



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *The Estate of FF v Minister of Employment and Social Development*, 2021 SST 256

Tribunal File Number: GP-19-2071

BETWEEN:

**The Estate of F. F.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

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

---

Interlocutory Decision by: Shannon Russell

Claimant represented by: William Mullen

Pre-Hearing Conference: February 10, 2021

Date of decision: February 19, 2021

## **DECISION**

[1] This is an interlocutory decision about two procedural matters. One matter is about the form of hearing. The other matter is about whether there should be another party in this proceeding.

[2] I have decided that this appeal will be heard by teleconference. I have also decided that there should not be another party in this proceeding.

## **BACKGROUND**

[3] I originally scheduled this appeal to be heard by teleconference on February 10, 2021. On February 3, 2021, I changed the hearing to a Pre-Hearing Conference (PHC). I made this change for two reasons.

[4] First, the Appellant's representative indicated that he was unhappy with a teleconference hearing. He said he wanted an in-person hearing.

[5] Second, I determined that there were issues that needed to get resolved before I could hear this appeal. For example, I needed to decide whether another party (the Estate of F. B.) should be added in this proceeding. I also needed to consider the Appellant's argument that the hearing should not take place until the Respondent answers the questions he set out in his appeal letters.

### **This appeal will be heard by teleconference**

[6] I will first deal with the form of hearing.

[7] Due to the COVID-19 pandemic, the Tribunal is currently not scheduling in-person hearings. With this in mind, I began the PHC by asking Appellant's representative to explain why a teleconference or videoconference would not be a suitable form of hearing.

[8] The Appellant's representative told me that he is "totally uncomfortable" with a teleconference or videoconference and that it would be "almost impossible" for him to proceed with either option. He explained that he is a bundle of nerves over the "phone thing" and he said he would be unable to conduct himself in a proper manner.

[9] I have considered what the Appellant's representative told me, and I have decided to proceed by way of teleconference. Here are my reasons why.

[10] First, when the Appellant's representative filed the appeal with the Tribunal, he indicated that his preference would be for the hearing to proceed by way of videoconference, telephone or in-person<sup>1</sup>. This tells me that a teleconference is likely within the representative's capabilities.

[11] Second, the Appellant's representative was able to participate in the PHC, which was held by teleconference. During the PHC, the representative was able to state his position (with respect to several issues discussed) and provide reasons for his position. This shows me that the representative is able to communicate effectively during a teleconference.

[12] Third, during the hearing I will be able to conduct the teleconference in such a way that allows the representative plenty of time to formulate his thoughts and put forward his arguments in support of his position in this appeal.

[13] Fourth, the *Social Security Tribunal Regulations* require me to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit<sup>2</sup>. Given the COVID-19 pandemic, a teleconference is a more efficient proceeding than an in-person hearing. I recognize that the Appellant's representative says he is willing to wait as long as it takes so as to have an in-person hearing. However, I must be mindful that there is another party in this proceeding (i.e. the Respondent – namely, the Minister of Employment and Social Development Canada), and the Respondent's position is that the Appellant Estate owes the government money. As a party in this proceeding, the Respondent is entitled to have this matter heard in a timely manner without undue delay.

---

<sup>1</sup> Page GD1-1

<sup>2</sup> Section 3 of the *Social Security Tribunal Regulations*

[14] Fifth, as between a teleconference and a videoconference (by Zoom), I chose to proceed by teleconference. I chose a teleconference because the Appellant's representative told me that he does not know how to work a computer. He also said that his wife (who is also an Estate representative) has a computer but is "not very good at it". Upon hearing this, I determined that a teleconference would be more suitable for the Appellant's representative.

**The Estate of F. B. should not be named as a party in this matter**

[15] The issue in this appeal is whether the late F. F. was in a common-law relationship with the late F. B..

[16] On February 3, 2021, I wrote to the Respondent and I asked the Respondent to state its position as to whether the Estate of F. B. should be added as a party in this proceeding.

[17] The Respondent replied to my letter on February 5, 2021. The Respondent said its position is that the Estate of F. B. should not be a party in this proceeding. The Respondent explained that there was an overpayment on F. B.'s account, but the Respondent remitted that overpayment in 2019<sup>3</sup>. The Respondent did so after learning from the Estate that there were no funds to repay the debt.

[18] During the PHC, the Appellant's representative told me that he knows the Estate of F. B. had the funds to repay the debt, and he suggested that the Respondent should provide more information about what the Respondent learned from the Estate.

[19] The Respondent's representative explained that, for privacy reasons, she could not discuss the details of the Estate of F. B..

[20] I agree with the Respondent's representative that the details of the Estate of F. B. are private, and should not be discussed. In any event, the point is moot as I do not have the jurisdiction to review the Respondent's decision to remit an overpayment<sup>4</sup>.

---

<sup>3</sup> The Respondent explained that, to remit the overpayment, it relied on paragraph 37(4)(a) of the *Old Age Security Act*.

<sup>4</sup> This is explained in a decision called *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278

[21] I also agree with the Respondent's representative that the Estate of F. B. should not be a party in this proceeding.

[22] I can only add a party to a proceeding if that party has a direct interest in the decision<sup>5</sup>. A party has a "direct interest" when its legal rights are affected, legal obligations are imposed upon it, or it is prejudicially affected in some direct way<sup>6</sup>.

[23] Given that the Respondent has remitted the overpayment on the Estate of F. B.'s account, his Estate does not have a "direct interest" in this matter.

**The Appellant's representative's other issues relate to the merits of the appeal**

[24] During the PHC, the Appellant's representative raised other issues that he feels should be addressed before the hearing takes place.

[25] I have decided that the issues raised are not procedural or preliminary type matters. Rather, the issues relate to the merits of the appeal and should therefore be reserved for the hearing. As an example, the Appellant's representative tried to explain why he believes the late F. F. was not in a "conjugal" relationship with the late F. B.. He also wanted to know why the Respondent has not acknowledged a piece of evidence he had filed (i.e. an affidavit from a law firm).

[26] Although these issues are matters for the hearing, I told the Appellant's representative that I would send him some information about the factors that are relevant to assessing whether two people are cohabiting in a common-law relationship. I decided to do this because it became apparent to me during the PHC that the Appellant's representative believes that a conjugal relationship is conditional on sexual intercourse. Here are the factors that are relevant to determining whether two people were in a common-law relationship<sup>7</sup>:

- Shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;

---

<sup>5</sup> Subsection 10(1) of the *Social Security Tribunal Regulations*

<sup>6</sup> *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2013 FCA 236

<sup>7</sup> These factors are explained in a decision called *McLaughlin v. Canada (A.G.)*, 2012 FC 556

- 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 gifts for each other;
- Services, including whether the parties participated together or separately in neighbourhood and community activities and their relationship with respect to each 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; and
- Attitude and conduct concerning any children (if applicable).

**The hearing will be scheduled shortly**

[27] The parties will soon receive a Notice of Hearing. The Notice of Hearing will set out the date and time for the teleconference hearing.

Shannon Russell

Member, General Division - Income Security