



Citation: *CK v Minister of Employment and Social Development*, 2025 SST 1135

Social Security Tribunal of Canada General Division – Income Security Section

Interlocutory Decision

Appellant: C. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 18, 2023
(issued by Service Canada)

Tribunal member: Antoinette Cardillo

Decision date: October 10, 2025
GP-23-2116

File number:

Decision

[1] The Appellant's Charter Challenge Notice (Notice) does not comply with the requirements of section 1(1) of the *Social Security Tribunal Regulations, 2022* (SST Regulations).

Overview

[2] The Minister of Employment and Social Development (Minister) received the Appellant's application for the Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) on October 25, 2022.¹

[3] The Minister approved the Appellant's application at the rate of 24/40th with payments starting on November 2022, the month after the Appellant turned 65 years old.²

[4] The Appellant requested a reconsideration of the Minister's decision. She didn't agree with the amount of her monthly payments. The Minister maintained its position on reconsideration.³ The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division (Tribunal).

[5] The Appellant made several submissions to support her appeal. In her reply to the Minister's submissions, she referred to unfair treatment and discriminatory practices pursuant to several federal and provincial laws as well as the *Canadian Charter of Rights and Freedoms* (Charter).⁴

[6] After a case conference to discuss the Charter appeal process, the Tribunal sent the Appellant information about Charter appeals.

¹ See page GD1-40.

² See page GD1-43.

³ See page GD1-38.

⁴ See GD5.

[7] She filed a Notice on January 8, 2025.⁵

[8] After reviewing the Notice, I advised the Appellant that there were deficiencies. She referred to the *Human Rights Code* and to the *Canadian Human Rights Act*. However, I do not have the jurisdiction to make rulings based on these laws. I could only make rulings on matters relating to the *Canada Pension Plan* (CPP) or the *Old Age Security Act* (OAS Act).

[9] Therefore, I asked the Appellant to identify which sections of these two laws she claimed had infringed her rights under the Charter.

[10] I also asked the Appellant to identify which sections of the Charter she believed the CPP, or the OAS Act had violated.

[11] Finally, I invited the Appellant to review and amend the summary of facts and legal argument to support her claim based on the sections of the law and of the Charter that she would identify in the amended Notice.

[12] The Appellant filed an amended Notice.⁶

[13] The Minister made submissions on the Appellant's amended Notice.⁷

Issue

[14] I have to decide whether the Appellant's amended Notice complies with section 1(1) of the SST Regulations.

Analysis

[15] I find that the Appellant's amended Notice does not comply with section 1(1) of the SST Regulations.

⁵ See GD12.

⁶ See GD17.

⁷ See GD18.

[16] To explain my decision, I will:

- set out the notice requirements that are in the SST Regulations
- summarize what the Appellant said in her amended Notice
- summarize the Minister's arguments about the amended Notice
- discuss whether the Appellant's amended Notice complies with each requirement

The notice requirements

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

[18] 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*, the *Canada Disability Benefit 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.

[19] I will discuss each of these three requirements.

(a) The provision that will be challenged

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

[21] The Tribunal only has the power to hear a constitutional challenge against a specific section or sections of the laws mentioned in section 1(1). It can't hear a constitutional challenge against actions by the Minister or of any other law. It is therefore important for me to know which law and what section of it, the Appellant is challenging.

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

[22] 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.

[23] To meet this requirement, the Appellant must provide, in sufficient detail, the constituent elements of each legal ground raised.⁸

[24] What constitutes a material fact is determined by the cause of action or legal ground the Appellant is putting forward.

[25] 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.⁹

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

[26] Finally, the SST Regulations require an appellant to provide a summary of the legal argument they intend 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".¹⁰ 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.¹¹

[27] The change to the SST Regulations means that the Appellant must provide a summary of the legal arguments she intends to make. The arguments must therefore be

⁸ See *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 at paragraph 19.

⁹ 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.

