

BETWEEN:

MONIQUE GROULX,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on November 8, 2022, at Ottawa, Canada

Before: The Honourable Justice Jean Marc Gagnon

Appearances:

For the appellant: The appellant herself

Counsel for the respondent: Yvette Virok

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**JUDGMENT**

1. The appeal from each of the following redeterminations:

redeterminations dated July 19, 2019, regarding the Canada Child Benefit for the 2015, 2016 and 2017 base taxation years and the May 20, 2020, redetermination regarding the Canada Child Benefit for the 2018 base taxation year;

is allowed without costs, and all the foregoing is referred to the Minister of National Revenue for redetermination in accordance with the attached reasons for judgment.

2. The appeal from each of the following reassessments:

reassessments dated July 22, 2019, regarding the wholly dependent person credit for the 2016, 2017 and 2018 taxation years and the penalty

assessed under subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) for the 2016 and 2017 taxation years;

is allowed without costs, and all the foregoing is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

Signed at Toronto, Ontario, this 7th day of February 2023.

“J. M. Gagnon”

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Gagnon J.

Citation: 2023 TCC 21  
Date: February 7, 2023  
Docket: 2021-418(IT)I

BETWEEN:

MONIQUE GROULX,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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### **REASONS FOR JUDGMENT**

Gagnon J.

#### I. Introduction

[1] These are appeals that Monique Groulx has filed against the following redeterminations and reassessments made pursuant to sections 122.6 and 122.61 and subsections 118(1), 163(2) and 248(1) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the ITA) and section 6302 of the *Income Tax Regulations*:

- (a) the redeterminations dated July 19, 2019, regarding the Canada Child Benefit (CCB) for the 2015, 2016 and 2017 base taxation years;
- (b) the May 20, 2020, redetermination regarding the CCB for the 2018 base taxation year; and;
- (c) the reassessments dated July 22, 2019, regarding the wholly dependent person credit for the 2016, 2017 and 2018 taxation years and the penalty assessed under subsection 163(2) of the ITA for the 2016 and 2017 taxation years;

[2] For the purposes of making and upholding the reassessments and redeterminations under appeal, the Minister of National Revenue (Minister) relied on the following assumptions of fact set out in section 10 of the Reply to the Notice of Appeal (TRANSLATION):

(a) the appellant is the mother of two children:

- i. F, son born in 1985
- ii. J, son born in 2002

(allowed)

(b) J. is the child of the appellant and Michel Cournoyer (the parties);

(allowed)

(c) during the period at issue, the parties lived at the same address at 139 Durocher Street in Gatineau, Quebec;

(allowed)

(d) the parties lived together;

(denied)

(e) during the 2015, 2016, 2017 and 2018 taxation years, the net incomes of the parties were as follows:

Taxation year	Appellant	Mr. Cournoyer	Total
2015	\$64,772	\$720	\$65,492
2016	\$70,239	\$17,006	\$87,245
2017	\$69,786	\$59,704	\$129,490
2018	\$71,106	\$30,576	\$101,682

(The appellant's earnings were allowed. The appellant was unaware of the facts of paragraph 10(e) of the Reply regarding Mr. Cournoyer's net income because the appellant had not been previously informed of this information.)

(f) The Canada Child Benefits were based on the marital status and family income of the eligible individuals.

(disregarded)

[3] The appellant and Michel Cournoyer were the only witnesses at the hearing. Ms. Groulx testified on her own behalf and did not call any other witnesses. Mr. Cournoyer was the only witness called by the respondent. The appellant did not cross-examine Mr. Cournoyer. The Court considers the appellant's testimony credible, and although some explanations were hesitant or vague, the Court finds her testimony sufficiently credible. Mr. Cournoyer's testimony was more targeted because it was limited to answering the questions he was asked. The Court considers

Mr. Cournoyer's testimony credible as a whole, although certain parts of his testimony proved difficult to reconcile, particularly with regard to the events coinciding with the periods and years at issue. Subject to these remarks, both testimonies are accepted.

[4] During the preliminary questions, the respondent conceded to the withdrawal of the gross negligence penalty referred to in subsection 163(2) of the ITA, which was assessed with respect to the appellant's 2016 and 2017 taxation years. Accordingly, the appeal from the 2016 taxation year and the 2017 taxation year will be allowed on the basis of this concession.

