



Citation: *TF v Minister of Employment and Social Development and DP*, 2022 SST 407

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** T. F.  
**Representative:** Richard Pengelly

**Respondent:** Minister of Employment and Social Development  
**Representative:** Jared Porter

**Added Party:** D. P.  
**Representative:** Tara Vasdani

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**Decision under appeal:** General Division decision dated October 8, 2021  
(GP-21-336)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Teleconference

**Hearing date:** April 25, 2022

**Hearing participants:** Appellant  
Appellant's representative  
Respondent's representative  
Added Party  
Added Party's representative

**Decision date:** May 20, 2022

**File number:** AD-22-23

## Decision

[1] The appeal is allowed. The General Division committed an error by disregarding important evidence. I am overturning the General Division's decision and substituting it with my own decision to grant T. F. a survivor's pension.

## Overview

[2] This case involves two competing claims for a Canada Pension Plan (CPP) survivor's pension.

[3] The Appellant, T. F., married S. F., a contributor to the CPP, in 1993. They separated in 2006, although they remained married until S. F.'s death in May 2017.

[4] In July 2017, the Added Party, D. P., applied for a CPP survivor's pension. In her application, she indicated that she was in a common-law relationship with the S. F. at the time of his death. She also submitted a sworn statement declaring that she lived with S. F. for the last three years of his life.<sup>1</sup>

[5] The Minister granted D. P. the survivor's pension.

[6] In September 2017, T. F. also applied for the survivor's pension. The Minister denied this application because it had already determined that S. F. was living in a common-law relationship with someone else when he passed away.<sup>2</sup>

[7] T. F. appealed this decision to the General Division of the Social Security Tribunal. The General Division held a series of oral hearings by videoconference and, in a decision dated July 24, 2020, allowed the appeal. The General Division considered the evidence about S. F. living arrangements in the final year of his life and concluded that he was not in a common-law relationship with D. P. when he died. The General Division awarded the survivor's pension to T. F.

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<sup>1</sup> See D. P.'s application for the CPP survivor's pension dated July 5, 2017, GD2-126.

<sup>2</sup> See T. F.'s application for the CPP survivor's pension dated September 21, 2017, GD2-113.

[8] D. P. appealed to the Tribunal's Appeal Division. It overturned the General Division's decision for procedural issues and ordered a new hearing before a new member.

[9] The General Division held another series of hearings by teleconference. This time, in a decision dated October 8, 2021, the General Division sided with D. P. The General Division reviewed the documentary evidence and heard from more witnesses. In the end, the General Division found that D. P. shared homes with S. F. in Florida from February 2016 until his death. The General Division acknowledged that S. F. made occasional trips back to Ontario and had relationships with other women. However, it found that these facts did not negate the existence of a common-law relationship with D. P.

## **The Appellant's reasons for appealing**

[10] T. F. then requested permission to appeal from the Tribunal's Appeal Division. She alleged that the General Division made the following errors in coming to its decision:

– **Errors of procedural fairness:**

- It allowed D. P.'s representative to ask leading questions of all her witnesses;
- It did not consider any of the witness testimony that took place at the first General Division hearing;
- It permitted D. P.'s representative to ignore the Appeal Division's direction not to resubmit evidence; and
- It refused to sanction D. P. for failing to produce all relevant evidence.

– **Errors of law:**

- It permitted D. P. to submit new evidence and call new witnesses even though the Appeal Division had called for a *de novo* hearing; and

- It failed to consider S. F. intent, as required by the *Hodge* and *McLaughlin* cases,<sup>3</sup> during the **entire** relevant one-year period preceding his death.

– **Errors of fact:**

- It found that S. F. and D. P. were in a common-law relationship for more than one year when, in fact, they only lived together for seven months;
- It discounted the periods that S. F. spent in Canada during the last year of his life;
- It disregarded notes from S. F.'s psychotherapist, who indicated that the deceased was not settled in Florida during the last year of his life and did not intend to establish a common-law relationship with D. P.;
- It relied on the fact that S. F. signed a lease with D. P. without also taking into account evidence that he never (i) contributed rent for the house or (ii) lived in the house with D. P.;
- It disregarded evidence that S. F. was in serious relationships with two women other than D. P. in the year before his death; and
- It ignored the evidence of a forensic handwriting expert, who declared that loan documents submitted by D. P. were forgeries.

