Citation: *NB v Minister of Employment and Social Development and BD*, 2024 SST 162

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	N. B.
Respondent:	Minister of Employment and Social Development
Added Party:	B. D.

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated June 20, 2023 (issued by Service Canada)

Tribunal member:	James Beaton
Type of hearing:	In writing
Decision date:	February 21, 2024
File number:	GP-23-1599

Decision

[1] The appeal is allowed.

[2] The Minister of Employment and Social Development (Minister) must reverse the division of the Appellant and Added Party's unadjusted pensionable earnings. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant and the Added Party got married on February 12, 1982. They separated on April 20, 1989,[1] and signed Minutes of Settlement for a divorce on August 21, 1991.[2] The Court of Queen's Bench of Alberta granted a divorce judgment on December 3, 1992.[3]

[4] On June 27, 2022, the Added Party applied to the Minister for a division of unadjusted pensionable earnings (DUPE), also called a "credit split."[4] A credit split is when spouses' contributions to the Canada Pension Plan (CPP) during certain years are combined and divided equally between them upon separation or divorce.

[5] The Minister allowed the Added Party's application and notified the Appellant, as it was required to do. The Appellant asked the Minister to reverse the credit split because, through the Minutes of Settlement, he and the Added Party had agreed not to split their CPP contributions. The Added Party changed her mind and asked the Minister to reverse the credit split as well.[5] The Minister refused both requests.

[6] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division. Before the hearing,[6] the Added Party changed her mind again—she now wants the credit split to be maintained.[7] The Minister also changed its mind—it now

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[1] See GD2R-46.
[2] See GD2R-18.
[3] See GD2R-42.
[4] See GD2R-44.
[5] See GD2R-15.
[6] The hearing took place in writing. The last day that parties could file documents was February 19, 2024.
[7] See GD16 and GD21.

says it should not have processed the credit split application and asks the Tribunal to reverse the credit split.[8]

What I have to decide

[7] I have to decide whether the Minister should have processed the Added Party's credit split application.

Reasons for my decision

[8] The Minister should **not** have processed the Added Party's credit split application. It must reverse the credit split. Here is why.

– When the Minister must process a credit split, and when it must not

[9] The Minister **must** process a credit split when the Minister is informed that spouses have divorced.[9] The exception is when these four requirements are met:

1) The ex-spouses entered into a written agreement after June 3, 1986, containing a provision that expressly mentions the *Canada Pension Plan* and indicates that they don't want a credit split.
2) The provision is expressly permitted by the applicable provincial law.
3) The agreement was entered into before the divorce judgment was granted.
4) The provision hasn't been invalidated by a court order.

[10] If these requirements are met, then the Minister **must not** process a credit split.[10]

– Requirements (1), (3), and (4) are met

[11] It is obvious from the evidence that requirements (1), (3), and (4) are met.

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[8] See GD11.
[9] See section 55.1(1)(a) of the *Canada Pension Plan*. The Minister must also receive certain information before it can process a credit split.
[10] See section 55.2(3) of the *Canada Pension Plan*.

[12] The Appellant and the Added Party entered into a written agreement (the Minutes of Settlement) on August 21, 1991. This was after June 3, 1986, and before the divorce judgment was granted on December 3, 1992.

[13] Section 9 of the Minutes of Settlement states:

> The parties hereby acknowledge that there is no Provincial Legislation in force in Alberta which allows each party to waive any rights that they may have to make an application to split or in any way share or claim any interest whatsoever, now or at any future time in the Canada Pension Plan which the other party presently has or may acquire in the future. Notwithstanding this, the parties hereby agree that neither will make any application to split or in any way share or claim any interest whatsoever now or at any future time in the Canada Pension Plan or any other Retirement Pension Plan or Registered Retirement Savings Plan, or any of the benefits thereof, which the other party presently has or may acquire in the future.[11]

[14] This provision expressly mentions the *Canada Pension Plan* and indicates that the Appellant and the Added Party didn't want a credit split. There is no evidence that this provision has been invalidated by a court order.