## II. Issue

[5] The only issue in dispute is whether, during the periods and years under appeal, the appellant and Michel Cournoyer were *common-law partners* or living in a *common-law partnership* for purposes of section 122.6 and paragraph 118(1)(b) of the ITA.

## III. Background

[6] Ms. Groulx, a retired teacher, said she had known Mr. Cournoyer for about 20 years. During the relevant periods and years, Mr. Cournoyer was employed in the construction and renovation industry, except for a period when he was unemployed. During this period, Ms. Groulx already had a first son, Frédéric, born in 1985. She dated Mr. Cournoyer in the early 2000s when he occupied an apartment in a building owned by her father on Joffre Street in Gatineau, Quebec. During this period, Ms. Groulx was already living on Durocher Street in Gatineau, Quebec.

[7] In 2002, Ms. Groulx gave birth to Jacob. Mr. Cournoyer was the father. Although Mr. Cournoyer still occupied an apartment on Joffre Street in Gatineau, they were now common-law partners, according to the appellant. Mr. Cournoyer was more involved in the family's daily life on Durocher Street in Gatineau. He was primarily at the Durocher Street residence in Gatineau during the day and occasionally at night. When he spent the night at the Durocher Street residence in Gatineau, he and the appellant slept in separate rooms after Jacob was born. The appellant and Mr. Cournoyer were never married and never discussed marriage.

[8] In 2005, the situation deteriorated to the point where police intervention was required, which prompted Mr. Cournoyer's hasty departure from the appellant's residence. According to the appellant, this event was the final outcome of a marital

situation that had been deteriorating for some time. The appellant confirmed that they were no longer common-law partners after Mr. Cournoyer's departure. He stopped visiting although he occasionally visited Jacob only. During his testimony, Mr. Cournoyer confirmed that they were no longer common-law partners, but was unable to confirm the exact year, although it was between 2005 and 2008 at the latest.

[9] After his father died in 2008, Mr. Cournoyer had to leave the Joffre Street residence in Gatineau. At that time, the appellant and Mr. Cournoyer discussed the possibility of her renting him a room on Durocher Street in Gatineau, to which the appellant agreed. Ms. Groulx had already rented a room in the past and therefore understood what this decision could entail. The presence of a man who was also Jacob's father and the financial assistance that the rental would provide were the main reasons for the appellant's decision. Mr. Cournoyer continued to rent a room after the years and periods at issue. Jacob lives with the appellant and lived with her during the periods and years at issue.

#### IV. Position of the appellant

[10] The appellant alleged that although Mr. Cournoyer rented a room in her home, she and Mr. Cournoyer were not living in a common-law partnership after 2005, when the police intervened. The common-law relationship ended no later than 2005 and has never resumed. Because of their personal economic situation, Mr. Cournoyer rented a room at the appellant's residence even if they had a son together, Jacob, in 2002. She also said that during the periods and years at issue, they never lived together as a couple or common-law partners. At the time, she supported herself and her children on her own. Mr. Cournoyer was never part of the household during the periods and years at issue and, except for the rent he paid her for a room, he never provided her with financial support or any other form of support during this period.

[11] Although the appellant recognized that the situation might seem unusual, in actual fact, there was no conjugal relationship between Mr. Cournoyer and the appellant nor any reason to consider them common-law partners during the periods at issue. Although she knew that she could not control what the neighbours thought, the appellant said she had always maintained the same position regarding the relationship, albeit limited, that she had with Mr. Cournoyer. She could not accept that the tax authorities considered her Mr. Cournoyer's common-law partner for the purposes of the periods and years at issue.

## V. Position of the respondent

[12] According to the respondent, during the periods at issue, the appellant lived in a conjugal relationship that constituted a “common-law partnership” between “common-law partner” as defined for the purposes of the ITA. Mr. Cournoyer’s presence in the appellant’s residence and the behaviour and relationship that the parties maintained during the periods at issue were indicative of a common-law partnership as developed by the courts. The respondent was of the opinion that Mr. Cournoyer’s income should therefore be taken into account in computing the CCB amounts to which the appellant was entitled throughout these periods. Furthermore, this relationship would make the appellant ineligible for the wholly dependent person credit referred to in paragraph 118(1)(b) of the ITA for the 2016, 2017 and 2018 taxation years.

