

**Date: 20100219**

**Docket: A-45-09**

**Citation: 2010 FCA 54**

**CORAM: LÉTOURNEAU J.A.  
NADON J.A.  
DAWSON J.A.**

**BETWEEN:**

**SHARON GILES**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Regina, Saskatchewan, on February 17, 2010.

Judgment delivered at Ottawa, Ontario, on February 19, 2010.

**REASONS FOR JUDGMENT BY:**

**DAWSON J.A.**

**CONCURRED IN BY:**

**LÉTOURNEAU J.A.  
NADON J.A.**

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**REASONS FOR JUDGMENT**

**DAWSON J.A.**

The Issue in this Proceeding

[1] This is an application for judicial review of a decision of the Pension Appeals Board (Board) dated December 22, 2008. The applicant, who is self-represented in these proceedings, contends that the Board erred in determining that she had failed to establish that she was the common-law partner of Mr. James Hamill at the time of his death.

### The Decision of the Board

[2] In a detailed decision, the Board unanimously upheld the decision of a Review Tribunal which had denied Ms. Giles' claim to a survivor's pension benefit under paragraph 44(1)(d) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (Plan). The Board found that Ms. Giles had failed to establish, on a balance of probabilities, that at the time of Mr. Hamill's death she had cohabited with him in a conjugal relationship for a continuous period of at least one year, as required by the combined operation of paragraph 44(1)(d), section 42 and subsection 2(1) of the Plan.

### The Standard of Review

[3] The question of whether one is cohabiting in a conjugal relationship so as to meet the definition of a common-law partner is a question of mixed fact and law that attracts deference. The Board's decision on this question is reviewable on the standard of reasonableness unless the question contains an extricable legal issue. See: *Dilka v. Canada (Attorney General)*, 2009 FCA 90 at paragraphs 9 and 10. In the present case, Ms. Giles has not asserted the existence of any such extricable legal issue. The Board's decision should, therefore, be reviewed on the standard of reasonableness.

### Analysis of the Board's Decision and the Applicant's Submissions

[4] Ms. Giles argues that the Board's decision is unreasonable because the Board ignored evidence that supported her claim and drew unreasonable inferences from the evidence.

[5] The Board carefully reviewed the evidence before it, including Ms. Giles' testimony and what the Board characterized to be the “voluminous documentation” she submitted. At paragraph 14 of its reasons, the Board listed the factors that supported Ms. Giles' submission that a common-law relationship existed from 1991 until the death of the contributor in February, 2003. The Board then went on in the next paragraph to review the factors that supported the opposite conclusion. It cannot be said that the Board ignored evidence. The Board was entitled to weigh the evidence before it, to make assessments of credibility and to draw reasonable inferences from the evidence.

[6] While we have every sympathy for her situation, Ms. Giles essentially asks this Court to re-weigh the evidence that was before the Board. The jurisprudence is express that a court is not permitted to do this on judicial review. The Supreme Court of Canada has instructed that reviewing courts must show deference to administrative tribunals in matters that relate to their special role, function and expertise. Deference requires “a respectful attention to the reasons offered or which could be offered in support of a decision.” See: *Dunsmuir v. New Brunswick*, [2008], 1 S.C.R. 190 at paragraph 48.

[7] There was evidence before the Board to support its inferences and conclusion. The Board gave transparent and intelligible reasons as to why it came to its decision. The decision was within a range of acceptable outcomes which are defensible in respect of the facts and the law. The decision was, therefore, reasonable.

Conclusion

[8] For these reasons, I would dismiss this application. The respondent did not seek costs and so I would not award costs.

“Eleanor R. Dawson”

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J.A.

“I agree  
Gilles Létourneau J.A.”

“I agree  
M. Nadon J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-45-09

**STYLE OF CAUSE:** SHARON GILES v.  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Regina, Saskatchewan

**DATE OF HEARING:** February 17, 2010

**REASONS FOR JUDGMENT BY:** DAWSON J.A.

**CONCURRED IN BY:** LÉTOURNEAU J.A.  
NADON J.A.

**DATED:** February 19, 2010

**APPEARANCES:**

Sharon Giles SELF-REPRESENTED

Allan Matte FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada