

Federal Court



Cour fédérale

**Date: 20191211**

**Court File No.: T-1551-18**

**Citation: 2019 FC 1592**

**Vancouver, British Columbia, December 11, 2019**

**PRESENT: The Honourable Mr. Justice Lafrenière**

**BETWEEN:**

**JENNY DESIREE EVANS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA  
AND MARY-JO MCDONALD**

**Respondents**

**JUDGMENT AND REASONS**

I. Background

[1] The underlying dispute involves two competing claims for a survivor's pension under the *Canada Pension Plan*, RSC 1985, c C-8 [CPP].

[2] In March 2007, the Respondent, Mary-Jo McDonald, applied for a survivor's pension under the CPP as the common-law partner of a deceased contributor, Terry Evans. In April 2007,

the Applicant, Jenny Desiree Evans, applied for the same pension on the basis that she was Mr. Evans' separated married spouse.

[3] The CPP provides a pension for the survivor of a deceased contributor. Subsection 42(1) provides that the "survivor" is the person married to the contributor at the time of the contributor's death if the contributor has no common-law partner. Section 2 defines a "common-law partner" as a person who is cohabiting with the contributor in a conjugal relationship for a continuous period of at least one year at the time of the contributor's death.

[4] The issue of entitlement to the survivor's pension was hotly contested by both claimants over a number of years before the Minister of Employment and Social Development, the General Division of the Social Security Tribunal [General Division] (and its predecessor), the Appeal Division of the Social Security Tribunal [Appeal Division] (and its predecessor), and the Federal Court of Appeal. The matter was ultimately referred back to the General Division for a new hearing.

A. *Decision of the General Division of March 17, 2018*

[5] On March 17, 2018, the General Division determined that Ms. McDonald was the common-law partner of Mr. Evans, and she was entitled to the survivor's pension. It found that Ms. McDonald had established, on a balance of probabilities, that she and Mr. Evans began living together as common-law partners in June 2005 and continued to do so until his death. The General Division based its decision on the testimony of Ms. McDonald, her daughter and her

mother. It weighed that testimony against the testimony of Ms. Evans, her daughter and two friends of Mr. Evans.

[6] The General Division relied on documentary evidence that it found supported Ms. McDonald's testimony. This included an insurance benefits declaration signed by Mr. Evans stating Ms. McDonald was his common law spouse and letters from his pension fund declaring Ms. McDonald as his common law spouse and her daughter as one of his dependants.

B. *Decision of the Appeal Division of July 19, 2018*

[7] On June 14, 2018, Ms. Evans submitted an application for leave to appeal to the Appeal Division. In her two-page handwritten letter, Ms. Evans alleged that the General Division erred in rendering its decision by: (a) ignoring Ms. McDonald's use of false information; (b) disregarding evidence that, while she and her late husband became estranged, their marriage and family were intact as late as July 2006 and (c) preventing her from giving testimony by cutting her off twice when she attempted to speak.

[8] On July 19, 2018, the Appeal Division dismissed Ms. Evans' application for leave to appeal because she failed to identify any ground of appeal under subsections 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA] that would have a reasonable chance of success.

[9] First, the Appeal Division concluded that Ms. Evans' allegation that Ms. McDonald lied and that the General Division erred in failing to detect those lies did not demonstrate an arguable

case. It concluded the General Division should be afforded a measure of deference in how it assessed the quality of the evidence before it.

[10] Second, the Appeal Division found Ms. Evans' broad allegations that the General Division ignored evidence that her marriage and family were intact as of July 2006 amounted to a request to retry her entire claim and, in the absence of a more specific allegation of error, did not raise a ground of appeal. It concluded that Ms. Evans was asking that the evidence be reassessed, which it was not authorized to do.

[11] Third, after listening to the recording of the General Division hearing, the Appeal Division determined that Ms. Evans was not denied an opportunity to testify. The Appeal Division acknowledged that the General Division interjected frequently, but was satisfied that the interventions were intended to clarify evidence and to caution against giving irrelevant or hearsay evidence. The Appeal Division also noted that neither Ms. Evans nor her counsel raised any objection about the General Division's conduct at the time.

## II. Analysis

[12] Ms. Evans, who is self-represented, seeks judicial review of the Appeal Division's decision.

