Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by Mrs. [the Appellant]
AICAC File No.: AC-95-14

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('M.P.I.C.') represented by Ms Joan McKelvey** **Mrs. [the Appellant], the Appellant, appeared in person**
HEARING DATE:	**October 23rd, 1995.**
ISSUE:	**Meaning of 'cohabiting' for purpose of death benefits.**
RELEVANT SECTIONS:	**Sections 70(1), defining 'spouse' and 'dependant', and 120(1) and (2)**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

REASONS FOR DECISION

THE FACTS:

The facts of this case are uncomplicated and are not disputed.

[Text deleted], the Appellant, had lived in a common-law relationship with [the

Deceased] from about March of 1943 until February 8th, 1983 when he, having become free to marry her, did so. Their marriage prevailed from February of 1983 until June 23rd, 1994, when [the Deceased] was killed in an automobile accident.

By reason of the circumstances described below, Manitoba Public Insurance Corporation ('M.P.I.C.') decided that [the Appellant] would not qualify for spousal benefits of $40,000.00 as a result of her husband's death but, rather, would only qualify for a dependant's benefit of $19,000.00.

The [Appellant the Deceased's] relationship of over fifty years appears to have been a sporadically stormy one. [The Deceased], born on [text deleted], was by nature a jealous and suspicious person; those traits only surfaced infrequently in the early years of his life with [the Appellant] but, as he got older, became more obvious and were accompanied by outbursts of violence, both verbal and physical. He had been admitted to the [hospital] on at least two occasions for brief psychotic episodes, and had also had at least two psychiatric evaluations.

We were left with little doubt that the late [the Deceased] suffered from what the Community Mental Health Worker, [text deleted], described as 'a high degree of paranoid delusions and aggressiveness', at least in the limited context of his relationship with his wife - he convinced himself that she was trying to poison him, various males (both real and imaginary) perceived by [the Deceased] to be the near [Appellant the Deceased's]' home farm were automatically viewed as [the Appellant's] secret lovers, and he threatened to kill her on more than one occasion.

[The Appellant] had left the family home on a number of earlier occasions for her own physical and emotional well-being, returning after a couple of weeks or so once [the Deceased] seemed to have calmed down. On October 27th, 1992, after a particularly violent scene involving threats that he would shoot her, [the Appellant] called one of her daughters, [text deleted], and asked for help in again leaving the home. [Appellant's daughter], under the protective wing of an R.C.M.P. officer, assisted her mother out of the house after packing those few articles of clothing and other personalty that she might need for immediate purposes.

[The Appellant] spent part of the next twenty months tending to the needs of one of her daughters in [text deleted], Manitoba, who had recently been diagnosed with multiple sclerosis; she also spent part of her time away from her husband in British Columbia, helping another daughter move into a new home there. For the most part, she stayed in [text deleted], Manitoba, with [Appellant's daughter], who had also been ill. [The Appellant] had not returned to live under the same roof as her husband between October 28th, 1992 and the date of [the Deceased's] death.

Since her Old Age Security cheque was [the Appellant]'s sole source of income, she arranged to change her mailing address in the records of Health and Welfare Canada to that of [Appellant's daughter]. She also acquired a car during her visit with [Appellant's daughter], giving the latter's address as her own for purposes of registration.

However, we view the following facts as particularly important:

(i) [The Appellant] had left her husband on earlier occasions, to 'clear the air and put

some space between us', as she puts it, but had always gone back to him once she could be persuaded that the immediate danger had passed. Their partings, in other words, had always been of a temporary nature.

(ii) Although she had not returned to live at the family farm prior to his death, [the Appellant] and her husband had met at the homes of their son and their daughter on numerous occasions. During many of those meetings, [the Deceased] had urged the Appellant to come home. He often accompanied these requests with peace-offerings of flowers. Her response, consistently, had been that she would certainly do so as soon as he appeared to be taking his medication regularly and to be in control of himself. Under the latter circumstances she testified, he was usually a very nice man; she still loved him, evidenced by over fifty years of cohabitation, but had to be away temporarily for her own protection until he could re-establish the kind of mental and emotional stability that could offer some sense of personal safety. At no time did she announce, nor even feel, an intention to leave him permanently.