## VI. Analysis

[13] For the purposes of Subdivision a.1 of Division E of Part I of the ITA, the CCB requires that, for the purpose of determining the adjusted income of the individual claiming the CCB, the income of the person who was the *common-law partner* at the end of the year must be taken into account. To be eligible for the wholly dependent person credit referred to in paragraph 118(1)(b) of the ITA, the claimant must not be living in a *common-law partnership* at any time in the year.

[14] For the purposes of the CCB, section 122.6 of the ITA defines “cohabiting spouse or common-law partner” as follows:

“cohabiting spouse or common-law partner” of an individual at any time means the person who at that time is the individual’s spouse or common-law partner and who is not at that time living separate and apart from the individual and, for the purpose of this definition, a person shall not be considered to be living separate and apart from an individual at any time unless they were living separate and apart at that time, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes that time.

(Emphasis added)

[15] For the purposes of the ITA, the definition of “common-law partnership” is provided in subsection 248(1):

*common-law partnership* means the relationship between two persons who are common-law partners of each other. (union de fait)

(Emphasis added)

[16] For the purposes of the ITA, the definition of “common-law partner” is provided in subsection 248(1):

*common-law partner*, with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

(a) has so cohabited throughout the 12-month period that ends at that time, or

would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to paragraphs 252(1)(c) and (e) and subparagraph 252(2)(a)(iii),

and, for the purpose of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship.

(Emphasis added)

[17] It is not in dispute that the appellant considered herself Mr. Cournoyer’s common-law partner until the police had to intervene in 2005. According to the appellant, the situation had then escalated to the point of no return for the couple. During his testimony, Mr. Cournoyer said the couple’s separation was attributable to mixed messages.

[18] In this case, to establish that she was no longer Mr. Cournoyer’s common-law partner and to entitle her to appeal in light of each of the periods and years at issue, the appellant must demonstrate that, after that time, she lived separate and apart from Mr. Cournoyer for a period of at least 90 days because of the breakdown of their common-law partnership. In other words, given the length of the period at issue, the appellant will succeed if she can establish that she and Mr. Cournoyer were no longer living in a conjugal relationship during the periods and years at issue.

[19] To determine whether the appellant no longer lived in a conjugal relationship even if she lived under the same roof as Mr. Cournoyer, we should refer to the factors developed in *Molodowich v. Penttinen*, (1980), 1980 CanLII 1537 (ON SC) [*Molodowich*], affirmed by the Supreme Court of Canada in *M v. H*, [1999] 2 SCR 3 [*M v. H*] and taken up by this Court in *Milot v. R.*, [1996] 1 CTC 2247 [*Milot*] and *Aukstinaitis v. Canada*, 2008 TCC 104 [*Aukstinaitis*]. Our Court also referred to the decisions in *Pam Sanford v. The Queen*, [2001] DTC 12 (affirmed in Federal Court



of Appeal 2002 DTC 7442) and *Lavoie v. Canada*, 2001 DTC 5083 (FCA) which followed *Milot*.

[20] In *M v. H* the Supreme Court of Canada made the following comments with regard to *Molodowich*:

59 *Molodowich v. Penttinen* (1980) 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), sets out the generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, it was recognized that these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal. (. . .) In order to come within the definition, neither opposite-sex couples nor same-sex couples are required to fit precisely the traditional marital model to demonstrate that the relationship is “conjugal”.

60 Certainly an opposite-sex couple may, after many years together, be considered to be in a conjugal relationship although they have neither children nor sexual relations. Obviously the weight to be accorded the various elements or factors to be considered in determining whether an opposite-sex couple is in a conjugal relationship will vary widely and almost infinitely. The same must hold true of same-sex couples. Courts have wisely determined that the approach to determining whether a relationship is conjugal must be flexible. This must be so, for the relationships of all couples will vary widely. (. . .)

(Emphasis added)

[21] As reiterated on many occasions by this Court, in particular in the decision rendered by the Honourable Mr. Justice Favreau of this Court in *Perron v. Canada*, 2010 TCC 547, the elements and circumstances generally accepted by Canadian jurisprudence in order to establish whether an unmarried couple are common-law partners include the following factors established in *Molodowich*:

#### Shelter

- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?
- (c) Did anyone else occupy or share the available accommodation?

