



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. B. v Minister of Employment and Social Development and S. C.*, 2019 SST 1501

Tribunal File Number: GP-18-1236

BETWEEN:

K. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

S. C.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Teleconference hearing on: September 11, 2019

Date of decision: December 4, 2019

DECISION

[1] The Appellant is not entitled to a survivor's pension. The appeal is dismissed. Here are my reasons why.

OVERVIEW

[2] The Minister received an application from the Appellant (K. B.) for Canada Pension Plan (CPP) survivor's benefits on June 16, 2017. The Minister also received an application from the Added Party (S. C.) on June 16, 2017. The Minister approved S. C.'s application for a survivor's pension on October 5, 2017. The Minister denied K. B.'s application for a survivor's pension on October 5, 2017. K. B. submitted a request for reconsideration to the Minister on December 11, 2017. The Minister denied this request. K. B. appealed the reconsideration decision to the Social Security Tribunal.

[3] K. B. was married to the deceased contributor, M. B., on the date of his death. K. B. and M. B. had been separated since 2006. K. B. claims that S. C. and the deceased contributor were not common-law partners.

[4] S. C. claims that she and M. B. lived together as common-law partners from April 1, 2008, until his death on May 14, 2017.¹

PRELIMINARY ISSUE

[5] The Appellant filed GD25 in response to GD24. I decided to admit GD25 because the information is relevant to the issue of whether M. B. and S. C. were common law partners. There is also no prejudice to the Respondent or to S. C. if I admit the document.

¹ GD2-105.

ISSUE

[6] A survivor's pension is payable to the survivor of a deceased contributor.² The survivor is the common-law partner of the contributor at the time of the contributor's death. If there is no eligible common-law partner, then the survivor is the person who was married to the contributor at the time of death.³

[7] A person is the common-law partner of the contributor if they have cohabited in a conjugal relationship with the contributor for a continuous period of at least one year.

[8] The issue I have to decide is:

- Did S. C. cohabit in a conjugal relationship with M. B. at the time of his death, having so cohabited for a continuous period of at least one year?

[9] S. C. must prove that the answer to this question is more likely yes than no. If S. C. fails to do so, K. B. will be entitled to the survivor's pension, because she was married to M. B. at the time of his death.

ANALYSIS

[10] Factors that indicate a conjugal relationship include:

- social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members;
- sexual and personal behaviour, including whether the parties have sexual relations, maintain an attitude of fidelity to each other, communicate on a personal level, eat together, assist each other with problems or during illness or buy each other gifts;

² This rule is set out in s 44(1)(d) of the *Canada Pension Plan* (CPP).

³ s 44(1) "survivor" of the CPP.

- services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- societal, including the attitude and conduct of the community towards each of them as a couple;
- attitude and conduct concerning any children;
- support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property; and
- shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation.⁴

[11] There were voluminous documentation and submissions filed in addition to the oral testimony the parties gave. S. C. called two witnesses in support of her position. First, I will provide some background about litigation that preceded the CPP hearing. After that, I will review the evidence under each of the factors that indicate a conjugal relationship.

Findings in other court proceedings

[12] K. B. and M. B. were involved in contentious family law proceedings continuously since the time of their separation in 2006. At the time of M. B.'s death these proceedings were ongoing. The testimony of S. C. at the CPP hearing (that she was the common law partner of M. B.) and M. B.'s testimony in the family law proceedings (that S. C. was not his common law spouse⁵) are inconsistent.

[13] Following M. B.'s death in May 2017, the judge in the family law case released her reasons.⁶ The judge said the evidence that M. B. and S. C. were common-law spouses was

⁴ *McLaughlin v Canada (Attorney General)*, 2012 FC 556 at para 15.

⁵ GD2-45

⁶ GD 15-55

compelling.⁷ The judge wrote that there was a “considerable mingling of the financial affairs” with S. C., with whom M. B. denied being in a common-law relationship.⁸ The judge also noted that M. B. had tried repeatedly to deceive the court about the status of his relationship with S. C. She found M. B.’s evidence unreliable and stated he was not a credible witness.⁹

[14] I am not adopting the judge’s decision that M. B. and S. C. were common-law partners, although the judge’s decision is a factor I am considering alongside the other evidence. I acknowledge that M. B. stated during court proceedings that he was not the common-law spouse of S. C.¹⁰ The judge determined that despite M. B.’s efforts to frame the relationship otherwise, M. B. and S. C. were, more likely than not, common-law spouses.¹¹ I also recognize the test for whether parties are common-law spouses in the family law litigation is not the same as the test under the CPP.

