



[TRANSLATION]

Citation: *AB v Minister of Employment and Social Development*, 2026 SST 2

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. B.
Representative: J. B.

Respondent: Minister of Employment and Social Development
Representative: Marcus Dirnberger and Lucky Ingabire

Decision under appeal: General Division decision dated February 5, 2024
(GP-21-2026)

Tribunal member: Jean Lazure

Type of hearing: Videoconference

Hearing date: June 17, 2025

Hearing participants: Appellant
Appellant's representative
Respondent's representatives

Decision date: January 5, 2026

File number: AD-24-314

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. B., hasn't lived apart from his spouse since 2008. This means that he isn't eligible to receive the Guaranteed Income Supplement (GIS) calculated at the rate for a person living alone and based on their own income. Here is why I am dismissing the appeal.

Overview

[3] The Appellant was born in Morocco, and he is 81 years old. He came to Canada in 1972.¹

[4] The Appellant applied for an Old Age Security (OAS) pension on June 3, 2008.² He stated that he was married. The Minister granted him a full OAS pension starting in May 2009. The Minister also granted him the GIS.

[5] The Appellant contacted the Minister on June 3, 2009, to report that he and his spouse had been separated for over a year, even though they were still living together.³ The Minister sent a form to the Appellant. But it isn't clear from reading the file whether the Appellant gave this form to the Minister.⁴

[6] Starting in 2014, the Minister started investigating the Appellant's marital status, [translation] "because there was a difference between the marital status reported to the Canada Revenue Agency (CRA) and the one in [the Appellant's] OAS file"⁵

[7] On November 25, 2020, the Minister sent a letter to the Appellant telling him that he was overpaid \$58,774.43 for the period between May 2009 and June 2019 because

¹ See the file at GD2-4.

² See GD2-3.

³ See GD3-3.

⁴ See GD3-4.

⁵ See GD3-4.

he had received the GIS at the single rate while he was married.⁶ In the reconsideration decision letter dated June 8, 2021, the Minister upheld that initial decision.⁷

[8] The Appellant appealed that decision to the Tribunal's General Division.⁸ On February 2, 2024, the General Division dismissed his appeal. He appealed that decision to the Tribunal's Appeal Division.⁹ On May 21, 2024, the Appeal Division gave him permission to appeal.

[9] The Appellant is of the view that he and his spouse started living apart in 2008. It seems that the conjugal relationship started again sometime before the spouse's mother passed away in June 2018.¹⁰ According to the Appellant, even though they lived in the same residence during that period between 2008 and 2018, they weren't in a conjugal relationship.

[10] The Minister is of the view that the Appellant never stopped living in a conjugal relationship with his spouse.¹¹

[translation]

Even though the Appellant and his spouse state that they were separated between January 2009 and January 2018 while living at the same address, the [Appellant's] GIS benefits have to be calculated at the married or common-law rate and based on the family income starting in May 2009. Their lifestyle didn't change during that period. The Appellant and his spouse share activities and benefit in many ways from being married.

Issue

[11] The *Old Age Security Act* (OAS Act) says that people with low income can be eligible for the GIS.¹² The Act also says that when an applicant has a spouse or

⁶ See GD2-363.

⁷ See GD2-376.

⁸ September 21, 2021, at GD1-1.

⁹ April 25, 2024, at AD1-1.

¹⁰ See GD2-102.

¹¹ See GD3-13, at para 34.

¹² See R.S.C, 1985, c. O-9.

common-law partner, the couple's income has to be considered when determining the applicant's eligibility for the GIS.¹³

[12] The Act also says that if the applicant has been separated from his spouse for at least three months, the application for the GIS will be considered as though the applicant had ceased to have a spouse at the end of the third such month.¹⁴ Finally, the Act requires an applicant to inform the Minister without delay if they separate from, or cease to have, a spouse or common-law partner.¹⁵

[13] The issue is the following: Was the Applicant separated from his spouse at any time since 2008?

Analysis

[14] I find that the Appellant hasn't lived apart from his spouse since 2008. Here is why.

