

Social Security Tribunal of Canada General Division – Income Security Section

Citation: *BC v Minister of Employment and Social Development and WC*, 2021 SST 701

Tribunal File Number: GP-21-789

BETWEEN:

B. C.

Claimant

and

Minister of Employment and Social Development

Respondent

and

W. C.

Added Party

Tribunal File Number: GP-21-798

BETWEEN:

W. C.

Claimant

and

Minister of Employment and Social Development

Respondent

and

B. C.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division

DECISION BY: Anne Clark

DATE OF DECISION: October 23, 2021

The Appeals are joined

[1] I joined the Claimants' appeals.¹ I did this because:

- a) The relevant facts and law are similar in both cases. In other words, the issues in both appeals are the same.
- b) No injustice is likely to be caused by joining the appeals. In other words, joining them is fair to the Claimants and fair to the Minister of Employment and Social Development (Minister).

[2] Since I joined the appeals, I am basing this decision on documents from both appeal files and, this decision applies to both Claimants.

Decision

[3] The appeal is dismissed.

[4] The Claimants, B. C. and W. C. were not entitled to receive the Guaranteed Income Supplement (GIS) as single pensioners from September/October 2017 to January 2020.

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

Overview

[6] The Claimants have lived together in what they described as shared accommodations for more than 15 years. They both applied for and received a GIS under the *Old Age Security Act* (OAS Act) from 2017 to January 2020.

[7] In their applications for a GIS the Claimants identified themselves as divorced (B. C.) and widowed (W. C.). They were each paid a GIS as single pensioners. The Minister recalculated the GIS benefits and determined they were not entitled to have

¹ Section 13 of the *Social Security Tribunal Regulations* allow me to decide more than one appeal in some cases.

their GIS calculated at the single rate because they are common-law partners.

Therefore the Minister decided their GIS should be calculated at the married rate. I find the Minister was correct and the evidence shows that the Claimants meet the definition of common-law partners under the OAS Act.

[8] The Claimants say they live together for business reasons. They do not have an intimate or marriage-like relationship. They should be entitled to a GIS calculated at the rate used for single pensioners.

[9] The Minister says the evidence on file shows the Claimants are common-law partners within the meaning of the OAS Act. They were not entitled to a GIS calculated at the single rate. The Minister recalculated the GIS for each Claimant and decided they were overpaid. The Minister confirmed the decision on reconsideration.

[10] The Claimants appealed the Minister's decisions to the Social Security Tribunal (Tribunal).

The Claimants agree to some facts

[11] The Claimants agreed to some of the facts contained in the Minister's submissions.² In their testimony they agreed to the following:

- In 2012 B. C. identified his marital status in his application for a *Canada Pension Plan* retirement pension as common-law.
- In 2017 B. C. identified his marital status as divorced in his application for a GIS.
- In more than one tax return B. C. identified his marital status as married to W. C.
- In more than one income tax return W. C. identified her marital status as married to B. C.
- They have owned and/or lived together in three different homes since 2003.

² The Minister's submissions are at GD06

- They have a joint bank account.
- They own and share one vehicle.

What the Claimant must prove

[12] The Claimants and the Minister raised one issue on appeal. Specifically whether the Claimants were common-law partners for the purpose of calculating the GIS.

[13] For the Claimants to succeed, they must prove it is more likely than not (or on a balance of probabilities) they were not common-law partners for the relevant period which is 2017 to 2020.

Reasons for my decision

The GIS – What it is

[14] The GIS is an income-tested monthly benefit that is paid to individuals who are getting the OAS pension, who have little to no other income, and who reside in Canada. If a pensioner has a spouse or common-law partner, then the pensioner's eligibility for the GIS is determined based on the combined income of the couple.³

[15] In their applications for a GIS the Claimants identified themselves as divorced (B. C.) and widowed (W. C.). The Minister learned the Claimants were likely common-law partners as defined by the OAS Act.

[16] The Minister informed the Claimants there was new information and asked each of them to provide evidence to confirm their marital status.

[17] W. C. provided evidence about her marriage, her husband and his death. B. C. provided evidence of his marriage and divorce. In both cases the Claimant's continued to stress that they were not common-law partners but business partners who share accommodations.

³ Section 12 of the *Old Age Security Act*

What the law says about common-law partners

[18] The term “common-law partner” means a person who was cohabiting with someone in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year.⁴ In other words that they lived in a marriage-like relationship.⁵

[19] Factors that are relevant to determining whether two people were cohabiting in a conjugal relationship include:⁶

- a) Shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- b) Sexual and personal behavior, including whether the parties had sexual relations, maintained an attitude of fidelity to each other, communicated on a personal level, ate together, assisted each other with problems or during illness or bought each other gifts;
- c) Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- d) Social, including whether the parties participated together or separately in neighbourhood and community activities and their relationship with each other’s family members;
- e) Societal, including the attitude and conduct of the community towards each of them as a couple;

⁴ Section 2 of the *Old Age Security Act*

⁵ There is a recent Social Security Tribunal Appeal Division (AD) decision in *JR v. Minister of Employment and Social Development*, AD-20-851. I am not required to follow AD decisions however I find *the AD* provides a very clear description of common-law partner and is relevant to this appeal.

⁶ *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

- f) Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property; and
- g) Attitude and conduct concerning any children.

