



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SW v Minister of Employment and Social Development*, 2020 SST 1090

Tribunal File Number: GP-19-483

BETWEEN:

S. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Teleconference hearing on: June 15, July 16, and August 18, 2020

Date of decision: August 27, 2020

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (“CPP”) survivor’s pension.

OVERVIEW

[2] The Claimant was living with S. M. (the “Contributor”) when he died on February 9, 2017. They were not married, but had lived together for more than 20 years. The Minister received the Claimant’s application for the CPP survivor’s pension on June 26, 2017. The Minister denied her application initially and on reconsideration. The Minister admits that the Claimant and the Contributor were co-residents. However, the Minister submits that the Claimant was not the Contributor’s common-law partner when he died. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP survivor’s pension, the Claimant must meet the requirements in the CPP. In particular, she must meet the definition of “survivor”. As she was not married to the Contributor, she can only be his survivor if she was his common-law partner when he died.¹

ISSUE

[4] Was the Claimant the Contributor’s survivor? In other words, was she the Contributor’s common-law partner on February 9, 2017?

ANALYSIS

[5] The Claimant said she had lived with the Contributor since 1993. However, she admitted at the hearing that the Contributor had many issues during the last years of his life. She said he suffered from depression, and it eventually became a serious mental illness. Although she filed small portions of documents from his various disability claims,² these documents contained no objective evidence of disability. This means I cannot disregard any of his evidence on the basis that he lacked competence or capacity.

¹ Subsection 42(1) of the *Canada Pension Plan*.

² See GD2-32 to GD2-34: none of these identify a specific disability or health condition.

Was the Claimant the Contributor's common-law partner on February 9, 2017?

[6] For the reasons that follow, I find that the Claimant was not the Contributor's common-law partner when he died. This means the Claimant is not the Contributor's survivor, for the purposes of the CPP survivor's pension.

[7] As noted, the Minister accepts that the Claimant and the Contributor resided at the same address in Guelph (the "Apartment") when the Contributor died. However, by that time, the Minister submits that their co-residence was not a common-law partnership. While living under the same roof is important, it does not (by itself) prove a common-law partnership.³

What is a common-law partner?

[8] The *Canada Pension Plan* defines a "common-law partner". Applied to this case, the Claimant is a common-law partner if she had cohabited with the Contributor in a conjugal relationship for at least one year immediately before the Contributor's death.⁴ I will discuss "cohabitation in a conjugal relationship" below. The definition of a common-law partner may not be the same in other statutes. However, as the *Canada Pension Plan* explicitly defines "common-law partner", I must rely on that definition.

How should I interpret this definition?

[9] A 2001 Pension Appeals Board (the "Board") decision called *Betts* is often cited as an authority on this issue.⁵ While the *Betts* decision only has persuasive value, it sets out which factors are usually relevant to "cohabitation in a conjugal relationship" (I will call these the "Betts Factors"). The Betts Factors are:

- (a) Financial interdependence
- (b) Sexual relationship
- (c) Common residence
- (d) Purchasing gifts on special occasions
- (e) Sharing of household responsibilities
- (f) Shared use of assets
- (g) Shared responsibility for children
- (h) Shared vacations

³ *Hodge v. MHRD*, 2004 SCC 65.

⁴ See s. 2(1) of the *Canada Pension Plan*.

⁵ The full name is *Betts v. Shannon*, (2001) CP 11654. It is frequently cited in other Tribunal decisions, such as the Appeal Division's decision in *B. G. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 229.

- (i) Expectation of mutual dependency
- (j) Beneficiary of will
- (k) Beneficiary of insurance policy
- (l) Where clothing was kept
- (m) Care for one another when ill, and knowledge of medical needs
- (n) Communications between the parties
- (o) Public recognition
- (p) Attitude and conduct of the community
- (q) Marital status on various documents
- (r) Funeral arrangements

[10] The evidence in this case is not completely for or against a common-law relationship. However, complete certainty is not necessary. The onus is on the Claimant to prove that she was cohabiting in a conjugal relationship with the Contributor for at least one year when he died. I find that the Contributor and the Claimant were not in a common-law partnership at that time. I will explain why I came to this conclusion, after setting out the Betts Factors in this case.

