Citation: *SM v Minister of Employment and Social Development*, 2025 SST 351

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	S. M.
Representative:	L. L.
Respondent:	Minister of Employment and Social Development
Representatives:	Yanick Bélanger and Vanessa Buffett

Decision under appeal:	General Division decision dated January 6, 2024 (GP-23-571)

Tribunal member:	Neil Nawaz
Type of hearing:	In person
Hearing date:	March 26, 2025
Hearing participants:	Appellant Appellant's representative Respondent's representatives
Decision date:	April 9, 2025
File number:	AD-24-767

Decision

[1] I am allowing this appeal. The Appellant is entitled to a Canada Pension Plan (CPP) survivor's pension.

Overview

[2] The Appellant and the late B. V., a contributor to the CPP, lived together for nearly six years. The Appellant moved into the Contributor's Lindsay apartment in September 2016 and moved out in June 2022. He died six week later.

[3] In August 2022, the Appellant applied for a CPP survivor's pension. In her application, she said that she and the Contributor lived together continuously in a common-law relationship from September 26, 2016 to June 6, 2022.[1]

[4] Service Canada, the Minister's public-facing agency, refused the application because, in its view, the Appellant had not been cohabiting with the Contributor at the time of his death.

[5] The Appellant appealed the Minister's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by videoconference and dismissed the appeal. It agreed with the Minister that the Appellant wasn't entitled to the survivor's pension. It found that, while the Appellant and the Contributor cohabited in a conjugal relationship until June 8, 2022, they demonstrated a clear intention to end their relationship as of that date.

[6] The Appellant then applied for permission to appeal to the Appeal Division. Earlier this year, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. Last month, I held a hearing to discuss her claim in full.

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[1] See the Appellant's application for the CPP survivor's pension dated August 29, 2022, GD2-39.

Issue

[7] For the Appellant to succeed, she had to prove that she was in a common-law relationship with the Contributor at the time of his death.

Analysis

[8] The Appellant bore the burden of proving that she and the Contributor were common-law partners at the time of his death.[2] In my view, the Appellant met that burden. She may not have been living under the same roof as the Contributor when he passed away on July 23, 2022, but she still met enough of the criteria to qualify her as his survivor.

The Appellant lived with the Contributor until six weeks before he died

[9] The Appellant testified that she and the Contributor were in a committed relationship for six years.[3] She emphasized that, although was a good and loving man, he had problems that only got worse over time. He was a longtime alcoholic. He suffered from severe post-traumatic stress disorder, having witnessed terrible things while working as a prison guard. After undergoing a hip replacement operation in 2019, he became increasingly paranoid and gun-obsessed. He began to keep a loaded rifle behind the couch. He was obsessively jealous and often, without any basis, accused the Appellant of cheating on him.

[10] The Appellant said that she witnessed the Contributor's decline but couldn't do anything about it. He rarely saw a doctor and was dead set against going to the hospital. Near the end, he could barely take care of his basic needs. He wasn't eating, and he hardly left the apartment. She doesn't know for sure, but she thinks that he suffered from a number of serious medical conditions, including heart disease, liver cirrhosis and related psychoses.

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[2] See *Canada Pension Plan*, section 44(1).
[3] On August 29, 2022, the Appellant completed a Statutory Declaration of Common-Law Union, GD2-46.

[11] On June 8, 2022, the Appellant and the Contributor had an argument. They were supposed to go out for lunch with friends, but she didn't want him to go in his condition. She went by herself, and her friends convinced her to leave the Contributor before she either lost her life or her sanity. That night, she stayed in a hotel in Lindsay to think about her options. The next day, on the advice of her friend and upstairs neighbour, K., she asked the police for an escort while she removed her belongings from the apartment. She worried about what the Contributor would do when he realized she was leaving.

[12] K. told her about an apartment that was available nearby. The landlord rented it to her that day, but he insisted that she sign a 12-month lease. Still, she felt very lucky to find a place on such short notice.

[13] The Contributor's health took a sudden turn for the worse after the Appellant left. He stopped eating, and he needed help to get off the couch. The Appellant checked up on him at least twice a day, before and after work, helping him get dressed, do his laundry, and go to the bathroom. She eased off when the Contributor's daughter, a registered nurse, arrived from the Netherlands for a two-week visit.

[14] In mid July, the Contributor collapsed and was admitted to hospital. At the same time, authorities seized his collection of firearms. He died a week later. In his final days, the Appellant continued to visit him. She brought him his computer so that he could speak to his children via WhatsApp. After he died, she was shocked to learn that the Contributor had changed his will. She hasn't been allowed to see it, but she understands that the executor was one of the Contributor's old work friends and that she wasn't named as a beneficiary. She assumes that his daughter pushed the Contributor into signing a new will during her final visit, although she doubts that he was in his right mind when he did so.

