



Citation: *CW v Minister of Employment and Social Development*, 2025 SST 816

Social Security Tribunal of Canada
General Division – Income Security Section

Interlocutory Decision

Appellant: C. W.

Respondent: Minister of Employment and Social Development
Representatives: Rebekah Ferriss and Yanick Belanger

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 25, 2024 (issued by
Service Canada)

Tribunal member: Shannon Russell

Type of hearing:

Decision date: August 1, 2025

File number: GP-24-1173

Interlocutory Decision

[1] The Appellant, C. W., has filed a Charter Challenge Notice (Notice) that complies with section 1(1) of the *Social Security Tribunal Regulations* (SST Regulations).

Overview

[2] This is an interlocutory decision about whether the Appellant's Notice complies with section 1(1) of the SST Regulations.

[3] By way of background, the Appellant applied for the Allowance for the Survivor (ALW-S) in February 2023. In her application, she said that her spouse died in August 1986. This was a mistake because the death certificate shows her spouse died in August 1996. In any event, the Appellant went on to say that she remarried in February 2001 and divorced in December 2010.¹

[4] The Minister of Employment and Social Development (Minister) denied her application at both the initial and reconsideration levels of review. The Minister explained that it couldn't approve the application because the Appellant remarried after her spouse passed away and so she didn't meet the definition of a "survivor".²

[5] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

[6] After the Appellant filed her appeal with the Tribunal, she raised an argument under the Canadian Charter of Rights and Freedoms (Charter). She filed her Notice in April 2025.³

¹ See pages GD1-20, GD2-3 to GD2-7.

² The Minister's initial decision of October 19, 2023 is at page GD2-8. The Minister's reconsideration decision of March 25, 2024 is at page GD2-15.

³ See GD16.

The notice requirement

[7] The SST Regulations set out a notice requirement for making an argument under the Charter.

[8] Section 1(1) of the SST Regulations says:

1(1) A party who wants to challenge the constitutional validity, applicability or operability of a provision of the *Canada Pension Plan*, the *Old Age Security Act*, the *Employment Insurance Act*, Part 5 of the *Department of Employment and Social Development Act* or the rules or regulations made under any of those Acts must file a notice with the Tribunal that sets out

- (a) the provision that will be challenged;
- (b) the material facts relied on to support the constitutional challenge; and
- (c) a summary of the legal argument to be made in support of the constitutional challenge.

[9] I will explain what these requirements mean.

(a) the provision that will be challenged

[10] A Notice must identify the provision of the law that will be challenged.

[11] The Tribunal only has jurisdiction (power) to hear a constitutional challenge against a specific section of one of the Acts that it applies. It can't hear a constitutional challenge against a decision of the Minister or about any other law not mentioned in section 1(1).

[12] An appellant must be able to identify, from the outset, which Act, and what section of it, they are challenging.

(b) the material facts relied on to support the constitutional challenge

[13] A Notice must provide the material facts relied on to support the constitutional challenge. This is a new requirement. The last version of the SST Regulations didn't require a party to provide the material facts.

[14] The material facts are important because Charter issues can't be decided without a proper understanding of the factual context that led to the alleged breach of the Appellant's rights.⁴

[15] To meet this requirement, the Appellant must provide, in sufficient detail, the constituent elements of **each** legal ground raised.⁵

(c) a summary of the legal argument in support of the Charter challenge

[16] Finally, the SST Regulations require the Appellant to provide a summary of the legal argument she intends to bring forward. This is also a new requirement. The last version of the SST Regulations only required an appellant to provide "any submissions in support of the issue that is raised."⁶

[17] The use of the word "any" was interpreted by some decision makers to mean that submissions were optional. However, if submissions were made, they needed to relate to the issue and be on point. They needed to be sufficiently specific to permit a decision maker to at least see the outline of a Charter argument.⁷

[18] The change to the Regulations means that the Appellant must provide a summary of the argument she intends to make. It's not optional. It also means that a specific type of argument must be made – a **legal** argument. The argument must therefore be framed in a way that is consistent with the appropriate legal tests established by jurisprudence.

What the Appellant's Notice says

[19] The Appellant's Notice says she intends to challenge section 19 of the OAS Act, as informed by the definition of "survivor" in section 2. She says that the definition restricts eligibility for the ALW-S to those who did not remarry or enter into a common-

⁴ See *Mackay v. Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357, and *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 at paragraph 70.

⁵ See *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 at paragraph 19.

⁶ See paragraph 20(1)(a) of the *Social Security Tribunal Regulations*, 2013.

⁷ See *Minister of Employment and Social Development v. S.R. and D.R.*, 2018 SST 786.

law relationship after their spouse's death. She says the restriction infringes her rights under sections 7 and 15(1) of the Charter.

What the Minister says about the Appellant's Notice

[20] The Minister says that the Appellant has properly laid out the provisions she wants to challenge, and she has also set out the material facts to support her claim. However, the Minister says the Appellant's Notice fails to meet the requirement of section 1(1)(c). This is because the Appellant has failed to disclose an argument with a reasonable chance of success. The Minister points out that the Tribunal's Appeal Division (AD) has recently clarified that the summary of a legal argument must disclose an argument with a reasonable chance of success.⁸

Analysis

[21] The Appellant's Notice complies with section 1(1) of the SST Regulations. I will address each of the three requirements set out in section 1(1) of the SST Regulations.

I - Does the Appellant's Notice comply with section 1(1)(a) of the SST Regulations?

[22] The Appellant says she is challenging section 19 of the OAS Act, as informed by the definition of "survivor" in section 2 of the OAS Act.⁹

[23] Section 19 of the OAS Act is about the Allowance. It is **not** about the ALW-S. As such, section 19 of the OAS Act is not relevant in this appeal.

[24] The provision in the OAS Act that sets out the eligibility requirements for the ALW-S is section 21. This is the section that includes the word "survivor".

[25] That said, the Appellant has correctly cited section 2 of the OAS Act and has specifically referenced the definition of "survivor" in that section.

⁸ At page GD19-1, the Minister cites *JH v. Canada Employment Insurance Commission*, May 3, 2024, AD-24-13.

⁹ See page GD16-6.

[26] What's more, the Appellant's Notice, when read as a whole, is really about how the word "survivor" is defined. Section 2 defines "survivor" as a person whose spouse or common-law partner has died and who has not thereafter become the spouse or common-law partner of another person.

[27] The Appellant has also made it clear that her challenge is in the context of eligibility for the ALW-S.

[28] As such, the Appellant's Notice complies with section 1(1)(a) of the SST Regulations. She's challenging the definition of "survivor" in section 2 of the OAS Act as it informs section 21 of the OAS Act.

II - Does the Appellant's Notice comply with section 1(1)(b) of the SST Regulations?

[29] The Appellant's Notice complies with section 1(1)(b) of the SST Regulations. The Minister acknowledges this.

[30] The Appellant has explained the "who did what, and when". She has provided the facts that support the alleged wrong and her facts align with the elements of her Charter claim.

[31] The Appellant's material facts include the following:

- Her first husband died on August 2, 1996.
- She remarried on February 17, 2001.
- Her second marriage ended in divorce in 2010.
- She receives no spousal support or financial benefit from having remarried.
- She applied for the ALW-S in February 2023. She met the income requirement because her income was \$16,143.00, being well below the income threshold to qualify for the ALW-S.
- Her application was denied because she had remarried.

- The denial of the application left her unable to afford the basic necessities of life, thereby risking her health and financial stability.
- She currently relies on the food bank and the Alberta Adult Health Benefit to pay for prescriptions and dental services.
- She can't afford the supplements she needs to keep her autoimmune disease from causing inflammation in her body.

[32] The Appellant also cites some other facts and resources she intends to rely on, such as:

- 2022 statistics from Statistics Canada about the food insecurity rate for Canadians.
- Evidence to show that poverty is linked to higher chronic disease rates amongst seniors.
- Studies that highlight how health costs are excluded from poverty measures, like meal services and transportation.
- Data showing that many remarried widows are not financially secure.
- Statistics about the gender pension gap.
- Statistics about the gender wage gap.

III - Does the Appellant's Notice comply with section 1(1)(c) of the SST Regulations?