Betts Factors supporting a common-law partnership

[11] In the following paragraphs, I set out the Betts Factors that support a common-law relationship.

[12] The Claimant and the Contributor lived under the same roof. They shared a bed. They ate their meals together. They shared expenses to an extent, but the Claimant said he could not handle the responsibility. She paid the rent and hydro, while he would pay for other expenses.

[13] The Claimant and the Contributor had a sexual relationship. While this aspect had declined since the late 1990s, the Claimant attributed this to her antidepressants and the negative impact those drugs had on her libido.

[14] The Claimant and the Contributor shared household responsibilities. She did the laundry and looked after the Apartment maintenance. They both did the shopping. The Contributor prepared the meals.

[15] The Claimant and the Contributor would splurge once a year and buy gifts for each other.

[16] The Claimant and the Contributor used to take vacations together. They “had some wonderful trips to Europe”. However, when her job at RBC was outsourced in 2004, they could

no longer afford to travel. The Claimant said the Contributor talked about another trip to Europe, but they never went.

[17] The Claimant said she was one of the two beneficiaries in the Contributor's Will. The Claimant received the Contributor's household possessions and bank account proceeds, while the Contributor's sister received land. The Claimant said the land had special status because the Contributor was Indigenous and the land was part of the Sarnia First Nation.

[18] The Claimant and the Contributor both kept their clothing in the Apartment.

[19] The Claimant and the Contributor knew of each other's medical needs. They also cared for each other when they were ill. The Contributor visited the Claimant when she had retinal surgery, even though he had to take a train to get there. When the Contributor went to the hospital just before he died, he named the Claimant as his "next of kin" and "person to notify".⁶

[20] When the Contributor went on a business trip (before his disability) or away for the weekend, he would phone the Claimant daily.

[21] The Claimant said their friends and families recognized them as a common-law couple. She believes their landlord did as well.

[22] The Claimant gave her status as "common law" on her income tax returns up to 2017. She said the Contributor once identified her as a common-law spouse for his employment benefits program, but she was no longer listed after she started her own job and benefits at RBC in September 2000.

[23] The Contributor's family prepared his obituary, and described the Claimant as his "life partner".⁷ At the funeral, the Claimant said she sat "up front in the special widow's chair".

Betts Factors not supporting a common-law partnership

⁶ GD2-9 to GD2-11

⁷ GD2-49

[24] In the following paragraphs, I set out the Betts Factors that do not support a common-law relationship.

[25] The Claimant and the Contributor did not have significant financial interdependence. Both of their names were on the Apartment lease, but they did not have joint bank, trust, credit union, or charge card accounts.⁸

[26] The Claimant was not the executor of the Contributor's Will. At the first hearing, she said the Will did not describe her as a "partner". As a result, she had decided not to send it. She said the Contributor's view of her had "been the problem" in the past. As she wanted to think again about sending it, the hearing was adjourned twice.⁹ However, she never produced a copy of the Will. Shortly before the third hearing, she said she could not obtain a copy of it.¹⁰

[27] With respect to mutual dependency, the Contributor's attitude toward the relationship was troublesome. The Claimant said that, for the last ten years, "it wasn't a secret" that "he was sleeping with other women". However, she added that he was not actually involved in any relationships: he just wanted "shallow flings". Apparently, one young woman wanted him to leave the Claimant, but he did not agree. At the same time, the Claimant said the Contributor treated her as a possession. She attributed this to the Contributor's selfishness and severe mental illness. However, the Contributor apparently told the Claimant that he would not be alive without her. The Claimant said he saw her as a "support" and even a "doormat". She said she wanted to run away at one point, but their family doctor told her the Contributor would die if she left.