¹⁰ See paragraph 20(1)(a) of the *Social Security Tribunal Regulations*, 2013.

¹¹ See *Minister of Employment and Social Development v. S.R. and D.R.*, 2018 SST 786.

framed in a way that is consistent with the appropriate legal tests established by court decisions.

What the Appellant's Charter Challenge amended Notice says

[28] In her amended Notice, the Appellant said that the following sections of the OAS Act:

- 2(a)(b)
- 3(i)(ii)(iii)
- 3(2)
- 3.2
- 3.3
- 4
- 5
- 8(1)

infringed her rights under sections 2(b), 7 and 15(1) of the Charter.¹²

[29] The Appellant also referred to sections of the CPP she said had breached her rights under the Charter. However, the reconsideration decision she is appealing is not about her CPP pension.¹³ The reconsideration decision only deals with issues related to her OAS pension. I only have the authority to decide appeals from a reconsideration decision that is before me. Therefore, I don't have jurisdiction to deal with the CPP issues she raised in her amended notice.¹⁴

[30] The Appellant said that her monthly OAS and GIS payments did not reflect a fair assessment.¹⁵

[31] There were also errors of calculations which resulted in two missed months of payments.

¹² See GD17.

¹³ See page GD1-38.

¹⁴ See section 28 of the OAS Act.

¹⁵ See page GD17-3.

[32] Her OAS and GIS payments based on eligibility criteria to these benefits had not been ethically calculated as they were based on her lowest income years. In addition, there were six months of missed payments which were eventually paid one year after her OAS and GIS application causing psychological and financial stress.

[33] The Appellant also said that unethical taxes were applied to the amount reimbursed. She therefore received less money than she should have received.

[34] She wasn't contesting the years of residency determined by the Minister; however, she found the eligibility criteria to the pension benefits to be discriminatory.¹⁶

[35] The Appellant said that as a newcomer to Canada of a certain age, she was denied the advantage that her Canadian peers had or someone who came to Canada at the age of 18.

[36] She said that the Minister's lack of action had a lasting impact on her emotional well-being and caused financial distress and insecurity at an age where she should have been protected by the system. This went against section 15(1) of the Charter.¹⁷

[37] The Appellant said that the Supreme Court of Canada stated that the purpose of section 15 of the Charter is to protect those groups who suffer social disadvantage in society. She did not however refer to a specific decision of the Supreme Court.

[38] She added that the OAS and GIS benefits can be seen as complementary to the CPP and the Ontario Teacher's Pension Plan (OTPP) in preventing a serious decline in the standard of living at retirement. Under section 15 of the Charter, disadvantaged Canadians should not be subject to differential treatment and let to live in poverty resulting from systemic factors such as economic disparities, labour market inequalities and policy failures.

¹⁶ See page GD17-4.

¹⁷ See page GD17-6.

[39] The Appellant said she was mistreated by government institutions, and she was misled. She was given erroneous and confusing information which put her in the situation of paying additional taxes on missing payments. She felt disrespected and devalued by the system. As a recipient of Canadian pension benefits, she was obligated to receive benefits at a level that failed to take into consideration her basic needs.¹⁸

[40] The Appellant added that Service Canada, the Canada Revenue Agency and the OTPP wouldn't admit to any wrongdoing in disregarding her Charter rights in the context of her employment and pension plans.

[41] She was denied the opportunity to create the life she wanted to have in Canada and to have her needs accommodated consistent with her duties as a member of the Canadian society due to discriminatory practices. As a result, she suffered significant loss of income.

[42] Further, she said that the *Employment Standards Act* was violated by a sudden termination of her contract contrary to section 15 of the Charter that prohibits and provides equality and opportunity for all.¹⁹ She also said that section 74(1) of the *Employment Standards Act* does not allow unfair treatment in the workplace.

[43] She considered the abusive termination of her contract and full-time employment opportunity a direct threat to her security as a person as well as a discrimination by putting barriers in her economic and personal development. This resulted in a long emotional and economic struggle to maintain a decent standard of living according to her aspirations.

