



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *RB v Minister of Employment and Social Development*, 2019 SST 1717

Tribunal File Number: GP-19-1295

BETWEEN:

**R. B.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Raymond Raphael

In person hearing on: November 4, 2019

Date of decision: November 25, 2019

## **DECISION**

[1] The Claimant and J. B. (J. B.) were not common-law partners at the time of his death. She is not entitled to the *Canada Pension Plan* (CPP) survivor's benefit.

## **OVERVIEW**

[2] The Claimant and J. B. (J. B.) were married in April 1966. They separated in June 1990, and divorced in September 1994. The Claimant states that she and J. B. were common-law partners from 2010 until he died in December 2015. In February 2016, the Claimant applied for the CPP survivor's benefit. The Minister denied her application both initially and on reconsideration. The Claimant appealed to the Social Security Tribunal.

[3] In March 2019, the General Division determined that the Claimant had abandoned her appeal. The Claimant appealed to the Appeal Division. In July 2019, the Appeal Division allowed the appeal and referred this matter back to the General Division for an in person hearing on the merits.

## **ISSUE**

[4] I must decide whether the Claimant and J. B. were common-law partners at the time of his death.

## **ANALYSIS**

[5] The Claimant must establish that it is more likely than not, that she was cohabiting with J. B. as his common-law partner at the time of his death, and that they had so cohabited for a period of at least one year.

### **The Claimant's Position**

[6] Although she and J. B. were divorced, they continued to love each other and spent all weekends together. Since they were Catholic, their marriage was forever and they were "always married." She took care of J. B. after he became ill.

## **The Minister's position**

[7] Although the Claimant and J. B. remained on amicable terms following their divorce, they were not common-law partners. They lived at separate residences until J. B. was admitted to the hospital in October 2012. Thereafter, he lived in hospitals or nursing homes, and the Claimant lived elsewhere. The Minister acknowledges that the Claimant acted as power of attorney for J. B.'s property and personal care. However, this does not establish a common-law relationship.

## **Legal Principles**

[8] The Federal Court has stated that the factors that are indicative of a common-law relationship include the following<sup>1</sup>:

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

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<sup>1</sup> *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

[9] I now turn to each of the factors set out above.

***Shelter***

[10] The Claimant stated that when she and J. B. divorced in 1994, they were living in different apartments, in the same building. She lived with their son in a government-subsidized apartment. J. B. lived in a non-subsidized apartment. In 2002, the three of them moved to British Columbia because there were better programs available for their son. They lived together in the same apartment.

[11] In 2004, they moved back to Toronto. She and her son moved to a subsidized apartment in downtown Toronto. J. B. move to an apartment in Scarborough. J. B. lived in a separate apartment because he couldn't prepare his papers and for classes because their son was always screaming.

[12] This continued until October 2012, when J. B. was admitted to the hospital. After this, the Claimant went to see the J. B. everyday and made decisions for his care. He was initially in Mount Sinai Hospital. After one week, he was moved to Toronto Western Hospital. In May 2013, he was moved to a nursing home. In May 2015, the Claimant and J. B. moved back to Colombia. He was in a nursing home, and she lived in her brother's apartment. In November 2015, J. B. was moved to a hospital, where he died in December 2015.

***Sexual and personal behaviour***

[13] In 2010, they started to see each other more frequently, and "fell in love again." They were sexually intimate. Neither of them was involved with anyone else. They did not move into the same apartment because she would have lost the benefit of her subsidized housing. In addition, J. B. couldn't do his work if they were in the same apartment because of their son.

[14] They exchanged gifts on birthdays and Christmas. He brought a music group to sing on their anniversary. She stated that they renewed their wedding vows in the church in 2012. They exchanged rings and invited 50 people. However, although she filed photographs from their

April 1966 wedding<sup>2</sup>, she did not file any photographs from the wedding vows ceremony. She initially said that J. B. had lost the photographs in an accident in British Columbia, but they had not been in British Columbia since 2004. Further, she did not file any letters or other documents establishing when they renewed their wedding vows. Although I accept that they did renew their wedding vows, I am not satisfied that this took place in 2012, or at any time after 2010.

### ***Services, Social***

[15] After 2010, they were always together on weekends. On weekends, they shopped and ate together. They went to church together every weekend. She arranged for a caregiver for their son, and travelled with him to conferences in Montreal and the Dominican Republic. They went to parties and church activities together. They went on day and weekend trips together.

### ***Support and financial arrangements***

[16] When they divorced, they did not make any specific financial arrangements because she was on government benefits and had subsidized housing. The Claimant stated, “Sometimes he made payments for our son, and sometimes he didn’t.” They did not have any joint property. Neither of them had wills or life insurance. In November 2011, J. B. appointed the Claimant power of attorney for both his property and personal care.<sup>3</sup>

### ***Attitude and conduct concerning children***

[17] The Claimant read out a medical report from their son’s family doctor. The doctor stated that their son had been diagnosed with autistic spectrum disorder, relied on the Claimant completely for his daily activities, and was incapable of making decisions.

### **My findings**

[18] The extent to which the different factors of a common-law relationship should be taken into account varies with the circumstances of each case.<sup>4</sup> I must keep in mind the endlessly

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<sup>2</sup> GD1-43

<sup>3</sup> GD2-15 to 22

<sup>4</sup> *Molodowich v Penttinen*, 1980 CanLII 1537 (Ontario District Court, paragraph 16)

variable nature of marriage in our society and assess the specific circumstances, to determine if the Claimant and J. B. had a marriage like relationship.<sup>5</sup>

[19] Although a common-law relationship usually involves a common residence, each case must be determined on its own specific facts.<sup>6</sup>

[20] In this case, the failure to maintain a common residence is decisive. The Claimant decided to continue to maintain a separate residence from J. B. after 2010, when she states their common-law relationship began. This may have been motivated by a concern about losing the benefit of subsidized housing, but that is the choice she made. They shared expenses only for when they were together on weekends.

[21] The Claimant acknowledged in her oral evidence that in applications for the CPP retirement benefit, the Old Age Security Pension, and the Guarantee Income Supplement, she stated that her marital status was “divorced” and “single”, rather than “living common-law”.<sup>7</sup> She should not be allowed to represent to the government that she was not in a common-law relationship for the purpose of obtaining benefits, and later represent that she was in a common-law relationship for the purpose of obtaining a CPP survivor’s benefit.

[22] I accept that the Claimant and J. B. continued to have a close relationship, but a weekend relationship is not a common-law relationship. After October 2012, the Claimant undertook primary decision-making responsibility for J. B.’s care. She visited him every day and took him back to Colombia in May 2015. This is commendable, but it does not establish a common-law relationship.

[23] The Claimant has failed to establish, that it is more likely than not, the she and J. B. were common-law partners at the time of his death.

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<sup>5</sup> *A.L v D.P and MHRSD* (November 16, 2011), CP 27238 (PAB).

<sup>6</sup> *MHRD v Haynes* (June 28, 2001), CP 15179 (PAB)

<sup>7</sup> GD2-90, Claimant’s oral evidence

**CONCLUSION**

[24] The Claimant is not entitled to the CPP survivor's benefit.

[25] The appeal is dismissed.

Raymond Raphael  
Member, General Division - Income Security