[28] While others sometimes recognized them as a common-law couple, the Contributor would sometimes describe their relationship differently. The Claimant said he would do this "to justify sleeping with other women".

[29] The Contributor repeatedly declared himself "single", rather than "common law", when asked about his marital status. He declared himself "single" on his February 2014 application for the OAS pension, and named the Claimant as a person not related by blood or marriage who

⁸ GD2-24

⁹ GD0A-1 and GD0B-1 to GD0B-2

¹⁰ GD6-1

could prove his Canadian residency.¹¹ He also declared himself “single” in his April 2015 and September 2016 applications for the Guaranteed Income Supplement (“GIS”).¹² When asked about these forms, the Claimant said the Contributor did not consider her an equal partner.

[30] The Claimant believes the Contributor applied for his CPP retirement pension as a single person because “he didn’t consider it a common-law relationship”. The Claimant does not know what status he declared when he applied for CPP disability benefits in 2012. She also does not know what status he gave on his tax returns, as they completed their tax returns separately.

[31] Even in situations where it would not have given him a financial advantage, the Contributor still identified himself as single. When he was admitted to hospital just before his death, he told the hospital he was “single”. He identified the Claimant as a “friend”.¹³

[32] The Contributor’s family took care of the funeral arrangements. The Contributor’s band council paid for the funeral. The Contributor’s family also prepared the obituary, although the Claimant said they consulted her about it. The Claimant did not appear as next of kin on the Contributor’s Death Certificate. While the copy in the Tribunal file was redacted¹⁴, the Claimant confirmed that the Contributor’s nephew was listed as next of kin. She attributed this to the ownership of land in the Sarnia First Nation.

Betts Factors not relevant in this case

[33] Some of the Betts Factors are not relevant to this case. The Claimant said they had not been able to afford a car since the 1990s. They had no children from this or any other relationship.¹⁵ She has never had a Will. Neither she nor the Contributor had life insurance. The Claimant has not yet applied for a CPP retirement pension. She is too young for an OAS pension.

Assessment of the Betts Factors

¹¹ GD5-3 and GD5-5

¹² GD5-7 and GD5-9

¹³ GD2-9 to GD2-11

¹⁴ GD2-23

¹⁵ At the hearing, the Claimant confirmed that she completed the form at GD2-24 incorrectly. She is visually impaired, and mistakenly indicated that the common-law union had children. In fact, they had no children.

[34] If all the Betts Factors carried equal weight, they could be slightly in favour of a common-law partnership. However, this is not a strict arithmetic exercise. Not all Betts Factors are of equal weight in every case.¹⁶ I note that the Contributor directly addressed his marital status on several occasions. I find this to be more compelling than circumstantial evidence about his marital status. I also note that some evidence does not apply to the last year of the Contributor's life. For example, they did not travel after 2004. Some factors supporting a common-law partnership could also support some other kind of relationship.

[35] In the end, the Betts Factors do not decide this case. They do not clearly favour one outcome over another. Critically, another precedent dictates how I must decide this case. I will first consider the quality of the relationship between the Claimant and Contributor.

Quality of the relationship

[36] The Claimant said the Contributor was a gifted and multi-talented genius, but was also selfish and had a "righteous sense of intellectual superiority". For example, he stopped seeing a psychiatrist because he thought he was intellectually superior to the psychiatrist. At the same time, he was clingy and insecure in the last few years of his life. He saw her as a possession. She also repeatedly said that his actions in his last ten years ought to be seen through the lens of mental illness. She said those years were very hard on them: it was a nightmare to live with him.

[37] Ultimately, this evidence does not help me decide whether there was a common-law relationship. It speaks more to the quality of the relationship, rather than the essence of the relationship itself. The Federal Court says that I should not evaluate the quality of the relationship, when deciding whether the relationship was actually a common-law partnership.¹⁷ I will now look at how each of the parties regarded the relationship.

How the parties regarded the relationship

[38] While the Claimant viewed the relationship as a common-law partnership, albeit a flawed one, I must also assess how the Contributor viewed it.