[11] I gave T. F.'s permission to appeal because I thought she had an arguable case. Last month, I held a hearing by teleconference to discuss her allegations in full.

## Issue

[12] There are four grounds of appeal to the Appeal Division. An appellant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use those powers;
- interpreted the law incorrectly; or

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<sup>3</sup> *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65; *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

- based its decision on an important factual error.<sup>4</sup>

[13] My job is to determine whether any of T. F.'s allegations fall into one or more of the permitted grounds of appeal and, if so, whether any of them have merit.

## Analysis

[14] I have reviewed the General Division's decision, as well as the law and the evidence that it used to reach that decision. I am satisfied that the General Division based its decision on an important factual error—one that it made without regard for the available evidence—when it found that S. F. intended to be in a common-law relationship for the entire year preceding his death. Because the General Division's decision falls for this reason alone, I see no need to consider the rest of T. F.'s alleged errors.

### **The General Division disregarded material evidence**

[15] In its decision, the General Division found that S. F. was living with D. P. in a marriage-like relationship for more than a year before his death. Although the General Division did not specify the date on which it believed the relationship began, it seemed to regard February 2016 as a turning point. In that month, D. P. and S. F. apparently signed a lease for a rental property in Florida.<sup>5</sup> Relying almost entirely on testimony from D. P.'s witnesses, the General Division found that D. P. and S. F. began presenting themselves as a couple from that point forward.<sup>6</sup>

[16] In short, the General Division found that, by their words and conduct, S. F. and D. P. displayed a mutual intention to be in a common-law relationship for more than a year before S. F.'s death.<sup>7</sup> However, when I look at the record as a whole, I see evidence that raises doubt about whether there was such an intention during the entire period.

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<sup>4</sup> *Department of Employment and Social Development Act (DESDA)*, section 58(1).

<sup>5</sup> See residential lease dated February 16, 2016, GD2-160. I note that S. F.'s name appears to have been written into the document by pen at the last minute.

<sup>6</sup> General Division decision, paragraphs 30–34.

<sup>7</sup> General Division decision, paragraph 53.

[17] S. F. suffered from post-traumatic stress disorder (PTSD) and regularly saw a psychotherapist in the last four years of his life.<sup>8</sup>The psychotherapist kept detailed notes of their sessions, which she summarized on behalf of T. F., as executor of her late husband's estate. The notes show that, on February 11, 2016, S. F. expressed reluctance to take his relationship with D. P. to the next level: "His friend, D. has been offered a job in the U.S. and she wants to take their friendship to an intimate relationship. How to explain to her 'we are only friends and need to keep that relationship.'"<sup>9</sup>

[18] This entry was written in the very month that, according to the General Division, marked the beginning of S. F.'s common-law relationship with D. P. Yet despite its obvious relevance as a narrative summary of S. F.'s activities and private thoughts, the General Division made no reference to it or, for that matter, anything else in the psychotherapist's notes.<sup>10</sup>

[19] The General Division also found that, after February 2016, S. F. and D. P. shared a residence onward, with "very little" changing in their relationship when they were apart.<sup>11</sup> Yet the psychotherapist's notes suggest that S. F. spent hardly any time in Florida over the next six months and that he regarded himself as homeless during that period:

- On February 11, 2016, five days before he signed the Florida lease, the psychotherapist noted that S. F. was at his mother's house in Niagara-on-the-Lake. The psychotherapist also noted him to be there during several subsequent sessions: March 10, March 17, May 5, and May 25.

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<sup>8</sup> See letter dated January 16, 2018 by Barbara Anschuetz, registered psychotherapist, GD1-225.

<sup>9</sup> Dr. Anschuetz's note dated February 11, 2016, GD1-229.

<sup>10</sup> The General Division did make a brief, footnoted reference to a 266-page package of documents that T. F. submitted with her notice of appeal on June 7, 2018 (GD1). However, the General Division did not specifically refer to the contents any of these documents, which included Dr. Anschuetz's notes, in its decision.

