



Citation: *RB v Minister of Employment and Social Development*, 2024 SST 1040

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** R. B.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Dylan Edmonds

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**Decision under appeal:** General Division decision dated November 16, 2023  
(GP-22-1372)

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**Tribunal member:** Janet Lew

**Type of hearing:** Videoconference  
**Hearing date:** July 30, 2024  
**Hearing participants:** Appellant  
Interpreter (Hindi)  
Respondent's representative

**Decision date:** August 28, 2024  
**File number:** AD-24-137

## Decision

[1] The appeal is dismissed. The Appellant, R. B. (Claimant), is not eligible for a survivor's allowance under the *Old Age Security (OAS) Act*.

## Overview

[2] This is an appeal of the General Division decision dated November 16, 2023. The General Division determined that the Claimant was not eligible for a survivor's allowance under the OAS Act.

[3] The Appeal Division granted leave (permission) to the Claimant to appeal the General Division decision. Once the Appeal Division granted leave, then the appeal went ahead as a new proceeding.<sup>1</sup> The Appeal Division held a new hearing on July 30, 2024.

[4] The Claimant argues that she and T.B. were common-law partners and that she was therefore entitled to receive the survivor's allowance. She asked the Appeal Division to allow the appeal. She asks the Appeal Division to accept that she was in a common-law relationship with T.B.

[5] The Respondent, the Minister of Employment and Social Development (Minister), argues that the Claimant does not qualify for the survivor's allowance because she was neither married nor in a common-law relationship with T.B. The Minister asks the Appeal Division to dismiss the appeal.

## Issue

[6] Is the Claimant eligible for a survivor's allowance under the OAS Act? In particular, was she in a common-law relationship with T.B.?

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<sup>1</sup> See section 58.3 of the *Department of Employment and Social Development Act*.

## Preliminary matters

[7] Both parties filed documents after the hearing.<sup>2</sup>

– **Documents AD8 and AD9 are admissible**

[8] The Claimant filed an email statement on July 31, 2024, and the Commission filed a letter on August 21, 2024.

[9] The Claimant explained that she was stressed at the Appeal Division hearing. She says that because of this, she made mistakes when she testified and gave incomplete responses. She would like to correct the record and clarify some of the evidence she gave.

[10] At the hearing, the Claimant testified that she was in such a close relationship with T.B., that her siblings were unaware that she and T.B. were divorced. The Claimant states that she gave the wrong impression. She states that her sister was aware of the divorce early on, as she witnessed the Claimant and T.B. sign the divorce documents.

[11] The Claimant also states that T.B. likely told some of her siblings about the divorce. He was close to some of her siblings. She states that once one sibling became aware of certain news, then all of her other siblings would come to learn of that news.

[12] The Claimant also states that it was her sister-in-law, rather than her sister, who told her that she was eligible for a widow's pension, not the survivor's pension. In other words, she says that her family considered her the common-law spouse of T.B.

[13] The Minister does not object to the admissibility of the Claimant's statement of July 31, 2024. The Minister argues that they are of little relevance, as it is undisputed that the Claimant was divorced, and it is not the main issue on appeal. The Minister argues that the Claimant's statement does not help to establish that she was the deceased's common-law partner when he passed away.

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<sup>2</sup> See documents AD8 to AD10.

[14] I am accepting the Claimant's statement of July 31, 2024, as it helps to clarify the Claimant's evidence that she gave at the Appeal Division hearing.

– **Document AD10 is not relevant**

[15] The Claimant also filed a statement dated July 2024 from the Department of Employment and Social Development. The statement shows the amount of her monthly payment for the Guaranteed Income Supplement, the Allowance, or the Allowance for the Survivor benefit. The Claimant notes that the monthly amount is less than what she had been receiving.

[16] I am not accepting this document. It is not relevant and does not speak to the issue about whether the Claimant was in a common-law relationship with T.B.

