



Citation: *JB v Minister of Employment and Social Development*, 2021 SST 846

**Social Security Tribunal of Canada  
General Division – Income Security Section**

## Decision

**Appellant:** J. B.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated May 5, 2020 (issued by Service Canada)

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**Tribunal member:** George Tsakalis

**Type of hearing:** Teleconference

**Hearing date:** August 24, 2021 and post-hearing submissions

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

**Decision date:** November 15, 2021

**File number:** GP-20-1010

## Decision

[1] The appeal is dismissed.

[2] The Claimant failed to prove that she is eligible for the Canada Pension Plan (CPP) survivor's pension.

## Overview

[3] J. B. is the Claimant in this case. She says she had lived in a continuous common-law relationship with F. R. (the deceased contributor) for 10 years before his death on March 5, 2020.

[4] The Minister of Employment and Social Development (the Minister) received the Claimant's survivor's pension application on April 9, 2020.

[5] The Minister initially approved the Claimant's survivor's pension application on April 14, 2020. But it changed its mind on April 22, 2020.

[6] The Claimant appealed the Minister's decision to the Social Security Tribunal of Canada.

[7] The Minister says the Claimant is not eligible for a survivor's pension. The Claimant did not live with the deceased contributor at the time of his death. The deceased contributor completed a Statutory Declaration on January 15, 2020 that said that he had no longer been in a common-law relationship with the Claimant since December 4, 2019. The Minister said the evidence did not show that a common-law relationship resumed after December 4, 2019.

[8] The Claimant says that she is entitled to the survivor's pension. She says she lived with the deceased contributor in a common-law relationship at the time of his death. They ate meals together and both contributed to the housekeeping tasks. They socialized in the community. People considered them a couple and they supported each other financially. She also argued that the deceased contributor lacked capacity to sign the Statutory Declaration that said he was no longer in a common-law relationship with her.

## **Matters I have to consider first**

[9] The Minister did not provide the Tribunal with a copy of the Statutory Declaration signed by the deceased contributor on January 15, 2020. I asked the Minister's representative why the Statutory Declaration was not provided at the August 24, 2021 hearing. The Minister's representative said that the Statutory Declaration was in the deceased contributor's file and it was signed by a third party. She said that the Minister could not provide this document under *The Personal Information Protection and Electronic Documents Act*.

[10] On September 7, 2021, the Minister wrote to the Tribunal and asked for permission to submit the Statutory Declaration. The Minister agreed that this document could be shared with the Claimant and the Tribunal.

[11] I granted the Minister's request to submit the Statutory Declaration signed by the deceased contributor and to make submissions by September 14, 2021 because this was a relevant document. I gave the Claimant an opportunity to make submissions to the Tribunal by September 28, 2021.

[12] I received the Minister's submissions and the Statutory Declaration on September 14, 2021. I received multiple submissions from the Claimant up to and after September 28, 2021. I accepted the Claimant's submissions prior to the September 28, 2021 deadline. But I did not accept her submissions filed after September 28, 2021 because they were received by the Tribunal after the deadline.

## **What the Claimant must prove**

[13] For the Claimant to succeed, she must show that it is more likely than not that she cohabited with the deceased contributor as his common-law partner at the time of his death, and that they had so cohabited for a continuous period of at least one year.<sup>1</sup>

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<sup>1</sup> See subsection 2(1), 42(1) and paragraph 44(1)(d) *Canada Pension Plan*

[14] The Federal Court of Canada in a decision called *McLaughlin v. Canada (Attorney General)*, 2012 FC 556 ruled that the generally accepted characteristics of a conjugal relationship include the following:

- Shelter, including consideration of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- Sexual and personal behavior, including whether the parties have sexual relations maintain an attitude of fidelity to each other, communicate on a person level, eat together, assist each other with problems or during illness or buy each other gifts;
- Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- Social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to other's family members;
- Societal, including the attitude and conduct of the community towards each of them as a couple;
- Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property;
- Attitude and conduct concerning any children.

[15] All the characteristics of a conjugal relationship may be present in varying degrees, but not all are necessary for the relationship to be conjugal.<sup>2</sup>

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<sup>2</sup> See *M. v. H.*, 1999 CanLII 686 (SCC) and *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

[16] For the reasons that follow, I find the evidence showed that the Claimant and deceased had not lived in common-law relationship, as defined in the CPP, at the time of the deceased's passing for a continuous period of at least one year.

## **Comments regarding evidentiary findings**

[17] Many of the Claimant's arguments were not relevant to the issues before the Tribunal. The law does not require me to refer to each submitted document. I am not required to refer to all the hearing evidence or answer every submission. The law requires me to identify the path that I made in reaching my decision.<sup>3</sup>

[18] I will only refer to documents, testimony and submissions that are relevant to the issue that I have to deal with which is whether the Claimant cohabited with the deceased contributor in a common-law relationship for a continuous period of at least one year at the time of the deceased's passing.

