

FEDERAL COURT OF APPEAL

BETWEEN:

ANNETTE LANCE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be requested by the Applicant. The Applicant requests that this Application be heard in person before the Federal Court of Appeal at Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application or to be served with any documents in the Application, you or a solicitor acting for you must file a Notice of Appearance in Form 305 prescribed by the Federal Court Rules, and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this Notice of Application.

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| | 30-AUG-2023 Doc. 1 / ID 1 | |
| Toronto, ONT | | |

Copies of the Federal Court Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

August 30, 2023

Issued by: "Veton Mamudov"

Address of local office: Federal Court of Appeal
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

To: The Attorney General of Canada
Justice Building, 4th Floor
284 Wellington Street
Ottawa, Ontario K1A 0H8

APPLICATION

This is an Application for judicial review in respect of a Decision of the Appeal Division of the Social Services Tribunal given on August 1, 2023 by Members Janet Lew, Neil Nawaz and Pierre Lafontaine under File No.AD-23-13.

The Decision of the Appeal Division overturned the Decision of Member Leonard of the SST General Division and exercised its jurisdiction to substitute its own Decision in lieu thereof, thereby denying the entitlement of the Applicant to EI benefits.

The Applicant asserts that the Appeal Division erred in law and acted unreasonably in its Decision to set aside the Decision of the General Division, which held that the Applicant was entitled to EI benefits, and in making the determination that it believed that the General Division should have made.

THE APPLICANT MAKES APPLICATION FOR:

- 1.An Order setting aside the Decision of the Appeal Division made August 1, 2023, and finding that the Applicant is entitled to EI benefits.
2. Such further and other Order as is determined to be fit and just, including returning the matter to the SST for any determination that is deemed necessary before a differently constituted Member or Members.
3. Awarding the Applicant her costs of the Application.

THE GROUNDS FOR THE APPLICATION ARE;

- 1.Section 28 (1) (g.1) of the Federal Courts Act, R.S.C. 1985, c.F-7.

2. The Appeal Division of the Social Services Tribunal erred in law, and ruled in an unreasonable manner, in failing to apply or misapplying the binding Supreme Court of Canada decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, which held that the interpretation of language in benefits-conferring legislation is to be resolved with the most broad and liberal construction favourable to the claimant.
3. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, in construing and applying the legal test for determining misconduct in an unduly narrow, inappropriate and inaccurate fashion.
4. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, in failing to observe that its jurisdiction did not permit overturning the General Division Decision on a question of mixed fact and law, and further in wrongly determining that the CEIC argument on the appeal was a question of law alone, and not a question of mixed fact and law.
5. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, by finding that Member Mark Leonard of the General Division had exceeded his jurisdiction in his determination that there was no misconduct on the part of the Applicant.
6. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, in adverting to the case of *Cecchetto v. Canada* in determining the appeal, when the present case was expressly distinguished by Justice Pentney of the Federal Court in the *Cecchetto Decision*, 2023 FC 102.
7. The Appeal Division of the SST erred, and ruled in an unreasonable manner, by finding that an employer has an unfettered right to impose an employment policy on an employee, and that a purported deliberate abrogation of the policy is sufficient for a finding of misconduct.

8. The Appeal Division of the SST erred, and ruled in an unreasonable manner, on the preliminary Motion of the Applicant raising the question of reasonable apprehension of bias on the part of Member Pierre Lafontaine in hearing the subject appeal, having regard to his refusal to recuse himself, and in his participation in the determination of the appeal, which taints the determination of the Appeal Division.

9. Such further and other grounds as the Applicant may identify and present, and the Honourable Court permit.

IN SUPPORT OF THIS APPLICATION THE APPLICANT WILL RELY ON THE FOLLOWING MATERIAL:

1. The record before the Social Services Tribunal, including the General Division and the Appeal Division.
2. The Decision of the General Division dated December 14, 2022
3. The Decision of the Appeal Division dated August 1, 2023
4. Such further and other material as the Applicant may present and the Honourable Court permit.

Dated at Clinton, Ontario this 29th day of August, 2023.



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