## **Background facts**

[17] The Claimant and T.B. were married for about 33 years, from January 1975 to December 2007. They separated in 2000 and divorced in December 2007.

[18] Their culture did not allow them to date anyone while still married. So they divorced to allow the other to move on with their life. She thought that T.B. might be able to have a relationship with someone else. But neither remarried nor lived in a common-law relationship with anyone else.

[19] Despite being separated, they found that they kept "connecting."<sup>3</sup>

[20] The Claimant did not resume living with T.B. She explained that she could not live with him. His smoking habits aggravated the Claimant's thyroid disease. He was also a violent alcoholic. She says that she did not feel safe being alone with T.B. Indeed, she testified that she did not spend any time alone with him.

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<sup>3</sup> At approximately 10:37 of the audio recording of the General Division hearing.

[21] However, the Claimant did in fact spend time alone with T.B. She testified that when she went away for the weekend to visit a relative, she had dinner with T.B. before her niece came to pick her up. She left her car outside his home while she was away.

[22] The Claimant did not want intimate relations with T.B. because he smelled of cigarette smoke and was a violent alcoholic, but they spent much time together. She says that they had a conjugal relationship and were common-law partners.<sup>4</sup>

[23] Although they were divorced, they continued to spend time with the other's relatives. The Claimant says that her family invited T.B. as her spouse to events. Her nieces and nephews continued to address him as an uncle. T.B. helped with preparations at many of the family events.

[24] They celebrated family events, holidays, and religious functions together. They attended births, birthdays, weddings, and funerals of family members and relatives. This included her mother's birthday in 2014, and T.B.'s 60<sup>th</sup> birthday before that, in 2011. All of her siblings and their families attended T.B.'s birthday celebrations.

[25] They were also together after their grandchildren were born. They prayed and performed rituals together at some of these events. There are photos and a video showing the Claimant and T.B. with their children at different family gatherings.

[26] The Claimant and T.B. spent Christmas holidays with their children. They exchanged gifts. T.B. cooked dinner for the Claimant, her sister and her sister's spouse during the Christmas holidays. They attended their daughter's church for Christmas programs and plays. Her daughter's younger friends referred to them as "mama and papa."<sup>5</sup>

[27] The Claimant and T.B. also travelled together with their children. In November 2010, they travelled to California for a relative's wedding. The family went on fishing trips in 2011 and in 2015. In 2012, they travelled to Los Cabos. She shared a room with her daughter and her daughter's family. T.B. had a pullout couch in another room. She

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<sup>4</sup> See Claimant's letter dated June 28, 2024, at AD 7-6, at para 24.

<sup>5</sup> See Claimant's letter dated June 28, 2024, at AD 7-4, at para 9.

explained that within their culture, the men sleep apart from the women. Their daughter had to return to Canada for work. She and T.B. remained behind and travelled home together.

[28] The Claimant says that she frequently visited her cousin in the U.S. She parked her vehicle at T.B.'s home, as he lived close to the U.S. border. He always prepared dinner for them before she left for the weekend.

[29] The Claimant supported T.B. He fell ill during a family event in California in November 2010. Although she had to return home early due to work commitments, she took care of booking an appointment for T.B. with his family doctor. T.B. stayed at her sibling's home until he returned to Canada.

[30] T.B. supported the Claimant in return. When the Claimant was out of work in 2006 (while they were still married), T.B. helped her get a job with an employer for whom he also worked. When she had surgery in June 2014, T.B. drove her to the hospital. He visited her in the hospital. He also picked her up and took her home, where he cared for her that same day.<sup>6</sup> After that, he kept checking on her to see how she was feeling and to check if she needed anything.

[31] In 2015, the Claimant's vehicle was vandalized. T.B. took her vehicle to the body shop where he casually worked. He had the vehicle repaired. As he was an auto painter, he painted the vehicle to save her from making an insurance claim and paying the cost of the deductible.

[32] In September 2015, the Claimant's mother passed away. The Claimant found T.B. emotionally supportive. He attended the funeral and performed the rituals with the family, up to the six-month ritual.

