

Federal Court of Appeal



Cour d'appel fédérale

Date: 20201207

Docket: A-467-19

Citation: 2020 FCA 209

**CORAM: BOIVIN J.A.
RENNIE J.A.
GLEASON J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JULIE REDMAN

Respondent

Heard by online video conference hosted by the registry

on November 19, 2020

Judgment delivered at Ottawa, Ontario, on December 7, 2020.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**RENNIE J.A.
GLEASON J.A.**

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REASONS FOR JUDGMENT

BOIVIN J.A.

I. Introduction

[1] This matter concerns an application for judicial review brought by the Attorney General of Canada (AGC) in connection with a decision rendered by the Social Security Tribunal's Appeal Division (Appeal Division) (AD-19-436). The Appeal Division overruled the Social Security Tribunal General Division (General Division) decision and found that Ms. Julie

Redman (respondent) was the common-law partner of Mr. Alfred Johnson (deceased contributor) as defined in, and for the purpose of, subsection 2(1) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (CPP). The Appeal Division accordingly determined that the respondent was entitled to a survivor's pension under the CPP. The AGC disagrees with this conclusion on the part of the Appeal Division, hence the present application for judicial review.

II. Background and Decisions Below

[2] The relationship between the respondent and the deceased contributor began in 2012. In February 2016, the deceased contributor moved out of the home he shared with the respondent. The deceased contributor and the respondent began cohabiting again for a certain number of months in or around July 2016 until November 3, 2016, the date of the deceased contributor's death.

[3] On April 3, 2018, the respondent applied for a CPP survivor pension as a common-law partner of the deceased contributor.

[4] On May 29, 2018, the Minister of Employment and Social Development Canada (Minister) denied the respondent's application for a survivor pension on the basis that the respondent had lived with the deceased contributor for less than one year prior to his passing away. On September 19, 2018, following a request for reconsideration by the respondent, the Minister maintained its decision.

[5] The respondent appealed the Minister's decision to the General Division.

[6] On March 20, 2019, the General Division dismissed the respondent's appeal. The General Division found that the respondent and the deceased contributor had been in a common-law relationship between July 2012 and February 2016, at which point the relationship broke down. Based on an assessment of the couple's conduct, as well as various considerations including residence, finances and responsibilities, the General Division determined that the respondent and the deceased contributor could not be deemed to have been in a common-law relationship for a continuous period during the year immediately prior to the deceased contributor's passing – *i.e.* November 2015 to November 2016. In the General Division's view, there had been an interruption of the common-law relationship between February and July 2016. The General Division, accordingly, found that the respondent did not meet the definition of common-law partner pursuant to subsection 2(1) of the CPP because she and the deceased contributor "[had] not maintain[ed] a common-law relationship for a continuous period of at least one year leading up to the time of the contributor's death" (General Division's decision at para. 17). On this basis, the General Division concluded that the respondent was not entitled to a survivor's pension under the CPP.

[7] On July 2, 2019, the respondent was granted leave to appeal the General Division's decision to the Appeal Division.

[8] On November 21, 2019, the Appeal Division allowed the respondent's appeal and reversed the General Division's decision on a question of law pursuant to subsection 58(1)(b) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34. Specifically, the Appeal Division found that the General Division had erred in law by wrongly applying the legal

test for a common-law relationship in the context of an application for a survivor's pension under the CPP. The Appeal Division made reference to a number of decisions, including the decision of our Court in *Beaudoin v. Canada (Minister of National Health and Welfare)*, [1993] 3 F.C. 518, 155 N.R. 298 [*Beaudoin*], and determined that the respondent did not need to be in a conjugal relationship with the deceased contributor for a year leading up to his passing (Appeal Division's decision at para. 16). Rather, the Appeal Division found that the fact that the respondent had resided with the deceased contributor in a conjugal relationship for over one year in the past, coupled with the fact that she had also resided with the deceased contributor in such a relationship at the time of his death, were sufficient to establish the respondent's status as a "common-law partner" entitled to a survivor's pension under the CPP (paragraph 44(1)(d) and subsections 2(1) and 42(1) of the CPP).

[9] As noted at the outset, the AGC applies for judicial review of the Appeal Division's decision. For the reasons that follow, I would allow the application, without costs.

III. Issue

[10] The sole issue in this matter is whether it was reasonable for the Appeal Division to find that the respondent need not have been cohabiting in a conjugal relationship with the deceased contributor for at least one year immediately prior to the latter's death for the purpose of claiming a survivor's pension, as defined at subsection 2(1) of the CPP.

IV. Relevant Statutory Provisions

[11] The statutory provisions of the CPP relevant to the present matter are the following:

2(1) In this Act,

...

common-law partner, in relation to a contributor, means a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a continuous period of at least one year. For greater certainty, in the case of a contributor's death, the *relevant time* means the time of the contributor's death; (*conjoint de fait*)

...

42(1) In this Part,

...

survivor, in relation to a deceased contributor, means

(a) if there is no person described in paragraph (b), a person who was married to the contributor at the time of the contributor's death, or

(b) a person who was the common-law partner of the contributor at the time of the contributor's death; (*survivant*)

2(1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

conjoint de fait La personne qui, au moment considéré, vit avec un cotisant dans une relation conjugale depuis au moins un an. Il est entendu que, dans le cas du décès du cotisant, *moment considéré* s'entend du moment du décès. (*common-law partner*)

[...]

42(1) Les définitions qui suivent s'appliquent à la présente partie.

[...]

survivant S'entend :

a) à défaut de la personne visée à l'alinéa b), de l'époux du cotisant au décès de celui-ci;

b) du conjoint de fait du cotisant au décès de celui-ci. (*survivor*)

V. Analysis

[12] From the outset, as reiterated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 [*Vavilov*], reasonableness remains the presumptive standard of review with respect to the merits of an administrative decision. There is no reason to depart from that presumption in the present matter.

[13] Turning to the decision at hand, the Appeal Division effectively found that, for the purposes of claiming a survivor's pension under the CPP, a year of cohabitation need not be immediately before the contributor's death in order for a claimant to be considered a common-law partner pursuant to subsection 2(1) of the CPP. As noted earlier, the Appeal Division relied on this Court's long-standing decision in *Beaudoin* as follows (Appeal Division's Decision at para. 12):

The Federal Court [of Appeal] decision in *Beaudoin* states that since the definition of common-law partner does not specifically state that the continuous period of one year must immediately precede the death, that interpretation should not be given to the legislation. In other words, to qualify for a survivor's pension, a claimant must prove that they were in a conjugal relationship with the deceased contributor for a least one year, and that they were in such a relationship at the time of the contributor's death, not that the conjugal relationship existed for at least one year immediately before the contributor's death. Although the legislation has changed since this decision was made, it has changed only to include same-sex partners. The requirement to reside in a conjugal relationship has not changed. Therefore, this decision is binding on the Tribunal.

[My emphasis].

[14] The main passage from paragraph 4 of *Beaudoin* that the Appeal Division seems to have relied on as binding reads as follows:

The Board appears to be in error in its view as to “the prescribed period of time”, since it had previously stated the issue in the case as being “whether the deceased contributor was cohabiting with Line Beaudoin in conjugal relationship at the time of his death, having so cohabited for at least one year immediately prior to his death”. As another panel of the Board held – in my view correctly – in *Minister of National Health and Welfare v. Decoux, Elaine* (1991), C.E.B. & P.G.R. 6206, “Since s. 2 [of the Act] does not specifically state that the continuous period of one year must immediately precede the death, I do not think we should give it that interpretation” (at page 6207).

[Emphasis omitted].

[15] Yet, when read in context, the above-quoted passage from *Beaudoin* is merely *obiter*. Indeed, in delivering his analysis in *Beaudoin*, MacGuigan J.A. did not engage in an exercise of statutory interpretation of the definition of “common-law partner” in the context of a claim for a survivor’s pension. Nor did MacGuigan J.A. in *Beaudoin* make any factual finding in this regard – *i.e.* whether Ms. Beaudoin had cohabited with the deceased contributor one year prior to his death. Rather, the central issue in *Beaudoin*, the “essential case” of Ms. Beaudoin (*Beaudoin* at para. 6), was whether a denial of a request for a hearing in French, although not outright rejected, amounted to a denial of natural justice because it had fettered Ms. Beaudoin’s ability to present her case (*Beaudoin* at paras. 21-23). The decision in *Beaudoin*, accordingly, cannot and should not be relied upon as binding authority for the interpretation of the definition of “common-law partner” pursuant to subsection 2(1) of the CPP. It was thus unreasonable for the Appeal Division to do so.