#### Sexual and personal conduct

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?

(f) What, if anything, did they do to assist each other with problems or during illness?

(g) Did they buy gifts for each other on special occasions?

#### Services

What was the conduct and habit of the parties in relation to:

- (a) preparation of meals;
- (b) washing and mending clothes;
- (c) shopping;
- (d) household maintenance; and
- (e) any other domestic services?

#### Social

(a) Did they participate together or separately in neighbourhood and community activities?

(b) What were the arrangements concerning the acquisition and ownership of property?

#### Societal

What was the attitude and conduct of the community towards each of them and as a couple?

#### Support (Economic):

(a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?

(b) What were the arrangements concerning the acquisition and ownership of property?

(c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

#### Children

What was the attitude and conduct of the parties concerning children?

[22] If we apply these factors to the particular facts specific to the appellant, the following conclusions can be drawn:

#### 1. Shelter

(a) Did the parties live under the same roof?

(b) What were the sleeping arrangements?

(c) Did anyone else occupy or share the available accommodation?

[23] The evidence clearly established that the appellant and Mr. Cournoyer lived under the same roof with their son Jacob during the periods and years at issue. The appellant and Mr. Cournoyer testified that they each had their own bedroom in which they kept their personal effects, including a television set in Mr. Cournoyer's case. They never shared the same bed. During the periods at issue, the appellant and Mr. Cournoyer each occupied a room upstairs in the Durocher Street residence in Gatineau. Jacob occupied the main floor bedroom.

[24] According to case law, it is accepted that the mere fact of living under the same roof does not provide a sufficient basis on which to find that two people are common-law partners. In *Kelner v. R.*, [1995] TCJ No. 1130, the Honourable Mr. Justice Bowman (as he then was) said the following on this subject:

16 I start from the premise that it is possible for spouses, as a matter of law, to live separate and apart even though they are under the same roof.

[25] The Honourable Mr. Justice Rip (the Associate Chief Judge) made the following comment in *Aukstinaitis*, above:

23 The fact that the Appellant lived with Mr. Mongeon under the same roof is not fatal to her case. It is actually only one of the factors to take into account.

[26] This test is therefore not determinative in the circumstances.

## 2. Sexual and personal conduct

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?

[27] The appellant testified that she had not had any sexual relations with Mr. Cournoyer since his hasty departure in 2005. The Court's understanding is that the absence of sexual relationships since that time is attributable to the absence of a marital relationship. During the period from 2005 to 2008, Mr. Cournoyer's visits at the Durocher Street residence in Gatineau were far apart and only involved visiting Jacob. The appellant did not visit Mr. Cournoyer on Joffre Street in Gatineau.

[28] She described their relationship since 2008 as civilized and often limited to the essentials. The death of Mr. Cournoyer's father led to discussions between the two parties about renting a room. The appellant had already rented a room in the past and was therefore in a position to understand the consequences that such a situation involved. The Court learned from the appellant's testimony that she was a woman whose social life during the relevant periods was limited to few activities and whose circle of friends seemed to be absent. The Court got the impression that she had a more introverted and reserved personality. In this case, the Court believes that three years after her marriage ended, it was reasonable for the appellant to decide to rent strictly for economic reasons, occasional mutual assistance and the good of her son, without the rental being associated with a situation between common-law partners for the purposes of the ITA.

[29] The Court accepts the appellant's and Mr. Cournoyer's testimony that they did not associate with other people during the periods at issue and that they therefore remained faithful to one another. However, the Court is of the opinion that the appellant and Mr. Cournoyer were not faithful to one another because of their marital or couple relationship. Their choice to seldom if ever see one another was attributable to personal decisions they made that had nothing to do with the other person.

[30] Based on the evidence, the Court does not accept that the appellant and Mr. Cournoyer had feelings for each other during the periods at issue that could be considered feelings shared by common-law or married spouses. The situations where the couple shared confidences, discussed matters, interacted and bonded, which would normally be present at one level or another in a marital relationship, appear to the Court to be almost non-existent in this case. The respondent compared the marital relationship of the appellant and Mr. Cournoyer to that of an old couple. A conjugal relationship can certainly evolve, change, vary and take a different form throughout married life. However, the Court did not note such a situation in this case with regard to the periods and years at issue.