[15] There's no doubt that Appellant and the Contributor stopped living under the same roof six weeks before he died. This is a relevant factor in considering whether they were in a common law relationship. However, as we will see, it is not the only factor, and it is not the deciding factor.

The law says common-law couples don't necessarily have to cohabit

[16] A CPP survivor's pension is payable to the survivor of a deceased contributor. A survivor is a person who was legally married to the contributor at the time of his death. However, if the contributor was in a common-law relationship at the time of his death, then the survivor is the contributor's common-law partner.[4]

[17] A common-law partner is a person who was cohabiting with the contributor in a conjugal relationship at the time of the contributor's death, having done so for a continuous period of at least one year.[5] The one-year period must immediately precede the contributor's death.[6] The word cohabitation doesn't necessarily mean co-residence. According to *Hodge*, the leading case about what a common-law relationship means under the *Canada Pension Plan*, it is possible for a couple to cohabit, even if they don't live under the same roof.[7] Other cases have recognized that there can be valid medical, educational, or vocational reasons for a common-law couple to separate, provided they don't intend to end their relationship.

[18] The *Canada Pension Plan* doesn't define "conjugal" relationship, but the courts have said that it is characterized by factors such as:

- Shelter — whether the parties lived under the same roof;
- Sexual behaviour — whether the parties had sexual relations and were faithful to each other;
- Services — whether the parties prepared meals or performed other domestic services for each other;
- Social — whether the parties participated together in neighbourhood and community activities;
- Societal — whether the parties were seen as a couple by the community; and

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[4] See *Canada Pension Plan*, section 42(1).
[5] See *Canada Pension Plan*, section 2(1).
[6] See *Redman v Canada (Attorney General)*, 2020 FCA and *J.R. v Minister of Employment and Social Development*, 2021 SST 113.
[7] See *Minister of Human Resources Development v Hodge*, 2004 SCC 65.

- Support — whether the parties shared assets and finances.[8]

All the characteristics of a conjugal relationship may be present in varying degrees, but not all are necessary for the relationship to be conjugal.

[19] According to *Hodge*, a common-law relationship ends when one of the spouses "regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one."[9] That case involved a CPP survivor's pension claimant who was in a common law relationship with a contributor between 1972 and February 1993, at which point, because of his alleged verbal and physical abuse, she left. A brief reconciliation failed, and she agreed that, when she left for good in February 1994, she intended to, and did, end their relationship. The Court observed that "[s]uch periods of physical separation as the respondent and the deceased experienced in 1993 did not end the common law relationship if there was a mutual intention to continue."[10]

[20] The Court acknowledged that there were situations in which a couple might continue to be in a common-law relationship even though they were living apart. It also suggested that even a physical separation due to verbal and physical abuse might not end a common-law relationship, and that couples can enter a "cooling off" period without ending their relationship.[11] A number of other cases have recognized that domestic abuse can precipitate a couple's separation without jeopardizing their status as common-law partners.[12]

[21] I believe that the Appellant's case falls into this last category. The Appellant left the home she shared with the Contributor, but she didn't do so voluntarily. The Contributor's increasingly erratic behaviour gave her good reason to believe that her life would be in danger if she stayed. She didn't want to leave, and her actions in the six

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[8] See *Hodge* and *McLaughlin v Canada (Attorney General)*, 2012 FC 556.
[9] See *Hodge,* paragraph 42.
[10] See *Hodge,* paragraph 42.
[11] See *Hodge,* paragraph 42.
[12] See *L.C. v Minister of Employment and Social Development*, 2024 SST 114; Minister of Human Resources and Skills Development *v S.S.*, October 6, 2011, CP27386 (PAB); and *S.C. v Minister of Employment and Social Development*, 2015 SSTGDIS 34.

weeks leading up to the Contributor's death indicate that she continued to see herself in a marriage-like relationship, even if she and the Contributor were no longer living under the same roof. As for the Contributor, I am not satisfied that his state of mind convincingly demonstrated a "settled" intention to end the relationship.

The Appellant was credible

[22] The Minister argued that the Contributor intended to definitively end his relationship with the Appellant, and he pointed to various items of documentary evidence suggesting that he had taken steps to exclude her from his finances. At the hearing, the Appellant told her side of the story and insisted that the paper record didn't reflect what really happened.