[16] In the present case, the AGC alleges that the Appeal Division wrongly distinguished *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65, [2004] 3 S.C.R. 357 [*Hodge*] and *Perez v. Hull*, 2019 FCA 238, [2019] F.C.J. No. 1102 (QL/Lexis) [*Perez*] from the decision in *Beaudoin*. In support of the present application for judicial review, the AGC contends that these decisions confirm that continuous cohabitation for at least one year immediately prior to the death of the contributor is required for the purposes of claiming a survivor's pension under the CPP. Yet, this contention is likewise problematic, akin to the Appeal Division's reliance on the comments in *Beaudoin* as binding authority when they are in fact *obiter*. Indeed, neither *Hodge* nor *Perez* addressed the issue of whether the existence of a conjugal relationship at least one year immediately before the contributor's death is required to be deemed a "common-law partner" pursuant to subsection 2(1) of the CPP.

[17] More particularly, in *Hodge*, the question decided by the Supreme Court was whether the definition of "spouse" in section 2(1) of the CPP infringed section 15(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (*Hodge* at para. 14). The claimant in *Hodge* had terminated the common-law relationship at issue and was therefore not in a conjugal relationship with the contributor at the date of his death (*Hodge* at paras. 4, 40-43). This was a given, and the question as to whether the parties had cohabited together for one year immediately before the death of the contributor was not at play.

[18] Likewise, in *Perez*, the evidence did not establish that Ms. Perez was in a common-law relationship with the deceased for at least one year prior to his death (*Perez* at paras. 6-7). While

Ms. Perez and the deceased had been living together, the General Division considered all of the factors and concluded that the nature of their relationship was not a common-law relationship under the CPP (*Perez* at paras. 6-7). The questions ruled upon by our Court in that case concerned the admissibility of new evidence and the reasonableness of the dismissal of the claimant's appeal on grounds of procedural fairness and failure to consider all the evidence (*Perez* at paras. 8-9, 13-14). The question as to whether a common-law partner must be in a conjugal relationship with a contributor for a year leading up to the contributor's death was not addressed *per se*.

[19] It should be recalled that the Supreme Court, in *R. v. Henry*, 2005 SCC 76, [2005] 3 S.C.R. 609 [*Henry*], stated that not every phrase of a judgment is "binding", and the weight of *obiter* "decreases as one moves from the dispositive *ratio decidendi* to a wider circle of analysis" (*Henry* at para. 57). In the present case, the commentary on the issue of the interpretation of the definition of "common-law partner" in subsection 2(1) of the CPP in *Beaudoin*, as well as in *Hodge* and *Perez*, clearly fall in the *obiter* category and are certainly not binding. Therefore, these decisions are of limited assistance when it comes to determining whether a continuous one-year period of cohabitation must immediately precede the passing of the deceased contributor for the purposes of eligibility for a survivor's pension under the CPP. To put it simply, there is an utter lack of jurisprudential clarity in this regard.

[20] In these circumstances, the Appeal Division's task was to address the issue by undertaking a statutory interpretation. The fact that it failed to do so, renders its decision unreasonable. Although the Appeal Division indeed referred to the relevant provisions of the

CPP at the outset of its analysis (Appeal Division's decision at paras. 9-10), it failed to engage in any statutory interpretation exercise.

[21] The Supreme Court has recently indicated in *Vavilov* that, in accordance with *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 154 D.L.R. (4th) 193 and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, the statutory interpretation entrusted to an administrative decision-maker must be consistent with the text, context and purpose of the statute (*Vavilov* at paras. 120-121):

But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.

The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.

[22] Finally, and however trite, the statutory provisions of the CPP, a federal statute, are set forth in both official languages - English and French. As such, both versions of the statute are equally authoritative statements and have to be given meaning in accordance with the rules of statutory interpretation (see *Schreiber v. Canada (Attorney General)*, 2002 SCC 62, [2002] 3 S.C.R. 269; Michel Bastarache et al., *The Law of Bilingual Interpretation*, 1st ed. (Markham:

LexisNexis, 2008); Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis, 2014); Pierre-André Côté in collaboration with Stéphane Beaulac and Mathieu Devinat, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011); *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.); *R. v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217).

VI. Conclusion

[23] Having determined that the Appeal Division decision in the present matter was unreasonable, I would allow the application for judicial review and I would remit the matter back to the Appeal Division to be determined in accordance with these reasons by a different tribunal member. The AGC did not request costs and I would therefore not award any.

"Richard Boivin"

J.A.

"I agree.
Donald J. Rennie J.A."

"I agree.
Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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GLEASON J.A.

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