[31] They seldom ate meals together. Mr. Cournoyer made his own meal which Jacob could share given his father's more regular schedule. Mr. Cournoyer washed his own dishes. The appellant would then prepare her own meal and wash her dishes.

[32] During the periods and years at issue, the appellant would occasionally allow Mr. Cournoyer to use her car because he did not have one. The evidence heard led the Court to believe that the appellant and Mr. Cournoyer seldom provided each other with mutual assistance. Mutual assistance seemed mainly limited to situations

where the appellant was unable to accompany Jacob outside the home on school or extracurricular activities. The Court considers this assistance minimal in the circumstances.

[33] According to the appellant, Mr. Cournoyer never organized a party for her and never gave her any gifts.

[34] In the words of Rip J. in *Aukstinaitis*, above, it seems that the contacts and exchanges between the appellant and Mr. Cournoyer were minimal and limited to what one would expect of anyone who has to live with another person, share certain spaces with that person, and try to live in a civilized manner. Mutual assistance between the appellant and Mr. Cournoyer appears minimal in the circumstances.

[35] The Court is of the opinion that the evidence does not support the finding that this second factor undermines the appellant's position.

### 3. Services

What was the conduct and habit of the parties in relation to:

- (a) preparation of meals;
- (b) washing and mending clothes;
- (c) shopping;
- (d) household maintenance; and
- (e) any other domestic services?

[36] According to the testimony, the adults did not prepare any meals together. Mr. Cournoyer was early to bed and early to rise. In the evening, he prepared supper and ate first with Jacob who usually preferred the food his father prepared. The appellant prepared her own meal, although she would occasionally share the meal that Mr. Cournoyer prepared. The appellant admitted that she occasionally ate at the same time as he did, although Mr. Cournoyer had his own schedule which could fit in better with Jacob's schedule. However, Mr. Cournoyer said they seldom ate at the same time. They washed their own dishes.

[37] The appellant did not do Mr. Cournoyer's laundry. He had access to the laundry room and did his own laundry. Nor did she look after Mr. Cournoyer's clothing. Mr. Cournoyer also had access to the kitchen, his bedroom, the bathroom and, according to the appellant, the living room, but as little as possible. She generally took care of the housekeeping, with the exception of Mr. Cournoyer's

room, which he looked after himself. Mr. Cournoyer was more involved in outdoor chores, such as shovelling the snow after heavy snowfalls.

[38] Mr. Cournoyer did not have a car. They may have driven to the store together on a few occasions and done their shopping on their own. In the circumstances, they may also have shared the cost of certain items since they were living under the same roof. In any event, they each did their own groceries and paid for their own purchases. The appellant then paid for the gas for her car, as well as all the other household expenses, except for certain times when Mr. Cournoyer would pay for the gas when he was allowed to use the car.

[39] Mr. Cournoyer did not look after any maintenance and repair work on the residence or pay to have this work done. Mr. Cournoyer did not perform this work nor was he generally interested in doing it. Rather, the appellant contacted her eldest son regarding maintenance work and repairs.

[40] Overall, this factor appears to be consistent with the absence of a marital relationship.

#### 4. Social

(a) Did they participate together or separately in neighbourhood and community activities?

(b) What were the arrangements concerning the acquisition and ownership of property?

[41] According to the appellant's testimony, she did not engage in any outside social activities with Mr. Cournoyer. In this regard, she did not mention any trips. The two witnesses at the hearing did not appear to be very interested in neighbourhood and community activities. The appellant seemed to be a rather reserved person, not very concerned with neighbourhood and community life.

[42] When the parties were a couple, the appellant admitted that they would visit her family together. Mr. Cournoyer does not visit his family. On the other hand, he maintained some ties with the appellant's family after the breakdown of the marital relationship. The appellant related the example of the 2015 Christmas celebration at the Durocher residence in Gatineau when Mr. Cournoyer was renting a room there. The appellant's mother, who was at the celebration, had invited Mr. Cournoyer to join them, although he was not initially invited. Mr. Cournoyer had maintained a good relationship with the appellant's mother, but did not feel as though he had been

invited to the celebrations. That evening, the appellant did not object to Mr. Cournoyer's joining them. Mr. Cournoyer also said that when he was invited to an event, he did not stay long because he usually went to bed early.