The Appellant hasn't lived apart from his spouse since 2008

[15] First, the decision giving permission to appeal in this file referred to a Supreme Court case, *Hodge*.¹⁶ That case dealt with the cohabitation of common-law partners¹⁷ and said the following: "[A] common-law relationship ends when either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one."¹⁸

[16] The notion of "conduct" means that the breakup can't be only a matter of one party's state of mind. The Appeal Division has already confirmed this: "In other words, a

¹³ See section 12 of the *Old Age Security Act* (OAS Act).

¹⁴ See section 15(4.1) of the OAS Act.

¹⁵ See section 15(9) of the OAS Act.

¹⁶ See *Hodge v Canada (Minister of Human Resources Development)*, [2004] 3 SCR 357.

¹⁷ I believe this applies equally to spouses.

¹⁸ See *Hodge v Canada (Minister of Human Resources Development)*, at para 42.

person cannot just terminate a relationship in their mind without doing more. Their conduct must also convincingly demonstrate that the relationship is over.”¹⁹

[17] In *McLaughlin*, the Federal Court set out the factors that have to be considered when deciding whether common-law partners are living in a conjugal relationship.²⁰ I believe that these factors apply equally when deciding whether spouses are living together or are in fact separated:

- 1) shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation
- 2) sexual and personal behaviour, including whether the parties have sexual relations, maintain an attitude of fidelity to each other, communicate on a personal level, eat together, assist each other with problems or during illness or buy each other gifts
- 3) services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services
- 4) social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other’s family members
- 5) societal, including the attitude and conduct of the community towards each of them as a couple

¹⁹ See *RP v Minister of Employment and Social Development and BG*, 2025 SST 720.

²⁰ See *McLaughlin v Attorney General of Canada*, 2012 FC 556. In that case, the Court considered whether a common-law partner who was living with the deceased at the time of his death could be eligible for a survivor’s pension under the *Canada Pension Plan*, even though the deceased was still legally married to another woman when he died.

- 6) support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property
- 7) attitude and conduct concerning any children

[18] I believe that these factors relate to the “conduct” referred to in *Hodge*. In my view, these two cases are essentially complementary, not contradictory. Since I have to decide whether there was cohabitation, I will apply the factors from *McLaughlin*.²¹

[19] Finally, I note that these factors aren’t used like a checklist. It is possible that only a few factors—or even just one—are decisive. First, I will review the evidence I had for each factor.

– **Shelter**

[20] The Appellant says that he and his spouse never stopped living under the same roof. He states that he had no choice because of his low income.

[21] Also, the Appellant slept in a bedroom in the basement, while his spouse slept in a bedroom [translation] “upstairs.” He also watched television alone in the basement.

[22] But the spouses seemed to share some common areas. First, the kitchen, since there seems to be only one in the house. They also seemed to share a bathroom for washing up. The Appellant testified that there is a bathroom [translation] “upstairs” and that he used that one. His spouse also had to use it because her bedroom is also [translation] “upstairs.”

– **Personal behaviour between the spouses**

[23] The Appellant testified that he and his spouse didn’t eat together. But a 2019 investigation report from the Minister seems to show that the spouses told the Minister that they [translation] “did their grocery shopping separately but ate together.”²²

²¹ See para 17 of the Appeal Division decision mentioned above, 2025 SST 720.

²² See GD2-102.

[24] As for communication, the Appellant testified that he [translation] “rarely” had conversations with his spouse. These conversations were usually limited to talking about problems that might come up. They would talk about specific problems as they came up to deal with them.

[25] As for assisting each other during illness, it seems that the Appellant had surgery in 2013 for prostate cancer. In an interview on April 10, 2019, the spouse seemed to say that she didn’t take care of him and that she didn’t go with him to his medical appointments.²³

[26] But in a later interview, the spouse stated that she went to the United States for three to four months with the Appellant while he was recovering. She took care of him during his illness, and she went with him to his surgery.²⁴ The Appellant, for his part, testified that his spouse took him to the hospital, dropped him off, and then left.

[27] The Appellant also said that it was usually his daughter or son who went with him to his medical appointments. His spouse had done so before, but [translation] “rarely.”