[15] J. M. testified on behalf of S. C. He is the husband of M. B.’s sister, P. B. (who also testified). His testimony was straightforward and sincere. He answered questions thoughtfully, with detail, and without hesitation. He did not appear to exaggerate or embellish his testimony. I found him to be credible. J. M. testified that M. B. told him he (M. B.) would be testifying that S. C. was not his common-law spouse in litigation proceedings in order to protect her. M. B. was concerned about how S. C. would react.

[16] I find that M. B. was not being truthful in the context of the family law proceedings about his relationship with S. C., so I am not giving weight to his testimony at those proceedings. My finding that M. B. was not being truthful in those proceedings about his relationship with S. C. is supported by the judge’s findings in the family law proceedings, as well as J. M.’s testimony about what M. B. said regarding M. B.’s testimony in the family law proceedings.

⁷ GD15-53 and GD15-54

⁸ GD15-50

⁹ GD15-53

¹⁰ GD2-45

¹¹ GD15-55

Social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members

[17] P. B. testified on behalf of S. C. She is the sister of M. B. Her testimony was straightforward and sincere. She answered questions politely without hesitation. I thought she was truthful and she did not appear to embellish or exaggerate her testimony. I found her to be credible. She said M. B. and S. C. were a couple from the beginning to the end. She never worried about her brother because he was with S. C. M. B. and S. C. celebrated holidays together and did everything a normal couple would do. In the last few years, once M. B.'s parents passed, M. B., S. C., J. M. and P. B. did not socialize as much as they used to but talked monthly on the phone.

[18] J. M. testified that M. B. phoned J. M. and said M. B. met S. C. and was living with S. C.. J. M. socialized with S. C., M. B., P. B. and the elderly B. parents. M. B. and S. C. would frequently have the B. parents to their home for weekends after M. B.'s mother moved to a nursing home. M. B. always spoke of M. B. and S. C. M. B. seldom talked only about himself. J. M. testified that M. B. and S. C. were together all the time. He believed that M. B. and S. C. lived in a common law relationship. He said there was a lot of love and caring between M. B. and S. C.

[19] S. C. testified she and M. B. went to Europe together in September 2013 and researched M. B.'s family history in Scotland and Ireland. S. C. said that they were a part of each other's family. S. C. hired M. B.'s son to work at X to promote a better relationship between father and son. S. C. invited his children for Christmas and special holidays.

[20] I find that M. B. and S. C. accepted and interacted with each other's families in a way that showed a caring relationship between them that is indicative of common law partners. S. C. invited M. B.'s parents to stay for the weekend and encouraged a better relationship between M. B. and his children. As well, I have given weight to P. B.'s testimony that S. C. was the partner of M. B. for many years.

Sexual and personal behaviour, including whether the parties have sexual relations, maintain an attitude of fidelity to each other, communicate on a personal level, eat together, assist each other with problems or during illness or buy each other gifts

[21] S. C. testified that she took M. B. to the doctor and psychiatrist. In 2012, M. B. called S. C. to pick him up from the hospital as M. B. had anxiety from work. The psychiatrist told S. C. to walk with M. B. and try to take the stress off M. B. S. C. was “always” with M. B. because S. C. was worried about M. B.’s medical conditions and that M. B. may collapse or fall.

[22] S. C. testified that S. C. and M. B. bought each other gifts on birthdays and special occasions. S. C. testified S. C. and M. B. lived together and shared a bedroom from April 2008 until his death.

[23] S. C. submitted a photo and receipt for an engagement ring from M. B. The receipt for the engagement ring is difficult to read and lacks a description of the jewelry. But it does show an April 2013 purchase and I am satisfied that the lengthy divorce proceedings of M. B. and K. B. impacted the proposed marriage date which S. C. testified was December 2015. M. B. passed away before the divorce judgment was issued.¹²

[24] There is no requirement to have an intention to marry in order to qualify for CPP survivor’s benefit. However, the evidence regarding gifts for each other and S. C.’s care for M. B. during illness support that they were in a romantic and conjugal relationship, because these are the types of things people do when they are committed to each other.

Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services

¹² GD4-1

[25] The living arrangement for M. B. and S. C. consist of two homes. In 2010, S. C. owned a home at X which she sold on March 31, 2017.¹³ In January 14, 2014 M. B. purchased a home at X where he died on May 14, 2017.