[33] The Appellant's Notice complies with section 1(1)(c) of the SST Regulations. I will start with the Appellant's section 7 Charter argument.

The Appellant's section 7 Charter argument

– What section 7 of the Charter is about

[34] Section 7 of the Charter states:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[35] A section 7 argument requires the decision maker to ask two questions. First, is there a deprivation of one of the three protected interests? Second, is the deprivation in accordance with the principles of fundamental justice?¹⁰

– **What the Appellant says**

[36] Of the three protected interests, the Appellant asserts that her right to security of the person has been infringed. She argues that the restricted definition of “survivor” threatens her security of the person by risking poverty (financial security) and health issues (well-being).

[37] The Appellant acknowledges that the courts have been cautious about extending section 7 to purely economic rights. But she says there are cases that suggest section 7 can protect against state actions affecting security of the person.¹¹ She also points to *PHS Community Services Society*¹² for the proposition that a law can infringe section 7 if it creates a risk to health by preventing access to health care.

[38] In terms of the principles of fundamental justice, the Appellant says the rule about denying the ALW-S to those who have remarried is arbitrary and is based on the assumption that remarriage ensures financial security.¹³ She also says the rule is overbroad in that it applies to all remarried widows without considering individual circumstances.

– **What the Minister says**

[39] The Minister says the Appellant’s section 7 claim fails to disclose an argument with a reasonable chance of success. This is because section 7 does not guarantee a right to financial security.¹⁴ Security of the person refers to freedom from psychological

¹⁰ See *Canadian Council for Refugees v. Canada (Citizen and Immigration)*, 2023 SCC 17 at paragraphs 56 and 60; and *Canada (Attorney General) v. Bedford*, 2013 SCC 72 (CanLII).

¹¹ The Appellant cites *New Brunswick (Minister of Health and Community Services) v. G.(J)* [1999] 3 SCR 46.

¹² See *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (CanLII).

¹³ See page GD16-7.

¹⁴ The Minister cites *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84 at paragraph 80.

and physical harm imposed by the state.¹⁵ Security of the person does not encompass economic rights, nor does it impose a positive obligation on the government to guarantee financial security.¹⁶ The Minister says that the Appellant has not made any argument, or suggested that she will make arguments, that would undermine this approach to section 7 and its operation.¹⁷

– **My findings about the Appellant’s section 7 argument**

[40] I acknowledge that the Tribunal’s AD has recently held that section 1(1)(c) of the SST Regulations requires a claimant to provide a summary of their legal argument (in support of the constitutional challenge) that has a reasonable chance of success.¹⁸

[41] But in the case before the AD, the claimant was trying to raise an argument that was inconsistent with a decision from the Supreme Court of Canada (SCC). That claimant was relying on unwritten constitutional principles such as the doctrine of vagueness to invalidate sections of the *Employment Insurance Act*. The AD held that the General Division didn’t err in relying on a decision from the SCC that says that unwritten constitutional principles cannot be used as bases for invalidating legislation.¹⁹

[42] In the case before me, the Appellant isn’t trying to raise an argument about an area of the law that the courts have closed the door on. She’s raising an argument about an area of the law where the courts have left the door slightly ajar (economic rights).²⁰ She’s also raising an argument (access to health care) that has been recognized in case law as falling within the scope of section 7.²¹

[43] The Appellant may have a difficult case to make with respect to her section 7 challenge. But this doesn’t mean she hasn’t met the requirement of section 1(1)(c) of

¹⁵ The Minister cites *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, at paragraphs 53 to 55; and *R. v. Morgentaler*, [1988] 1 SCR 30 at page 56.

¹⁶ The Minister cites *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84.

¹⁷ See pages GD19-2 to GD19-3.

¹⁸ See *JH v. Canada Employment Insurance Commission*, April 28, 2025, AD-24-13 at paragraph 59.

¹⁹ See *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at paragraph 84.

²⁰ See *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84 at paragraph 83.

²¹ See *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (CanLII) at paragraph 93.

the SST Regulations. She has identified the protected interest, summarized her argument about why the denial of benefits to those who have remarried is contrary to the principles of fundamental justice, and acknowledged what the SCC has said about economic rights and section 7 of the Charter.

