

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20100413

Docket: A-324-09

Citation: 2010 FCA 99

**CORAM: NADON J.A.
SHARLOW J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

CATHY LEDUC

Applicant

and

MARYSIA TURNER

Respondent

and

MINISTER OF HUMAN RESOURCES AND SKILLS DEVELOPMENT

Respondent

Heard at Ottawa, Ontario, on April 13, 2010.

Judgment delivered from the Bench at Ottawa, Ontario, on April 13, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on April 13, 2010)

SHARLOW J.A.

[1] The applicant Cathy Leduc is asking this Court to set aside a decision of the Pension Appeals Board dismissing her claim for survivor benefits under the *Canada Pension Plan*, R.S.C. 1985, c. 8, in relation to a deceased contributor, Mr. Jacques Leduc, to whom Ms. Leduc was legally married at the time of his death. The Board's decision was based on its determination that Ms. Leduc did not meet the statutory definition of "survivor" because the respondent Marysia Turner was the "common-law partner" of Mr. Leduc at the time of his death.

[2] Ms. Leduc is entitled to survivor benefits only if she meets the definition of “survivor” in subsection 42(1) of the *Canada Pension Plan*. The definition reads as follows:

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.

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.

[3] The phrase “common-law partner” is defined as follows in section 2 of the *Canada Pension Plan*. The definition reads as follows:

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.

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.

[4] The Board concluded, after considering a large volume of documentary evidence and the oral evidence of several witnesses, that at the time of Mr. Leduc’s death, Ms. Turner was his

“common-law partner” as defined in section 2, and therefore she fell within the statutory definition of “survivor” in section 42, and Ms. Leduc did not. This is essentially a factual conclusion that must stand absent palpable and overriding error, or a breach of the duty of procedural fairness.

[5] It is argued for Ms. Leduc that the absence of a transcript of the Board hearing is a breach of the Board’s duty of procedural fairness because, without a transcript, this Court is unable to deal effectively with the issues raised in the application for judicial review. We do not accept this argument. In our view, and notwithstanding the able submissions of counsel for Ms. Leduc, the record provides a sufficient basis for assessing the merits of the arguments raised by Ms. Leduc in this application for judicial review.

[6] It is also argued for Ms. Leduc that the Board erred by failing to consider certain oral evidence favouring her position. In our view, the factual conclusion of the Board on the key issue before it is supported by the record and well explained by the reasons. Even if we were to assume that there was some oral evidence favouring Ms. Leduc’s position that was not mentioned in the Board’s reasons, this would indicate only that the evidence was given little weight, not that it was disregarded. Having considered the entire documentary record and the submissions of Ms. Leduc, we are not persuaded that the Board made any palpable and overriding factual error in concluding that Ms. Turner met the statutory definition of “common-law partner”.

[7] For these reasons, this application will be dismissed with costs payable to the respondent Ms. Turner. The respondent the Attorney General of Canada has not asked for costs.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-324-09

STYLE OF CAUSE: Cathy Leduc v. Marysia Turner and
Minister of Human Resources and
Skills Development

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: April 13, 2010

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Sharlow J.A.
Layden- Stevenson J.A.

DELIVERED FROM THE BENCH BY: Sharlow J.A.

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Marysia Turner

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