<sup>11</sup> General Division decision, paragraph 39.

- The next entry, June 16, does not specify where S. F. was calling from, but it appears that, except for a brief trip south, he had spent much of the previous three weeks in Ontario:

He went to Florida to bring back his boat; trying to deal with lack of funds to support T. F. and children; spending time with children instead of them having to go to camp or day care—taking them out boating for a day—the only costs are gas and a picnic lunch. A friend will loan him a camping trailer to put on T. F.'s property in the bushes—1 minute from the house.

Disclosed he met a lady who was a CEO, and they started a relationship. Within weeks of being with her, she wanted a full relationship—on his birthday, she took him for a weekend away, and then a gift. cert. for him and for his children for Great Wolf Lodge [a resort near Niagara-on-the-Lake]. When S. F. wasn't with her every day, she told him she had invested a lot in him—emotionally and financially and ended the relationship; then his former girlfriend T. was in town to see him (NOTL) another stressful relationship over many years...<sup>12</sup>

- On July 7, the psychotherapist noted that S. F. was calling from Florida, staying with a friend, C.<sup>13</sup> From subsequent entries, it appears that S. F. stayed there for the next month, but he was also recorded as saying, “I survive off of the charity and sympathy of others ... I live on whatever couch I can ... It's wondrous being 53, **homeless**, destitute, and without hope [my emphasis].”<sup>14</sup>
- By September 8, S. F. was back in Canada for an in-person session: “On Sunday, the bailiff showed up for his truck at T. F.'s home.”<sup>15</sup>
- On November 8, the psychotherapist wrote that S. F. was in Florida again. This time, she detected in him a small measure of contentment: “Moved to a

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<sup>12</sup> Dr. Anschuetz's note dated June 16, 2016, GD1-229.

<sup>13</sup> I will assume that this is a typographical error and that the psychotherapist meant “D.”

<sup>14</sup> Dr. Anschuetz's note dated July 30, 2016, GD1-230.

<sup>15</sup> Dr. Anschuetz's note dated September 8, 2016, GD1-230.

house—quiet, restful, goes out for social to interact with people; has a sense of grounding for the first time.”<sup>16</sup> Except for brief visits back to Canada in December 2016 and March 2017, it appears that S. F. remained in Florida until his death six months later.

[20] It is hard to square the General Division’s findings with what S. F. was telling his psychotherapist in confidence. How could the General Division find that the relationship between S. F. and D. P. had deepened into a marriage-like state at the same moment that S. F. was expressing a reluctance to become “intimate” with D. P.? How could the General Division find that S. F. shared a residence with D. P. in Florida when he spent much of February to October 2016 living with his mother in Canada and in a relationship with another woman?

[21] The most obvious answer is that the General Division disregarded the psychotherapist’s evidence. In its role as finder of fact, the General Division is presumed to have considered all the evidence before it,<sup>17</sup> but that presumption can be rebutted if highly material information goes unaddressed in its reasons.

[22] For that reason, I am satisfied that the General Division ignored objective and relevant evidence about S. F.’s intention to enter into a common-law relationship during the final year of his life. If the General Division did in fact consider the psychotherapist’s notes, then it should have made some attempt to address them in its decision and explain how they could be reconciled with D. P.’s evidence.

## Remedy

### **There are two ways to fix the General Division’s error**

[23] When the General Division makes an error, the Appeal Division can address it by one of two ways: (i) it can send the matter back to the General Division for a new hearing or (ii) it can give the decision that the General Division should have given.<sup>18</sup>

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<sup>16</sup> Dr. Anschuetz’s note dated November 8, 2016, GD1-230.

<sup>17</sup> See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

<sup>18</sup> DESDA, section 59(1).



[24] The Tribunal is required to proceed as quickly as fairness permits. The Federal Court of Appeal has stated that a decision-maker should consider the delay in bringing applications for benefits to conclusion. T. F. and D. P. have been vying for this survivor's pension in different forums for nearly five years. If this matter goes back to the General Division, it will needlessly delay a final resolution.