[43] According to the Court, this factor indicates that Mr. Cournoyer had maintained certain ties with the appellant's family. It also seems that Mr. Cournoyer's presence during these get-togethers with their son Jacob favoured more cordial relations. The appellant did not confirm that she maintained ties with Mr. Cournoyer's family.

[44] This factor does not appear to the Court to be decisive in this case. It is true that Mr. Cournoyer maintained certain ties with the appellant's family. However, these ties did not appear to the Court to involve the appellant. Rather, Mr. Cournoyer developed ties with the appellant's family when he was accompanied by his son Jacob.

## 5. Societal

What was the attitude and conduct of the community towards each of them and as a couple?

[45] The appellant admitted that on the rare occasions that they went out together, others might believe that she and Mr. Cournoyer were common-law partners. It was natural for them to come to this conclusion because she and Mr. Cournoyer were accompanied by Jacob on these outings. The Court learned from the appellant's testimony that these public outings were rare, particularly during the periods and years at issue. As soon as the issue of common-law partners was raised, the appellant said she always indicated that they were not common-law partners. The appellant never confirmed that they introduced themselves as common-law partners. Mr. Cournoyer testified that he had always considered himself single, including when he filed his income tax returns. She also did not participate in any social activities with Mr. Cournoyer or visit his family with him. On the few occasions that Mr. Cournoyer ever met with members of the appellant's family, he was accompanied only by his son.

[46] In short, this factor does not appear sufficiently decisive in this case to provide evidence of a common-law partnership. The activities or opportunities during which they could be seen as common-law partners were few and far between and completely absent when they visited their respective families.

## 6. Support (Economic)

Support (Economic):

- (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?
- (b) What were the arrangements concerning the acquisition and ownership of property?
- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

[47] According to the evidence and subject to the following, the appellant paid for all expenses relating to her residence and car. During the periods and years at issue, there was an arrangement between the appellant and Mr. Cournoyer pursuant to which he paid the appellant rent for a room and access to rooms in the Durocher residence in Gatineau. Although testimony at the hearing provided few details on how this monthly payment had been calculated and what it included, the Court noted that Mr. Cournoyer's usual monthly rental payment was for his room and his share of household costs. They each incurred their own recreational, personal, and food and clothing expenses. The appellant also paid for Jacob's expenses. There was no other agreement between the parties.

[48] It should be noted that Mr. Cournoyer was unemployed for a time during the periods and years at issue. The testimony is not clear regarding this event or the relevant length of this time during the periods and years at issue. During this time, Mr. Cournoyer did not make his monthly payments to the appellant. The appellant questioned the length of this period during which she did not receive any compensation. Also, she maintained that Mr. Cournoyer provided compensation when his economic situation was subsequently corrected. During his testimony, Mr. Cournoyer alluded to the fact that when this ill-defined period ended, he paid the appellant a larger amount. The parties did not provide a clear reason for this additional amount. On the other hand, it is clear that the appellant started receiving this additional compensation after Mr. Cournoyer went back to work. The Court considers that the duration of this unemployment for the purposes of the relevant period was longer than one year. The Court therefore finds that the evidence shows that the appellant supported Mr. Cournoyer financially during at least part of the time he was unemployed, which is included in the period at issue, notwithstanding some financial compensation paid thereafter.



[49] In *Aukstinaitis*, above, Rip J. encountered a somewhat similar situation involving a monetary arrangement:

The extent of Mr. Mongeon's financial contribution to this cohabitation is unclear, but it appears that he covered at least the excess costs that his presence generated. It is true that such an arrangement could, at first sight, appear "abusive" for people who are not living in a common-law partnership. But one must bear in mind that Mr. Mongeon went to live with the Appellant after going bankrupt, and that she wanted him to be in a position to leave her residence as quickly as possible.

