



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CS v Minister of Employment and Social Development and BC*, 2021 SST 287

Tribunal File Number: AD-21-63

BETWEEN:

**C. S.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**B. C.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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DECISION BY: Neil Nawaz

DATE OF DECISION: June 21, 2021

Canada 

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] This case involves competing claims for a Canada Pension Plan (CPP) survivor's pension.

[3] The Appellant, C. S., married C. G., a contributor to the CPP, in May 1986. They separated in February 2002, although they remained married until C. G.'s death in March 2018.

[4] Later the same month, B. C., the Added Party, applied for a CPP survivor's pension. In her application, she said that she was in a common-law relationship with C. G. at the time of his death. She also submitted a sworn statement<sup>1</sup> declaring that she and C. G. lived together from September 20, 2015 to March 9, 2018. In May 2018, the Minister granted B. C. the survivor's pension.

[5] C. S. applied for the survivor's pension in September 2018. The Minister denied the application because it had already found that C. G. was living in a common-law relationship with someone else when he passed away.

[6] C. S. appealed this decision to the General Division of the Social Security Tribunal. The General Division held a hearing by teleconference and, in a decision dated November 21, 2020, dismissed the appeal. The General Division considered C. G.'s living arrangements in his final years and concluded that he was in a common-law relationship with B. C. when he died.

[7] C. S. then requested permission to appeal from the Tribunal's Appeal Division, asking it to reconsider the evidence. She alleged that the General Division disregarded information that B. C. had misrepresented her relationship with C. G.

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<sup>1</sup> Statutory Declaration of Common-law Union dated March 21, 2018, GD2-38.

[8] Earlier this year, I granted C. S. permission to appeal because I thought some of her submissions pointed to an arguable case. I called a hearing by teleconference. At that point, B. C. filed a letter defending the General Division's decision.<sup>2</sup> She insisted that she and C. G. were common-law partners at the time of his death and denied that she had lied to get the survivor's pension.

[9] The Minister informed the Tribunal that it would not be taking a position in this matter.<sup>3</sup>

[10] I have now reviewed the written record and heard the parties' oral arguments. I have concluded that none of C. S.'s reasons for appealing justify overturning the General Division's decision.

## **ISSUES**

[11] There are three grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded unfairly;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.<sup>4</sup>

[12] I considered three questions in this appeal:

- Can the Appeal Division rehear evidence that was already before the General Division?
- Did the General Division disregard an important part of C. S.'s evidence?
- Did the General Division provide comprehensible reasons for its decision?

## **ANALYSIS**

### **Can the Appeal Division rehear evidence that was already before the General Division?**

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<sup>2</sup> B. C.'s letter dated April 14, 2021, AD02.

<sup>3</sup> Minister's letter dated April 26, 2021, AD04.

<sup>4</sup> *Department of Employment and Social Development Act* (DESDA), s 58(1).

[13] Under the law, the survivor's pension goes to a married spouse, unless it can be established that the deceased contributor was in a common-law relationship at the time of death. Whether a common-law relationship exists can depend on many factors, including the partners' places of residence, their sexual relationship, and their financial interdependence.<sup>5</sup>

[14] At the Appeal Division, a large part of C. S.'s submissions focused on her belief that B. C. misrepresented her relationship with C. G. She made the following allegations:

- B. C. and the funeral home manager conspired to deny C. S. the death certificate until B. C. had applied for the survivor's pension;
- B. C. told C. S. that she had paid for the funeral, but it was later revealed that the funds came from the late C. G.'s bank account;
- B. C. claimed to be in a romantic relationship with C. G., but evidence showed that he lived in her house as a boarder and slept in his own bedroom;
- B. C. claimed to be C. G.'s common-law spouse from September 2015 to March 2018, even though (i) C. G. said that he was separated on his income tax returns<sup>6</sup> from that period and (ii) B. C. described herself as C. G.'s "companion" in a notice<sup>7</sup> that she placed after his death.

[15] C. S. made these same allegations at the General Division. As we will see, General Division gave them due consideration but ultimately decided that B. C. was telling the truth when she claimed to be a common-law relationship with C. G.

[16] I cannot consider arguments and evidence that have already been presented to the General Division. As a member of the Appeal Division, I have limited authority. I am only permitted to consider whether the General Division committed certain types of error in coming to its decision. For that reason, an appeal to the Appeal Division is not a place in which to present evidence that was submitted, or could have been submitted, at the General Division. In short, an Appeal Division hearing is not meant to be a "redo" of the General Division hearing.

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<sup>5</sup> *Betts v Shannon*, (September 17, 2001) CP 11654 (PAB).

<sup>6</sup> C. G.'s Notices of Assessments for 2015-17, GD9-5.

<sup>7</sup> Funeral home death notice, GD7-9.

[17] C. S.'s appeal cannot succeed on this basis.

**Did the General Division disregard an important part of C. S.'s evidence?**

[18] C. S. strongly disagrees with the General Division's decision. She argues that the General Division ignored important evidence indicating that B. C. and C. G. were not in a common-law relationship at the time of the latter's death.

[19] Now that I have reviewed the General Division's decision in context, I have to disagree. I saw no indication that the General Division ignored C. S.'s evidence. The General Division's decision contains a comprehensive summary of both C. S.'s and B. C.'s documents, arguments, and witness testimony. The recording of the hearing indicates that the General Division member actively listened to what the parties and their witnesses had to say. Where evidence appeared to contradict a witness's preferred narrative, the member was careful to bring it to their attention. For example, the member asked B. C.