[33] In January 2016, when the Claimant was out of work again, T.B. always called and checked on her. He offered financial assistance, although he too was financially struggling. About a week before T.B. passed away on April 30, 2016, he spoke with the

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<sup>6</sup> See Claimant's letter dated September 11, 2023, at GD 7-2 at para 11, and letter dated June 28, 2024, at AD 7-5, at para 16.

Claimant's sister and told her that he was applying for a Canada Pension Plan pension. He hoped that the Claimant would be able to get his benefits if anything were to happen to him.

[34] After T.B. passed away, the Claimant and her children, along with her siblings, and other relatives, attended his funeral and observed their religious rituals. After the funeral, she and her sister helped clean T.B.'s home with T.B.'s nephew's wife. Later that same evening, they said prayers at T.B.'s brother's home. The rituals continued for three days. There were more rituals six months later. She says that she performed the rituals as T.B.'s widow. The Claimant paid the funeral expenses from donations that she received.

[35] The Claimant and T.B. shared a safety deposit box. They paid for the safety deposit box from their joint bank account. She closed the joint account and transferred the safety deposit box to her own account.

[36] The Claimant also filed T.B.'s final income tax return.<sup>7</sup> The tax return asked for the taxpayer's marital status. The Claimant ticked the box "Divorced." There was also an option for "Living common-law." The Claimant did not tick off this box.

[37] In her Application for the Allowance or Allowance for the Survivor under the Old Age Security Program, the Claimant ticked off the box "surviving spouse or common-law partner" for her current marital status. When asked whether she was married to the deceased at the time of death, she ticked off "No." And, when asked whether she was living common-law with the deceased at the time of death, she ticked off "No."<sup>8</sup>

[38] The Claimant explained that she did not identify herself as being common-law as she did not appreciate what that meant.

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<sup>7</sup> See T1 General 2016, at GD 3-4.

<sup>8</sup> See Application for Allowance or Allowance for the Survivor, at GD 2-13.

## **The *Old Age Security Act***

[39] Under section 19 of the OAS Act, an allowance may be paid to the spouse, common-law partner, or former common-law partner of a pensioner for a month in a payment period.

[40] Section 2 of the OAS Act defines a common-law partner. It means 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. For greater certainty, in the case of an individual's death, the "relevant time" means the time of the individual's death.

### **The parties' arguments about whether the Claimant is entitled to the survivor's allowance**

[41] The Claimant argues that the evidence shows that she was the common-law partner of T.B. and that she is entitled to the survivor's allowance. The Minister says she does not meet the definition of a common-law spouse under the OAS Act and is not eligible for the survivor's allowance.

### **The Claimant argues that she was in a common-law relationship**

[42] The Claimant argues that although she and T.B. had not resumed living together, they had reconciled and had a common-law relationship for the purposes of the OAS Act. She argues that the definition of a common-law partner should take into account one's cultural values. She writes, "The cultural values, children and grandchildren who always kept us in conjugal relationship."<sup>9</sup>

- **The Claimant argues that there are several court cases that show claimants can be eligible for benefits as a common-law partner, even if they were not living with the other spouse**

[43] In a case called *McLaughlin*<sup>10</sup>, Ms. Gunderman was found to be the common-law survivor of the deceased. She had been residing with and was in a sexual relationship

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<sup>9</sup> See Claimant's letter dated June 28, 2024, at AD 7-6, at para 24.

<sup>10</sup> See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

with him for more than a year before his death, was a joint owner of their home, paid some of the utility bills for the home, was listed in the deceased's tax return as his common-law spouse, had given each other assistance, and had communicated on a personal level and represented to the world that they were common-law partners.

[44] The Federal Court referred to *Pratt*,<sup>11</sup> in which the Board of Referees listed the following factors "as being indicative of a conjugal relationship":<sup>12</sup>

- 1) Shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation.
- 2) 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.
- 3) Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services.
- 4) Social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members.
- 5) Societal, including the attitude and conduct of the community towards each of them as a couple.
- 6) Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property.
- 7) Attitude and conduct concerning any children.