(iii) A letter from [the Appellant]'s physician, [text deleted], confirms the foregoing. [Appellant's doctor] says, in part, that [the Deceased] 'was rather paranoid with her activities and it was a fixation with him because otherwise he carried on in a fairly reasonable manner...it was recommended (by [the Deceased]'s medical advisors) that she maintain a separation until he would change his thinking, and that had not happened up to the time of his accident.' It is clear from [Appellant's doctor's] letter that the Appellant had moved out of the family home on medical advice, but that this was intended from the beginning to be temporary - an intention that does

not seem to have changed at any time prior to [the Deceased's] death.

(iv) [The Appellant], when asked how she would have known when the point of safe return had been reached, said simply, and based upon over fifty years of intimate knowledge and observation of the man, 'I'd have had a certain feeling that would have told me that it was O.K. to go back.'

(v) Almost all of [the Appellant's] clothing and personal effects were still at the farm, not to mention all of the jointly owned household contents. While it may well be said that she left her possessions there out of fear for her safety if she had returned to get them, she could always have arranged for one of the children to pick up her things if she had intended a permanent split - her son, in particular, continued to work alongside his father, with whom he seems to have had a good relationship.

(vi) [The Deceased's] Will, which he appears to have tried to alter in longhand by striking out the names of two of his daughters as beneficiaries at some time after the Will had been executed and witnessed, nevertheless leaves his wife, the Appellant, as principal beneficiary - hardly the act of man who believes that his wife has left him for good.

(vii) While [the Appellant] testified that she 'wasn't quite ready to go home', both she and her daughter, [Appellant's daughter], testified that [the Deceased] 'was getting better', and neither of them seemed to harbour any doubt that [the Appellant] would shortly have been able and willing to return to him.

THE LAW:

The relevant sections of the M.P.I.C. Act are these:

Section 70(1) "dependent" means

(a) the spouse,

(b) the person who is married to the victim but separated from him or her de facto or legally,

(c) a person whose marriage to the victim has been dissolved by a final judgment of divorce or declared null by a declaration of divorce or declared null by a declaration of nullity of marriage, and who, at the time of the accident, is entitled to receive support from the victim under a judgment or agreement...

Computing indemnity to spouse under schedules

120(1) The spouse of a deceased victim is entitled to a lump sum indemnity.......... (*because of the insured's age, only the minimum called for by Subsection (2) is relevant).*

Minimum indemnity to deceased victim's spouse

120(2) The lump sum indemnity payable under Subsection (1) shall not be less than $40,000. whether or not the deceased victim would have been entitled to an income replacement indemnity had he or she survived.

Lump sum indemnity to other dependent

(a) a lump sum indemnity in the amount opposite the age of the dependent in Schedule 3;...............(*Schedule 3 provides for a payment to the widow of $19,000.00*).

The position of M.P.I.C. is that, because [t he Deceased and the Appellant] were not apparently living together at the time of his death, the Appellant does not qualify as a 'spouse' within the meaning of the definition noted above, and is therefore only entitled to be paid as a 'dependent'.

The question that we have to decide, then, is whether that temporary absence on [the Appellant's] part should cause us to say that she and her husband were no longer 'cohabiting', that she was no longer his 'spouse' within the meaning of Section 70(1), and that her benefits under the Act must therefore be limited to the $19,000.00 minimum that flows to a dependent.

The first and most basic rule governing the construction of statutes is that the words used by a legislative body, when clear and unambiguous, must be given their ordinary meaning, no matter how unjust the result may appear to be. It is only when some ambiguity exists or some reasonable, alternative construction is open that we need to have recourse to other rules of interpretation. The strict letter of statutes has often been relaxed by the Courts so as to permit what has become known as 'beneficial interpretation'.

The word 'cohabiting', in the present context, is capable of both the narrow, strict interpretation - that is to say, 'living together on a full-time basis under the same roof'- or the more liberal interpretation that allows for temporary absences for good reason falling short of desertion or a decision by one or both of the parties to abandon the state of marriage.

