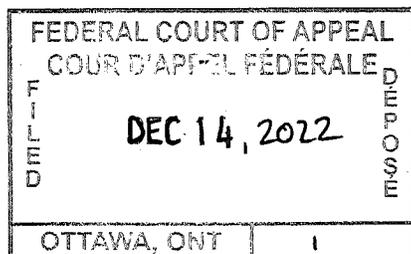


FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant



and

SABET IBRAHIM

Respondent

APPLICATION UNDER ss 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

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 as requested by the Applicant. The Applicant requests that this application be heard remotely by zoom.

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 Courts 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.

Copies of the *Federal Courts 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.

December 14, 2022

Issued By: Elizabeth Silva  
Registry Officer

Address of local office:  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, ON  
K1A 0H9

**TO:** Sabet Ibrahim  
47 McGill Cres  
Cambridge, ON N1T 1Y4

Respondent

**AND TO:** Misha Buchholz  
Director, Registry Operations  
Social Security Tribunal  
344 Slater Street, 4<sup>th</sup> Floor  
Ottawa, ON K1R 5Y7

Tel: 1-877-227-8577  
Fax: 1-855-814-4117

## APPLICATION

**THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF** the decision of the Social Security Tribunal's Appeal Division ("Appeal Division") file number AD-22-228, dated November 14, 2022 and communicated to the Applicant on November 15, 2022.

### **THE APPLICANT MAKES APPLICATION FOR AN ORDER FOR:**

- (i) Setting aside the Appeal Division's decision;
- (ii) Referring the matter back to a different Member of the Appeal Division with such directions as this Court considers appropriate; and for
- (iii) Such further and other relief as counsel may advise and this Honourable Court permits.

### **THE GROUNDS FOR THE APPLICATION ARE:**

1. The Appeal Division erred in law at paragraphs 31-32 of its decision. The Tribunal Member set aside the General Division's decision on the basis that it did not apply factors to determine the existence of a benevolent employment situation. This was unreasonable, because such factors are inapplicable to this context, which is instead determined by the operation of subsection 68.1(1) the *Canada Pension Plan Regulations* and the prescribed earnings amount;
2. The Appeal Division erred in law at paragraphs 74 and 77 of its decision. The Tribunal Member concluded that there was nothing about the definition of "substantially gainful" in the *Canada Pension Plan Regulations* that changes, modifies, or defines what counts as an "occupation" under the *Canada Pension Plan*. This was unreasonable, because subsection 68.1(1) of the *Canada Pension Plan Regulations* explicitly provides a formula to determine what constitutes an occupation that is "substantially gainful" within the meaning of the Act;
3. The Appeal Division erred in law at paragraph 86 of its decision. The Tribunal Member conducted her purposive analysis of subsection 68.1(1) of the *Canada Pension Plan Regulations* in an unreasonable manner, by concluding that there was nothing within the

Hansard and Regulatory Impact Analysis Statement that illustrated the intended consequence of a claimant receiving earnings above the prescribed substantially gainful amount. In fact, the Hansard and Regulatory Impact Analysis Statement provide clear evidence of the intent behind the regulatory change, which was to establish the benchmark of earnings for determining whether a claimant had a severe disability that rendered them incapable of pursuing a substantially gainful occupation;

4. The Appeal Division erred in law at paragraph 92 of its decision. The Tribunal Member concluded that regulations are more detailed rules that support existing laws, but do not change existing laws. In fact, regulations are laws, with the same legal force as statutes. The Tribunal Member's conclusion to the contrary was unreasonable;
5. The Appeal Division erred in law at paragraph 93 of its decision. The Tribunal Member concluded that subsection 68.1(1) of the *Canada Pension Plan Regulations* did not change the definition of a severe disability. In fact, the express purpose of subsection 68.1(1) was to provide a prescribed meaning of "substantially gainful" in respect of an occupation, for the purposes of the word "severe" found at subparagraph 42(2)(a)(i) of the *Canada Pension Plan*;
6. The Appeal Division erred in law at paragraph 95 of its decision. The Tribunal Member concluded that a person can be incapable regularly of pursuing any substantially gainful occupation and still have a friend or family member who creates a job for them or pays them more than the market requires for their work. This conclusion was unreasonable, because it ignored the plain meaning of the word "any" within subparagraph 42(2)(a)(i) of the *Canada Pension Plan*;
7. Sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7;
8. Section 58 of the *Department of Employment and Social Development Act*, SC 2005, c 34;
9. Subparagraph 42(2)(a)(i) of the *Canada Pension Plan*, RSC, 1985, c C-8;
10. Subsection 68.1(1) of the *Canada Pension Plan Regulations*, CRC, c 385;
11. Any other further grounds as counsel may propose and this Honourable Court may allow.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

- (a) The record before the Social Security Tribunal;
- (b) Affidavit(s), to be sworn or affirmed;
- (c) Transcripts of the General Division and/or Appeal Division hearing(s) as counsel may produce;
- (d) Such further and other material as counsel may propose and this Honourable Court may permit.

The Applicant requests the Appeal Division send a certified copy of all the materials that formed the record of the appeal at the Social Security Tribunal that is not in the possession of the Applicant but is in the possession of the Social Security Tribunal to the Applicant and to the Registry.

December 14, 2022



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**ATTORNEY GENERAL OF CANADA**

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Counsel for the Applicant