## **Reasons for my decision**

[19] I find that the Claimant failed to prove that she had cohabited with the deceased contributor in a conjugal relationship for a continuous period of at least one year at the time of his death on March 5, 2020.

[20] The Claimant provided arguments that suggested that she lived in a common-law relationship with the deceased contributor, when you consider the factors for a conjugal relationship set out by the Federal Court of Canada in *McLaughlin*.

[21] The Claimant testified that she had lived with the deceased contributor in a common law relationship since 2010 and that she lived with the deceased contributor at her residence when he passed away. She submitted a letter signed by the deceased contributor on July 8, 2019 that said he had lived with the Claimant since 2010.<sup>4</sup>

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<sup>3</sup> See *Connolly v. Canada (Attorney General)*, 2014 FCA 294

<sup>4</sup> See GD11-37

[22] With respect to sexual and personal behavior, the Claimant denied that she and the deceased contributor were sexually active.<sup>5</sup> However, they loved each other. They planned on getting married at the time of his death.<sup>6</sup> The Claimant had serious health problems and she cared for him when he was sick. She paid for a personal support worker to take care of the Claimant. They bought each other gifts.

[23] The Claimant submitted that the deceased helped her with the housework. He did all the snow shovelling and they worked on the lawn together. They ate and shopped together.<sup>7</sup>

[24] The Claimant says that she and the deceased contributor went to church together. The deceased contributor's parents were not alive during their relationship. She only knew three of the deceased contributor's eleven siblings. But she testified the three siblings she knew considered her and the deceased contributor a common-law couple.

[25] The Claimant submitted statements, which she says showed that the community considered her and the deceased a common-law couple.<sup>8</sup>

[26] The Claimant testified that she and the deceased contributor financially supported each other. She paid all the bills and paid for the mortgage on her residence. They both collected pensions that went into her bank account. The deceased contributor did not have a bank account of his own. The deceased contributor's income was put into the household and bills were jointly paid. The deceased contributor was not on the deed to her residence, but they had applied for a mortgage together. They filed taxes together that said they were common-law partners. They bought a car together.

[27] The Claimant produced an insurance policy certificate from Blue Cross Life Insurance that was dated May 16, 2016. The Claimant was named as the beneficiary

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<sup>5</sup> See GD24-8

<sup>6</sup> See GD29-20

<sup>7</sup> See GD29-1-2

<sup>8</sup> See GD2-53, GD4-17, GD11-29, 32-33, 34, 43, 47, GD16-53

and spouse of the deceased contributor.<sup>9</sup> The Claimant testified that she was paid out on this life insurance policy. The Claimant produced a bank statement from December 24, 2019 to January 23, 2020 that named both her and the deceased contributor as account holders.<sup>10</sup> She produced a letter dated April 28, 2020 from a financial institution that said that she and the deceased contributor applied for credit as a common-law couple in November 2016.<sup>11</sup>

[28] With respect to attitude and conduct concerning any children. The Claimant did not have children of her own. The deceased contributor had three children. The Claimant said two of the deceased contributor's children did not speak to him. The deceased contributor had one daughter who had not visited him for many years and had no real contact with him. The Claimant submitted texts from the deceased contributor's daughter that showed she at least knew her.<sup>12</sup>

[29] The difficulty with the Claimant's case is that the deceased contributor signed a Statutory Declaration on January 15, 2020 that said that he and the Claimant had lived separate and apart since December 4, 2019. This means that the Claimant is not eligible for the CPP disability pension because she and the deceased contributor were not in a common-law relationship at the time of his death. In the alternative, even if the Claimant and deceased contributor reconciled after the signing of the Statutory Declaration, she is still not eligible for the survivor's pension. This is because the Claimant had to have been in a common-law relationship for a continuous period of one year before the contributor's death.<sup>13</sup>

[30] The Claimant argued that the deceased contributor was incapacitated when he signed the Statutory Declaration. She provided a psychological consultation note dated January 18, 2011, to support her argument about the deceased contributor's incapacity.

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<sup>9</sup> See GD2-9

<sup>10</sup> See GD2-56

<sup>11</sup> See GD2-52

<sup>12</sup> See GD11-22

<sup>13</sup> See *J.R. v. Minister of Employment and Social Development*, 2021 SST 113. The Tribunal's Appeal Division ruled that a claimant needs to live with the deceased contributor for a continuous period of one year before their death in order to receive a survivor's pension. Even though this decision does not bind me, I find its reasoning persuasive.