– **The parties disagree about whether requirement (2) is met**

[15] Where the parties disagree is with respect to requirement (2): that section 9 of the Minutes of Settlement is expressly permitted by the applicable provincial law—in this case, the law of Alberta, where the divorce was finalized.

[16] The Minister and the Appellant argue that requirement (2) **has** been met. Section 82.2 of Alberta's *Family Law Act* says, "A written agreement between spouses or common-law partners entered into on or after June 4, 1986 may provide that, notwithstanding the *Canada Pension Plan* (Canada), there be no [credit split]." According to the Minister and the Appellant, the Minutes of Settlement fulfil this requirement. Therefore, the Minister had no authority to process the Added Party's credit split application.

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[11] See GD2R-26 and 27.

[17] The Added Party argues that requirement (2) **has not** been met because section 82.2 wasn't in force (that is, it wasn't the law) until 2005. By then, the divorce had already been finalized. Therefore, at the time the Minutes of Settlement were signed and the divorce judgment was granted, Alberta law didn't expressly permit spouses to opt out of mandatory credit splitting under the *Canada Pension Plan*.

– **I find that requirement (2) has been met**

[18] I agree with the Minister and the Appellant. I find that requirement (2) has been met. Since all four requirements were met, the Minister had no authority to process the credit split.

[19] The *Canada Pension Plan* says an agreement between spouses not to split their CPP contributions only binds the Minister if the applicable provincial law expressly permits spouses to opt out of credit splitting. Section 82.2 of the *Family Law Act* clearly meets this requirement.

[20] It is true that section 82.2 wasn't in force when the Minutes of Settlement were signed and the divorce judgment was granted. But that doesn't matter. Section 82.2 says, "A written agreement between spouses or common-law partners entered into **on or after June 4, 1986** may provide that, notwithstanding the *Canada Pension Plan* (Canada), there be no [credit split]" (my emphasis). When the Alberta Legislature made section 82.2 the law in 2005, it chose to make it applicable to agreements that were made in the past, not just agreements that were made in 2005 or later. Section 9 of the Minutes of Settlement contemplates precisely this scenario.

[21] I am aware of a case where the Pension Appeals Board (the predecessor to the Social Security Tribunal) came to the opposite conclusion. In *Moore v Canada (Minister of Social Development)*,[12] the spouses divorced in 1989 in Alberta. One spouse applied for credit splitting in 1993. The Minister processed the application even though the other

[12] See *Moore v Canada (Minister of Social Development)*, 2006 LNCPEN 10 (PAB) (*Moore*).

spouse objected. Later, section 82.2 came into force. The spouse who opposed the credit split tried to rely on section 82.2 to reverse the credit split.

[22] In finding that the Minister had to process the credit split, the Board found that section 82.2 didn't apply because, as remedial legislation, "it is presumed not to be retroactive." So the spouses were bound by the law as it existed when they got divorced.[13]

[23] The Board was correct to say that legislation is presumed to apply only to future events, not past events. But that is only a presumption. That presumption is overcome if it can be shown that the law **was** intended to apply to past events.[14] In my view, section 82.2's explicit reference to agreements made well before 2005 shows such an intention.

[24] The Added Party referenced another decision called *BG v Minister (Employment and Social Development)*.[15] This was a decision of the Tribunal's Appeal Division. The Tribunal found that the appellant could not cancel her credit split because credit splits are mandatory when two people divorce after 1986 and the Minister receives certain information. That decision didn't involve a separation agreement, though, like this one does. The facts are different, so the outcome is also different.

Conclusion

[25] I find that the Minister should not have processed the Added Party's credit split application. All four requirements in the *Canada Pension Plan* were met. As a result, the Minister was bound by the Minutes of Settlement. It had no authority to split the Appellant and Added Party's CPP contributions.

[26] This means the appeal is allowed.

James Beaton
Member, General Division – Income Security Section

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[13] See paragraphs 8 to 13 of *Moore*.
[14] The Federal Court discussed retroactive laws in *Huynh v Canada (TD)*, [1995] 1 FC 633.
[15] See *BG v Minister (Employment and Social Development)*, 2022 SST 816.