[25] At the hearing, the parties agreed that, if I were to find an error in the General Division's decision, the appropriate remedy would be for me to give the decision that the General Division should have given and make my own assessment of who is entitled to the survivor's pension. Of course, T. F. and D. P. had different views about that question.

[26] T. F. argued that, if the General Division had considered the evidence properly, it would have found she had the only valid claim to the pension, since her late husband was never in a common-law relationship. D. P. argued that, whatever the General Division's errors, the available evidence still showed that she was living with the deceased in a conjugal relationship during the entire year before his death.

### **The record is complete enough to decide this case on its merits**

[27] I am satisfied that the record before me is complete. T. F. and D. P. have both submitted large volumes of documentary evidence over two separate General Division proceedings, including bills, declarations, medical records, and hundreds of pages of emails and text messages. All told, the General Division has conducted seven days of oral hearings, in which T. F., D. P., and several witnesses gave evidence about the deceased's life and lifestyle in his final years.

[28] As a result, I am in a position to assess the evidence that was available to the General Division and to give the decision that it should have given. In my view, if the General Division had properly considered the evidence, it would have come to a different conclusion. My own assessment of the record satisfies me that S. F. was not in a common-law relationship with D. P. at the time of his death. As a result, the survivor's pension should properly go to his widow.

## The burden of proof is on the Added Party

[29] Where there are competing interests between the legally married widow of a deceased contributor and an alleged common-law partner, there is a presumption that the pension goes to the legal widow. As a result, the burden will be on the alleged common-law partner to prove that she was living with the deceased contributor in a conjugal relationship at the time of their death and had lived with them in a conjugal relationship for a continuous period of at least one year.<sup>19</sup>

[30] D. P. must establish that it is more likely than not that she was cohabiting with the deceased as his common-law partner at the time of his death, and they had done so for a continuous period of at least one year. If she fails to establish this, T. F., who was still legally married to S. F. when he died, will be entitled to the survivor's pension.

## A common-law relationship depends on mutual intention

[31] Common-law relationships differ from legal marriages. There is often no specific evidence, such as a marriage certificate, to show when common-law partners make a commitment to each other. Parties in a common-law relationship have to show, by their acts and conduct, a **mutual intention** to live together in a conjugal relationship of some permanence.<sup>20</sup> Mutual intention must be deduced from available evidence.

[32] The existence of a conjugal relationship may depend on many factors. The generally accepted characteristics of a conjugal relationship include shared shelter, sexual and personal behavior, services, social activities, economic support and children, as well as the societal perception of the couple. These elements may be present in varying degrees and not all are necessary for the relationship to be conjugal.<sup>21</sup>

[33] In this case, I find that, on balance, D. P. was not in a common-law relationship with S. F. at the time of his death. D. P. may believe that she cohabited in a conjugal relationship with the deceased for three years, but the evidence suggests that S. F. did

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<sup>19</sup> See *Betts v Shannon* (2001), CP 11654 (PAB); *Canada (Attorney General) v Redman*, 2020 FCA 209.

<sup>20</sup> See *McLaughlin v Canada Attorney General*, 2012 FC 556.

<sup>21</sup> See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65.

not begin to look at their relationship in the same way until the last few months of his life.

### **The deceased spent limited time in Florida between February and October 2016**

[34] Cohabitation is a major factor to consider when determining whether a couple is in a common-law relationship. It is possible to live together and not be common-law; conversely, it is possible to be common-law and not live together.<sup>22</sup>

[35] In this case, the evidence shows that S. F. and D. P. did not begin living together until October 2016. In that month, S. F. returned to Florida after spending most of the preceding year in Canada. He then proposed to D. P. and bought a house with her.<sup>23</sup>

[36] T. F. testified that her late husband did not have a settled home in the years between their separation and his death. She said that S. F. lived with a friend until 2013, then returned to live with T. F. and their children. In the fall of 2014, he moved in with his mother but continued a pattern of staying with friends—and not just D. P.

[37] D. P. testified that she began living with the deceased in May 2014. She swore a statutory declaration to this effect, and she filed income tax returns stating that she was married or in a common-law relationship. Her friends and family gave testimony backing up her story.