[26] Starting in 2010 M. B. lived full-time at X (what is disputed is whether he was living with S. C. or renting space in her home). In 2014 M. B. purchased a home at X. (what is disputed is whether S. C. was living at the X home). Later in my decision, I will discuss the living arrangements of M. B. and S. C. in more detail.

[27] S. C. testified that she looked after M. B.'s clothes and shirts, made his lunches, and cooked his dinner. From 2010 to 2014, M. B. and S. C. kept clothes at X. From January 2014 to December 2015, M. B. and S. C. kept clothes at X and X. From December 2015 onward M. B. and S. C. kept clothes at X and the cabin at X. M. B. did yard maintenance and S. C. looked after the pool, although at which homes was not specified.

[28] I am satisfied that S. C. and M. B. lives were domestically intertwined as is typical of partners in a conjugal relationship.

Societal, including the attitude and conduct of the community towards each of them as a couple

[29] In her oral testimony, K. B. acknowledged that M. B. and S. C. were a couple (but not a common law couple based on the requirements for CPP survivor's pension).

[30] J. M. testified that S. C. made the funeral arrangements and co-ordinated a memorial for friends and family of M. B. S. C. also went through M. B.'s belongings after M. B. passed.

[31] I have given significant weight to K. B.'s testimony that S. C. and M. B. were a couple. The fact that S. C. was responsible for all funeral arrangements is a strong indication that S. C. and M. B. were in a conjugal relationship. The fact that she organized the memorial for his

¹³ GD7-40

friends and family is an important statement to the community that M. B. and S. C. were a couple.

Attitude and conduct concerning any children

[32] I do not think M. B. took an active role in caring for S. C.'s daughter. I do think that S. C. made efforts to facilitate improved relations between M. B. and his children. It makes sense that if she cared deeply about M. B. she would want to encourage a good relationship between M. B. and his children. However, I do not think that M. B. or S. C. were instrumental figures in the lives of each other's children. Having said that, I recognize that the children were young adults.

Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property

[33] There were all sorts of complicated structuring of the finances between S. C. and M. B. The Minister submits that the evidence demonstrates significant property interests together and interdependence characteristic of a common-law relationship:¹⁴

- In Mr. B.'s Last Will and Testament, dated March 5, 2014, S. C. is name as a principle beneficiary of his estate.¹⁵
- Proof of shared automobile insurance between S. C. and M. B. (RBC Insurance), for the period between 2015 and 2017,¹⁶
- Joint hydro bills for X addressed to M. B. and S. C.¹⁷
- Joint line of credit statements from the Bank of Montreal, dated May 2017 and June 2017¹⁸

¹⁴ GD14-3

¹⁵ GD 2-13 to 33 and GD2 106-126 and GD26

¹⁶ GD2-127, 130, 131, 145, 146 and 147 and GD26

¹⁷ GD2-143 and 144 and GD26

¹⁸ GD2-128,129, 139 and 149 and GD26

- The Agreement to Purchase X shows the property was jointly purchased by S. C. and M. B.¹⁹
- T5 Statement of Investment Income from 2014 with the names of M. B. and S. C. and the address as X.²⁰

[34] K. B. submits that M. B. and S. C. were not financially interdependent. They had no joint savings or bank accounts. M. B. did not need financial support from S. C. Further, in M. B.'s CPP Retirement Pension application and tax returns M. B. never indicated he was in a common-law relationship with S. C.²¹ K. B. submits that M. B. and S. C. were not in a cohabitation or common law relationship for any one year:²²

- The joint automobile insurance does not prove cohabitation or a common law relationship.
- The RBC insurance and Bank of Montreal line of credit were issued as part of S. C.'s duties as one of five trustees managing the estate.
- M. B.'s will names S. C. as a "friend".
- The hydro bills for X arose because M. B. needed a co-signer on his new account when he bought his house.²³
- The joint T5 statement of income was issued in error.²⁴

[35] S. C. testified that X was to be the final home of S. C. and M. B. S. C. testified that the X property closed in January 2014, solely in the name of M. B. because of the financial requirements to qualify for a mortgage from the bank. She removed her name from the title because X had not sold. S. C. said she made 40 mortgage payments on the X home. S. C. took a

¹⁹ GD8 – 6 and GD8 23- 25

²⁰ GD 2-51 to 54 and GD2-75 to 78,

²¹ GD10-1

²² GD25-1

²³ GD25-1

²⁴ GD25-1

lien against the X home because in 2013 she made a 280-thousand-dollar cash down payment to purchase the X home.²⁵ S. C. got the 280-thousand dollars from a loan S. C. took against X.