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<sup>11</sup> See *Canada (Minister of Social Development) v Pratt*, 2006 CP 22323 (PAB), 2006 LNCPEN 5.

<sup>12</sup> See *McLaughlin* at para 15.

[45] The Federal Court also noted that the Supreme Court of Canada confirmed that these were the factors that should be used to test whether or not a common-law conjugal relationship exists: “The generally accepted characteristics of a conjugal relationship ... include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple.”<sup>13</sup>

[46] The Claimant argues that all of these characteristics may be present in varying degrees, but that not all are necessary for the relationship to be conjugal.<sup>14</sup>

[47] The Claimant also relies on the following cases from the Social Security Tribunal:

- *D.C.*<sup>15</sup> —The General Division determined that the added party L.M. was the common-law spouse of W.C. at the time of his death. They lived together from at least 1999 at L.M.’s home until February 2013, when W.C. moved to a nursing home. This was an involuntary separation and did not terminate the common-law relationship. Until his move, they had been sexually intimate and shared the same bedroom. L.M. cooked and did W.C.’s laundry. She took him to medical appointments and made arrangements for his move. She named him as a spouse for her employment and group benefit plans. They went to church, social and community events together. They were affectionate towards each other in front of others, and they received invitations as a couple. They shared some expenses.
- *L.C.*<sup>16</sup> —The Appeal Division determined that L.C. was in a common-law relationship with the contributor S.D. and therefore eligible for a Canada Pension Plan survivor’s pension. They had stopped living together years before S.D. died, but S.D. did not sleep and was an alcoholic. L.C. needed to sleep. She also ran a

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<sup>13</sup> See *McLaughlin*, at para 16, referring to *M. v H.*, 1999 CanLII 686 (SCC), [1999] 2 SCR 3, [1999] SCJ No. 23 at para 59.

<sup>14</sup> See *D.C. v Minister of Employment and Social Development and A.R.*, 2022 SST 137 at para 16.

<sup>15</sup> See *D.C. v Minister of Employment and Social Development and L.M.*, 2020 SST 1008.

<sup>16</sup> See *L.C. v Minister of Employment and Social Development*, 2024 SST 114.

business from her home. The contributor moved three blocks away, but the Appeal Division found that the parties did not intend to break up.

Although the contributor stopped drinking, they did not resume living together. The Appeal Division found that there were other factors to explain why they were unable to live together.

Although they did not live together, *L.C.* and *S.D.* had a sexual relationship for most of the time, except when the contributor was too sick in the year before he died.

*L.C.* helped the contributor, attended medical appointments with him and helped him in his home. The Appeal Division accepted that *L.C.* saw the contributor at least every second day in the year before he died. They shared some household duties. *L.C.* sometimes helped the contributor with groceries and laundry and the contributor did household maintenance. They spent much time together and they were a key part of each other's social lives. They did not financially support the other. The contributor did not name *L.C.* as a spouse but he named her as a beneficiary in his life insurance policy and public service pension plan documents. *L.C.* stated that she was single in her income tax returns.

Based on all the evidence, the Appeal Division accepted that *L.C.* was the common-law spouse of the deceased contributor.

- *S.B.*<sup>17</sup>—The General Division accepted that *S.B.* was entitled to receive the Canada Pension Plan survivor's pension. The General Division found that the Minister of Employment and Social Development lacked the authority to change its initial decision granting *S.B.* a survivor's pension. The General Division found that it was unnecessary to consider whether *S.B.* and the contributor were in a common-law relationship.

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<sup>17</sup> See *S.B. v Minister of Employment and Social Development*, 2020 SST 822.