[28] Finally, there is no evidence that the spouses had sexual relations, but neither of them had other spouses during their separation.²⁵

– **Services that the spouses provided to each other**

[29] According to the Appellant’s testimony at the hearing, each spouse prepared their own meals. He said that he made [translation] “salads, burgers, easy things.” If there were leftovers, he didn’t share them with his spouse. He also said that the food in the refrigerator was sometimes shared: [translation] “Sometimes I take some of her things; sometimes she takes some of mine. We both agree.” He also said that they each had their own milk and meat in the refrigerator.

²³ See GD2-102.

²⁴ See GD2-110.

²⁵ See GD2-102.

[30] There is no evidence of any sharing of tasks related to shopping, doing laundry, household maintenance, or other domestic services.

– **Social activities of the spouses**

[31] The Minister's investigation report after the April 2019 interview said the following: [translation] "During the separation, [the spouse] said that [the Appellant] was always invited to her family's events and celebrations."²⁶ This seems to be confirmed in the report after the October 2019 interview: [translation] "[The spouse] reported that they always spent Christmas holidays together as a family with the children. She said she could not leave him alone."²⁷

[32] The Appellant's testimony at the hearing about this is a bit confusing. The Appellant first said that they didn't celebrate Christmas. When the Minister's representative was talking to him about the investigation reports above, he said that they celebrated Christmas together [translation] "before," but that they had stopped. He seemed to say that they had stopped since they separated, or that they were doing it [translation] "less than before." But he also said that they continued the tradition until [translation] "around '78," and that they stopped [translation] "to avoid creating friction."

[33] As for travel, the first investigation report after the April 2019 interview said: [translation] "They said they didn't travel together."²⁸ But in the second investigation report after the October 2019 interview, the Appellant [translation] "confirmed that they have been going to Florida every winter for periods of two to three months since 2015, after [the spouse] retired."²⁹

[34] When asked about this in cross-examination at the hearing, the Appellant stated that he and his spouse went to stay with his spouse's brother, who had a condominium

²⁶ See GD2-102.

²⁷ See GD2-110.

²⁸ See GD2-102.

²⁹ See GD2-109.

in Florida, where each spouse had their own bedroom: [translation] “She was in one room, I was in another room, each doing our own thing.”

[35] The Appellant also testified that the spouses flew together. He justified this by saying that it was for financial reasons. His spouse’s brother worked for an airline: [translation] “My brother-in-law worked for an airline, so we benefited from buying tickets together, and he had the condominium. It was only to save money because we could not afford to pay more.”

– **Societal image of the spouses**

[36] The Appellant testified at the hearing that their families and children knew that they were separated. His daughter also testified at the hearing. She said that they were separated: [translation] “They separated. It’s been years. [...] I am a first-hand witness.”

[37] There is no other evidence showing whether the community viewed the spouses as a couple.

[38] As for how the Appellant or the spouses presented themselves, there is important documentary evidence on file that the Appellant presented himself as married, not separated. In fact, the only written statements to governments or institutions where the Appellant said he was separated are those he made to the Minister in connection with this file.³⁰

[39] The Appellant’s income tax returns between 1988 and 2019 show that his marital status was [translation] “married.”³¹ A document from the Appellant’s financial institution from March 2018 said that he was married or living common law.³² Also, a document from the RAMQ dated May 2019 said that his spouse had been his [translation] “declared spouse” since December 6, 1997.³³

³⁰ See GD2-23 to GD2-359.

³¹ See GD2-46 to GD2-95; and GD2-277 to GD2-279.

³² “Married or Common Law.” See the document dated March 22, 2018, at GD2-36.

³³ See GD2-145.

[40] The Appellant applied for a passport in 2015 where he reported his marital status as [translation] “married.” His November 2015 passport lists his spouse’s name as the person to contact in case of emergency and identified her relationship to him as [translation] “spouse.”³⁴

[41] It also seems that, the spouse agreed twice in 2010 to a mortgage on the spouses’ residence, and she appears to be the sole owner.³⁵ The Appellant signed both documents as a participating party.³⁶ In both documents, the spouses reported that they were married, with no mention of any separation.

[42] Finally, it almost goes without saying that the spouses never started proceedings to separate or divorce.