[36] J. M. testified that he had no knowledge of the details regarding property ownership for M. B. M. B. told J. M. that he was going to rewrite his will and make S. C. the sole beneficiary and leave something for his sister (P. B.).

[37] I have given significant weight to the ruling of the family law judge who listened in detail to the evidence regarding the finances of M. B. and S. C. I have only the benefit of a few hours of testimony, but to me it was clear to me from S. C.'s detailed description of M. B.'s finances that S. C. had in depth knowledge of M. B.'s finances.

[38] The judge wrote that M. B. knew no bounds in how much money M. B. gave S. C..²⁶ One of the reasons the judge found M. B. was not credible about the relationship with S. C. was the evidence regarding whether their finances were intertwined. The judge wrote that while M. B. denied that M. B.'s finances were intertwined with S. C. the evidence showed M. B.'s position was false. In fact, M. B. had created a "web of intricately intertwined finances."²⁷ The judge found that M. B. was not credible. In contrast, the judge found K. B. quite believable.²⁸

[39] I have given weight to the financial arrangements between S. C. and M. B. concerning X and X. I find it unusual that M. B. and S. C.'s names are not both on title for X.²⁹ However, although S. C.'s name may not be on title, I believe that the X property was purchased for the benefit of M. B. and S. C. I have given weight to the fact that M. B. and S. C. are named on the joint purchase agreement of X.³⁰ I find S. C. invested significant monies in the X property as part of a very complex co-mingling of funds between M. B. and S. C. I reach this conclusion based on S. C.'s testimony that she registered a charge against X. Her evidence is consistent

²⁵ GD7-44

²⁶ GD15-56

²⁷ GD15-55

²⁸ GD 15-51

²⁹ GD8-37

³⁰ GD8-6

with the finding set out in the family law decision that the financial arrangement for the purchase and sale agreement for X evidenced a co-mingling of funds.³¹

[40] The complicated property interests and S. C.'s intimate knowledge of M. B.'s finances show financial interdependence indicative of a common-law partnership. I know that finances are not determinative of a common law partnership, but rather one area to consider. But, I have put significant weight on this factor in determining whether M. B. and S. C. were common law partners under the CPP. The interweaving of such significant sums of money is indicative of a significant commitment between these two individuals, and, as such, supports that they were in a marriage-like relationship.

[41] I do not think the fact that M. B. and S. C. did not name each other as beneficiary's of life insurance policies is problematic. M. B. had significant assets. I find that it is reasonable S. C. would want to ensure her daughter is the beneficiary of her life insurance and property interest at X. The RBC insurance is a renewal package for the year 2015³² and 2017. The 2017 renewal demonstrates shared automobile and home coverage for M. B. and S. C. at X in the year prior to his death.³³ I believe that the joint insurance policies and hydro bills demonstrate shared financial responsibility and a life together between M. B. and S. C.. I acknowledge K. B. submits that the documents relied on by the Minister are not sufficient to demonstrate that M. B. and S. C. are common law partners, but I believe that any absence of property interests together is outweighed by the interweaving of significant sums of money.

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

[42] The Supreme Court of Canada has stated that cohabitation in the context of a common-law relationship is not synonymous with co-residence, and that two people can cohabit even though they do not live under the same roof. Periods of physical separation do not end the

³¹ GD15-56. GD15-57

³² GD2-145

³³ GD26-5

common law relationship if there was a mutual intention to continue the relationship.³⁴ While living under the same roof is not determinative of a common-law relationship in order to qualify for a survivor's pension, living under the same roof is still a significant factor to be taken into account in assessing the overall relationship.³⁵

[43] The issue before me is whether M. B. and S. C. were cohabiting in a conjugal relationship at the time of his death and for a continuous period of at least one year. M. B. testified during court proceedings that he and S. C. never lived together. M. B. testified during those proceedings that they were good friends.³⁶ For the reasons outlined earlier, I have given little weight to this evidence.