[44] The Appellant also said that section 2(b) of the Charter gives her the right to ask the Minister to discuss her position in the Canadian labour system and in the pension

¹⁸ See page GD17-8.

¹⁹ See page GD17-10.

system and to be offered solutions that are equitable and that could repair the disadvantages she faced during her working years in Canada.

What the Minister says about the Appellant's amended Notice

[45] The Minister said the Appellant's amended Notice did not meet the requirements of section 1(1) of the SST Regulations.²⁰

[46] More specifically, the Appellant's amended Notice did not meet the requirement of section 1(1)(a) because she had not provided enough specificity regarding the provisions she wished to challenge. She simply cited numerous, loosely-related provisions of two different pieces of legislation.

[47] In addition, the Minister said that the Appellant had not met the requirement of section 1(1)(b) of the SST Regulations because she had only made vague allegations of wrongdoing, not facts that could support her claim. The Appellant said that "admission criteria have not been ethically calculated", there were "errors of calculation", and she was missing some payments. She said that her entitlement to all pension plans were "disputable". These vague assertions do not form the basis for a Charter Notice.

[48] The Minister also said that the Appellant had not met the requirement of section 1(1)(c). Although at this stage of the process the Appellant didn't have to prove her case or even present her entire claim, her submissions must at a minimum relate to the identified provisions in issue and should address the criteria needed to raise a Charter infringement. Instead, the Appellant made a variety of arguments (including ones about the *Employment Standards Act*) that do not form a clear outline of any Charter arguments.

[49] Finally, the Minister said that the Appellant had not provided any outline about her arguments relating to the tests to be met in a challenge of sections 7 and 15(1) of the Charter.

²⁰ See GD11.

My Findings

What part of the Appellant's amended Notice complies with the SST Regulations

[50] The Appellant's amended Notice said that sections 2(a)(b), 3(i)(ii)(iii), 3(2), 3.2, 3.3, 4, 5 and 8(1) of the OAS Act infringed sections, 2(b), 7 and 15(1) of the Charter.

[51] Although not all the sections the Appellant mentioned in her amended Notice exist in the OAS Act (or the *Old Age Security Regulations*), I find that the amended Notice meets the requirement of section 1(1)(a) of the SST Regulations because she identified the sections of the OAS Act she is challenging.

What parts of the Appellant's amended Notice don't comply with the SST Regulations

- Section 2(b) of the Charter**

[52] Section 2(b) of the Charter says:

Everyone has the following fundamental freedoms:

freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

[53] The Appellant does not identify any sections of the OAS Act that infringe section 2(b) of the Charter or provide any facts or legal arguments in relation to this section of the Charter.

- Section 7 of the Charter**

[54] I find that the Appellant has not explained how sections 2(a)(b), 3(i)(ii)(iii), 3(2), 3.2, 3.3, 4, 5 and 8(1) of the OAS Act infringe her right to life, liberty and security.

[55] Section 7 of the Charter says:

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.

[56] A section 7 argument requires the decision maker to ask two questions:

- 1) Is there a deprivation of one of the three protected interests?
- 2) Is the deprivation in accordance with the principles of fundamental justice?²¹

[57] The Appellant made a statement in her amended Notice that she considered the abusive termination of her contract and full-time employment a direct threat to her security as a person as well as a discrimination by putting barriers to her economic and personal development. This resulted in a long emotional and economic struggle to maintain a decent standard of living according to her aspirations.

[58] She further said that she was denied the opportunity to create the life she wanted to have in Canada.

[59] She does not provide any material facts or legal arguments to show how the sections of the OAS Act she identified in her amended Notice deprived her of the right to either life, liberty or security of the person.

[60] Although the Appellant says that the abusive termination of her full-time employment was a direct threat to her security as a person, she doesn't link the infringement to any sections of the OAS Act. Instead, she links it to her employer's decisions and claims that the *Employment Standards Act* was breached.