- why she and C. G. slept in separate rooms;
- why she accepted money from C. G. if it was not rent;
- why she and C. G. didn't report themselves as common-law spouses on their tax returns;
- why she described herself as C. G.'s "companion" in the death notice; and
- why her lawyer issued a letter<sup>8</sup> declaring that she wasn't C. G.'s "spouse."

[20] For each one of these questions, B. C. had a response, which the General Division accepted. In the end, having considered these responses, along with other relevant evidence, the General Division concluded that B. C.'s case was stronger than C. S.'s.

[21] It is the General Division's job to make findings of fact. In doing so, it is entitled to some leeway in how it chooses to weigh the available evidence.<sup>9</sup> Here, the General Division looked at the documents, listened to the testimony, and decided that the evidence, on balance, pointed to a common-law relationship between B. C. and C. G. The General Division may not have given C.

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<sup>8</sup> Letter dated May 14, 2018 from Patrick Kraemer, barrister and solicitor, to the Canada Revenue Agency, GD2-19.

<sup>9</sup> *Simpson v Canada (Attorney General)*, 2012 FCA 82.

S.'s evidence the weight she thought it deserved, but I don't see anything in its analysis that amounted to an error.

**Did the General Division provide comprehensible reasons for its decision?**

[22] At the General Division, C. S. and B. C. each presented evidence about C. G.'s living arrangements at the end of his life. C. S. acknowledged that C. G. had been living in a house owned and occupied by B. C. and her brother, but she maintained that he was there only as a boarder. To support her case, she relied on testimony from C. G.'s sister and his nephew, as well as documentary evidence, mentioned above, suggesting inconsistencies in how B. C. described her relationship with C. G.

[23] I allowed C. S. permission to appeal because I saw an arguable case that the General Division's reasons for dismissing C. S.'s appeal didn't quite make sense. To be more specific, it wasn't immediately clear to me why the General Division felt that B. C.'s evidence outweighed C. S.'s.

[24] The Supreme Court of Canada has recently reaffirmed that administrative decisions must be "based on an internally coherent and rational chain of analysis."<sup>10</sup> In a similar vein, the Federal Court of Canada requires decision-makers to make their reasons intelligible and transparent so that "the basis for a decision ... is understandable, with some discernible logic."<sup>11</sup>

[25] I have now reviewed the logic underlying the General Division's decision. I have decided that the General Division's reasons for favouring B. C.' evidence over C. S.'s are internally coherent and grounded in a rational chain of analysis.

[26] C. S.'s sister-in-law and nephew testified that, when they helped C. G. move to the C.'s residence, he was doing so only as a boarder. By contrast, B. C.'s brother testified that C. G. and his sister had a conjugal relationship and that C. G. contributed to household expenses but didn't pay rent. The General Division gave more weight to the testimony of B. C.'s witness, but it didn't make this choice arbitrarily. It offered a clear and compelling reason for doing so: C. S.

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<sup>10</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85.

<sup>11</sup> See *Canada (Attorney General) v Redman*, 2020 FC 1093 at para 44, quoting with approval *Vancouver Airport Authority v PSAC*, 2010 FCA 158, [2011] 4 FCR 425.

and her witnesses admitted that they had little or no contact with C. G. while he was living with B. C.. Unlike C., they lacked firsthand knowledge about the precise nature of C. G.'s relationship with B. C.<sup>12</sup> It is true that C. was no one's idea of a disinterested observer, but the same might be said of C. S.'s witnesses. The General Division was obviously aware that C. came forward to support his sister, and it presumably took that into account when assessing his credibility as a witness.

[27] Credibility was also the deciding factor when the General Division examined the apparent contradictions and inconsistencies in B. C.'s case. To put it simply, the General Division believed B. C. when she said that

- she and C. G. slept in separate rooms because she didn't want to be awakened when he got up early for work;
- she and C. G. didn't pay attention to how they reported their marital status on their income tax returns and forgot to update CRA when they moved in together;
- her description of herself as C. G.'s "loving companion" in the death notice was accurate and not inconsistent with their being common-law spouses; and
- she had her lawyer declare that she wasn't C. G.'s "spouse" at C. S.'s request and only to facilitate her appointment as administrator of his estate.

[28] Again, the General Division was within its authority to accept these explanations and weigh them against the rest of the evidence. As the General Division put it:

However, when they [documents at odds with B. C.'s case] are examined in the context of the remaining documentary evidence on file and the testimony from the Added Party and C., the Added Party and the Deceased Contributor have shown, by their acts and conduct, a mutual intention to live together as common-law partners.<sup>13</sup>

[29] In my view, the General Division weighed the evidence rationally and fairly. It explained why it favoured some items of evidence over others. Its conclusions flowed logically from its findings.

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<sup>12</sup> General Division decision, para 71.

<sup>13</sup> General Division decision, para 77.

[30] The General Division's reasons were adequate and in keeping with the standards demanded by the leading cases. I am satisfied that the General Division did not commit an error of law.

**CONCLUSION**

[31] For the above reasons, C. S. has not demonstrated to me that the General Division committed an error that falls within any of the permitted grounds of appeal.

[32] The appeal is therefore dismissed.



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Member, Appeal Division

HEARD ON:	June 7, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. S., Appellant B. C., Added Party Jordan Fine, representative for the Minister