[44] I acknowledge that in April 2015, S. C. wrote to K. B.'s lawyer that S. C. was M. B.'s friend.³⁷ In fact, S. C. referred to K. B. as the "ex-wife of a friend." This evidence is inconsistent with S. C.'s testimony at the CPP hearing. I believe that, on balance, S. C. was not being truthful when S. C. wrote to K. B.'s lawyer because S. C. was concerned K. B. may be entitled to the income from S. C.'s B&B if the family law judge determined S. C. was M. B.'s common law spouse.³⁸ Although S. C. was not a party to the family law litigation and did not testify, being in a relationship with M. B., S. C. certainly had a vested interest in the outcome of the proceedings and the fact that the financial consequences of the judge's ruling could include a reduction in S. C.'s own income.³⁹

[45] There are two properties that I will consider when determining if M. B. and S. C. were living together in the year prior to his death. They are X and X:

- K. B. submits that S. C.'s tax returns from 1994 to 2016 show X home as her principal residence.⁴⁰ K. B. submits that S. C. lived at X until March 2017. K. B. further submits that

³⁴ *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65 at para 42.

³⁵ *E.S. v MHRSD* (July 24, 2012), CP 25586 (PAB) at para 37. This decision is not binding, but I find it persuasive.

³⁶ GD 2-92, GD2-45

³⁷ GD7-36

³⁸ GD8-3

³⁹ GD8-3

⁴⁰ GD25-2

from January 2014 until M. B.'s death in May 2017, M. B. lived at X, which M. B. purchased alone.

- S. C. testified that S. C. and M. B. lived together from April 1, 2008, until May 14, 2017, when M. B. passed away.⁴¹ M. B. and S. C. lived together under the same roof and shared a bedroom during this entire period.

2008-2014

[46] K. B. submits that between 2008 and 2010, M. B. may have spent time at the X home, but he was not cohabiting with S. C. At this time, S. C. lived at X with her teenage daughter. Between April 2008 and October 2010, M. B. lived in various townhouses until S. C. rented him an apartment in her home at X.⁴²

[47] S. C. testified that from April 2008 to January 2014, M. B. and S. C. lived together at X. S. C. admitted she did not live full-time with M. B. until October 2010.⁴³

2014- to May 2017

[48] K. B. submits that there was never a jointly shared financial commitment for a home by M. B. and S. C.⁴⁴ I disagree because the agreement of purchase and sale for X and S. C.'s mortgage payments persuaded me that M. B. and S. C.'s intentions were for X to be their home together.

[49] S. C. testified that in January 2014, S. C. and M. B. purchased X, which was to be their permanent home. They were living together at X when M. B. passed away.

[50] The family law decision concluded there were numerous references to the X address as the common residence of M. B. and S. C.⁴⁵ I believe that after 2014 (when the purchase of X

⁴¹ GS2-105

⁴² GD7-5

⁴³ GD9-3

⁴⁴ GD7-6

⁴⁵ GD15-54

closed) , M. B. and S. C. continued to live together moving between the X and X homes. I acknowledge S. C.'s submission that after 2015, the home at X was rented out. It may have been a rental property (B&B) at times, but S. C.'s description of where M. B. and S. C. kept their clothing persuaded me that after January 2014, M. B. and S. C. were living in both homes. M. B.'s statements to J. M. persuaded me that it was more likely than not, that S. C. and M. B. were living together in a conjugal relationship at the time of his death and for a continuous period of at least one year because of his desire to protect S. C. and his concern about how S. C. would react to M. B.'s testimony suggests they were in a martial type of relationship.

[51] K. B. submits that S. C. declared X on her tax returns as her principal residence and claimed capital gains exemptions when S. C. sold X. I have decided that M. B. and S. C. were living at both homes. I do not think the tax returns would influence my conclusion.⁴⁶ In any event, it is not my role to make findings on tax designations. However, there is no requirement that persons live together in a single residence to be considered common law partners under the CPP.

S. C. was the common-law partner of M. B. under the CPP

[52] I make no determination on the ongoing estate litigation between the parties, in which the issue of whether S. C. was the common-law partner of M. B. may be an issue. My role is to determine whether S. C. was the common-law partner of M. B. under the CPP.

