Citation: *LB v Minister of Employment and Social Development*, 2022 SST 1355

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	L. B.
Respondent:	Minister of Employment and Social Development
Representative:	Rebekah Ferriss
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated February 25, 2020 (issued by Service Canada)
Tribunal member:	Carol Wilton
Type of hearing:	Teleconference
Hearing date:	June 28, 2022
Hearing participants:	Appellant Minister's representative Witness Andrew Williamson
Decision date:	November 25, 2022
File number:	GP-21-2581

Decision

[1] The appeal is dismissed.

[2] The Appellant, L. B.,[1] is not eligible for a higher payment of her Canada Pension Plan (CPP) combined retirement and survivor's pension.

[3] This decision explains why I am dismissing the appeal.

Overview[2]

- Previous proceedings

[4] The Appellant was born in December 1947.[3] She had a Grade 12 education and a year of college. Her last job was working in a warehouse.[4] In November 1977,[5] she first applied for a CPP disability pension. She did not succeed because she did not have sufficient contributions to the CPP. In October 2001, she applied again. By then, she had established that she had enough valid contributions to qualify. In August 2004, the Pension Appeals Board[6] granted her a disability pension with a deemed date of disability fifteen months before the Minister received her application. The Appellant began to receive the pension retroactive to November 2000.

[5] The Appellant then insisted that she should have been granted a disability pension in 1977, and the payment should be calculated in 1977 dollars. She claimed

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[1] L. B. has been involved in several proceedings relating to the matter before me. She has been an appellant, a claimant, an applicant, and a respondent. For the sake of simplicity, I will refer to her as the Appellant throughout this decision.
[2] Except where indicated otherwise, the information in paragraphs 4 to 8 is based on *Minister of Employment and Social Development v. L.B.*, 2017 SSTADIS 286 and the Minister's submissions in IS07.
[3] GD2-4
[4] IS06-III-168
[5] *Minister of Employment and Social Development v. L.B.*, 2017 SSTADIS 286 at para. 1. The Appeal Division member said the Appellant applied in December 1977. However, she likely meant November 1977, based on other information in her decision.
[6] Predecessor of the Appeal Division of the Social Security Tribunal.

that her payment was too low because the Minister had made an administrative error.[7] The Minister denied it. In July 2011, the Federal Court dismissed the Appellant's judicial review application. The Federal Court of Appeal, however, allowed the appeal and returned the matter to the Minister for a new determination. The Minister reconsidered and then granted the Appellant retroactive benefits based on her first application.

[6] In December 2012, the Appellant turned 65. Her disability pension was automatically converted to a retirement pension. The Appellant believed that her retirement pension payments were too low. The Minister stated in its August 2013 reconsideration decision that the Appellant's contributory period was 79 months - from January 1966 to February 1978.[8]

[7] In September 2013, the Appellant appealed the reconsideration decision to the General Division (GDIS) of the Social Security Tribunal (Tribunal). She stated that her contributory period was 75 months. She maintained that her contributory period started when her payments began – in November 1977. They did not begin in March 1978, as the Minister claimed.[9]

[8] In November 2015, the GDIS found in favour of the Appellant.[10] The Minister appealed to the Appeal Division (AD) of the Tribunal. In June 2017, the AD found in favour of the Minister. It stated that the contributory period for the purpose of calculating the retirement pension was 79 months.[11] In September 2018, the Federal Court of Appeal upheld this decision. The Court's brief decision stated that the AD's decision had been reasonable.[12]

[9] The Appellant then brought a motion in Federal Court for an order for an extension of time because of alleged errors in the calculation of her CPP retirement

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[7] She cited subsection 66(4) of the CPP. An appellant may appeal to the Federal Court if the Minister denies a claim of administrative error: *Pincombe v. Canada (Attorney General*), [1995] FCJ No. 1320 (FCA), and *Canada (Minister of Human Resources Development) v. Tucker,* 2003 FCA 278.
[8] OF1-9. See also Section 49 of the CPP. The shorter the contributory period is, the greater the Appellant's pension.
[9] OF1-Notice of Appeal to GDIS
[10] GP-13-2507, decided November 9, 2015
[11] *Minister of Employment and Social Development v. L.B.,* 2017 SSTADIS 286
[12] *Linda Bartlett v. Canada (Attorney General)*, 2018 FCA 165. The judgment was five paragraphs long.

pension in 2012. In November 2018, the Federal Court Order dismissed the motion as a collateral attack on the September 2018 decision of the Federal Court of Appeal. [13]

[10] In its Order, the Federal Court stated that it did not have jurisdiction to grant judicial review of a decision of the Federal Court of Appeal. The Appellant should have appealed to the Supreme Court. Or she could have made a motion to the Federal Court of Appeal to reconsider its decision. In one of the recitals, the Federal Court stated that "all matters pertaining to the [Appellant's] pension have been finally decided."[14]

- **The present proceedings**

[11] On June 1, 2020, the Appellant's husband passed away. On June 15, 2020, she applied for a CPP survivor's pension.[15] When someone who's receiving a CPP retirement pension begins to receive a survivor's pension, the two benefits are combined. The Minister's December 2020 reconsideration decision stated that when it first began in 2020, the Appellant's combined monthly benefit was $782.43.[16]

[12] The Appellant appealed the December 2020 reconsideration decision to the GDIS. She claimed that the retirement pension portion of her combined benefit was calculated incorrectly. She stated that she should have been receiving a combined total of $1,070 a month.[17]

[13] In August 2021, the GDIS summarily dismissed the Appellant's appeal.[18] The decision stated that the Minister had "calculated [the Appellant's] combined survivor/retirement pension entitlement in accordance with the required CPP formula." In addition, the November 2018 order of the Federal Court stated that all matters relating to the Appellant's pension had been finally decided. The GDIS member stated

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[13] IS06-I-363-364
[14] *Bartlett v Canada (Attorney General)*, 18-T-64, November 14, 2018. See GD-06-11-12. Lawyers for the Attorney General argued that the Tribunal and the Federal Court of Appeal had heard about every factor likely to impact the calculation of the Appellant's CPP retirement pension: GD06-9, Letter dated in October 2018.
[15] GD02-4
[16] GD02-15
[17] GD01-3
[18] A Tribunal Member must summarily dismiss an appeal if satisfied that it has no reasonable chance of success: subsection 53(1) of the *Department of Employment and Social Development Act*.

that he was bound by decisions of the Federal Court. Therefore, he could not make a decision different from the Federal Court's.[19]

[14] The Appellant appealed the summary dismissal decision to the Tribunal's AD. In December 2021, the AD allowed the appeal and sent the matter back to be reconsidered by another member of the GDIS.[20] According to the AD, the errors in the summary dismissal decision were:

- overlooking evidence from the Appellant about the Federal Court proceeding;
- failing to explain why it bound itself to the outcome of the Federal Court Order (insufficient reasons); and
- Failing to consider the Appellant's argument that the Minister applied the wrong legislative provisions to calculate her retirement pension.

The doctrine of *res judicata* does not apply to this case

[15] The Appellant is alleging that the retirement pension calculation is incorrect within the context of it being part of the retirement/survivor pension calculation.

[16] The doctrine of *res judicata* (also called issue estoppel) prevents the rehearing of matters that have already been decided.[21]

[17] The Minister says that the Appellant's appeal about the calculation of her retirement pension is barred by *res judicata.* The Appellant says that no court or tribunal has made a decision on the issue of the calculation of her retirement pension.

[18] The evidence shows that the issue of the **calculation** of the Appellant's retirement pension, as opposed to the **length of her contributory period**, has not been decided.

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[19] *L.B. v. Minister of Employment and Social Development*, GP-21-632, August 2021.
[20] *L.B. v. Minister of Economic and Social Development*, 2021 SST 773
[21] Court decisions have confirmed that the *res judicata* doctrine can apply to administrative tribunals: *Penner v. Niagara (Regional Police Services Board),* 2013 SCC 10; *Canada (MHRD) v. MacDonald,* 2002 FCA 18; and *Alves v. Canada (A.G.*), 2014 FC 1100.

[19] The leading legal decision on *res judicata* is a 2001 Supreme Court case called *Danyluk.*[22] *Danyluk* sets out a two-step test for determining whether a claim can be heard. The first step of the test lists three considerations:

- Whether the same question has been decided in previous proceedings;
- Whether the previous decision is final; and
- Whether the parties are the same.

[20] The *Danyluk* case also says that if the answer to **all three** of these questions is "yes", the court (or tribunal) must still consider a second step. This is whether "as a matter of discretion, issue estoppel ought to be applied."

