Citation: *R. H. v. Minister of Employment and Social Development*, 2015 SSTGDIS 76

Date: July 19, 2015

File number: GT-112829

GENERAL DIVISION - Income Security Section

Between:

R. H.

Appellant

and

Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)

Respondent

Decision by: Virginia Saunders, Member, General Division - Income Security Section

Heard by Teleconference on July 7, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

R. H.	Appellant
A. D.	Witness

INTRODUCTION

[1] The Appellant received a Guaranteed Income Supplement (GIS) under the *Old Age Security Act* (OAS Act) beginning in February 2004. The amount of the GIS was based on his status as a single pensioner. In April 2009 the Appellant's GIS payments were stopped while the Respondent conducted an investigation into his marital status.

[2] On April 19, 2010 the Respondent determined that the Appellant had been in a common- law relationship with A. D. since at least 2001, and adjusted his GIS entitlement for the period February 2004 to March 2009, resulting in an overpayment of $29,889.87. The Respondent advised that it would begin deducting $194.30 from the Appellant's monthly entitlement to repay the amount owing. The Respondent also advised that the Appellant's entitlement would be reviewed if Ms. D. provided income tax returns for 2002 through 2007.

[3] The Appellant requested reconsideration of this decision and it was upheld on July 22, 2010. The Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals (OCRT) and this appeal was transferred to the Tribunal in April 2013.

[4] The hearing of this appeal was by Teleconference for the following reasons:

- The issues under appeal are not complex.
- The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[5] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Tribunal.

[6] Under Part 2 of the OAS Act a GIS is paid to a recipient of an OAS pension who meets certain qualifications. The amount of the GIS depends on his or her previous year's income. If a person is married or has a common-law partner, the spouse or partner's income is taken into account in determining entitlement. Thus subsection 15(1) of the OAS Act and section 16 of the *Old Age Security Regulations* (the OAS Regulations) state in part:

> 15. (1) Every person by whom an application for a supplement in respect of a payment period is made shall, in the application, state whether the person has or had a spouse or common-law partner at any time during the payment period or in the month before the first month of the payment period, and, if so, the name and address of the spouse or common-law partner and whether, to the person's knowledge, the spouse or common-law partner is a pensioner.
>
> 16. If the Minister has not received sufficient evidence or information in support of an application to determine the relationship between the applicant and their spouse or common-law partner, the applicant or their representative shall allow the Minister access to the following documents:
>
> (b) in the case of common-law partners,
>
> (i) a statutory declaration setting out information as to the relationship of the common-law partners, and
>
> (ii) other evidence of the relationship.

[7] "Common-law partner" is defined in section 2 of the OAS Act as "a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year."

ISSUE

[8] The Tribunal must determine if A. D. was the common-law partner of the Appellant and, if so, the dates of that relationship.

EVIDENCE

[9] Many of the documents in the file refer to A. L., A. L. D. or F. L. . Ms. D. was a witness at the hearing. She testified that her name at birth was F. L.. Her married surname was D. . She was born in Quebec, and recently applied to that province for a legal name change to A. L. Through an error her name was changed to A. D. instead. She did not want to go through the bother of having the error corrected, and so has kept her legal name as A. D. and now refers to herself as such.

Evidence by the Appellant and the Witness

[10] On September 30, 2009 the Appellant provided the Respondent with a written history of his relationship with Ms. D. and his living arrangements. At the hearing he and Ms. D. provided further details under oath. Their evidence of their living arrangements at the relevant time is as follows:

The Appellant and Ms. D. have never had a sexual relationship. They have never shared a bed. All of their living accommodations have had separate sleeping quarters for each of them. They have never knowingly presented themselves to others as a couple, and they do not regard themselves as such.

The Appellant endured a difficult separation from his wife many years ago, after which he raised his son on his own. After that, he was not interested in having any kind of serious relationship and certainly not a common-law one.

He first met Ms. D. through her husband in 1998 or 1999, while living in a rooming house in X B.C. The two men struck up a conversation while they were buying coffee, and Mr. D. invited the Appellant to hear a lecture his wife was giving upstairs in the coffee shop. He became friendly with the family. Ms. D. is 12 years younger than the Appellant.

A few years later, the Appellant was having health problems and he was invited to rent a room in the rented home where Mr. and Ms. D. lived with their two sons and a daughter. He enjoyed their companionship and their alternative health lifestyle, as well as the help they gave him in getting to medical appointments. After about two years the family moved with the Appellant to a cheaper home, also in X. The Appellant rented a room in the basement. They then moved to an apartment on X Avenue in X. By this time the Appellant was using X Avenue mainly as a mailing address, as he was frequently travelling to X and Alberta.

Ms. D.'s marriage had been deteriorating since about 2000. She and her husband had a gradual separation and he moved out in 2002 or 2003, leaving her destitute. Eventually he moved back to X Avenue and stayed there with their children until around 2006. When Ms. D. was in X she would stay there as well. She and the Appellant did not have a sexual relationship of any kind, and his relationship with her played no part in the breakup of her marriage. She and her husband have never divorced, and she remains friendly with him, as does the Appellant.

When the Appellant applied for OAS in June 2003 he was living temporarily in X B.C. because he was having esophageal surgery in nearby X. He stayed with an elderly couple who also provided a separate room for Ms. D., who drove to X several times to take him to his appointments and to assist him. She had been a nurse and so was a great help to him. The Appellant had worked as a vitamin wholesaler in the past, and he was familiar with types of alternative health care. A job opportunity in the field presented itself in X B.C. and in the fall of 2003 he moved there to pursue it. Ms. D. moved there as she too was interested in the employment possibilities, and she had been left with large debts by her husband. To save money, they looked for a two-bedroom rental that they could share.

The Appellant's written history states that he and Ms. D. camped while they renovated a two-bedroom cabin in a cherry orchard. When the renovation was complete they moved into the cabin and stayed there until early 2004. Their prospective employer had a heart attack. They returned to X and waited to see if the job opportunity would be resurrected. They returned to X for the summer and Ms. D. found work at an orchard.

Ms. D.'s testimony regarding their time in X is that as a free-lance journalist she went there to write an article about cherry-pickers from Quebec, and that the Appellant wanted to come with

her. They lived in a camp with 40 cherry-pickers. Usually she slept in her van and the Appellant stayed in a little cabin, or they stayed in cabins side by side, or shared cabins or tents with others.

When it became apparent that the hoped-for employment in X was not going to materialize, Ms. D. decided to move to X. The Appellant's recollection is that she was hoping to buy a health food store; hers is that she and the Appellant were going to start a magazine together. They rented a 2-bedroom townhouse in a complex where the Appellant had lived many years earlier. They both signed the rental agreement, with the expectation that Ms. D. would find her own accommodation once she was earning money.

In November 2005 the Appellant began working at a forestation company in X, over an hour's drive from X. At the same time, Ms. D. found a two-year house-sitting job at a large home also in X. The owner agreed that the Appellant could stay in one of the bedrooms and help Ms. D. take care of the large grounds.

Shortly after beginning work at his new job the Appellant injured his knee in a workplace accident. He was unable to walk for a time, and had numerous medical appointments. He remained in the house in X but was unable to help with its upkeep. Ms. D. helped him out by driving him to his appointments, including physiotherapy, examinations and knee surgery.

Ms. D. went to Quebec in October 2006 because her mother was ill. She returned in the new year, and planned to go to X in February to be with her daughter who was about to have her first child. Instead, the house in X was sold and she and the Appellant had to pack their belongings and move out. She was able to get to X in March. Shortly after returning to X to complete her move out of the house she received a phone call on March 27, 2007, telling her that her mother had died. The Appellant drove her to the airport, and she stayed in Quebec until early May.

While Ms. D. was in Quebec the Appellant took a house-painting job in X. On April 3, 2007, scaffolding collapsed while he was on it and he hit his face on the kitchen counter, smashing his teeth and breaking the bones in his jaw. After Ms. D. returned from Quebec she and the Appellant drove to X where Ms. D. planned to live near her daughter. The Appellant

continued on to X, where he kept a motor home that he purchased around 2006 on the property of a friend, B. G.. He stayed there and spent his time going to dentists as instructed by Workers' Compensation (WCB). Eventually he was assigned to see a dental specialist, Dr. Takahashi, in X, and so faced the prospect of travelling back and forth every few months. He asked Ms. D. to help him with these trips, which she agreed to do.