[23] For various reasons, the Appellant lacked documentary evidence to support many of her claims. Still, I believed her. I believed her when she said the Contributor was an abusive and increasingly delusional alcoholic. I believed her when she said she feared for her life when she fled their apartment on June 8, 2022. I believed her when she said that a suitable apartment fell into her lap at just the right moment. I believed her when she described how she continued to care for the Contributor in his final days, first at home, then at hospital.

[24] It's not hard to imagine that a former prison guard would be traumatized by some of the things he had witnessed during his career and suffer psychological problems as a result. It's easy to believe that his mental health and cognition would deteriorate as age and years of drinking caught up to him. It's well known that victims of abuse often return to their abusers. It's well within the realm of possibility that a long absent adult daughter might induce an ailing parent to change his will on his death bed.

[25] In short, I found the Appellant's narrative plausible. Her testimony was coloured with details that rang true. She was understandably emotional when telling me about the final weeks of her relationship with the Contributor, but I never felt that she was embellishing her story. Nothing in the admittedly thin record contradicted what she said.

The Appellant and the Contributor continued to meet many of the indicia for a common-law relationship after June 8, 2022

[26] Like many couples who find each other in middle age, the Appellant and the Contributor already had established lives and finances when they moved in together. They did not find it convenient or necessary to commingle every aspect of their lives:

- The Contributor already had an apartment, so the Appellant moved in. They did not bother to put her name on the lease.
- The Contributor already had utility accounts set up, so there was no need to set up new ones or add her name to existing ones.
- The Appellant and the Contributor already had their own cars.

[27] Even so, the Appellant and the Contributor exhibited many of the characteristics typical of an enduring and settled relationship even after they separated on June 8, 2022:

- The Appellant continued to care for the Contributor, visiting him twice a day and attending to his personal needs during his final health crisis.
- The Appellant and the Contributor continued to have a joint bank account at ScotiaBank up to the time of his death.[13]
- The Appellant continued to be the named beneficiary of the Contributor's Co-operators life insurance plan and received a payout of more than $20,000 after his death.[14]

[28] The Minister did not dispute that the Appellant and the Contributor were common law partners from September 2016 to June 2022. Rather, he argued that their conduct indicated a mutual intention to end the relationship on June 8, 2022. He pointed to the following acts:

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[13] See ScotiaBank statement dated July 22, 2023, AD1-59.
[14] See disbursement letter dated September 15, 2022 from Co-operators Insurance Company, GD9-28.

- The Appellant moved out of the apartment she shared with the Contributor and signed a long-term lease elsewhere.
- The Appellant removed most or all of her belongings from the apartment.
- The Contributor removed the Appellant as a dependent on his extended Manulife healthcare plan.
- The Contributor removed the Appellant as a beneficiary on his Ontario Public Service Employees Union (OPSEU) pension plan.
- The Contributor changed his will and apparently removed the Appellant as beneficiary and executor.

[29] On the face of it, these acts suggest that the Appellant and Contributor had broken up for good. But having listened to the Appellant, I'm convinced there was more here than met the eye. The Appellant offered explanations and context that led me to believe that neither the Appellant nor the Contributor intended to end their relationship. In particular, I find that, contrary to appearances, the Contributor took no active steps to excise the Appellant from his life.

[30] The Appellant fled the apartment that she shared with the Contributor because she genuinely feared for her safety. She had good reason to be afraid. The Appellant, who later discovered that she had been written out of the Contributor's will and stripped of her power of attorney over his affairs, had no access to his medical records, but I accept that the Contributor was in the final stages of a progressive disease that had affected his behaviour and likely eroded his cognitive abilities. He was not the person he had been a few years earlier. The gravity of his condition can be inferred from the fact that he died only a few weeks later.

[31] The Appellant left the apartment in a panic. She testified that she spent her first night in a hotel and the next day signed a 12-month lease for the first place that was suggested to her. She was desperate. She was not in a position to conduct a search for optimal accommodation. She had a job. She couldn't afford to keep living in a hotel. Her children lived far away.

[32] From the available evidence, I have pieced together a chronology of key events:[15]

June 8, 2022	Appellant leaves Contributor's apartment
June 24, 2022	Contributor formally terminates employment and membership in the OPSEU pension plan.
June 26, 2022	Contributor's daughter arrives in Canada
July 12, 2022	Contributor's will revised
July 12, 2022	Contributor's daughter departs
July 14, 2022	Appellant removed as dependent from Contributor's Manulife extended health care plan
July 15, 2022	Contributor admitted to hospital
July 23, 2022	Contributor dies

[33] I don't think it's a coincidence that the Contributor's will and named dependents changed in and around the time his daughter visited him from the Netherlands. I think it is likely that she persuaded or induced her father to sign off on these changes at a time when his physical health was in steep decline, his mental capacity was impaired, and his domestic life was in turmoil.