The psychological consultation note stated that the deceased contributor had schizophrenia and he had an extremely low level of cognitive abilities.<sup>14</sup>

[31] The Claimant said that the deceased contributor could not do his own banking. The deceased contributor's brother had managed his financial affairs. The deceased contributor could not add, did not know what a mortgage was and that any financing that had been arranged had been in her name because he lacked capacity. She said if the deceased contributor did not have the capacity to do his own banking, he would not have the capacity to sign the Statutory Declaration. The Claimant argued that the deceased contributor provided the wrong signature date on the Statutory Declaration, which showed that he did not know what he was signing.<sup>15</sup>

[32] The Claimant also accused the Minister's representative of fraud. She said that the deceased contributor was tricked into signing the Statutory Declaration.<sup>16</sup>

[33] However, I agree with the Minister's submission that the information in the Statutory Declaration about a separation in the one-year period prior to the deceased passing away was accurate.

[34] I agree with the Minister's argument that it is unclear if the impairment noted in the 2011 psychological consultation note continued until the deceased contributor's death in March 2020. The Claimant did not submit updated medical information that showed any possible incapacity on the deceased contributor's part after 2011. The Minister's files did not contain any information that showed the deceased contributor suffered from an incapacity.<sup>17</sup>

[35] I also find no support for the allegations of fraud made by the Claimant. The Minister said that the Claimant's file had been referred for an investigation in October 2019 to determine the Claimant's marital status to the deceased contributor. The Minister was looking at whether the Claimant was eligible for an allowance benefit under

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<sup>14</sup> See GD11-27-28

<sup>15</sup> See GD43-3

<sup>16</sup> See GD3-2

<sup>17</sup> See GD9-8 and GD12-3



the *Old Age Security Act*. The Minister's file showed that the Claimant and deceased had separated and subsequently reconciled in the past. The Minister's investigator interviewed the deceased contributor on January 15, 2020, when he was in the hospital. He signed the Statutory Declaration on that day. He wrote to the Minister on January 23, 2020 to have his CPP and OAS benefits issued by cheque and mailed to him at the hospital. He referred to the Claimant as his ex-girlfriend when he called the Minister on February 3, 2020.<sup>18</sup> The deceased contributor was advised to notify the Minister if his marital status changed on that phone call. But the deceased contributor never advised the Minister that he had reconciled with the Claimant prior to his death.

[36] I have no reason to doubt the Minister's version of events. I do not see any reason why the Minister's investigator would trick the deceased contributor into signing a Statutory Declaration that said he had separated from the Claimant in the one year period before his death.

[37] The Claimant testified that she and the deceased contributor had planned on marrying and moving to Quebec. She said that she and the deceased contributor had applied for a mortgage together. The Claimant produced a text from the deceased contributor's daughter that said the deceased contributor would go to Quebec with the Claimant.<sup>19</sup> However, I did not see anything in the texts from the deceased contributor's daughter that showed she considered the Claimant and the deceased contributor to be common-law partners. I also did not see anything from the daughter's texts that would suggest that she had knowledge that her father planned on marrying the Claimant. I also do not see any evidence that other members of the deceased contributor's family considered her and the deceased contributor a common-law couple.

[38] There is evidence that the Claimant and the deceased contributor may not have been in a common-law relationship at the time of his death. The deceased did not end up paying for the funeral. The Claimant produced a Funeral Director's Statement that described her as the deceased contributor's next of kin.<sup>20</sup> However, the Claimant

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<sup>18</sup> See GD9-3-4

<sup>19</sup> See GD11-22

<sup>20</sup> See GD2-8

testified that the deceased contributor had listed his daughter as the next of kin. The daughter paid for the funeral and ended up receiving the CPP death benefit.

[39] I reviewed the witness statements provided by the Claimant that she says supported a finding of a common-law relationship. I find that the statements provided by the Claimant are vague about the nature of her relationship with the deceased contributor. The statements did not contain much detail on the daily lives of the Claimant and deceased contributor.

[40] The Claimant argued that there was no separation in the one-year period before the deceased contributor died. They only lived separate and apart because the deceased contributor was in the hospital. But she submitted evidence that showed that she did not have access to the deceased contributor when he was in the hospital. She mentioned that the nurses would not let her speak to the deceased contributor.<sup>21</sup> If the Claimant and the deceased contributor were a common-law couple, one would think that she could see him in the hospital.

[41] The documentary evidence is not clear as to whether the Claimant and deceased contributor had reconciled at the time of his death. The evidence suggests that the deceased and the Claimant had separated and reconciled on several occasions during the course of their relationship. I find that there was a separation in the one-year period before the deceased passed away. This means that the Claimant is not entitled to a CPP survivor's pension.

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<sup>21</sup> See GD20-60

## **Conclusion**

[42] I find that the Claimant isn't eligible for a CPP survivor's pension because she had not cohabited with the deceased contributor for a continuous period of at least one year before his death.

[43] This means the appeal is dismissed.

George Tsakalis  
Member, General Division – Income Security Section