¹⁶ See, for example, *M. v. H.*, [1999] 2 SCR 3, at paragraph 60.

¹⁷ *McLaughlin v. Canada (Attorney General)*, 2012 FC 556. This decision binds the Tribunal.

[39] In the *Hodge* case, the Supreme Court of Canada said that a common-law relationship ends, “when either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one.”¹⁸ In the Contributor’s case, he declared for GIS purposes in September 2016 that he was single. Critically, in February 2017 (the last month of his life), he confirmed to the hospital that he was single. The Contributor gained no financial advantage by declaring himself single to the hospital. This declaration reinforced what he had said for GIS purposes five months before, and I saw no intervening declarations of common-law status by the Contributor. This suggests that his declared “single” status in February 2017 was not just a whim. Indeed, he also made similar declarations on forms completed in February 2014 and April 2015. I see no intervening declarations of common-law status during those years either. While he may also have declared himself “single” for his CPP retirement pension, I do not rely on that because no dates are available.

[40] The Claimant believed that the Contributor’s mental illness, during the last years of his life, made him avoid being “pinned down to definitions”. She thought that this was “so he could go out and have fun, and not have the burden of being in a relationship”. She affirmed that he did not consider her a partner as he “made his own reality”, and thought she “was just a friend”. She said she felt increasingly like “the long-suffering lady who just lived with” the Contributor.

[41] I find that the Contributor’s repeated statements regarding his marital status, including those made in the last year of his life, convincingly demonstrate that he regarded any common-law relationship to be at an end. They also show that this state of mind was a settled one. The Claimant affirmed that the Contributor felt this way toward the end of his life. While his statements may have been selfish, and may even have flowed from mental illness, I see no evidence that he was incompetent or that he had no basis for his belief. Indeed, the Claimant admitted that the Contributor sought ways to justify his infidelity. This suggests that he had some awareness of what he was doing and saying.

[42] I cannot disregard the *Hodge* decision. Supreme Court of Canada decisions are fully binding on the Tribunal. As the Contributor regarded any common-law relationship to be at an

¹⁸ *Hodge v. MHRD*, 2004 SCC 65.

end, I cannot find that it had existed for at least one year when he died. Even if the Betts Factors had been more persuasive, the *Hodge* decision would still apply.

[43] Although I do not need to rely on it, I note that my conclusion is consistent with the Federal Court of Appeal decision in *Dilka*. Like Supreme Court of Canada decisions, Federal Court of Appeal decisions are binding on the Tribunal. In the *Dilka* decision, the purported common-law spouses had told tax and social welfare authorities that they were single. The Federal Court of Appeal said it was reasonable to decide the case on that basis.¹⁹ This emphasizes how important marital status declarations can be, when deciding whether a common-law relationship existed. I also note that the predecessor to this Tribunal placed significant weight on written declarations by potential common-law partners.²⁰

Additional remarks

[44] The circumstances surrounding this case were difficult. The Claimant described many challenges in her relationship with the Contributor. She also disclosed details about that relationship which must have been very difficult for her to share. These details included prolonged infidelity by the Contributor. His death had also upset her.

[45] Despite these very real factors, I am bound by the higher court decisions. While the Contributor was not in a common-law relationship with anybody else when he died, his clear declarations prevent me from finding in the Claimant's favour. I also accept that the Claimant is far more "deserving" of a survivor's pension from the Contributor than anyone else. However, whether a person "deserves" a survivor's pension is not a factor I can consider.²¹

CONCLUSION

[46] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security

¹⁹ *Dilka v. Canada (Attorney General)*, 2009 FCA 90.

²⁰ *E.S. v. MHRSD*, (2012) CP 25586, at paragraph 38. While decisions of the Pension Appeals Board are not binding, they can have persuasive value.

²¹ *Farrell v. Canada (Attorney General)*, 2010 FC 34, at paragraph 49. This decision of the Federal Court is also binding on me.