While a sense of the possible injustice of an interpretation ought not to induce us to do violence to well settled rules of construction, it may properly lead to the selection of one rather than the other of two reasonable interpretations. (See the comment of Lord Chancellor Herschell in Arrow Shipping Co. Ltd. vs. Tyne Improvement Commissioners [1984] A.C. 508, quoted in Maxwell on the Interpretation of Statues, 12th Edition, at page 208).

Whenever the language of the legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention to bring it about had been manifested in plain words. (Smith vs. Great Western Railway [1877] 3 A.C. 165; Coutts & Co. vs. The Commissioners of Inland Revenue [1953] A.C. 267). The same principle was stated in another way by Ungoed-Thomas J. in re: Maryon-Wilson's Will Trusts [1968] Ch. 268 at page 282, 'If the Court is to avoid a statutory result that flouts common sense and justice it must do so not by disregarding the statute or overriding it, but by interpreting it in accordance with the judicially presumed parliamentary concern for common sense and justice.'

In our view, to place the narrower interpretation upon the word 'cohabiting' in the present context, would produce some grave injustices. Take, for example, the insured who is killed in an automobile accident while returning home to a faithful, waiting wife after completing a lengthy stay in hospital, in jail or in service overseas with the Department of External Affairs or the Canadian Armed Forces. None of those situations is the fault of the surviving widow, none (except the jail term) the fault or necessarily the intent of the deceased insured, and certainly none connotes an intent by either of them to cease cohabiting. In the case before us, it is doubtful

whether [the Deceased] could have formed an intent to cease cohabiting, since his mental condition appears to have precluded his ability to do so; even were that not so, almost all of his actions towards his wife while they were living under separate roofs belie any such intent on his part - flowers, requests to come home, recognition that he needed medical advice and treatment and voluntary submission to that treatment, purposeful retention of [the Appellant] as beneficiary in his Will, along with frequent meetings. For her part, the [text deleted] -year-old [the Appellant], as noted above, had indicated an unwavering intent to return at the appropriate time.

As was said by Jeune, P., in the case of Huxtable vs. Huxtable [1899] 68 L.J.P. 83, D.C., at page 85,

> 'Cohabitation may be of two sorts, one continuous and the other intermittent. The parties may reside together constantly, or there may be only occasional intercourse between them which, nevertheless, amounts to cohabitation in the legal sense of the term. Such cohabitation may indeed exist together with an agreement to live apart....The circumstances of life, such as business duties, domestic service, and other things, may separate husband and wife and yet, notwithstanding, there may be cohabitation'.

In the view of this tribunal, the medically diagnosed condition of [the Deceased] which, when not kept under control by regular treatment and medication, caused him to behave in such a violent manner towards his wife, was one of those 'circumstances of life' to which Jeune, P. referred, and [the Appellant] should not be penalized as a result of it.

Statutory provisions regarding continuity of residence are normally interpreted liberally by the Courts. For example, a person was held to have been 'receiving treatment for mental illness as a resident in a hospital, within the meaning of the Divorce (Insanity and Desertion) Act of England, notwithstanding temporary absences from the hospital on 'trial leave' at home. (Head vs. Head [1963] P. 357). Similarly, in the case of Surrey County Council vs. Battersby [1965] 2 Q.B. 194, involving a definition of 'foster child' contained in the Children Act of 1958 in England as 'one whose care and maintenance are undertaken for reward for a period exceeding one month by a person who is not a relative or guardian of his', it was held that a child had become a 'foster child' even though it went home to its parents for certain weekends, the intervals between which never exceeded one month.

To quote Maxwell again, at page 203, '...It appears to be an assumption (often unspoken) of the Courts that, where two possible constructions present themselves, the more reasonable one is to be chosen.' In our view, and in light of all of the circumstances outlined above - some of which may well have not been within the knowledge of the Internal Review Officer of M.P.I.C. - it is more reasonable to interpret the word 'cohabiting' as being inclusive of a surviving widow or widower who, while living apart from the insured at the time of the latter's death, was only doing so on a temporary basis until one or more reasonable conditions, once fulfilled, would permit her to move back into the family home.

DISPOSITION:

We therefore find that [the Appellant] does, in fact, qualify for the spousal benefit under Section 120(2), and we so order.

Dated at Winnipeg this 28th day of October, 1995.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED