



Citation: *SR v Minister of Employment and Social Development*, 2024 SST 1332

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

## Decision

**Appellant:** S. R.

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

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated February 20, 2024 (issued by Service Canada)

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**Tribunal member:** James Beaton

**Type of hearing:** Videoconference

**Hearing date:** October 30, 2024

**Hearing participant:** Appellant

**Decision date:** November 1, 2024

**File number:** GP-24-883

## Decision

[1] The appeal is allowed.

[2] The Appellant, S. R., is eligible for a Canada Pension Plan (CPP) survivor's pension in respect of the deceased contributor, B. G.. (I will refer to B. G. as the "Contributor" in the rest of this decision.) The Minister of Employment and Social Development was wrong to cancel the Appellant's survivor's pension. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant and the Contributor met in 1988 and began living together in August 2002 as common-law partners. They lived in downtown Toronto. The Appellant was a teacher for a Catholic school district and the Contributor worked for a multinational insurance company.

[4] In 2011, the Contributor's employer offered him a job in the Philippines. The Contributor accepted the job and moved to the Philippines in July 2011.<sup>1</sup> After a year, he returned to Canada but lived separately from the Appellant, outside of the Greater Toronto Area (GTA). The Appellant says this was more convenient for the Contributor's commute to work. Soon after, he moved back to the Philippines, again for work, but he only stayed a year before returning to Canada for the second time. Upon his return, he lived outside of the GTA as he did before. The Appellant argues that, throughout this period, he and the Contributor maintained a common-law relationship.

[5] In August 2022, the Contributor found a job with a different insurance company that would allow him to work remotely most days. Instead of moving in with the Appellant, though, the Contributor bought a house in New Brunswick so that he could take care of his aging mother.

[6] The plan, according to the Appellant, was to retire in June 2023 and join the Contributor in New Brunswick. They intended to get married. They had put off getting

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<sup>1</sup> See GD2-33.

married because they didn't want to jeopardize the Appellant's job with a religiously-affiliated school district. In fact, they had kept their relationship secret from the Appellant's employer for years. The Appellant worried that his employer might treat him poorly if they discovered that he was in a romantic relationship with another man.

[7] Unfortunately, the Contributor died suddenly on September 7, 2022. The Appellant applied for a survivor's pension as the common-law spouse of the Contributor. The Minister approved the application with payments effective October 2022. But a few months later, the Minister reversed its decision on the basis that the Contributor and the Appellant weren't living together for the year immediately before the Contributor died. The Minister stopped paying a survivor's pension and also required the Appellant to repay an overpayment of \$9,917.49, representing the benefits that he had received from October 2022 to December 2023.

[8] The Appellant appealed to the Social Security Tribunal's General Division.

## **What I have to decide**

[9] I have to decide if the Appellant is eligible for a survivor's pension in respect of the Contributor.

[10] The law says only the survivor of a deceased contributor to the CPP is entitled to a survivor's pension.<sup>2</sup> The *Canada Pension Plan* 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>

[11] The Contributor was never married. So the Appellant must prove that he was the Contributor's common-law partner. He must prove this on a balance of probabilities (that it is more likely than not).<sup>4</sup>

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<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 *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

[12] Under the *Canada Pension Plan*, 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>5</sup>

[13] According to the Supreme Court of Canada in a case called *Hodge*, 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>6</sup> In other words, I can't just look at whether two people lived together. To determine whether two people are common-law partners, I must consider multiple factors, such as:

- **shelter**—including whether they lived together or slept together, or whether anyone else lived with them or shared their accommodations
- **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
- **services**—including their roles in preparing meals, doing laundry, shopping, conducting household maintenance, and performing other domestic services
- **social factors**—including whether they participated together or separately in neighbourhood and community activities, and their relationship with each other's family members
- **societal factors**—including the attitude and conduct of the community toward them as a couple
- **support**—including their financial arrangements for the provision of their needs and for the acquisition and ownership of property

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<sup>5</sup> See section 2(1) of the *Canada Pension Plan*.

<sup>6</sup> See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SSC 65. See also *BK v Minister (Employment and Social Development)*, 2023 SST 1412; and *LC v Minister (Employment and Social Development)*, 2024 SST 114.