[21] The Supreme Court decided that seven non-exhaustive relevant factors applied in the *Danyluk* case:

a) the wording of the statute pursuant to which the first decision was made:

b) the purpose of the legislation;

c) the availability of an appeal;

d) safeguards available to the parties in the administrative procedure;

e) the expertise of the administrative decision maker;

f) the circumstances giving rise to the prior administrative proceeding; and

g) potential injustice.[12]

[22] The *Danyluk* decision states that "the law rightly seeks a finality to litigation….A litigant … is only entitled to one bite at the cherry." However, it also says that "estoppel is a doctrine of public policy that is designed to advance the interests of justice".[23]

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[22] *Danyluk v. Ainsworth Technologies*, 2001 SCC 44 (*Danyluk*). Or as a member of the Appeal Division put it, the Supreme Court listed the three preconditions to the operation of issue estoppel (a form of *res judicata*): *D.K. v. MESD*, 2015 SSTAD 1068. See also *British Columbia (Workers' Compensation Board) v. Figliola,* 2011 SCC 52; and *Penner v. Niagara (Regional Police Services Board),* 2013 SCC 10.
[23] *Danyluk v. Ainsworth Technologies Inc.,* 2001 SCC 44 at paras. 18-19

- Application of the *Danyluk* test

[23] The Minister submits that the 2018 Federal Court of Appeal decision is final. The Court decided that the Appellant's contributory period was 79 months. The Appellant did not appeal this decision to the Supreme Court or bring a motion to the Federal Court of Appeal to reconsider its decision. Therefore, the decision is final.[24]

[24] The Minister also submits that the parties to the present proceedings and the proceedings before the Federal Court of Appeal are the same.[25]

[25] The Appellant disputes neither of these statements.

- The same question has not been decided

[26] In *Danyluk,* the Court stated that issues subject to the issue estoppel form of *res judicata* are "any right, question or fact **distinctly put in issue and directly determined**." Citing an earlier Supreme Court decision, the Court stated that it was not enough if the issue arose collaterally or incidentally or is one that must be inferred by argument from the judgment." [26]

[27] The Minister submits that "the Appellant's retirement pension calculations were the subject of prior Tribunal and Federal Court proceedings."[27] The Minister maintains that the issue of the contribution period (contribution issue) and that of the calculations (calculation issue) are both about the Appellant's retirement pension. It may reasonably be inferred that the Minister is saying that these two are the same issue.

[28] With all due respect to the Minister, neither the Appellant, nor the Tribunal adjudicators, nor the Federal Court of Appeal believed that the calculation issue is the

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[24] IS07. The Minister's submissions of June 2022 did not argue that the Federal Court Order was binding on the General Division. They simply stated that "the Federal court of Appeal decision is final:" IS07-14.
[25] IS07
[26] *Danyluk v. Ainsworth Technologies Inc.,* 2001 SCC 44, at para. 24. See also *Angle v. M.N.R.,* 1974 CanLII 168 (SCC).
[27] IS07-14, June 2022.

same thing as the contribution issue. Even the Minister did not always argue that they are the same.

[29] The calculation issue was not directly decided in any proceeding up to and including the November 2018 Order of the Federal Court.

[30] The Tribunal can only consider matters raised in the Minister's reconsideration decision. That decision, in turn, is a response to a reconsideration request from an appellant.[28]

[31] When she asked for reconsideration in January 2013, the Appellant failed to raise the issue of the calculation of her retirement pension. She did raise the matter of her contributory period.[29] So the Minister's August 2013 reconsideration decision discussed only the contribution issue.[30]

[32] In submissions to the Federal Court, the Minister stated that [in January 2013] "when seeking reconsideration of the Minister's decision regarding the retirement amount payable [,] the [Appellant] alleged "the calculations" were incorrect and those allegations were subsequently considered before the General Division."[31] The Minister is suggesting that the calculation issue was before the General Division in 2015.[32]

[33] Subsequent developments do not bear this out. After her January 2013 letter, the Appellant tried many times to raise the calculation issue, but without success.[33] If she believed she had raised the issue in her request for reconsideration, or understood the significance of the reconsideration decision, she would not likely have done so.