[61] As I previously explained to the Appellant, the *Employment Standards Act* is provincial law. I don't have jurisdiction to decide matters under provincial legislation. I only have jurisdiction to decide if a statutory provision of the OAS Act violated a Charter

²¹ See *Canadian Council for Refugees v. Canada (Citizen and Immigration)*, 2003 SCC 17 at para. 56.

right. In this instance, the Appellant hasn't identified how any of the sections she mentioned in her amended Notice violated her section 7 rights.

[62] She does not explain how her security was threatened except to say that she experienced financial strain. That is not enough to claim that her Charter rights under section 7 were violated.

[63] Also, while economic rights are generally not included under section 7 of the Charter, I note that the Supreme Court of Canada has suggested that section 7 might protect against the deprivation of economic rights that are fundamental to human survival.²²

[64] However, in the Appellant's case, I simply cannot consider that she has provided a summary of legal arguments that show how her life or security was infringed or limited by the sections of the law she identified in her amended Notice.

- Section 15 of the Charter

[65] The Appellant said sections 2(a)(b), 3(i)(ii)(iii), 3(2), 3.2, 3.3, 4, 5 and 8(1) of the OAS Act infringe section 15(1) of the Charter.

[66] Section 15(1) of the Charter says:

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.

[67] To prove that a law violates section 15(1), an appellant must show that the law:

- creates a distinction based on enumerated or analogous grounds, on its face or in its impact; and
- imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.²³

²² See *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84; and *Irwin Toy Ltd., v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC).

²³ See *R. v. Sharma*, 2022 SCC 39 at paragraph 28.

[68] It's not enough for an appellant to show that the law creates a distinction. The appellant must show that the distinction is based on an enumerated (listed in section 15(1)) or analogous (similar) ground. Enumerated grounds are race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Where the law does not explicitly identify a group, the appellant has to show how the law creates or contributes to a disproportionate impact on the appellant's group based on a protected ground.²⁴

[69] The Appellant does not explain how the OAS Act created a distinction based on either an enumerated or analogous ground.

[70] The Appellant's arguments are mainly about her disagreement with the calculation of her pension benefits. She also speaks about discriminatory practices and unethical errors in the calculation of these benefits. She disagrees with the eligibility criteria for these benefits and makes lengthy arguments about how her employer mistreated her and its effects on her emotional and financial well being.

[71] She also said that as a newcomer to Canada of a certain age, she was denied the advantage that her Canadian peers had or someone who came to Canada at the age of 18. She was denied the opportunity to create the life she wanted to have in Canada and to have her needs accommodated consistent with her duties as a member of the Canadian society due to discriminatory practices. As a result, she suffered significant loss of income.

[72] The Appellant does not describe what distinction the sections of the law she identified in her amended Notice have created and the grounds for the alleged distinction. She also has not explained how the sections of the law create a disproportionate impact on a specific group protected by section 15 of the Charter.

²⁴ See *R v. Sharma*, 2022 SCC 39 at paragraph 50.

[73] The Appellant's arguments are about her experience with her employer and how she felt mistreated by the system.

[74] Therefore, the Appellant's amended Notice does not provide the material facts or legal arguments, in accordance with the tests set out by the Supreme Court, to explain how her Charter rights under section 15 have been breached.

Conclusion

[75] The Appellant's amended Notice does not comply with section 1(1) of the SST Regulations.

[76] Although the amended Notice identifies the sections of the OAS Act that the Appellant wants to challenge, the amended Notice does not provide the material facts to be relied on to support the constitutional challenge. It does not provide a summary of the legal arguments as required by sections 1(1)(b) and (c) of the SST Regulations.

[77] As a result, the Appellant cannot raise a constitutional issue in this appeal. Her appeal will continue as a regular appeal.

[78] The Tribunal will contact the parties regarding next steps.

Antoinette Cardillo

Member, General Division – Income Security Section