- **attitude and conduct concerning any children**

[14] These are sometimes called the *McLaughlin* factors because they were set out by the Federal Court in a case by that name.<sup>7</sup>

## **Matters I have to consider first**

### **– The Minister asked me to summarily dismiss the appeal**

[15] The Minister asked me to summarily dismiss the appeal under section 53(1) of the *Department of Employment and Social Development Act*.<sup>8</sup> To summarily dismiss an appeal means to dismiss an appeal without a hearing because it has no reasonable chance of success.

[16] Section 53(1) is no longer in force. It was removed from the legislation on December 5, 2022. The Tribunal can no longer summarily dismiss appeals.

## **Reasons for my decision**

[17] I find that the Appellant cohabited with the Contributor in a conjugal relationship for more than a year immediately before the Contributor's death. The Appellant was the Contributor's common-law partner and is the Contributor's survivor.

[18] To explain my decision, I will show how the evidence points to a common-law relationship beginning in August 2002. Then I will show how the evidence supports that their relationship never ended, even though they didn't live together after July 2011.

[19] Almost all of the evidence in this appeal took the form of testimony from the Appellant rather than documentary evidence. I found the Appellant to be a credible witness. He answered my questions in a forthright manner. His story has been consistent since he first applied for a survivor's pension. He never said anything that was inconsistent with the documentary evidence that is available. The Minister didn't

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<sup>7</sup> See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

<sup>8</sup> See GD3-7.

challenge the Appellant's testimony. For these reasons, I put significant weight on his testimony.

– **The Appellant and the Contributor began a common-law relationship in 2002**

[20] I find that the Appellant and the Contributor were in a common-law relationship from August 2002, when they moved in together, to July 2011, when the Contributor first moved to the Philippines:

- **shelter**—They lived together in the same house in downtown Toronto.<sup>9</sup> They slept together. No one else lived with them.
- **sexual and personal behaviour**—They were sexually intimate and faithful to each other. They ate their meals together and bought each other gifts, even when there was no special occasion to celebrate.
- **services**—They shared responsibility for buying groceries, preparing meals, and doing housework.
- **social factors**—They went to restaurants together. They had good relationships with each other's family members (parents and siblings). Their families understood the nature of their relationship.
- **societal factors**—The Appellant and the Contributor hid their relationship from the Appellant's employer. The Appellant's reasons for doing so, which I explained earlier, make sense. In these circumstances, I don't give much weight to this factor.
- **support**—The house where they lived was under the Appellant's name and they didn't share any joint bank accounts. However, the Contributor paid about \$700 per month toward the mortgage. This is a considerable amount of money, particularly in the years 2002 to 2011 (before adjusting for inflation).

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<sup>9</sup> The Appellant's driver's licence (issued in 2005) and the Contributor's driver's licence (issued in 2007) show the same Toronto address. See GD4-8 and 10.

- **attitude and conduct concerning any children**—Neither the Appellant nor the Contributor had children. This factor doesn't weigh in favour of or against a common-law relationship.

– **The Appellant and the Contributor's relationship never ended**

[21] Having found that the Appellant and the Contributor were in a common-law relationship for nearly nine years, it becomes clearer that their relationship was firmly established and never ended even when the Contributor moved away.

[22] In *Hodge*, the Supreme Court of Canada explained how to determine if a common-law relationship has ended. A common-law relationship ends when (1) either party regards the relationship as being at an end, and (2) that party convincingly demonstrates that their intention to end the relationship is settled.<sup>10</sup> In other words, both the parties' subjective intentions and their objective intentions (the *McLaughlin* factors) are relevant.

– **The Appellant and the Contributor's intentions**

[23] The Appellant testified that neither he nor the Contributor ever regarded their relationship as being at an end. I accept the Appellant's testimony. His subjective intentions are supported by an email exchange that he had with the Contributor in December 2020.

[24] The Appellant emailed his pension plan provider to ask when he could potentially retire. He also asked, "If I were to get married, by which date do I need to get married by in order to include my partner as part of my pension benefits?" He copied his email to the Contributor, and the Contributor replied, "Well put. Let's see how they respond." The Appellant answered, "I think I will get a positive response from them .... if so then we could be married within the next two years."<sup>11</sup>

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<sup>10</sup> See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SSC 65.

<sup>11</sup> See GD2-43.

[25] This shows that, as of December 2020, their relationship was very much intact. They planned to get married as soon as the Appellant retired and his employer was no longer a concern.