[13] In her two-page memorandum filed in support of the present application, Ms. Evans does not address the standard of review applicable to a decision of the Appeal Division denying leave to appeal.

[14] At the hearing, Ms. Evans stated that she was confused about the procedure. She stated that she was expecting to appear before a three-member panel and answer questions. The matter was adjourned for a few minutes to allow counsel for the Respondent, the Attorney General of Canada, to explain to Ms. Evans how judicial reviews are conducted.

[15] When the hearing resumed, Ms. Evans indicated that she was prepared to proceed. However, it became clear from her submissions that Ms. Evans did not appreciate that the decision under review was that of the Appeal Division and not the General Division.

[16] A decision of the Appeal Division denying leave to appeal is to be reviewed against a standard of reasonableness: *Andrews v Canada (Attorney General)*, 2018 FC 606 at para 17; *Griffin v Canada (Attorney General)*, 2016 FC 874 at paras 13-14. The Appeal Division's analysis of the evidence is entitled to deference, and it is not the Court's role on judicial review to reweigh the evidence or to substitute its own view of a preferable outcome for that reached by the appointed decision-maker.

[17] Pursuant to subsection 58(2) of the DESDA, leave to appeal will be refused if the "Appeal Division is satisfied that the appeal has no reasonable chance of success". The sole issue raised by this application is whether the Appeal Division unreasonably refused Ms. Evans' application for leave to appeal the decision of the General Division.

[18] Ms. Evans had the burden of demonstrating to the Appeal Division that her appeal possessed a reasonable chance of success. The Appeal Division reviewed Ms. Evans' allegations, assessing them against subsections 58(1) and (2) of the DESDA.

[19] I am not satisfied that the Appeal Division erred in finding Ms. Evans' first allegation, that the General Division ignored Ms. McDonald's use of false information, did not amount to an arguable case. The General Division weighed the testimony, and it considered the competing and contradictory evidence before it. The Appeal Division is only permitted to intervene where the General Division's decision demonstrates perversion or capriciousness. Ms. Evans did not demonstrate that the Appeal Division's decision was made without regard to that evidence.

[20] Ms. Evans did not demonstrate that her allegations the General Division ignored evidence that her marriage and family were intact as of July 2006 fell within one of the grounds of appeal permitted by subsection 58(1) of the DESDA. The Appeal Division has a limited role in granting leave to appeal, and it is not permitted to grant leave to appeal if the allegation at hand is not one of those grounds of appeal. I see no error in the Appeal Division's conclusion that these broad allegations did not raise a ground of appeal.

[21] Ms. Evans also failed to establish that the Appeal Division erred in determining her third allegation, that she was denied an opportunity to testify, did not amount to an arguable case. The Appeal Division listened to the relevant portions of the audio recording of the General Division hearing and found nothing to substantiate Ms. Evans' allegation. On several occasions, Ms. Evans was cautioned by the General Division member not to give irrelevant or hearsay evidence,

but the Appeal Division found nothing inappropriate about the interventions. I see no reviewable error in this finding.

[22] While I have sympathy for Ms. Evans, absent any reviewable error on the part of the Appeal Division, my intervention is not warranted.

[23] In conclusion, I am of the view that the Appeal Division's decision refusing leave to appeal was reasonable as it fell within the range of acceptable outcomes which are defensible in respect of the facts and the law.

### III. Costs

[24] The parties did not seek costs, and none will be awarded.

### IV. Conclusion

For these reasons, Ms. Evans' application for judicial review is dismissed.

**JUDGMENT in T-1551-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

“Roger R. Lafrenière”

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1551-18

**STYLE OF CAUSE:** JENNY DESIREE EVANS v ATTORNEY GENERAL  
OF CANADA AND MARY-JO MCDONALD

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** DECEMBER 9, 2019

**ORDER AND REASONS:** LAFRENIÈRE J.

**DATED:** DECEMBER 11, 2019

**APPEARANCES:**

Jenny Desiree Evans THE APPLICANT ON HER OWN BEHALF

Matthew Vens FOR THE RESPONDENT  
ATTORNEY GENERAL OF CANADA

Mary-Jo McDonald THE RESPONDENT MARY-JO MCDONALD  
ON HER OWN BEHALF

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