[34] Because the reconsideration decision failed to discuss the calculation issue, the 2015 General Division decision did not consider the issue. The 2017 Appeal Division

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[28] Subsections 60(7), 70(2), and 81(1) of the CPP
[29] Her request for reconsideration is at IS06-I-121.
[30] IS06-I-21
[31] Respondent's Written Representations, October 2018, IS06-I -351. I do not believe that the Minister's statement is accurate
[32] It was not in the reconsideration decision. It is irrelevant that it was in the Appellant's Notice of Appeal to the GDIS and in the response to the Intention to Summarily Dismiss: GD1-1; GD6-1-9.
[33] IS06-I-253; *Minister of Employment and Social Development v. L.B.,* 2017 SSTADIS 286

decision stated that it would not consider the calculation issue because "the issue was not before the General Division."[34]

[35] The Minister's submissions to the Federal Court of Appeal stated that the contribution issue was the only one before the Court.[35] The Federal Court of Appeal decided that the Appeal Division's decision was reasonable.[36] The Appeal Division decision, as noted above, did not discuss the calculation issue.

[36] Nor was the calculation issue the matter before the Federal Court. According to the Minister, the Appellant's 2018 application raised the issue of whether the Federal Court had the authority (jurisdiction) to grant judicial review as the Appellant requested. If so, should the Federal Court grant an extension of time to file an application for judicial review of a decision that remained unspecified?[37] The Minister answered "no" to both questions.[38]

[37] In one of its recitals,[39] the Federal Court Order stated that "all matters pertaining to the [Appellant's] pension have been finally decided."[40] I find that this statement does not give rise to *res judicata*. The Federal Court was being asked whether it had the authority to grant judicial review and if so whether an extension should be granted for the Appellant to file an application. The Federal Court was not being asked to make a decision about the calculation issue.

[38] The Minister submitted that the calculation issue was before the Federal Court of Appeal and the Federal Court. However, since neither court addressed the calculation issue directly in its decision, *res judicata* does not apply.[41]

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[34] *MESD v. L.B.*, 2017 SSTADIS 286; IS06-I-24, 209, 264. See also GD02-18, which shows that the Appellant wrote the Minister in December 2018 about the calculation issue.
[35] Respondent's Memorandum of Fact and Law, November 2017, IS06-I-225
[36] IS06-I-305
[37] IS06-I-346
[38] IS06-I-351
[39] The recitals begin with "whereas". They are introductory statements. They are not the actual Order.
[40] *Bartlett v Canada (Attorney General)*, 18-T-64, November 14, 2018. See GD-06-I-11-12. Lawyers for the Attorney General argued that the Tribunal and the Federal Court of Appeal had heard about every factor likely to impact the calculation of the Appellant's CPP retirement pension: GD06-I-9, Letter dated in October 2018.
[41] *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, at para. 24.

[39] The calculation issue was addressed in the 2021 GDIS summary dismissal decision. However, the Appellant's appeal of that decision was successful. The AD determined that the GDIS member failed to consider the Appellant's argument that the Minister applied the wrong legislative provisions to calculate her retirement pension. This was an error of law. The AD decided against the GDIS decision and returned it to this division for a hearing. Therefore, the 2021 GDIS decision cannot support a claim of *res judicata.*[42]

- **Would there be any injustice from applying *res judicata*?**

[40] In the first step of the *res judicata* analysis, I have found that the doctrine does not apply. The Minister stated that it did. The Minister therefore proceeded to the second step, and determined that no injustice would arise from the application of the doctrine.[43]

[41] I am not required to consider the argument about whether the application of *res judicata* would lead to an injustice. However, I am taking this opportunity to address the Minister's submissions on the issue.

[42] The Minister submitted that applying *res judicata* would not create an injustice. The Appellant had an obligation to exercise reasonable diligence. She could have raised the calculation issue in prior proceedings. In fact, she did raise her arguments on the calculation issue. However, the Minister says, she was unable to make her argument effectively.[44]

[43] I do not find this argument persuasive. The reason that the Tribunal and the courts did not make a decision on the calculation issue in prior proceedings was that they could not. It was the reconsideration decision that determined what the decision-making bodies could make decisions about. The 2013 reconsideration decision did not

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[42] See Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 5th edition, 2022, Chapter 2, page 6.
[43] IS07
[44] IS07-15

say anything about the calculation issue. Therefore, neither the Tribunal nor the courts could make a decision on the matter.

[44] In the present case, I find that it would be unjust to prevent the hearing of a claim by a self-represented 74-year-old former warehouse worker disabled since 1977 because she failed to raise it when requesting reconsideration in 2013.

The calculation of the Appellant's retirement pension

The Appellant has failed to show that the Minister's figures are wrong

[45] The burden of proof is on the Appellant to show that it is more likely than not that there is an error in the Minister's calculations.

