



Citation: *BS v Minister of Employment and Social Development*, 2024 SST 1203

## Social Security Tribunal of Canada General Division – Income Security Section

# Decision

**Appellant:** B. S.

**Respondent:** Minister of Employment and Social Development

**Added Party:** A. S.

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated May 9, 2023 (issued by Service Canada)

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**Tribunal member:** Adam Picotte

**Type of hearing:** Videoconference

**Hearing date:** September 19, 2024

**Hearing participants:** Appellant  
Added Party

**Decision date:** October 8, 2024

**File number:** GP-24-251

## Decision

[1] The appeal is dismissed.

[2] The Appellant, B. S., isn't eligible for a survivor's pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant submitted an application for a CPP survivor's pension on May 19, 2017. She wrote in her application that she was the common-law partner of J. K. (the "Contributor") and had been since 2009. At the time of application, the Appellant submitted a statutory declaration of common-law union, an incident report from the Toronto police, a bank statement, and an income tax return for the year 2015. While the address provided by the Appellant was different from the Contributor's, the Appellant provided an explanation that satisfied the Minister.

[4] As a result, the Minister initially granted the Appellant the benefit on the basis that she had resided with the Contributor in a conjugal relationship for at least one year immediately before the date of his death. However, in response to further information provided to the Minister in 2020, the Minister referred the file for further investigation. The investigation resulted in a cancellation of the survivor's pension and a resulting overpayment having been made to the Appellant.

[5] The Appellant says that while she maintained her own home, she lived with the Contributor and maintained a strong relationship that was acknowledged by the community. She submits that she had an intimate and sexual relationship with the Contributor for over six years, so she is entitled to a survivor's pension.

[6] After its investigation, the Minister concluded that the Appellant had not resided in a common-law relationship with the Contributor for at least one year. As a result, her survivor's pension was terminated, and an overpayment assessed against her.

## What the Appellant must prove

[7] While this is a cancellation of a benefit, the burden remains on the Appellant as the Minister determined that the Appellant was never entitled to the benefit in the first place.<sup>1</sup>

[8] The law says only the survivor of a deceased contributor to the CPP is entitled to a survivor's pension.<sup>2</sup> The CPP defines "survivor" as the common-law partner or (if there is no common-law partner) the married spouse of the deceased contributor.<sup>3</sup>

[9] A common-law partner is someone who cohabited with another person in a conjugal relationship for at least one year immediately before the other person's death.<sup>4</sup>

[10] It is possible for two people to cohabit even if they don't live under the same roof. It is also possible for two people not to cohabit even if they do live under the same roof.<sup>5</sup>

[11] To determine whether two people are common-law partners, I must look at things like:<sup>6</sup>

- a) **shelter**—including whether they lived together or slept together, or whether anyone else lived with them or shared their accommodations
- b) **sexual and personal behaviour**—including whether they had sexual relations, maintained an attitude of fidelity to each other, communicated on a personal level, ate together, assisted each other with problems or during illness, or bought each other gifts
- c) **services**—including their roles in preparing meals, doing laundry, shopping, conducting household maintenance, and performing other domestic services

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<sup>1</sup> See 2022 SST 1443 at paragraph 58 and *Canada (Attorney General) v Burke*, 2022 FCA 44

<sup>2</sup> See section 44(1)(d) of the *Canada Pension Plan*

<sup>3</sup> See section 42(1) of the *Canada Pension Plan*.

<sup>4</sup> See section 2(1) of the *Canada Pension Plan*.

<sup>5</sup> See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SSC 65.

<sup>6</sup> See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

- d) **social factors**—including whether they participated together or separately in neighbourhood and community activities, and their relationship with each other's family members
- e) **societal factors**—including the attitude and conduct of the community toward them as a couple
- f) **support**—including their financial arrangements for the provision of their needs and for the acquisition and ownership of property
- g) **attitude and conduct concerning any children**

## Reasons for my decision

[12] I find that the Appellant is not the Contributor's survivor. They never cohabitated with each other in a conjugal relationship.

### – The death investigation does not support a common-law relationship

[13] Contained in the reconsideration file is a General Occurrence report from December 31, 2016. It concerns a police report into the death of the Contributor. The report details that on December 31, 2016, the Appellant attended the Contributor's home and knocked on the door several times with no answer. She then advised the superintendent and asked him to open the Contributor's apartment door. He advised that he could not do this without police. As a result, 911 was contacted.<sup>7</sup>

[14] During the oral hearing, I asked the Appellant about what access she had to the Appellant's apartment. She told me that she had a key to his apartment, so she could come and go as she pleased. However, this is not supported by the General Occurrence report. I put the statement contained to the General Occurrence report to the Appellant. She told me that this was not correct. That, in fact, there was a sliding lock, and this prevented her from entering the apartment unit on December 31, 2016.

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<sup>7</sup> See GD2-22.

[15] However, I did not find this to be credible. The superintendent statement detailed that he could not open a door without police present. When the police arrived they noted a sliding lock but also noted that it was easily removed. The Appellant's explanation for this is not consistent with the report. I prefer the information contained in the report as it was written by a neutral third party without a vested interest in the outcome of this hearing. While the Appellant told me under oath that she had a key to the Contributor's apartment, I did not believe her. She would not have had to contact the Contributor's superintendent if she had a key. I find that the Appellant did not have general access to the Contributor's home.