At this time, Ms. D.'s daughter in X had left her partner and was now alone raising an infant. While in X for the Appellant's dental surgery in May 2008 the Appellant and Ms. D. stopped to see a woman named D. L. from whom Ms. D. had bought a dog. Ms. L. persuaded Ms. D. to move to X with her daughter, on the promise that she would give her a job doing writing and secretarial work, and she would train her daughter to be a dog groomer. She offered an apartment for rent.

Ms. D. began making arrangements to move to X near the end of June 2008. Her daughter was delayed in X. The Appellant still had more dental procedures in X, and he decided to move there as well to keep Ms. D. company and to perhaps cut down on the number of trips he would have to make to and from Vancouver Island for surgery. He signed the rental agreement as tenant. Ms. D. put the motorhome she sometimes lived in storage on Vancouver Island, and she and the Appellant moved her belongings to X at the end of June.

The apartment was a basement suite with a small bedroom where Ms. D. slept and a large futon in the living room, which the Appellant slept on when he was in X. The furniture and household effects belonged to Ms. D., as the Appellant's belongings were in his motor home in X.

The next several months were difficult ones, as the apartment was almost uninhabitable, the jobs did not materialize and there was constant conflict with Ms. L. over a number of issues. The Appellant and Ms. D. went to X for two weeks in July while construction on the suite was to be completed. The Appellant also went back and forth to his motor home in X, and would return to X for his dental appointments and to help Ms. D. with her rental issues. On October 1, 2008 he cancelled the tenancy agreement because of all the unresolved problems with the apartment. He went back to X that day, and Ms. D. was to move out of the apartment as soon as she was able to. He returned on October 13 with B. G. who would help with the

move. Shortly after that they packed up Ms. D.'s belongings and put them in storage. They stayed separately in temporary accommodation while they pursued a claim against Ms. L. at the B.C. Residential Tenancy Branch. Then they drove back to Vancouver Island, where Ms. D. moved in with her daughter in X and the Appellant returned to X.

Ms. D. lived with her daughter on X Road in X for a short time until she retrieved her motor home from storage. She then lived in the motor home in X until May 2009. After a rent increase she moved to X until August of that year, when she moved to an apartment outside X X until September 2011.

The Appellant remained in X until Mr. G. sold the property in September 2011. At that time, the Appellant and Ms. D. moved to a property in X.X, where they work as caretakers on the acreage there. They live in separate cabins.

[11] Ms. D. and the Appellant admitted to having a joint bank account until a few years ago. It was initially set up because they thought it would be helpful for her to have a Power of Attorney to help him with his finances and other matters. They did not realize that it had been set up as a joint account but agreed that they both used it for their own convenience. Ms. D. stated that she would purchase items for the two of them, or individually, and that she would reimburse any amounts that were used solely for her. When they were living together or travelling together they had some joint expenses such as gas and shared household items, which they split evenly. When her mother died she used the account to deposit two large amounts from her mother's estate, and withdrew them immediately. Other large amounts were funds sent by the Appellant's sister in Florida, who was trying to help the Appellant financially as well. Both the Appellant and Ms. D. stated that they would each allow the other to make use of their share of the funds in the account for short-term financial difficulties. They were friends and trusted each other, so there was no exact accounting done.

[12] Ms. D. testified that she had a cell phone on the Appellant's account because after her marriage broke up she had a bad credit rating and could not get a cell phone on her own. Both the Appellant and Ms. D. testified that to their knowledge it was common for people to name their friends on their cell phone accounts for similar reasons. She testified that she had a

credit card on the Appellant's Visa account for the same reason. She only used the card for emergency purchases and would reimburse the Appellant for them.

[13] The Appellant stated in his written evidence that Dr. Takahashi mistakenly assumed that Ms. D. was his wife, and that she did not correct him because it would be easier for her to help him if she was regarded as his legal spouse. Ms. D. testified that her recollection was that when she first saw Dr. Takahashi he referred to the Appellant as "your husband,"' and that she clarified the situation for him.

Documentary Evidence

[14] The Appellant was born on January 16, 1939. He turned 65 on January 16, 2004. He had earlier applied for an OAS pension and a GIS, and these payments began in February 2004.