[38] However, the documentary evidence, including his emails, texts and medical records, do not support a finding that S. F. was living with D. P. for most of the three years that they knew each other.

[39] S. F. may have spent time with D. P. at her homes in Georgetown, Ontario and, later, Venice, Florida, but I do not accept that they actually began living together until they purchased a house together in October 2016. The S. F.'s texts to T. F. from 2014 to 2016 contain numerous references to him living in his truck or at his mother's home.<sup>24</sup>

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<sup>22</sup> *Hodge*, note 21.

<sup>23</sup> See GD2-170–181.

<sup>24</sup> See S. F.'s text messages, GD12-352, 363, 393, 372, 381, 435, 512, 819, and 856.

He said much the same thing to his psychotherapist, who reported that, throughout 2016 and into 2016, S. F. was living alternatively in his truck, with his mother or with T. F. and their children.<sup>25</sup> The psychotherapist mentioned D. P. in October 2015, but not in a way that suggested S. F. had permanently moved in with her: “[H]as only been at mom's apt. 3x in the last month; as was spending more time at D.'s house; he contributes to food and helps with projects in return for living there.”<sup>26</sup>

[40] In March 2016, S. F. thanked D. P. for “housing and feeding” him for two years: “Hopefully, I’ve been of ‘some use.’”<sup>27</sup> However, I do not take this to mean that S. F. had been continuously living with D. P. during that period. Rather, the context of the message suggests that D. P. accommodated him during difficult periods in his life when he needed a place to stay. The psychotherapist’s notes and S. F. text messages to his wife during the same period indicate that S. F. had no real place of his own and by necessity had adopted an itinerant lifestyle.

[41] So when D. P. insists that she was S. F.’s common-law partner for the entire three years they knew each other, I am skeptical. That skepticism extends to her assertion that she and S. F. began living together as soon as she moved to Florida in February 2011. As noted, S. F. may have signed a lease with D. P.,<sup>28</sup> but that does not necessarily mean he began cohabiting with her. There is certainly no evidence that S. F. ever contributed rent during the eight months that D. P. lived in the leased property.

[42] The file contains hundreds of pages of texts and emails between D. P. and S. F. and between T. F. and S. F. Large though this volume of material may be, I doubt that it represents a complete record of S. F.’s communications with the two women during his

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<sup>25</sup> See Dr. Anschuetz’s notes (GD1-226–231), in particular, entries for January 5, 2015 (“made time for children this Christmas”); April 14, 2015 (“spent 14 hours in his car”); May 14, 2015 (“has to use the matrimonial house as a safe place until stabilized”); May 19, 2015 (“three day darkness of sleeping in his car”); September 15, 2015 (“was able to find a suitable housing arrangement, that of sharing accommodation with his mother part-time and his ex-wife and children part-time”); October 16, 2015 (“hibernating in Niagara-on-the-Lake [mom's place]”)

<sup>26</sup> See Dr. Anschuetz’s note dated October 1, 2015, GD1-228.

<sup>27</sup> See S. M.’s text message dated March 3, 2016, GD36-216.

<sup>28</sup> See residential lease, note 5.

last years. I suspect that T. F. and D. P. both submitted only what they thought would bolster their respective cases.

[43] Still, even with these gaps in the record, I was able to piece together a rough picture of S. F.'s whereabouts in the final year of his life. As I noted in my earlier discussion of the psychotherapist's notes, S. F. spent much of his time in Southern Ontario, mainly at his mother's home, where most of his possessions remained until his death. In 2016, he began making regular trips to Florida (all dates approximate):

- February 18–24, 2016;<sup>29</sup>
- April 12–26, 2016;<sup>30</sup>
- June 14 to August 29, 2016;<sup>31</sup>
- October 24 to December 8, 2016.<sup>32</sup>

[44] This history shows that S. F. was predominantly based in Canada until June 2016, when the duration of his trips to Florida became longer. I note that S. F. expressed a wish to return to Canada during the summer but did not have enough money in his bank account for fuel.<sup>33</sup> On each trip, S. F. stayed with D. P. and took steps to establish a security consulting business, but it does not appear that he resolved to begin a settled life with D. P. until October 2016, when they became engaged and moved into the new home that they had purchased together.