- **The Minister's calculations**

[46] The Minister relies on the "Williamson Affidavit" (Affidavit) in support of its calculation of the Appellant's retirement pension. Its author was Andrew Williamson, an employee of the Department of Employment and Social Development since 2000. At the time of writing in May 2022, he was Senior Legislative Officer with CPP Policy and Legislation.[45]

[47] The Affidavit explained that the Minister arrived at the amount of the retirement pension by using the following information: the number of months in the contributory period;[46] the total pensionable earnings; the total **adjusted** pensionable earnings (that is, adjusted for the cost of living);[47] and the average monthly pensionable earnings - the total adjusted pensionable earnings divided by the number of months in the contributory period.[48] The monthly retirement pension is 25% of the average monthly pensionable earnings.[49]

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[45] IS07-33. In an earlier version of this document, Mr. Williamson explained that his calculations were done on a year-by-year rather than a month-by-month basis: IS06-293.
[46] Section 49 of the CCP. As noted above, the Federal Court of Appeal determined that her contributory period was 79 months.
[47] Sections 53, 51, and 50 of the CPP
[48] Section 48 of the CPP
[49] Section 46 of the CPP

[48] The adjusted pensionable earnings calculation follows a complicated formula.[50] It involves dividing the Appellant's earnings for a year when she had income by the maximum pensionable earnings a person could earn in that year. In other words, this figure took account of the Appellant's income, and therefore of her contributions to the CPP. That figure is multiplied by another – the pension index figure for 2013 divided by the pension index figure for 1978 (121.50 divided by 33.10) which equals **3.671** (pension index figure).[51] This makes some allowance for the rising cost of living. Because the appellant had different earnings in each of the five years she contributed, there was a different "adjustment factor" for each year. The adjustment factor ranged from a high of 8.5 to a low of 4.87.[52]

[49] An illustration of the way this formula worked is the Affidavit's treatment of the Appellant's 1970 income, which was $2,269. The maximum pensionable earnings average divided by the year's maximum pensionable earnings is 2.32698. The adjustment factor for 1970 is 2.32968 x 3.671 = 8.54234. This gives adjusted pensionable earnings in 1970 of $19,383.[53]

[50] The Affidavit recorded that the Appellant's **unadjusted pensionable earnings** totalled $21,268. The adjustment factor varied for each year that the Appellant earned an income, but her **adjusted pensionable earnings** were $124,642.[54] The Minister divided this by the number of months in her contributory period, which was 79. The result of this was $1,577.75. Twenty-five per cent of this is $394.44. That plus one cent is the amount of the Appellant's retirement pension in 2013.[55]

[51] In submissions to the Appeal Division in October 2021, the Appellant stated that her CPP retirement pension should have been $819.93 monthly beginning in January 2013.[56] The maximum CPP retirement pension in 2013 was $1,012.50. That is the

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[50] See subsection 51(1) of the CPP.
[51] Consumer Price Index average and Pension Index for use in Benefit Calculations, at AD03-16.
[52] IS07-39
[53] IS07-39
[54] IS07-39
[55] IS07-40. The amount was raised by one cent due to rounding rules used in the government's computer.
[56] AD2-9

amount that a contributor to the CPP would have earned, for example, if they contributed the maximum amount to the CPP over a lifetime's work.

- **The Appellant's criticisms of the Minister's calculations**

[52] The Appellant has failed to convince me that there was an error in the Affidavit's pension calculations.

[53] At the hearing, the Appellant stated that the Affidavit failed to take full account of inflation between 1978, when she started receiving her CPP disability pension, and 2013, when she began getting her CPP retirement pension.

[54] The Appellant stated that in calculating the amount of her retirement pension, the Affidavit failed to take into account the escalation factor,[57] and used too low a pension index figure. It should have been about double the amount stated in the Affidavit.

[55] With regard to the escalation factor, the Appellant reported hearing a disability lawyer on the radio. He stated that there was an escalation period or escalation factor. It was calculated by taking the 5-year average of an appellant's earnings working backwards from what would have been, in her case, 1978. The Appellant stated that the Affidavit omitted this step of the calculations.

[56] It appears that the Affidavit did take into account something resembling what the Appellant said. It stated that the maximum pensionable earnings average for 1978 was the average of the year's maximum pensionable earnings for that year and the two previous years.[58] The Affidavit went on to calculate the maximum pensionable earnings rate for 1978, based on the CPP legislation.[59]

[57] With regard to the pension index figure, the Appellant stated that it should be either 7.63 or 6.4685, not 3.671.