[20] The Claimants said they did not understand why I was asking personal questions. They seemed to think I should simply accept that they do not want to be thought of as common-law partners. They were confused about the factors that demonstrate an intention to live in a marriage-like relationship. The Claimants said they should not be considered common-law partners because they do not meet **all** of these factors. I explained that all of the factors are important and I must consider them but they are not a complete list of required elements. I explained I must consider all of the evidence. It is possible the Claimants could meet the definition of common-law partners even if they do not meet one or more of these factors.⁷

– **The Claimants identified themselves as married or common-law spouses in various forms**

[21] As noted above the Claimants agreed there were mistakes and they each identified their marital status as married or common-law in different forms and applications. I found the forms including tax returns, CPP application and mortgage documents seemed to show the Claimants intended to present themselves as married or common-law partners at least for the purposes of those applications and forms.

[22] I asked them to talk about that and explain why they chose, or allowed others to choose, incorrect marital status in those forms if they did not want to present themselves as common-law partners. I found their explanations generally implausible. I am not persuaded to give their testimony about those forms as much weight as the forms themselves.

⁷ In *Pintea v. Johns*, 2017 SCC 23 the Supreme Court of Canada endorsed the *Statement of Principles on Self represented Litigants and Accused Persons* issued by the Canadian Judicial Council. These principles recommend case management activities to protect the interests of participants who represent themselves.

[23] For example, B. C. said he simply “ticked” the wrong box on his retirement application. He said it was probably because he was distracted because he was waiting for surgery. He also wrote that it was not in his best interests to correct the mortgage documents that identified him as married.⁸ In his letter he said the marital status was wrong but he did not want to correct it because it might affect his mortgage approval. He wasn’t able to explain that further but clearly he knew he was presenting himself as married.

[24] W. C. said their “tax preparer” made a mistake when she identified them as married to each other.⁹ The Claimants explained the same person prepared their taxes for at least 15 years. For some unknown reason she made a mistake in at least two or three years. I asked them to talk about how a person who knew them both for many years could make such a mistake more than once. I also asked them to explain why they did not correct the error. W. C. said repeatedly it was a simple mistake and the Ministry “perpetuated” the mistake. She wasn’t able to explain that statement but stressed it was not her fault.

[25] W. C. talked about her decision to use the title Mrs. She said she was told she was required to use the title even though she is single because she was married and widowed. I asked her for more details but she could not tell me who said that, in what context or when.

[26] I found B. C. more open to my questions and willing to answer them. W. C. was less credible. At times she evaded my questions and disrupted B. C.’s testimony. She interrupted when I asked B. C. questions and she demanded that he refuse to answer. For example, the Claimants said they do not maintain a sexual relationship with each other or with anyone else. B. C. explained that he had surgery a number of years ago and is not capable of an intimate, physical relationship. W. C. became agitated and yelled for B. C. to stop talking. She appeared angry and tried to prevent B. C. from continuing his testimony about their personal relationship.

⁸ B. C.’s letter is at GD1-10

⁹ W. C.’s 2016 tax summary is at GD02-23.

[27] The Claimants said they lived together for purely business reasons. They describe their relationship as a shared expense accommodation. As noted above, I reviewed the factors that relate to whether people live in a conjugal relationship and asked them for their evidence or submissions about each factor. W. C. continued to be combative and became loud at certain questions. She was disruptive at times when B. C. was testifying. Here are their responses to the factors:¹⁰

- Shelter – They own a home together. They each have their own space and share the rest of the property. Each one will own the property if the other dies. No one else lives in the home and they both maintain it. It appears they have lived together in three different homes. B. C. said “they” have a nice home. They spend their free time enjoying it. They spend time working in the garden and around the home.
- Sexual and personal behaviour - They do not have a sexual relationship with each other or anyone else. They sometimes eat meals together. They help each other when needed. When they moved in 2012 it was so B. C. would be closer to the health center. They help take care of each other when they are ill. B. C. drives W. C. to appointments when necessary.
- Services - They share household tasks such as laundry and cleaning. It was not clear but it seemed as though B. C. takes care of the yard maintenance.
- Social - They do not socialize with anyone, either together or separately. When they were working they entertained business associates and clients in their home. W. C. said she does not socialize at all. B. C. said they have not socialized since they closed their business.
- Societal - They do not know what people in their community think of their relationship because they do not socialize with anyone in their neighbourhood.

¹⁰ *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

- Support - They share financial responsibilities equally. They own one vehicle and split all household expenses. The property and service accounts are in both names. They share one bank account. They have no wills but their property and accounts are joint so one will become the sole owner when the other dies.
- Attitude and conduct regarding children – The Claimants did not discuss children. They do not have any together. B. C.'s brother comes to visit sometimes. W. C. will stay for the first part of the visit.

[28] The Claimants worked together as a team. They used their homes to entertain clients and colleagues. They consider their arrangement to be purely business shown by the fact that they are not physically intimate. I find however that all of the other evidence is far more persuasive than the fact they do not have sexual relations with each other.

[29] For the purpose of determining whether the Claimants meet the definition of common-law partners I must look at all of the evidence. The documentary evidence, their personal and financial arrangements, the length of time they have been together when they worked and since they retired is all relevant. I appreciate that this will have an impact on their finances and understand the Claimants prefer to be assessed as single business partners not common-law partners.

[30] However, I find the evidence including their testimony and their own statements on forms and applications prove it is more likely than not that they met the definition of common-law partners from September/October 2017 to January 2020.

Conclusion

[31] I find that the Claimants weren't eligible for GIS calculated for single pensioners from September/October 2017 to January 2020.

[32] This means the appeal is dismissed.

Anne S. Clark
Member, General Division – Income Security Section