[45] I am satisfied that S. F. lived with D. P. in a common-law relationship after the October 2016 until the time of his death. I can see that S. F. later entered into what appears to be a serious online relationship with a woman in Oregon,<sup>34</sup> but I don't see

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<sup>29</sup> See text messages, GD36-48–59.

<sup>30</sup> See text messages, GD36-239–245.

<sup>31</sup> See text messages, GD36-192–210; GD36-60–88; GD12-213; Dr. Anschuetz's note dated September 8, 2016, GD1-230.

<sup>32</sup> See Dr. Anschuetz's note dated November 8, 2016. It appears that S. F. returned to Florida in time for the close of his house purchase with D. P. Also see S. F.'s email to T. J. dated December 28, 2016, GD2-45.

<sup>33</sup> See S. F.'s text message dated August 15, 2016, GD1-253.

<sup>34</sup> See letter dated June 24, 2018 by E. L. (GD12-23), with accompanying text messages, March to May 2017, GD12-25–98.

any evidence that he terminated his relationship with D. P., or moved out of their residence, prior to his death.

[46] Still, however committed S. F. may have been to D. P., the fact remains that they cohabited for only seven months. That is short of the statutory requirement needed to prove a common-law relationship.

### **The deceased was hesitant to enter into a deeper relationship with the Added Party**

[47] S. F. resigned from the Toronto Police Service in 2014 after witnessing numerous psychologically traumatizing incidents. From February 2013 until his death four years later, he received regular counselling from a psychotherapist, who kept detailed notes of their sessions.<sup>35</sup> I place great weight on these notes because they were prepared by a qualified professional in the context of treatment and, as such, provide an objective, if incomplete, record of the deceased's thoughts and activities during the relevant period.

[48] D. P. testified that she met S. F. in 2014 and shortly afterward began a sexual relationship with him. However, S. F.'s comments to his psychotherapist suggest that they didn't have a sexual relationship as of February 2016.<sup>36</sup> As we have already seen, D. P. wanted intimacy, but S. F. wanted to keep D. P. as a friend.

[49] I don't doubt that S. F. and D. P. had a boyfriend-girlfriend relationship in 2014 and into 2015.<sup>37</sup> It appears that it came to a temporary end but that they remained close friends. I can also see that their relationship rekindled and deepened to the point where they again became intimate by May 2016.<sup>38</sup> But that does not mean S. F. intended to cohabit in a conjugal relationship with D. P., especially in light of the fact that he spent most of his time in Canada during the first nine months of 2016.

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<sup>35</sup> Dr. Anschuetz's letter, note 8.

<sup>36</sup> See Dr. Anschuetz's note dated February 16, 2016, GD1-229.

<sup>37</sup> See text messages and emails between S. F. and D. P., February 2014 to July 2015, GD36-16-38.

<sup>38</sup> See S. F.'s text message to D. P., GD36-169.

[50] I am reinforced in this belief by evidence that D. P. was by no means S. F. only romantic interest during the relevant period.

### **The deceased was not in an exclusive relationship with the Added Party**

[51] S. F. and D. P. had what appears to be an off-and-on relationship from 2014 onward. When D. P. still lived in Georgetown, Ontario, S. F. spent time at her home; when she moved to Florida, the pattern continued. However, none of this necessarily means that they were in common-law relationship.

[52] It is likely that S. F. regarded their relationship more casually than D. P.. This can be seen from evidence that S. F. had relationships other women during the final year of his life—both before and after his engagement:

- As mentioned, the psychotherapist noted that S. F. saw a corporate executive for several weeks during the summer of 2016;
- The psychotherapist also mentioned that, around the same time, a former girlfriend came to see him while he was living at his mother's home in Niagara-on-the-Lake; and
- A former PTSD advocate for United States Military veterans declared that she was in a long-distance romantic relationship with S. F. in the weeks and months before his death.<sup>39</sup>

[53] It is clear that D. P. was not the only woman in S. F.'s life during his final year. That fact does not decide the matter, but it's one more indication that S. F. did not intend to be in a committed and stable relationship with D. P. at the relevant time.