– **The Appellant and the Contributor’s actions**

[26] Understandably, their lifestyles changed when the Contributor moved in 2011. This is reflected in the *McLaughlin* factors. Viewed in context, I find that they don’t negate the continuation of a common-law relationship:

- **shelter**—They didn’t live together. The Appellant continued living in downtown Toronto. The Contributor moved twice to the Philippines, for a year each time, in order to accept positions offered by his employer. When he moved back to Canada, he lived outside of the GTA because he disliked living downtown and the commute was better. Then he moved to New Brunswick to care for his mother. They planned to live together when the Appellant retired.
- **sexual and personal behaviour**—Despite living apart, they lived close enough that they could visit each other every weekend. The Contributor enjoyed driving, so he would generally drive to Toronto to visit the Appellant. They continued to be sexually intimate and faithful to each other. They gave each gifts, although the Contributor preferred experiences over material things. For example, the Appellant paid for them to take a weekend trip to Niagara together. They spoke almost daily.
- **services**—Since they didn’t live together, they didn’t share services.
- **social factors**—They still went to restaurants together. The Contributor joined the Appellant’s extended family to celebrate holidays. The Appellant’s parents and the Contributor’s mother wrote letters confirming their common-law relationship.<sup>12</sup>

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<sup>12</sup> See GD1-19 and 20, and GD5-3.



- **societal factors**—This factor didn't change. The Appellant and the Contributor still hid their relationship from the Appellant's employer. The Contributor died before the Appellant retired.
- **support**—They didn't share any joint bank accounts or other joint property. However, the Contributor named the Appellant as beneficiary on his life insurance and on an RRSP.<sup>13</sup> The Appellant named the Contributor as beneficiary on his life insurance, too, although he gave the Contributor's status as "friend" due to his concerns about his employer.
- **attitude and conduct concerning any children**—Neither the Appellant nor the Contributor had children.
- **other factors**—The Contributor died without a will.<sup>14</sup> He was in his 50s and, as the Appellant testified, didn't expect to die soon. A Court granted the Appellant the right to administer the Contributor's estate, with the blessing of the Contributor's mother and sister.<sup>15</sup>
- The Contributor listed the Appellant as his emergency contact on a health clinic registration form in 2015.<sup>16</sup>
- From 2012 to 2021, they gave their marital status as common-law on income taxes. In 2022, the Appellant changed his status to widowed.<sup>17</sup>

[27] In summary, the Appellant and the Contributor had logical reasons for not living together after 2011. Their resulting lifestyle was somewhat unconventional for a common-law couple, but not necessarily inconsistent with common-law status. Indeed, they continued to exhibit many of the hallmarks of a common-law relationship despite living apart.

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<sup>13</sup> See GD1-13, 21, and 24.

<sup>14</sup> See GD2-46 to 48.

<sup>15</sup> See GD1-12, and GD2-35 and 36.

<sup>16</sup> See GD2-37.

<sup>17</sup> See GD11 and GD4-13, 15, 17, 19, 21, 22, 25, 28, 30, 32, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, and 58.

[28] They were intimate, spent time together, travelled together, and gave each other gifts. They hid their relationship from the Appellant's employer but their families viewed them as common-law partners. They didn't have a reason to hold joint bank accounts, but they named each other as beneficiaries on their life insurance policies. They consistently gave their status as common-law on taxes from 2012 to 2021. The Appellant was given the authority to administer the Contributor's estate.

## **Conclusion**

[29] In conclusion, the Minister's decision was wrong. The Minister's submissions focus entirely on the fact that the Appellant and the Contributor weren't living together when the Contributor died.<sup>18</sup> The Minister doesn't appear to have considered what the Supreme Court of Canada said in *Hodge*. The Minister didn't consider all of the factors that are relevant to determining a common-law relationship.

[30] When I consider *Hodge* and the *McLaughlin* factors, I find that the Appellant and the Contributor established a common-law relationship in August 2002. That relationship never ended. Therefore, the Appellant remained the Contributor's common-law partner up until the Contributor's death. The Appellant is the Contributor's survivor and is entitled to a survivor's pension.

[31] This means the appeal is allowed.

James Beaton  
Member, General Division – Income Security Section

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<sup>18</sup> See GD3.