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[57] Mr. Williamson pointed out that "escalation factor" was not a term used in the legislation.
[58] IS07-36
[59] Section 51, subsections (1) and (2) of the CPP

- In October 2021, the Appellant arrived at the pension figure of 7.63 partly by subtracting 33.10[60] from 121.50 and then dividing by 33.10.[61] The result was 88.40/33.10 x 100 which equalled 267/35 years. This yielded a figure of 7.63. The result would be an adjusted income in 1970 of about $40,300 instead of $19,383. I don't accept the Appellant's calculation because it does not follow the method specified in subsection 51(1) of the CPP.

- In May 2022, the Appellant stated that the "escalation factor" (this should be the "pension index figure") was 6.4685. The Appellant's key document was a letter dated December 17, 2012 from R. Geit, Benefits Officer of Service Canada.[62] That document used an "escalation factor" of 6.4685 to calculate the Appellant's monthly retirement pension. The retirement pension the Benefits Officer arrived at was $394.45 a month. R. Geit did not explain the origin of the figure of 6.4685. The calculations in the letter do not make sense. I therefore decline to find in favour of its "escalation factor".

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[60] The Appellant didn't explain why she subtracted 33.10 from 121.50. At the hearing, she stated that the 7.63 figure was based on a contribution period of 75 months, so she stood by R. Geit's figure of 6.4685.
[61] AD02-4
[62] IS04-3-4. R. Geit based the amount of the Appellant's CPP retirement pension on the earnings portion of her disability pension – $60.98 monthly. Her adjusted pensionable earnings were $33,953. R. Geit divided this by 79 (months in the contributory period) to get $429.78. Twenty-five per cent of that figure was $107.45 a month. Seventy-five per cent of this was $80.59, which was the amount of her retirement pension. However, R. Geit did not pursue the $80.59 figure. He took what he said was the earnings portion of the Appellant's disability pension - $60.98 - and escalated it by 6.4685. This gave her a monthly retirement pension of $394.45. At the hearing, the Minister's representative stated that the Benefits Officer got the amount of the monthly retirement pension right, but used the wrong route to get there. The Minister stood by the Affidavit. See also AD07-2.

[58] I find that the Appellant has not demonstrated that it is more likely than not that there is an error in the Affidavit's calculations of her retirement pension.

- Combined retirement and survivor's pension

[59] In calculating the combined retirement and survivor's pension (combined amount), the Affidavit based its calculations on paragraph 58(2)(c) of the CPP. This says that the starting point for calculating the combined amount is the Appellant's retirement pension, which in 2020 had a monthly value of $439.91. To this is added the deceased's retirement pension of $518.48 minus 40% of the Appellant's retirement pension ($175.96). This comes out to $342.52. The Appellant's combined amount therefore is $439.91 plus $342.52, which equals $782.43.[63]

[60] The Appellant stated that she should be receiving a total of about $1,070 a month.[64]

[61] In her March 2021 Notice of Appeal to GDIS, the Appellant stated that her CPP retirement pension should have been $695.04 per month.[65] It appears that this amount was based on the figures in R. Geit's December 2012 letter. That letter states that the Appellant's adjusted pensionable earnings were $33,953. It also states that the "escalation factor" is 6.4685.[66] The Geit letter explained neither of these figures. As noted above, the calculations in that letter do not make sense and the method of calculation is not consistent with the CPP.

[62] The Appellant also stated that her survivor's pension should have been $311.09 ($518.48-$207.39). The figure of $207.39 is 40% of 60% of the deceased's retirement pension. However, the amount of $175.96 should be used. It is the lower of the two figures provided for in paragraph 58(2)(c) of the CPP.[67]

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[63] See IS07-41-42 for a full account of how Mr. Williamson arrived at these figures.
[64] GD1-3
[65] GD01-3

[63] I find that the Appellant has not demonstrated that it is more likely than not that there is an error in the Affidavit's calculations of her combined retirement and survivor's benefit amount.

Conclusion

[64] I find that the matter of the calculation of the Appellant's retirement pension is not *res judicata*. However, I find that the Appellant failed to meet her burden of proof to show that it is more likely than not that the Minister's calculation of her combined retirement pension and survivor's benefit was incorrect.

[65] This means the appeal is dismissed.

Carol Wilton
Member, General Division – Income Security Section

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[66] IS04-3-5
[67] IS07-41