[43] Ultimately, at the hearing, I gave the Appellant two weeks to file any evidence showing that he had changed his marital status with the CRA. He didn’t file any documents about this.³⁷

– Support

[44] It seems clear from the evidence that the spouse was financially supporting the Appellant. He mentioned his low income many times in his testimony and in his written submissions on file. The spouse’s income does in fact seem to have been higher than the Appellant’s: [translation] “As for [the Appellant’s] income, he said he receives only the Québec Pension Plan (QPP), at \$250 a month. The [spouse] said she worked 41 years in Canada and receives \$1,100 a month from the QPP.”³⁸

[45] There seems to have been some sharing of expenses, but the evidence is unclear about exactly which expenses were shared and in what percentage. In the Minister’s investigation report after the April 2019 interview, the Appellant recognized being financially dependent on his spouse. It also seems that the spouse allegedly

³⁴ See GD2-285.

³⁵ See GD2-337 to GD2-358. The spouse is alone as the “borrower.”

³⁶ See GD2-318, GD2-357, and GD2-358.

³⁷ At the hearing, I used the term [translation] “marital status.”

³⁸ See GD2-101.

wanted to retire at age 65, but she worked until she was 70 because the Appellant wasn't working.³⁹

[46] Also, as I mentioned above, the spouse was the sole owner of the spouses' residence and let the Appellant stay there: [translation] "[The spouse] also said that she could not throw him out on the street. He didn't have enough income to live on his own."⁴⁰

[47] Finally, the Appellant's testimony and the documentary evidence on file show that the spouse had health insurance through her employer.⁴¹ The Appellant said that he benefited from it until 2018.

– **Attitude and conduct of the spouses concerning any children**

[48] I won't focus on this factor because I believe that it refers to the spouses' attitudes and conduct in raising their minor children. Because of the age of the Appellant and his spouse, and the fact that their children were adults, this factor doesn't seem relevant to me.

– **The balance of probabilities supports the existence of a conjugal relationship**

[49] Finally, the following factors seem to support the existence of a conjugal relationship between the spouses: shelter, social activities, societal image, and support. The factors that weigh against a conjugal relationship are personal behaviour and services.

[50] I believe that the evidence, on a balance of probabilities, shows that the spouses have always been in a conjugal relationship. In my view, two factors are decisive in this regard.

[51] The first is the societal image. As the Minister's representative stated in his arguments, everything about the spouses in their dealings with institutions or

³⁹ See GD2-102.

⁴⁰ See GD2-110.

⁴¹ See GD2-110.

governments says that they are married. Both the Appellant and the spouse could have presented themselves—whether to financial institutions, notaries, or the CRA—as being separated, but they chose not to.

[52] Whether people want to keep living under the same roof or do not want to divorce for financial reasons, that can still be acceptable. But it is completely inconsistent for the Appellant to tell the Minister that they have been separated since 2009, while continuing to tell everyone else that they are married, not separated. I can only take note here of the Appellant's choices, and they weigh against him.

[53] Also, the spouses did in fact continue to always live under the same roof since 2008. And they took yearly trips to Florida together for many months since 2015. But the second decisive factor, in my opinion, is the spouse's support for the Appellant. This has been shown in the following ways:

- The spouse let the Appellant keep living with her in the house she owns, while he was earning only \$250 a month.
- She worked five years longer than she allegedly wanted to, from age 65 to 70, because the Appellant wasn't working.
- She let the Appellant benefit from her employer's health insurance until 2018.

[54] These three points show that the spouse made deliberate choices to support the Appellant. In my opinion, this support can only be explained in the context of a conjugal relationship. When this support is added to the societal image—and when living under the same roof and taking yearly trips to Florida are also added—the only finding that can be made here is that they were in a conjugal relationship.

[55] So, I am of the view that the Appellant has always lived in a conjugal relationship with his spouse since 2008.

Conclusion

[56] I find that the Appellant hasn't lived apart from his spouse since 2008. This means that he isn't eligible to receive the GIS calculated at the rate for a person living alone and based on their own income.

[57] This means that the appeal is dismissed.

Jean Lazure
Member, Appeal Division