[15] In his OAS application the Appellant described himself as separated. In his GIS applications made that year and subsequently he described himself as single or separated. He gave his date of separation as November 1984. The Appellant described himself as single on his income tax returns filed for the years 2002, separated for 2003 to 2006 and then single for 2007.

[16] An address and marital status history for the Appellant from Canada Revenue Agency states the Appellant's mailing addresses as follows:

- 1998: X Street, X
- 1999: X Street, X
- 2000: X Street, X
- 2005: X Avenue, X
- 2006: X
- 2007: X
- 2009: X

[17] In his OAS application the Appellant gave an address on X Drive in X BC. He gave a phone number that was the same as that given for Ms. D., who he named as a reference and stated, lived on X Avenue in X.

[18] On a July 2004 GIS application the Appellant gave X Drive as his address. On an August 2004 GIS application he gave his address as X Road in X. His April 2005 GIS application states his address as X Avenue in X.

[19] A copy of what the Respondent identified as a statement by a Service Canada employee in X dated August 11, 2004, states that the Appellant "is living with a lady called E. *(sic)* D.. He states that he is not in a common-law situation and refers to E. as his nurse." The employee stated that Ms. D. provided all the information required for the Appellant's GIS applications; that he did not believe she had any income; that this "couple's only income has been MHR. I do not know if they collected separately or as a couple."

[20] A note by a Service Canada employee of a telephone conversation between Ms. D. and the employee on September 9, 2004 indicates that Ms. D. called on the Appellant's behalf to inquire about his GIS as he was suffering from financial hardship. She stated that she and the Appellant were not in a common-law relationship and that although they had the same address in X they lived in separate cabins.

[21] A Tenant Ledger from CML Properties indicates that the Appellant moved into a unit on X Avenue in X on March 1, 2005, and moved out on November 30, 2005. A copy of the Residential Tenancy Agreement for the property lists the Appellant and Ms. D. as tenants. Both their signatures are on the document.

[22] A Rental Agreement dated May 26, 2008 between D. L. as landlord and the Appellant as tenant indicates that the Appellant will rent the basement suite at X X Street in X on a month-to-month tenancy beginning July 1, 2008.

[23] The Respondent noted a Third Party Complaint dated November 3, 2008 from an un- named person identified as the Appellant's former landlord, stating that "he has now moved to X X Street" and was living with A. L..

[24] The Respondent noted that on December 3, 2008 Ms. L. called and identified herself as the Appellant's landlord. She stated that she had evicted him, and that he had been a tenant in her home for two years during which he had lived common-law with A. L.. She advised that she was aware that he had been living common-law with A. L. for ten years.

[25] Documents obtained by the Respondent from the B.C. Residential Tenancy Branch indicate that hearings were held on November 24 and December 12, 2008, regarding the dispute between the Appellant and Ms. D. on the one side and Ms. L. on the other. The documents revealed a great deal of acrimony between the parties and vastly different versions of what took place. In the end the tenancy was found to have begun on July 1, 2008 and ended October 21, 2008 by frustration because the tenants were forced to vacate as the premises were declared unfit for habitation. Ms. L.'s claims for unpaid rent and repair costs were dismissed as she had failed to prove them. The Appellant and Ms. D. were granted compensation for food and accommodation expenses and loss of quiet enjoyment.

[26] Ms. D. prepared a written statement for her hearing before the Residential Tenancy Branch. In it she referred to the Appellant many times as her "partner." She testified that French is her first language, and that she meant "partner" in the business sense.

[27] Respondent's records reveal that Ms. L. made another complaint on January 6, 2009, claiming that the Appellant "has been in a common-law partnership for 14 years and his common-law partner and himself have lived together in the same house for over a year."

[28] The Appellant completed a Marital Status Questionnaire and swore it before a commissioner for taking affidavits in X on April 7, 2009. In the questionnaire he stated that he was not in a common-law union with Ms. D.; that she assisted him with his health issues as a caregiver and friend only; that her current address was on X Road in X; that he was living in X in his motor home on a friend's leased property; that Ms. D. was not named as a beneficiary in his will or in any kind of pension RRSP, insurance policy or other document; that they did not own vehicles together; that they had a joint bank account so that she could assist him with paying bills because he was forgetful; that they had a joint Visa card; that they did not have MSP coverage as a married couple; that they receive no provincial or

federal benefits as a married couple; that he represents himself to others as ‘single – separated.” He gave his address history as follows:

- 2000 to June 2003: a rental room or suite in X BC
- July 2003 to January 2004: camping in X BC for “fruit-picking trial”
- February 2004 to October 2005: X Apartments in X BC
- November 2005 to April 2007: a rental house and motor home in X BC
- May 2007 to 2009: a motor home in X

[29] The Appellant’s GIS benefits were ceased in April 2009.

[30] In May 2009 the Respondent requested information from Ms. D.’s daughter, Y. D., who provided a declaration stating that she had known the Appellant as a family friend for about ten years; that he and her mother had been good friends for that length of time, and that “My Mom helps to take care of his health issues and also financially.”

[31] A record of a telephone conversation by the Respondent’s Integrity Services Officer (ISO) indicated that she spoke with Ms. L. on May 19, 2009. Ms. L. advised that the Appellant and Ms. D. lived in her home for about two years, first in the basement suite and then moving upstairs because they did not have a separate bathroom. She stated that she had evicted them because they were hoarders, after which they had phoned bylaw officers and began proceedings to obtain reimbursement of their rent. She made a number of allegations that are not relevant to this appeal. She also advised that they had lived with a previous landlord named Bob for over four years with a similar outcome, and that she would provide his address.

[32] In June 2009 the ISO contacted the Canadian Imperial Bank of Commerce (CIBC) requesting any information referring the Appellant or Ms. D. for account number 7890036 for the period January 1, 2007 to April 30, 2009. CIBC provided the information for the Appellant but asked for a separate request for Ms. D. which it appears was never made.

[33] Copies of documents for the Appellant’s account 7890036 at the CIBC on X Avenue in X indicate that the account is a joint one but the second account holder’s name is blacked out. The account was opened September 25, 2003.

[34] Copies of the account statements show multiple retail purchases including gas, food and alcohol in a number of B.C. towns and cities including X, X, X and X. Many transactions take place in different places on the same day or the day immediately following. The only regular deposits are Canada Pension Plan and what is presumably OAS near the end of each month. There are infrequent deposits of amounts that are mostly $100 or less, with a few deposits of several hundred up to two thousand dollars. In May 2007 there are deposits of $15,000 and $21,000 that are immediately withdrawn.

[35] Ms. D. wrote to the Respondent on July 2, 2009, describing her situation and protesting the suppression of the Appellant's GIS. She asked who she could contact to get help for him. She gave her address in X, and the Appellant's address in X.

[36] An internal note by the Respondent dated July 7, 2009 indicated that the B.C. medical Services Plan (MSP) advised that the Appellant received medical coverage as a single person, not as married or common-law. His address for MSP purposes had been on X Avenue in X since 2005.

[37] That same day the Respondent wrote to the Appellant in X requesting more information and copies of rental or tenancy agreements. In reply, the Appellant maintained that he often did not have written agreements, that if he did not keep copies of any that were in writing and he had no way of obtaining other copies that might exist. He stated that any documents that belonged to Ms. D. could be requested from her as it was not his place to invade her privacy.

[38] A note from B. G. dated September 10, 2009, stated that the Appellant "has been using my place in X B.C. as a residence for the last 3 years prior to Sept. 10/2009 – as a place to park motor home."

[39] A note made by the ISO of a telephone conversation she had with Mr. G. on October 30, 2009 indicates that Mr. G. lived on the X property in a house, and that the Appellant lived there in a room which he paid for by performing odd jobs. He sometimes stayed in the motor home that was parked on the property, and he came and went freely. The Appellant paid for

his own food although Mr. G. occasionally cooked dinner for him. Mr. G. confirmed that the Appellant had lived on the property in X since 2006.

[40] On October 31, 2009 B. H. signed a Declaration Regarding Marital Status in which he stated that met the Appellant in early 2000 as a tenant, and that he then lost track of him until April 2007. He stated that since that time the Appellant had lived by himself in a motor home in X. He described the relationship between the Appellant and Ms. D. as that of friends, and that after reading the definition of marital status provided by the Respondent he believed the Appellant's current marital status to be single.