## **The Minister argues that the Claimant was not in a common-law relationship**

[48] The Minister agrees that *McLaughlin* sets out the relevant factors in deciding whether individuals were cohabiting in a conjugal relationship. The Minister also agrees that this is not a conjunctive test and that no single factor plays a decisive role in what it describes as a “flexible analysis.”<sup>18</sup> The Minister argues that a decision-maker should assess all factors to determine whether the individuals had a mutual intention to be in a marriage-like relationship.<sup>19</sup>

[49] The Minister acknowledges that the Claimant remained on good terms with T.B. and that they spent much time together. They socialized at family events and drove each other to medical appointments.

[50] However, the Minister argues that the evidence points to a friendship, rather than to a common-law relationship. The Minister argues that when Parliament added the term “common-law partner” to the OAS Act, it did not mean to broadly expand the meaning of a spouse to include emotional ties or other measures of the strength or nature of the relationship.<sup>20</sup> The Federal Court held in the *Leavitt* case that:

As currently worded, where the term spouse is used in the OAS Act, it is followed by the term common-law spouse. There is no intention, as would be argued by the [Canada Pension Plan Review Tribunal], to extend the commonly understood meaning of “spouse” to include emotional ties or other measures of the strength or nature of the relationship. Rather, the intent was simply to avoid a definition of “spouse” that no longer accords with today’s understanding of that term.

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<sup>18</sup> See Submissions of the Minister, at AD 4-7 at para 13, citing *M. v H.*, 1999 2 SCR 3, 43 OR (3d) 254 at paras 59 to 60.

<sup>19</sup> See Submissions of the Minister, at AD 4-7, at para 13, citing *B.H. v Minister of Employment and Social Development*, 2023 SST 1296 at para 32.

<sup>20</sup> See Submissions of the Minister, at AD 4-7, at para 12, citing *Canada (Minister of Human Resources Development) v Leavitt*, 2005 FC 664.

[51] The Minister argues that the evidence shows that the relationship was more like a friendship, rather than a common-law relationship because:

- they lived separately
- they maintained separate finances except for a joint account for child support<sup>21</sup>
- they did not have sexual relations, and
- they presented themselves as a former couple to friends and family.

[52] The Minister argues that, in public, the Claimant and T.B. “presented themselves as a former couple, which was consistent with their independent living and financial arrangements, as well as their platonic bond.”<sup>22</sup> The Minister relies on and cites portions of the audio recording of the General Division hearing to support this argument. I note, however, that the Claimant did not actually testify at the General Division hearing that she and T.B. presented themselves as a former couple.

[53] The Minister also argues that, although T.B.’s addiction caused their initial separation, it has no bearing on whether the Claimant and T.B. were in a common-law relationship after their divorce. The Minister argues that there was no indication that the former couple wished to resume living together but were precluded from doing so by T.B.’s addiction. The Minister argues that “To imply so would be inconsistent with the evidence, which shows that living separately allowed the former couple to end an ‘unhealthy relationship’ and cultivate a ‘healthy’ bond.”<sup>23</sup>

[54] The Minister argues that the fact that the Claimant decided to live separately from T.B. for approximately 16 years is one among several factors weighing against a common-law relationship.

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<sup>21</sup> At approximately 37:50 of the audio recording of the General Division hearing.

<sup>22</sup> See Submissions of the Minister, at AD 4-7, at para 3, citing the General Division’s findings at paras 35 to 36, and note 4, and 35:35 of the audio recording of the General Division hearing. See also AD 4-8, at para 12, citing General Division decision note 4 at para 36. Note 4 of the General Division decision refers to pages GD 7-3 to GD 7-4.

<sup>23</sup> See Submissions of the Minister, at AD 4-8, at para 14.

[55] The Minister argues that occasionally, the Claimant and T.B. spent time alone together, but more often they socialized at family gatherings with others present.<sup>24</sup>

## Analysis

[56] The Claimant urges me to put a lot of weight on the fact that she and T.B. had been married for over 30 years and that, even after they separated, they did not remarry or cohabit in a common-law relationship with anyone else. But the fact that they had been married for a long time and did not remarry or live with anyone else after they divorced is not relevant.