[54] I acknowledge that, even though S. F. remained married to T. F., he and D. P. became engaged in late October 2016 — there are congratulatory emails on file from D. P.'s friends,<sup>40</sup> as well as communications from a wedding planner<sup>41</sup> and an

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<sup>39</sup> E. L.'s letter and text messages, note 34.

<sup>40</sup> See emails from D. P.'s friends dated October 29, 2016 (GD36-104) and January 3, 2017 (GD36-120).

<sup>41</sup> See email dated May 3, 2017, GD36-140.

acknowledgement from S. F. himself that D. P. was his fiancée.<sup>42</sup> I am satisfied that the two lived with each other in the house they co-owned from that point until his death. But this finding gives D. P. only seven months of the 12 that she needs to establish a common-law relationship, and that is not enough to demonstrate survivorship under the CPP.

### **The deceased and Added Party were not financially interdependent**

[55] A key indicator of a common-law relationship is mutual economic support. However, S. F. and D. P. did not set up a common household until October 2016. It does not appear that they ever established joint accounts or pooled their finances.<sup>43</sup> And while D. P. gave S. F. monetary assistance, it came with strings attached.

[56] S. F. was in severe financial distress in the years before his death. That, plus the fact that he was absent for much of the time, might explain why he contributed little or nothing to rent and household expenses from February to October 2016, when D. P. lived in the leased property.

[57] D. P. testified that S. F. paid for common expenses and various home renovations. But other than a few odd text mentions of grocery stops during his visits, I did not see documentary evidence to suggest that S. F. consistently or significantly contributed to a common household between February and October 2016. S. F. later worked on their shared house, but that was the house that they purchased together in October 2016, after they became engaged.<sup>44</sup> In an effort to show that she and S. F. mutually supported each other, D. P. submitted documents showing that S. F. transferred \$200 to her account in May 2016.<sup>45</sup> However, based on my review of the available record as a whole, I see this money transfer as an isolated occurrence that was not representative of their relationship at that time.

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<sup>42</sup> See S. F.'s email dated February 20, 2017, GD36-125.

<sup>43</sup> For example, D. P. and the deceased never had a joint bank account or credit card.

<sup>44</sup> In an email dated October 24, 2016, S. F. inquired about access to his newly-purchased house in Florida so that he could perform various renovations (see GD36-96). Other emails indicate that, from October to December 2016, he oversaw pool cleaning, kitchen cabinetry installation, and other home improvements (see GD36-97–98, 106–07, 110–12).

<sup>45</sup> See email (GD36-177) and text message (GD36-178), both dated May 20, 2016.



[58] Other than accommodating S. F. during his visits to Florida, I see no evidence that D. P. offered him any significant or unconditional material support before October 2016, if at all. Indeed, there is more evidence of T. F. providing her estranged husband with financial help around that time frame, for instance:

- She helped him purchase a truck in 2015;<sup>46</sup>
- She paid some of his life insurance premiums;<sup>47</sup>
- She paid his dental bills;<sup>48</sup> and
- She paid his auto insurance premium.<sup>49</sup>

[59] In October 2016, D. P. and S. F. purchased a house in Venice, Florida.<sup>50</sup> It appears that D. P. and S. F. each contributed a share of the deposit,<sup>51</sup> and the balance was financed by a mortgage in both their names.<sup>52</sup> D. P. obtained mortgage insurance that covered S. F.<sup>53</sup>

[60] It is possible that S. F.'s share of the deposit was financed by D. P. herself. The file contains a brief written agreement dated September 2015 confirming that D. P. gave S. F. a \$50,000 loan and that he was to pay it back by February 2017.<sup>54</sup> There is also a signed declaration, addressed to "whom it may concern," in which S. F. declared that, on September 14, 2016, he transferred \$50,458 in U.S. funds to D. P.'s Florida bank account. He said that he did this because D. P. loaned him \$50,000 and because D. P. was purchasing a home and had asked him to pay back \$25,000 of that loan. He said that he had also purchased a new motorcycle in Florida and he needed a bank draft

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<sup>46</sup> See cheque signed by T. F. June 19, 2015, GD1-129

<sup>47</sup> See cheques made out to Transamerica Life dated July 13, 2015 (GD1-143) and September 14, 2015 (GD1-134) and Ivori dated January 26, 2016 (GD1-135) and June 15, 2016 (GD1-136).