The Appellant's section 15(1) Charter argument

– What section 15(1) of the Charter is about

[44] Section 15(1) of the Charter states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[45] To prove a violation of section 15(1), an appellant must show that the impugned law:

1. Creates a distinction based on enumerated or analogous grounds, on its face or in its impact; and
2. Imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.²²

[46] It's not enough for a claimant to show that the law creates a distinction. The claimant must show that the distinction is based on an enumerated (listed) or analogous (similar) ground.

– What the Appellant says

[47] As I understand it, the Appellant is arguing that the definition of "survivor" discriminates based on **marital status** because it creates a distinction between

²² See *R. v. Sharma*, 2022 SCC 39 at paragraph 28.

survivors who remarried after losing a spouse and survivors who didn't remarry after losing a spouse.

[48] The Appellant is also arguing that the distinction discriminates based on **sex** because it disproportionately affects women. This is because women are more likely to be widows due to longer life expectancies and because women face lower incomes compared to men.

[49] As for the second part of the section 15(1) test, the Appellant argues that the definition of "survivor" perpetuates a female dependency stereotype – that a subsequent spouse will financially support the widow. She adds that the denial of the ALW-S reinforces historical patterns of economic vulnerability for women.

– **What the Minister says**

[50] The Minister says the Appellant's section 15(1) claim fails to disclose an argument with a reasonable chance of success. This is because the Appellant has not made a clear argument laying out a distinction based on sex or marital status, as required by step one of the section 15(1) test.

[51] The Minister says the Appellant's arguments disclose systemic disadvantage suffered by women broadly. The Minister says this is not enough to show that the provision itself creates a distinction.

[52] The Minister relies on *Weatherley*, from the Federal Court of Appeal (FCA).²³ In that case, the claimant was challenging the constitutionality of the provision in the Canada Pension Plan (CPP) that says a person can only receive one survivor's pension. That claimant argued the provision discriminated based on sex. The Minister points out that the FCA said that evidence about the general status of women as disadvantaged to men was not enough to show the requisite nexus between the impugned provision and the alleged distinction. The Minister also says that the claimant in *Weatherley* abandoned her previous argument about discrimination based on marital

²³ See *Weatherley v. Canada (Attorney General)*, 2021 FCA 158.

status (twice-widowed) and the FCA said her decision to abandon that argument was wise.²⁴

– **My findings**

[53] The Appellant's summary of her legal arguments meets the requirement of section 1(1)(c) of the SST Regulations.

[54] The Appellant has explained the alleged distinction and the grounds for the alleged distinction. She has also summarized the arguments she intends to make about how the challenged law perpetuates stereotypes and historical disadvantage.

[55] The FCA's comment in *Weatherley* about the claimant's decision to abandon her "twice-widowed" ground of discrimination was made in a specific context. The FCA said that particular ground hasn't been recognized as an analogous ground and that the claimant hadn't provided enough evidence to support it becoming one.²⁵ The Appellant in this case isn't arguing a distinction based on an analogous ground of "twice widowed" or even something like "widowed and divorced". She's relying, more broadly, on the already recognized analogous ground of marital status.

[56] I acknowledge that the FCA held in *Weatherley* that evidence about the general status of women as disadvantaged to men is not enough to show the requisite nexus between the impugned provision and the alleged distinction. However, in *Weatherley*, the FCA was assessing the evidence the claimant filed to support her section 15(1) argument. This case, however, is only at the initial steps of a Charter claim. I don't yet have any evidence to assess. It would be improper for me to find the Appellant's Notice doesn't comply with section 1(1)(c) simply because the Appellant may file evidence that is unduly broad.

²⁴ See page GD19-2.

²⁵ See *Weatherley v. Canada (Attorney General)*, 2021 FCA 158 at paragraphs 18 and 19.

Conclusion

[57] The Appellant's Notice complies with section 1(1) of the SST Regulations. The next step in the process is for the Appellant to file a Charter Record. I will schedule a Case Conference shortly. During the Case Conference, I will set the deadline for receipt of the Appellant's Charter Record.

Shannon Russell

Member, General Division – Income Security Section