process.

Overview

[2] The Appellant filed a Notice of Appeal to the Social Security Tribunal (Tribunal) appealing the Commission's reconsideration decision on the issue of whether she committed misconduct under the Employment Insurance Act (EI Act)¹.

[3] In her Notice of Appeal, the Appellant raised potential issues related to the *Canadian Charter of Rights and Freedoms* (Charter). To proceed with a Charter challenge an appellant is required to file a Notice of Constitutional Question². I will refer to this as the Notice.

Issue

[4] I must decide if the Appellant's appeal raises a constitutional issue that is sufficient to meet the requirements of the Regulations.³

Analysis

[5] To challenge the constitutional validity, applicability, or operability of any provision of the EI Act, an appellant must file a Notice setting out the provision at issue. The Notice must include submissions in support of the issue raised.⁴ The Notice must not only set out the statutory provisions or regulations at issue. It must also set out a valid constitutional argument.⁵

¹ GD2

² The rules are set out in section 1 of the *Social Security Tribunal Regulations*.

³ See section 1(1) of the *Social Security Tribunal Regulations*.

⁴ Section 1(1) of the *Social Security Tribunal Regulations*.

⁵ *Langlois v The Attorney General Canada*, 2018 FC 1108, para 13.

[6] The requirement to file a Notice does not impose an unduly high burden on appellants who seek to challenge the constitutionality of some aspect of legislation.⁶ However, I must reject an appellant's Notice if they do not identify the specific provision of the EI Act they intend to challenge or if they do not outline a valid constitutional argument.⁷ It is not enough for an appellant to make indirect generalized references to the Charter without further clarification.⁸ An appellant's submissions must be specific enough to permit a decision-maker to see the outline of a Charter argument.⁹

[7] The Tribunal is not allowed to consider whether an action taken by an employer violates an appellant's Charter fundamental rights. That is beyond our jurisdiction. Nor is the Tribunal allowed to make rulings based on the *Canadian Bill of Rights* or the *Canadian Human Rights Act* or any of the provincial laws that protect rights and freedoms. Finally, the Tribunal has no jurisdiction to decide if other provincial or federal legislation infringes on the Appellant's fundamental rights.

[8] I cannot decide Charter issues without a proper understanding of the factual context that led to the alleged breach or infringement of the Appellant's rights. I must also be able to understand which specific part of the legislation caused it.¹⁰ That is why appellants who intend to raise Charter issues in their appeals have to file a Notice with the Tribunal.¹¹

[9] If I am satisfied that the Appellant has properly outlined her argument, the challenge would proceed to the next step. In that case, the Appellant would have to file a more detailed document (this is called the "record"). The record includes the evidence, submissions, and authorities that an appellant intends to rely on. If the Notice does not include the necessary information, the Appellant's Charter challenge cannot proceed. In that case, I can return the appeal to the regular appeal process.

⁶ *R. S. v Minister of Employment and Social Development*, 2017 CanLII 84970.

⁷ *Canada (Attorney General) v Stewart*, 2018 FC 768.

⁸ *Langlois v Canada (Attorney General)*, 2018 FC 1108.

⁹ *Law v Canada (Minister of Employment and Immigration)* [1999] 1 S.C.R. 497.

¹⁰ The Supreme Court of Canada explained their general principle in *Mackay v Manitoba*, [1989] 2 SCR 357.

¹¹ Section 1(1) of the *Social Security Tribunal Regulations*.

- **The Appellant's Notice**

[10] The Appellant says her Charter rights were violated when the Commission refused to pay her employment insurance benefits because of a finding of misconduct. The Appellant did not at first identify sections of the EI Act or its Regulations or how they violated her rights.

[11] A case management conference was therefore held to explain to the Appellant what was required for a Notice to be valid. I explained that it needed to identify which section of the EI Act she wanted to be declared inoperable and how it violated some of her fundamental rights or freedoms. A long argument wasn't necessary, but the link between the two needed to be clearly identified.

[12] A few weeks later, the Appellant filed an Amended Notice of Constitutional Question¹². In it, she identifies s. 30(1) of the Employment Act as being the section to be declared inoperable because violating her rights protected by s. 7(2) and 7(3) of the Charter of rights and freedoms.

[13] Her argument is essentially the following: by concluding that her refusal to be vaccinated constituted misconduct, and using s.30(1) of the Employment Insurance Act to refuse to grant her benefits for that reason, the Commission was violating her rights to security of her body and violating her freedom to make her own choices regarding medical decisions, therefore infringing her Charter protected rights.

[14] The Appellant submits her appeal should proceed as a Charter challenge.

- **Has the Appellant complied with section 1(1) of the *Social Security Tribunal Regulations*?**

[15] No, I find that the Appellant's submissions are not sufficient to allow the appeal to proceed as a constitutional challenge.

¹² GD13

[16] The Appellant did not raise valid constitutional challenges that satisfy the requirement under the law. Her submissions are essentially about how her employer's actions and the Commission's decision violated her Charter rights.

[17] It needs to be said again that the Tribunal has no jurisdiction to decide if her employer's policy is valid or not. This question does not fall under the Tribunal's jurisdiction.¹³

[18] Nowhere in her argument does she identify how one or more of the EI Act provisions violate those rights. She maintains that it is her employer's or the Commission's actions that violated those rights. As explained in paragraph 7 above, the Tribunal does not have jurisdiction to decide if her employer's actions violated her Charter rights.

[19] The Appellant has not identified which section of the EI Act or Regulations are at issue and has not shown how the Act or Regulations violates her Charter rights. Her Notice does not meet the legal requirements and must be rejected.

Conclusion

[20] The Appellant cannot proceed with her constitutional arguments. This means the appeal will now proceed within the regular process.

Nathalie Léger
Member, General Division – Employment Insurance

¹³ The Appellant said she has filed a complaint with a Human Rights Tribunal about those facts.