<sup>48</sup> See bills dated November 24, 2015 and September 13, 2016 indicating that T. F. paid for S. F.'s dental work, GD1-141–42.

<sup>49</sup> See Co-operators statement dated September 26, 2017 (GD1-148–50) indicating that T. F. paid to insure S. F.'s truck for the prior year.

<sup>50</sup> See warranty deed dated October 27, 2016, GD2-180.

<sup>51</sup> From my review of the file, I was unable to determine what amount each of D. P. and S. F. contributed to the deposit.

<sup>52</sup> See mortgage dated October 27, 2016, GD2-170.

<sup>53</sup> See quote from Pulte Insurance Agency, GD36-91.

<sup>54</sup> See loan agreement dated September 5, 2015, GD12-143.

taken to the dealership.<sup>55</sup> There is also a certificate of title allegedly transferring his motorcycle to D. P., presumably in the event of non-payment of the loan.<sup>56</sup>

[61] T. F. attempted to cast doubt on the authenticity of these documents by submitting a report from a forensic handwriting expert.<sup>57</sup> The report, which T. F. commissioned, found that D. P. had likely forged S. F.'s signature on two of the documents.

[62] For the purpose of my analysis, I don't think it's necessary to make a finding about whether the loan documents are forgeries. I think it likely, although I can't be certain when, that D. P. lent S. F. some money at some point. How else to explain how S. F., who complained of being penniless for most of 2016, was suddenly able to afford a new Harley-Davidson motorcycle<sup>58</sup> and to contribute something to the down payment on the purchase of a new house?<sup>59</sup>

[63] However, even if I assume the documents are real, they do not help D. P.'s case. Instead, they demonstrate that D. P. did not completely trust S. F. to repay her whatever money she had lent him. D. P. made sure her loan was documented and secured, suggesting that it was as much a commercial transaction as it was the kind of mutual and unconditional support that one might expect to see between spouses.

[64] I'm sure that D. P.'s loan benefitted S. F., but it was no gift. When I review the evidence as a whole, I find that the financial arrangements between S. F. and D. P. did not show significant interdependence in a committed relationship of some permanence for a continuous period for at least one year.

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<sup>55</sup> See S. F.'s undated signed declaration, GD12-141.

<sup>56</sup> See certificate of title dated October 13, 2016, GD12-142.

<sup>57</sup> Report dated April 10, 2019 by Dianne Peterson, forensic document examiner and handwriting expert, GD12-140.

<sup>58</sup> See S. F.'s email to his Florida bank manager dated September 14, 2016, GD36-264. This date happens to coincide with S. F.'s purported signed declaration acknowledging repayment of his \$50,000 debt.

<sup>59</sup> There is also an indication in the file that S. F. might have accessed funds during the fall of 2016 by cashing in his Toronto Police Service Locked in Retirement Account (LIRA).

## Conclusion

[65] The General Division committed an error by overlooking important psychiatric evidence about S. F.'s activities and state of mind during the final year of his life. I have decided that the General Division's decision cannot stand. I am substituting it with my own decision to grant T. F. a survivor's pension.

[66] I recognize that D. P. may have had a sincere belief that she had lived in a common-law relationship with S. F. since May 2014. But the evidence showed that S. F. did not view their relationship in the same way until much later. A common-law relationship cannot exist without the mutual intention of the parties to live together in a married-like state of some permanence for an entire year.

[67] I find that the S. F. and D. P. did not become common-law partners until October 2016, only seven months before S. F. was killed in a motorcycle accident. This means that D. P. is not entitled to the survivor's pension because she failed to prove that she cohabited continuously with the deceased in a conjugal relationship for a continuous period of at least one year before his death. Instead, the pension goes to T. F. as the legally married spouse of S. F.

[68] The appeal is allowed.



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Member, Appeal Division