[34] The Minister argues that the fact a new will was executed proves he was of sound mind in the last six weeks of his life. I'm not so sure. Like the Appellant, I don't have access to the will, but I accept her evidence that it was generated by an online service (the hospital returned the Contributor's laptop to her after his death even though she wasn't his beneficiary).[16] The will therefore appears to have been executed without the involvement of a lawyer. It must have been witnessed, but we don't know who witnessed it or the circumstances in which they did so. It was never probated,

[15] These dates are largely drawn from the Appellant's testimony and her written submissions dated April 7, 2025 (AD11) and from a denial letter dated June 8, 2023 by Richard Ashmore, benefits specialist, OPTrust (AD12-19).
[16] See Appellant's submission dated October 9, 2024, AD1-18.

presumably because the Appellant left few assets. It is possible, even likely, that the Appellant signed his final will under the influence of his daughter without fully comprehending what he was doing.

[35] Nor do I place much significance on the fact that the Contributor apparently delisted the Appellant as a dependent from his Manulife extended health care plan. The Appellant argued that this event occurred only because the Contributor had formally resigned from his employment as of June 24, 2022, thereby removing himself from the Ontario public service's regular benefits. That might be so, but the three-week gap between the Contributor's resignation and the Appellant's delisting makes me think that something else was at play. Again, I suspect that the Contributor's daughter influenced him to remove the Appellant from the plan on or about July 14, 2022. True, that milestone came two days after my best estimate of when the Contributor's daughter left Canada, but processing time likely accounted for the delay.

[36] As for the OPSEU pension plan's refusal to pay the Appellant a survivor's pension, I don't place much significance on that either. OPTrust, the plan's administrator, issued a rejection letter making it clear that, since the Contributor never named the Appellant as his common-law spouse while he was an active member of the plan, he had no need to "remove" her from the plan, if that's what he wanted to do.[17]

[37] While acknowledging that Appellant and the Contributor were in fact common-law spouses for a number of years, OPTrust proceeded to deny the Appellant a survivor's pension for many of the same reasons the Minister has denied her the CPP equivalent. Like the Minister, OPTrust pointed to the Appellant's departure from the Lindsay apartment and the Contributor's revocation of his earlier will. But OPTrust did not, as I have tried to do here, look into the circumstances behind these acts. Furthermore, it relied on information from the Contributor's daughter to come to its decision, ignoring evidence that she may have had a financial interest in establishing that her father was single at the time of his death.

[17] See denial letter dated June 8, 2023 by Richard Ashmore, benefits specialist, OPTrust, AD12-19.

[38] It remains unclear why, if the Contributor's daughter was arranging her father‘s affairs to her benefit, she didn't also induce him to change his life insurance policy and make her his beneficiary. It is possible she didn't know about the policy. Whatever the explanation, the fact remains that Manulife ultimately paid the Appellant a significant sum upon the Contributor's death. Since, according to the Appellant, the Contributor had few other assets, this payout represented his largest posthumous "gift."

Conclusion

[39] This is a case of unfortunate timing. The Appellant and the Contributor were common-law partners for nearly six years. They had a tumultuous relationship, marred by the Contributor's worsening drinking problem, his deepening anger issues, and his increasingly erratic behaviour. Only six weeks before the Contributor's death, the Appellant fled their home after an ugly argument. It wasn't a voluntary separation: the Appellant loved the Contributor but, in his state of mind, she genuinely felt her safety was at risk.

[40] Desperate and fearful, the Appellant took the first accommodation that was suggested to her, even though it meant signing a long-term lease. Despite that, she continued to routinely visit the Contributor and care for him as his health precipitously declined. Case law recognizes that there may be situations in which a couple no longer lives under the same roof but nonetheless remain in a common-law relationship. This is one of those situations. The Appellant lived apart from the Contributor in the last six weeks of his life, but their relationship otherwise retained many of the hallmarks of a committed, marriage-like relationship.

[41] The Appellant's claim was complicated by certain acts that the Contributor apparently took in the final weeks of his life — acts that just happened to coincide with the arrival of his daughter from abroad. Unfortunately, it is not unheard of for adult children to attempt to alienate their parents from their late-life partners, particularly when, as here, the parent may not be in full possession of his faculties.

[42] In all, I find that the Contributor did not take active steps to remove the Appellant from his will or his accounts. I am satisfied that, after June 8, 2022, the two of them were in the midst of what would likely have been a temporary separation had it not been interrupted by the Contributor's death.

[43] The appeal is allowed.

Member, Appeal Division