[41] Mr. G. gave the following written statement to the Respondent dated November 18, 2009:

> I have known [the Appellant] for about 20 years. For the past three years, he has been living in his motor home which I allow him to keep on my property. When the weather is severe, he stays with me in my home at X X in X.
>
> I have observed [the Appellant's] relationship with his friend, A. L.. When A. comes to X to visit [the Appellant], she stays in my home and has her own sleeping quarters.
>
> To the best of my knowledge and belief, the nature of the relationship between A. and [the Appellant] is that of friends. It is not a marriage-like relationship and they do not present themselves to me, or in public, as a couple. They appear to live lives independent of one another but because they are friends, they often spend time together.
>
> [The Appellant] has sustained a number of serious injuries in that past several years and A. has been his care giver during his recovery from those injuries.
>
> [The Appellant] and A. have worked on a number of projects together and have what I would describe as a working or business partnership. They did some renovation work for me and performed as a team. I do not perceive them as a couple, other than in a working environment.

SUBMISSIONS

[42] The Appellant submitted that he has never been in a common-law relationship with A. D. or anyone else, and that he correctly identified himself as single or separated when applying for a GIS.

[43] The Respondent submitted that the Appellant has been living in a common-law relationship with A. D. since 2001 and as a result had a GIS overpayment. In particular the Respondent submitted that the following evidence points to the existence of a common-law relationship:

a) A joint bank account to which Ms. D. makes deposits and withdrawals;
b) Shared cell phone plans;
c) Joint Visa cards;
d) A rental agreement from 2005 with both signatures;
e) A joint claim for damages arising out of the 2008 tenancy in X, in which Ms. D. refers to the Appellant as her partner;
f) Correspondence sent to the Respondent by the Appellant in September 2009 stating that his dental surgeon believed Ms. D. to be the Appellant's spouse and that he did not correct him.

ANALYSIS

[44] "Conjugal relationship" is not defined in the CPP. In *MSD v. Pratt* 2006 CP 22323, the Pension Appeals Board stated at paragraph 44 that: "the core of the [conjugal] relationship is that the parties have by their acts and conduct shown a mutual intention to live together in a marriage-like relationship of some permanence." In *Betts v. Shannon* 2001 CP 11654, the Board listed elements that will generally be found in a conjugal relationship, but stressed that not all of them needed to be present. These included:

1. financial interdependence
2. a sexual relationship
3. a common residence
4. the purchase of gifts for each other on special occasions
5. a sharing of household responsibilities
6. shared use of assets
7. shared responsibility in raising children
8. shared vacations
9. the expectation of mutual dependency each day

10. the naming of each other as beneficiary in wills and insurance policies
11. where each kept their clothing
12. caring of each other during illness
13. knowledge of each other's medical needs
14. communication between the parties
15. public recognition of the parties as a couple
16. marital status declared by the parties on various applications or other forms completed by them, and
17. responsibility for funeral arrangements

[45] In *Hodge v. Canada* 2004 SCC 65 the Supreme Court of Canada stated that:

> ". . . cohabitation is a constituent element of a common law relationship. 'Cohabitation' in this context is not synonymous with co-residence. Two people can cohabit even though they do not live under the same roof and, conversely, they may not be cohabiting in the relevant sense even if they are living under the same roof"

[46] The Respondent did not attend the hearing and did not cross-examine either witness. The Tribunal found the Appellant and Ms. D. to be credible witnesses and accepts their evidence as an honest and generally accurate description of their relationship. While there are some inconsistencies in the evidence regarding the exact times they spent in various places, the reasons they were there and the description of their living arrangements, the Tribunal does not consider that these reflect on the credibility of either witness: they are talking about something that happened many years ago and for which they had different perspectives and different recollections. In all cases they describe separate living or sleeping accommodations of some type.

[47] The Tribunal finds that the Appellant's descriptions of himself as "separated" on his GIS applications and income tax returns referred to a long-ended relationship with his legal spouse, and not to his relationship to Ms. D..

[48] The Tribunal finds that the Appellant's relationship with Ms. D. is not and never has been a conjugal one. It is one of platonic friendship between two people who have an unconventional lifestyle. While their relationship has some of the elements found in a conjugal one, it is missing the characteristics that generally distinguish a conjugal relationship from other types.

