

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20190923**

**Docket: A-193-18**

**Citation: 2019 FCA 237**

**CORAM: STRATAS J.A.  
RENNIE J.A.  
GLEASON J.A.**

**BETWEEN:**

**LIZA MOREAU**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA,  
DOROTHY CRAIGIE**

**Respondents**

Heard at Winnipeg, Manitoba, on September 23, 2019.  
Judgment delivered from the Bench at Winnipeg, Manitoba, on September 23, 2019.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**GLEASON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Winnipeg, Manitoba, on September 23, 2019).**

**GLEASON J.A.**

[1] In this application for judicial review, Ms. Moreau seeks to set aside the May 17, 2018 decision of the Social Security Tribunal Appeal Division (the Appeal Division), made in File AD-17-916. In that decision, the Appeal Division dismissed Ms. Moreau's appeal from the earlier decision of the Social Security Tribunal General Division (the General Division) in which

that Tribunal determined that Ms. Dorothy Craigie as opposed to Ms. Moreau was entitled to a survivor benefit under the *Canada Pension Plan*, R.S.C. 1985 c. C-8 (the CPP) following the death of Mr. Wilfred Craigie.

[2] We note that Ms. Craigie was served with the notice of application, was kept informed by the Attorney General of the progress of this file and of the date of hearing and chose not to participate in the application.

[3] For many years prior to his death, Mr. Craigie resided with Ms. Moreau and she asserts that she was his common law spouse and therefore ought to receive the survivor benefit.

[4] Ms. Moreau has sought to file with this Court 66 additional documents, which were appended to her affidavit. These include doctors' reports, insurance documents, pictures and cards, which she alleges show that she and Mr. Craigie were common law spouses. She seeks to file them in order to support her claim for entitlement to the CPP survivor benefit. These documents were not filed with either the General Division or the Appeal Division. They cannot be considered by this Court because judicial review applications are normally decided based on the record that was before the administrative decision-maker and, only in exceptional circumstances, may a party introduce new evidence before the reviewing court. As this Court recently noted in *Sharma v. Canada (Attorney General)*, 2018 FCA 48 at para 8, “[n]ew evidence may be admitted where (1) it provides general background in circumstances where that information might assist in understanding the issues relevant to the judicial review but does not add new evidence on the merits (2) it highlights the complete absence of evidence before the

administrative decision-maker on a particular finding, or (3) it brings to the attention of the judicial review court defects that cannot be found in the evidentiary record of the administrative decision-maker.” None of the foregoing exceptions applies to the additional 66 documents that Ms. Moreau appended to her affidavit, and Ms. Moreau’s application for judicial review must therefore be determined without reference to them.

[5] The opposite conclusion, however, applies to the body of Ms. Moreau’s affidavit, in which she provides evidence about how she says she was denied natural justice by the General Division. Evidence of this nature falls into the third exception enumerated in *Sharma* and, indeed, goes to the central issue before this Court. Ms. Moreau’s affidavit is therefore admissible.

[6] In it she deposes that she spoke to a staff member of the General Division following receipt of a September 12, 2017 letter and that, during the conversation, asked if she was required to attend the hearing and was told that she was welcome to attend but that Ms. Craigie was fighting the Minister of Employment and Social Development and that she was just an added party. The balance of Ms. Moreau’s affidavit details how this led her to conclude that she was not required to attend the hearing before the General Division to protect her interests.

[7] As it turns out, no one on behalf of the Minister participated in the hearing before the General Division. Ms. Moreau also declined to attend so the only party present was Ms. Craigie.

[8] In this application for judicial review, Ms. Moreau contends that the Appeal Division erred in concluding that there was no denial of natural justice by the General Division. More specifically, she says that the General Division ought to have made it clear to her that her presence and testimony at the hearing were important to defend her claim to entitlement to the survivor benefit.

[9] We agree with the Appeal Division that it is not and cannot be the role of Tribunal staff to provide legal advice to claimants and that it was therefore not incumbent on the staff member with whom Ms. Moreau spoke to explain to her the importance of attending the hearing. That said, it was also not open to the staff member to provide incomplete or misleading information to Ms. Moreau.

[10] The statements made by the General Division staff member detailed in Ms. Moreau's affidavit are misleading because they could be understood as indicating that Ms. Moreau's interests would be defended by the Minister at the hearing, when this did not occur. The only other evidence before us as to what occurred during this crucial conversation is a short note to file, presumably made by the officer, which merely states that the officer advised Ms. Moreau that attendance at the hearing was not mandatory and that she would be sent a copy of the decision if she did not attend. This is not inconsistent with Ms. Moreau's sworn evidence that she was not cross-examined upon.

[11] The misleading nature of the conversation is compounded by the cryptic nature of the Hearing Notice that the General Division sent. It fails to adequately explain that Ms. Moreau

could call witnesses at the hearing and also does not clearly indicate the consequences of non-attendance.

[12] In the circumstances, we are of the view that the Appeal Division made a reviewable error in concluding that there had not been a denial of natural justice and therefore would allow this application for judicial review, without costs, set the Appeal Decision aside and remit the file to the Appeal Division for a re-hearing. Given the confusion and uncertainty that the Notice of Hearing and comments made by the officer generated, the Appeal Division should allow the parties to file additional evidence at or before the hearing.

[13] In closing, the Court wishes to thank counsel for the respondent for his helpful, fair and candid submissions, which were entirely appropriate ones for the Attorney General of Canada to have made.

"Mary J.L. Gleason"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-193-18

**APPEAL FROM A DECISION OF THE SOCIAL SECURITY TRIBUNAL OF CANADA  
APPEAL DIVISION DATED MAY 17, 2018.**

**STYLE OF CAUSE:** LIZA MOREAU v. THE  
ATTORNEY GENERAL OF  
CANADA, DOROTHY CRAIGIE

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** SEPTEMBER 23, 2019

**REASONS FOR JUDGMENT OF THE COURT BY:** STRATAS J.A.  
RENNIE J.A.  
GLEASON J.A.

**DELIVERED FROM THE BENCH BY:** GLEASON J.A.

**APPEARANCES:**

Liza Moreau FOR THE APPLICANT  
(ON HER OWN BEHALF)

Matthew Vens FOR THE RESPONDENT  
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