[53] K. B. acknowledges that M. B. and S. C. were in a relationship. However, K. B. submits that M. B. and S. C. are not common-law partners under the CPP. K. B. further submits that S. C. has no proof that she ever had a common-law relationship with M. B. according to the CPP requirements.⁴⁷ In fact, the evidence on file disproves a common-law relationship existed between S. C. and M. B. for the following reasons:

⁴⁶ GD25-2

⁴⁷ GD7-7

1. S. C. and M. B. were not living together. Since 2014, M. B. resided at X which he purchased alone.
2. S. C. and M. B. were not financially interdependent.
3. There are no written documents on file to demonstrate the parties were common-law partners.
4. M. B. stated in Court that M. B. and S. C. were not common-law spouses. M. B.'s sworn testimony shows M. B.'s intentions and state of mind within 12 months of M. B.'s death.⁴⁸

[54] K. B. asked me to put greater emphasis on the documentation on file as opposed to the oral testimony, when I decide whether S. C. was M. B.'s common-law partner. These are K. B.'s reasons:

- M. B. states he is separated on his application for a CPP retirement pension.⁴⁹
- M. B.'s tax returns for the years 2013, 2014 and 2015 state M. B. is separated.⁵⁰ M. B.'s 2016 tax returns show marital status as separated.⁵¹
- M. B.'s will refers to S. C. as his friend.⁵²
- M. B.'s tax returns are consistent with K. B.'s testimony and submission that S. C. and M. B. were not common-law partners because he stated on his tax returns that his marital status was "separated".

[55] I acknowledge that in all of the documents on file in which M. B. declared his marital status, M. B. identified himself as being separated. K. B. submits that S. C. could have

⁴⁸ Hodge.v. Canada (Minister of Human Resourced Development) (2004) 3 SCR 357 cited at GD7-4

⁴⁹ GD2-152-155

⁵⁰ GD 7-26 (2013) GD2-52 (2014) and GD2-75 (2015)

⁵¹ GD 7-10

⁵² GD2-215

submitted her tax returns to confirm her status as M. B.'s common law spouse.⁵³ S. C. did not provide her tax returns. However, I have not given much weight to what might be declared on S. C.'s tax returns. Instead, I have given the greatest weight to the decision of the family law judge and the testimony of the witnesses that S. C. and M. B. were common law partners, over any potential designation that might be on S. C.'s tax returns. I note, the tax returns would not be determinative of whether S. C. and M. B. were common law partners.

[56] I acknowledge S. C. was not a party to the family law proceeding and so S. C. never testified about the status of her relationship with M. B. in the family law proceedings. However, because I have found that M. B.'s oral testimony about the status of M. B.'s relationship with S. C. was unreliable, I have concluded that M. B.'s declaration of marital status, as reflected in M. B.'s tax returns and other documents including M. B.'s CPP retirement application are also unreliable. For this reason, I have placed little weight on the documents on file where M. B. declares his status as separated when deciding whether M. B. and S. C. were common law partners. I have also placed little weight on the fact that S. C. is referred to as a "friend" in M. B.'s will. Instead, I have given more emphasis to the testimony of P. B., J. M. and the family law decision about the status of the relationship between M. B. and S. C.

[57] The evidence of J. M. and P. B. was mutually consistent as well as credible. There was nothing to suggest their testimony was self-serving. I believe M. B. talked candidly with J. M. about his plans regarding M. B.'s testimony in the family law litigation. K. B. has asked me to rely on M. B.'s evidence in court to give insight into his state of mind regarding the relationship between M. B. and S. C. I am unable to do so. I believe M. B. was truthful in M. B.'s conversation with J. M. because it was a private discussion. M. B. confided to J. M. that M. B. would be stating under oath that S. C. was not his common-law spouse and M. B. was concerned about how S. C. would react. This is significant because in my view, this evidence provides insight into M. B.'s view of M. B.'s relationship with S. C.

⁵³ GD10-1 and GD25-2

[58] I acknowledge K. B.'s submissions. When I look at the factors that support the existence of a common law relationship I have given significant weight to the fact that M. B. and S. C. were living together. They were doing all the things one would expect of a couple, like interacting with elderly parents, taking holidays, giving care during illness and planning funeral arrangements. The interweaving of significant amounts of money shows a commitment between M. B. and S. C. and supports they were in a marriage-like relationship. The oral testimony of S. C., J. M., P. B., the conclusions of the family law judge and the fact that M. B. and S. C. both invested significant money in the X home all support that M. B. and S. C. were cohabiting together in a conjugal relationship at the time of his death⁵⁴, having so cohabited for a period of at least one year.

[59] I am satisfied that it is more likely than not that M. B. and S. C. were common law partners at the time of M. B.'s death.

CONCLUSION

[60] S. C. is entitled to the survivor's pension. Therefore, K. B. is not entitled to a survivor's pension under the CPP.

[61] The appeal is dismissed.

Kelly Temkin
Member, General Division - Income Security

⁵⁴ May 2017