[49] Firstly, the Appellant and Ms. D. did not have "financial interdependence." Ms. D. assists the Appellant with his finances. They had one joint bank account and a credit card, used by Ms. D. for a limited purpose. They kept track of what each spent on the other, and gave reimbursement. The banking information obtained by the Respondent is consistent with Ms. D.'s evidence that she used the account but paid back anything that was not used by the Appellant. There was no regular or long-term financial support and no expectation of such by either. They have not named each other as beneficiaries in wills, RRSPs or life insurance policies. They shared household expenses and responsibilities when they lived together, as do almost all room-mates.

[50] The Respondent submitted that the sharing of a joint credit card is normally seen between committed individuals, rather than friends. No evidence was provided to support that statement. The Tribunal accepts the Appellant's evidence as to the purpose of the shared credit card and finds that it was not an indication of a conjugal relationship as alleged by the Respondent.

[51] The Respondent also submitted that the Appellant's sharing of a cell phone account with Ms. D. is "not something usually done between friends or between a caregiver and client." Again, the Respondent did not provide evidence to support that statement, whereas the Appellant and Ms. D. testified that in fact it is done fairly often and gave a reason for their doing so.

[52] There was no sexual relationship between the Appellant and Ms. D.. They both testified that they have never had a sexual relationship, and that there is no evidence at all that they did. The allegations made by Ms. L. regarding their living arrangements were inconsistent with each other and incorrect: she first stated that the Appellant and Ms. D. rented from her for two years and then changed that to one year, while the rental agreement

clearly begins July 1, 2008 and was found to have ended less than four months later. She gave unsubstantiated evidence suggesting the two were living common-law, when there is no indication as to how she would have first-hand knowledge of that nor did she provide the evidence from a previous landlord that she claimed would support her view.

[53] While the Appellant and Ms. D. frequently lived under the same roof, they did not have a continuous common residence throughout. The evidence is that they had a somewhat transient lifestyle during which they were frequently together but not always. Sometimes they

shared accommodation, and sometimes they had separate living quarters near to each other. They never shared a bedroom. When they did live together it was out of convenience and because they got along well, not because they intended to establish a household together. From 2006 on the Appellant kept his motor home in X, and returned to it at regular intervals. It is clear that, although the Appellant signed the X rental agreement in 2008, they both regarded the apartment as Ms. D.'s. She was there full-time and the Appellant was not; she had the bedroom while he had the futon in the living room; she moved her belongings to X and put her motorhome in storage while he did not. She actively pursued the dispute with Ms. L.. The Appellant was a part of the claim because he was named in the lease and because he too suffered damages.

[54] The Tribunal accepts Ms. D.'s evidence regarding her use of the term "partner." This was not a statement that they were a couple. The term does not necessarily indicate a marital-like relationship and the Tribunal accepts Ms. D.'s evidence that she did not intend it as such. The Tribunal notes that the document as a whole makes it quite clear that Ms. D. regarded the apartment and the property in it as hers alone, with the Appellant as a frequent co-habitant.

[55] Ms. D. clearly had knowledge of the Appellant's medical needs, and he relied on her for assistance and some care. There is no evidence of a reciprocal arrangement with respect to her needs. Outside of Ms. D.'s caregiving role, there is no evidence of an "expectation of mutual dependency each day" beyond what would normally be observed in any close friendship.

[56] Finally, the Appellant and Ms. D. did not identify themselves as a couple, nor was there any public recognition of them as such. There are several sworn statements by third parties denying that they were in a marriage-like arrangement. The Respondent submitted that the Appellant and Ms. D. "represented themselves as husband and wife" to the Appellant's dental surgeon. In fact, there is no evidence that the Appellant did anything of the sort. The Appellant and Ms. D. described circumstances in which Dr. Takahashi or his staff made an assumption about their relationship, which Ms. D. eventually corrected.

[57] The Tribunal is satisfied on a balance of probabilities that the Appellant is and was not cohabiting in a conjugal relationship with Ms. D. at any time. He therefore did not have a spouse or common-law partner at any time that is relevant to this appeal or to his entitlement to GIS.

CONCLUSION

[58] The appeal is allowed.

Virginia Saunders
Member, General Division - Income Security