



Supreme Court of British Columbia Delivers Landmark Decision on Survivor Benefit Entitlement

Introduction:

In *Gorecki v Byelyeychuk*, 2024 BCSC 1589, the Supreme Court of British Columbia addressed a complex dispute concerning entitlement to a survivor benefit under the pension of the late Bohdan Gorecki. The court had to determine whether Ellen Gorecki, Bohdan's legal spouse, or Olha Byelyeychuk, who claimed to be his common-law partner, was entitled to the benefit.

Summary of Facts:

Ellen Gorecki, the plaintiff, sought a declaration that she was entitled to the post-retirement survivor benefit from her late husband's pension. Bohdan had purportedly married Olha Byelyeychuk in 2004 while still married to Ellen. Olha contended she was Bohdan's common-law partner from 2004 until his death in 2015. The pension administrator had not made any survivor benefit payments pending the court's decision, resulting in an accumulation of almost \$150,000 in back payments.

Key Issues:

- Statutory Entitlement:** Under the *Pension Benefits Standards Act*, RSC 1985, c. 32 ("PBSA"), and the terms of the Northern Transportation Pension Plan, who is entitled to receive the survivor benefit?
- Common Law Partnership:** Was Olha Byelyeychuk a common-law partner to Bohdan Gorecki at the relevant times?
- Family Law Act Implications:** Does the *Family Law Act*, SBC 2011, c. 25 ("FLA") impact the entitlement to the survivor benefit?
- Apportionment:** What is the appropriate division of the survivor benefit?

Court's Analysis and Decision:

Justice Kirchner meticulously analyzed the statutory framework and the relationship dynamics between the parties.



- **Statutory Entitlement:** The PBSA and the pension plan prioritize a common-law partner over a legal spouse if both exist. The court confirmed that Olha was Bohdan's common-law partner under the PBSA as of October 1, 2012, and at his death.
- **Common Law Partnership:** Justice Kirchner found credible evidence supporting Olha's claim of a conjugal relationship with Bohdan from 2004 until his death.
- **Family Law Act:** The court held that the survivor benefit is family property and can be divided under the FLA, even if vested in a current spouse. This was supported by the precedent set in *Kraft v Kraft*, 2020 BCSC 283, which allows for such a division to achieve equitable outcomes.
- **Apportionment:** Given Ellen's significant non-financial contributions during the marriage and the family property implications, the court ordered an equal division of the survivor benefit between Ellen and Olha.

Legal Opinion:

This decision underscores the importance of understanding the interplay between federal pension legislation and provincial family law statutes. The court's reliance on *Kraft v Kraft*, 2020 BCSC 283, and *Tarr Estate v Tarr*, 2014 BCCA 315, demonstrates a commitment to equitable distribution, considering both financial and non-financial contributions to marital assets.

For legal practitioners, *Gorecki v Byelyeychuk* emphasizes the necessity of timely family law proceedings to protect spousal interests in pension benefits. It also shows the court's willingness to apply provincial family law to federally regulated pensions to remedy potential inequities.

Critical Statutes and Cases:

- *Pension Benefits Standards Act*, RSC 1985, c. 32 (PBSA)
- *Family Law Act*, SBC 2011, c. 25 (FLA)
- *Kraft v Kraft*, 2020 BCSC 283
- *Tarr Estate v Tarr*, 2014 BCCA 315
- *Hamilton v O'Pray*, 2015 BCSC 51
- *Jones v Davidson*, 2022 BCCA 31
- *Austin v Goerz*, 2007 BCCA 586
- *Weber v Leclerc*, 2015 BCCA 492

Jurisdictional Comparison:

If this case were handled in Ontario, the outcome might differ due to variations in provincial



family law statutes. Ontario's *Pension Benefits Act*, R.S.O. 1990, c. P.8, and the *Family Law Act*, RSO 1990, c. F.3, have similar provisions to B.C.'s legislation, but Ontario courts might place different emphasis on spousal contributions and the timing of claims. Additionally, Ontario case law, such as *Carrigan v Carrigan Estate*, 2012 ONCA 736, underscores the challenges in determining spousal entitlements, particularly when dealing with separated legal spouses and common-law partners. Therefore, while the core principles of equitable distribution would likely apply, the specific judicial interpretations and precedents could lead to differing outcomes in Ontario.

Conclusion:

The decision in *Gorecki v Byelyeychuk* provides critical insights and guidance on the division of survivor benefits under pension plans, balancing statutory entitlements with equitable considerations under family law. This case serves as a pivotal reference for legal professionals navigating similar disputes.

For more information, please review the full judgment [here](#).