[16] Similarly, the Contributor did not have a key to the Appellant's apartment. During the oral hearing, A. S., the Added Party and daughter of the Appellant, confirmed that when the Contributor attended their apartment, her mom would unlock the door for him as he did not have a key. I accept this evidence as credible and rely on it. The Added Party has a potential monetary interest in the outcome of this case. Her evidence, in this respect, was not helpful to her mother's case. As a result, I have no reason to doubt that it was truthful.

[17] These facts do not support that the Appellant and Contributor shared free access to each other's dwellings. I find this factor does not support a finding of a conjugal relationship.

– **The documentary evidence does not support a common-law relationship**

[18] The Appellant asserted that she and the Contributor had resided in a common-law relationship for approximately seven years before his death. However, there are almost no documents to support this.

[19] Neither the Appellant nor the Appellant's daughter is named in the Contributor's will. The Appellant did not share any joint banking account or insurance policies with the Contributor. I find this significant. Before his death, the Contributor became the beneficiary of a significant trust. The trust would pay the Contributor and then his surviving family upwards of \$40,000,000. Had this been a conjugal relationship, it is only reasonable that the Contributor, a non-practising lawyer, would have named the

Appellant and her daughter as beneficiaries of his estate. He did not. This fact weighs against a finding of a conjugal relationship.

[20] Moreover, the Contributor and Appellant did not share in joint ownership of any real property, vehicles, or other such things. Were this a conjugal relationship that is claimed to have been in existence for six years, the Appellant and the Contributor would likely have begun to mingle their possessions. However, there is no evidence of this. Just as persuasive is that the Appellant was unable to offer a reason for why this was not so.

[21] Further, the Contributor did not join the Appellant and her daughter on any vacations. I heard from the Appellant that the Contributor would join her at her apartment for dinners and occasionally stay overnight. However, his time spent there was for relatively short durations. The lack of any documentation showing the parties having cohabitated does not support a finding of a conjugal relationship.

– **The Contributor did not perform domestic services for the Appellant**

[22] During the oral hearing, the Added Party told me about her relationship with the Contributor. She told me that she perceived the Contributor as a paternal figure. However, the relationship she described to me was not one that would reasonably be seen as akin to a common-law father.

[23] The Added Party shared with me that she earnestly felt that the Contributor was a father-like figure. While I do not doubt her belief, she did not describe the sort of behaviours reflective of a paternal relationship. The Added Party told me that she would go to the racetracks and bet on horses with the Contributor. He attended a single soccer game that she played in during high school. He did not generally assist her with homework. Moreover, she never spent the night at the Contributor's home.

[24] While the Contributor counselled her on post secondary education and reviewed some written assignments for her, they were limited in number. The Appellant did not describe the sorts of emotional support a young child would require from a paternal figure. She did not detail any struggles he supported her through during school,

problems with friends, or difficulties with family. While these are not always present in relationships, the type of activities the Added Party described were generally superficial and lacked the emotional depth generally seen in a paternal relationship. I again find this factor does not support the presence of a conjugal relationship.

– **Family and friends did not accept the Appellant as a common-law spouse**

[25] The Minister provided a submission that references Court case 01-1033/17, involving the Estate of the Contributor and the Appellant. I obtained, reviewed, and sent a copy of the decision from that case to the Appellant.

[26] While the case deals with the issue of whether the same two people in this matter were in a conjugal relationship, I do not find it necessary to rely on that decision. However, I accept as fact that the executrix of the Estate and the biological children of the Contributor did not consider the Appellant to be the common-law spouse.

[27] The executrix was the respondent in case 01-1033/17 and defended the Estate of the Contributor successfully against the Appellant's assertion that she was the common-law partner of the Contributor. Moreover, in defending the Estate, the executrix produced sworn affidavits from the biological children of the Contributor which asserted that none of them acknowledged the Appellant to be the common-law spouse of the Contributor. I do not have evidence from these persons before me, but I do accept from these facts that family and friends did not accept the Appellant as being the Contributor's common-law spouse.

[28] This factor does not support a finding of a common-law relationship.

[29] During the oral hearing, the Added Party told me that when they had dinner together, his biological children did not attend. Similarly, when the Contributor joined the Appellant and Added Party for events or celebrations, he did not invite his children. This again weighed in favour of the Appellant and Contributor not having been in a conjugal relationship.

– **The sexual and personal behaviours do not support a conjugal relationship**

[30] I accept that the Appellant and the Contributor did have a sexual relationship. However, a sexual relationship is not akin to a conjugal relationship. More than sexual intimacy is required. A conjugal relationship implies mutual support and care. It is deeper and of a more personal and intimate nature. What I found striking in this case, and not supportive of a conjugal relationship, was that on the day of the Contributor's death, the Appellant was released from the hospital. She made no mention of the Contributor having visited her while in the hospital, nor of any support that he had provided to her during this time. This again is not in keeping with a conjugal relationship.

## **Conclusion**

[31] I am satisfied that the Appellant and Contributor did not reside in a common-law relationship for at least one year immediately before the Contributor's death. I have arrived at this conclusion based on the evidence before me. I relied heavily on the fact the Appellant and Contributor did not reside in the same dwelling, that there was not the mutual support present in a typical conjugal relationship, that there was a lack of legal ties between the two, and that the broader community did not regard them as common-law partners.

[32] I find that the Appellant isn't eligible for a survivor's pension because she was not the common-law partner to the Contributor for at least one year immediately before his death.

[33] This means the appeal is dismissed.

Adam Picotte  
Member, General Division – Income Security Section