[57] The OAS Act defines a common-law relationship. It requires continuous cohabitation in a conjugal relationship for at least one year at the time of the individual's death.

[58] I have to consider the state of the Claimant's relationship with T.B. Did it exhibit the hallmarks or features of a common-law relationship as defined by the OAS Act and which the Federal Court described in *McLaughlin*?

### – Shelter and sexual behaviour

[59] Cohabiting and having a sexual relationship while living together is usually a strong indicator of a common-law relationship. However, these are not essential, as there may be reasons why spouses are unable to continue residing together or to have sexual relations, such as in the cases *D.C.*<sup>25</sup> and *L.C.*,<sup>26</sup> cited above.

[60] The Claimant and T.B. did not have any sexual relations after their separation in April 2000. They lived separate and apart after that. The Claimant explains that they were unable to live together. She feared being alone with T.B. as he was a violent alcoholic. Additionally, she was unable to tolerate the fact that he smelled of cigarette

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<sup>24</sup> At approximately 36:10 and 41:45 of the audio recording of the General Division hearing.

<sup>25</sup> See *D.C.*, above, at note 14.

<sup>26</sup> See *L.C.*, above, at note 16.

smoke as she has thyroid disease. So, they could not be intimate even if he had not been potentially violent.

[61] There is no indication that T.B. ever attempted to address his addiction or to stop smoking in any effort to resume living together under the same roof. Neither the Claimant nor T.B. ever discussed or considered remarrying or living together again.

[62] Although the Claimant was unable to reside with T.B., I find her situation dissimilar from those in *D.C.* and *L.C.* In those cases, there was no mutual intention to end the relationship. That was not the case here. As the evidence shows, both the Claimant and T.B. decided to divorce to allow the other to move on with their life. This showed that, at that point, there was a clear mutual intention to end the relationship.

[63] So, the Claimant would have to show that at some point after the divorce, that she and T.B. began and had been cohabiting in a conjugal relationship for at least one year at the time T.B. passed away.

[64] The Claimant argues that the fact she could not live with T.B. or have intimate relations with him should not be determinative of whether there was a common-law relationship between them.

[65] However, the potential for violence and T.B.'s cigarette smell were the triggering factors that led to their separation in 2000. The Claimant and T.B. had divorced with the intention of moving on with their lives. In the Claimant's case, the divorce was to escape T.B.'s potential for violence and the cigarette smells.

[66] The potential for violence and the cigarette smells still existed after the divorce. The Claimant did not find these features attractive. The Claimant not only avoided being intimate with T.B., but she also avoided being alone with him for extended periods because of the potential for violence and because T.B. smelled of cigarettes. This does not suggest a common-law relationship between them.

– **Social and societal considerations**

[67] The Claimant urges me to put a lot of weight on the fact that her relationship with T.B. improved after the divorce, and that she and T.B. spent much time together and that their families treated them as if they were still a couple.

[68] The families remained close. The Claimant's sister still referred to T.B. as her brother-in-law,<sup>27</sup> and T.B.'s nephew still referred to the Claimant as his aunt.<sup>28</sup> He wrote that, "Socially everyone still treated them as a couple."<sup>29</sup> The Claimant's siblings continued to invite him to weddings, parties, religious or ritual functions, and any relatives' functions.

[69] When T.B. passed away, the Claimant received donations which she used towards funeral expenses.

[70] These considerations favour a finding of a common-law relationship.

– **Personal behaviour**

[71] While the social considerations favour a finding of a common-law relationship, they are not enough to satisfy the requirements set out in *McLaughlin* to indicate a common-law relationship.

[72] While the Claimant and T.B. spent much time together after their divorce in December 2007, it was primarily in the context of large family gatherings or celebrations, such as for weddings, birthdays, funerals, holidays, and religious functions, or for family trips. During these occasions, they spent time also with their children, grandchildren, and other family.