[50] In this case, the Court accepts the reasons that prompted the appellant to agree to this arrangement with Mr. Cournoyer, although at times she wanted him to leave. The appellant was initially motivated by economic considerations, and her desire to consider Mr. Cournoyer's departure became more difficult when Mr. Cournoyer informed Jacob that she wanted him to leave. The Court is of two minds about the appellant's real reason for tolerating this rental arrangement, at least during the periods and years at issue. In this regard, Mr. Cournoyer seemed categorical about his intentions to pursue the rental arrangement. The appellant's testimony on this subject was much more nuanced. It suggested that the appellant wanted to end the financial arrangement with Mr. Cournoyer, but Jacob's involvement complicated things. The Court is more inclined to accept the appellant's testimony, which in the Court's view does not corroborate Mr. Cournoyer's position.

[51] It is clear to the Court that Mr. Cournoyer's financial contribution was not directly related to the appellant's expenses. The expenses that were shared were household expenses and not the appellant's personal expenses.

[52] In the circumstances, the Court believes that in this case the economic factor has mixed attributes.

## 7. Children

What was the attitude and conduct of the parties concerning children?

[53] In the case under consideration, the appellant and Mr. Cournoyer are Jacob's parents. The appellant's eldest son did not live in the residence on Durocher Street in Gatineau during the periods and years at issue, and Mr. Cournoyer's testimony did not establish any connection with the appellant's eldest son. Admittedly, Jacob was mentioned during the testimony at the hearing but the comments focused on the situation of the two adults. However, the fact remains that Jacob helped maintain a bond between his parents.

## VII. Conclusion

[54] After having considered all the evidence at the hearing, the factors accepted by the courts and weighed each party's arguments, the Court considers that the appellant has provided sufficiently compelling evidence, on a balance of probabilities, that she was no longer living in a conjugal relationship with Mr. Cournoyer during the periods and taxation years at issue. The testimonial evidence proved to be the key element in this case.

[55] Some factors support the position that the common-law partnership was maintained after the separation in 2005, but the Court is of the opinion that most of the factors during the taxation periods and years at issue tend to support the recognition that the couple lived separate and apart throughout the periods and years at issue. The Court's assessment of all of the evidence favours the position supported by the appellant, who, after all, finds herself in a unique situation.

[56] In *Molodowich*, affirmed by the Supreme Court of Canada in *M v. H*, the Court clarified that the extent to which each of the seven elements listed above will be taken into account must vary with the circumstances of each case. In *M v. H*, the Supreme Court of Canada affirmed that the weight to be accorded to the various elements or factors to be considered in determining whether a couple is in a conjugal relationship will vary greatly and almost infinitely. The human race is not static.

[57] The Court finds the appellant's testimony more credible and therefore corroborated by Mr. Cournoyer's testimony in several respects. The appellant's explanations regarding sensitive elements or that contradict Mr. Cournoyer's testimony are also more credible and compelling.

[58] The Court allows the appeals. The redeterminations and reassessments are referred to the Minister of National Revenue for redetermination and reassessment on the following basis:

Cancel the claim for an overpayment determined by the Minister with regard to the 2015, 2016 and 2017 base taxation years in respect of the Canada Child Benefit in the amounts of \$247.16, \$532.68 and \$1,910.53, respectively, on the grounds that the appellant is not living in a common-law partnership.

Set aside the redetermination regarding the Canada Child Benefit entitlement with respect to the 2018 base taxation year, on the grounds that the appellant is not living in a common-law partnership.

Grant the wholly dependent person credit that the appellant claimed for her child for each of the 2016, 2017 and 2018 taxation years, on the grounds that the appellant is not living in a common-law partnership.

Cancel the gross negligence penalty referred to in subsection 163(2) of ITA, which was assessed with respect to the appellant's 2016 and 2017 taxation years.

Signed at Toronto, Ontario, this 7th day of February 2023.

“J. M. Gagnon”

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Gagnon J.

CITATION: 2023 TCC 21

DOCKET: 2021-418(IT)I

STYLE OF CAUSE: MONIQUE GROULX AND HIS  
MAJESTY THE KING

PLACE OF HEARING: Ottawa, Canada

DATE OF HEARING: November 8, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice Jean Marc Gagnon

DATE OF JUDGMENT: February 7, 2023

APPEARANCES:

For the appellant: The appellant herself  
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COUNSEL OF RECORD:

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