[73] But there was little sense of marriage-like behaviour or interaction. During family trips, the Claimant and T.B. slept in separate rooms. They did not have to be intimate to show that there was a common-law relationship. There may have been cultural reasons

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<sup>27</sup> See Claimant's sister's letter, at GD 7-8.

<sup>28</sup> See nephew's letter, at GD 7-6.

<sup>29</sup> See nephew's letter, at GD 7-7.

to explain some of their behaviour, but more tellingly, they had little of a private life together.

[74] They spent relatively little time alone. They had dinner together when she left her vehicle outside his home on weekends when she went to visit her cousin in the U.S. The Claimant and T.B. also helped each other when medical issues arose. When the Claimant had thyroid surgery in December 2004 (before they divorced), T.B. took her to the medical appointments, including follow-up appointments. He also stayed with her and took care of her. When the Claimant had surgery in June 2014, T.B. drove her to and from the hospital. He also looked after her on the day when she was discharged from the hospital.

[75] However, the Claimant did not mention any other occasions when she might have spent time alone with T.B. in the years after they divorced (though there likely were some occasions). The Claimant and T.B. kept and maintained separate residences. They did not regularly visit each other in their homes, other than when she dropped off her car and had dinner with T.B., before her niece picked her up to go to the U.S. Outside of family events, they generally did not spend much time together.

[76] Overall, this factor does not favour a finding of a common-law relationship.

– **Services**

[77] The Claimant and T.B. did not provide services for each other. They did not help each other in their homes or in many aspects of their lives outside of their family. For instance, there is no indication that either performed laundry or other household chores or maintenance, other than in 2015, when T.B. looked after repairing and painting the Claimant's vehicle which had been vandalized. This factor does not favour a finding of a common-law relationship.

– **Support**

[78] The Claimant and T.B. did not share any living expenses either, other than for a joint bank account and safety deposit box. The joint bank account had been used for child support. They kept the joint bank account open to pay for the safety deposit box. Otherwise, the Claimant did not use the joint bank account.

[79] The Claimant did not rely on T.B. for any financial support. Similarly, T.B. did not rely on the Claimant. Other than the joint safety deposit box, they kept their financial arrangements separate from the other. The Claimant took care of her own mortgage. T.B. offered help after she lost her employment in January 2016. But, as the Claimant recognized, T.B. was in no real position to be able to help her as he had his own financial commitments. Indeed, their adult children financially supported T.B.

[80] When T.B. spoke with the Claimant's sister about a week before he passed away, he told her that he was applying for Canada Pension Plan benefits. He hoped the Claimant would be able to get his benefits if anything happened to him. However, there is no evidence that T.B. indicated on the application form that he had a common-law partner with whom he wanted to share his pension.

[81] There was nothing to show that there were any mutual legal rights and obligations or commitment of any nature between the Claimant and T.B.

[82] The "support" factor does not favour a finding of a common-law relationship.

[83] Finally, there are no hospital emergency records, tax records, or other documents that might have shown that the Claimant or T.B. named the other as their common-law partner or next of kin.

– **Summarizing the *McLaughlin* factors**

[84] Some of the factors set out in *McLaughlin* (such as social and societal considerations, and attitude and conduct concerning children/family) favour the Claimant. But overall, most of the factors, including shelter, sexual behaviour, services

and support considerations, do not support the Claimant. The considerations that show a strong marital-like commitment were mostly lacking in their relationship.

[85] While the time the Claimant and T.B. spent together, how they spent that time together and with whom was certainly important, it would have strengthened their claim that they were in a common-law relationship had there been some of these other considerations present.

[86] Taking into account all of the factors set out in *McLaughlin*, on balance they do not show that the relationship between the Claimant and T.B. indicated a common-law one.

## **Conclusion**

[87] The appeal is dismissed. The Claimant is not eligible for a survivor's allowance under the OAS Act.

Janet Lew  
Member, Appeal Division