

Citation: *A. K. v. Minister of Employment and Social Development*, 2016 SSTGDIS 9

Date: January 15, 2016

File number: GP-13-522

GENERAL DIVISION - Income Security Section

Between:

A. K.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

Decision by: Jeffrey Steinberg, Member, General Division - Income Security Section

Heard In person on December 15, 2015, Mississauga, Ontario

REASONS AND DECISION

PERSONS IN ATTENDANCE

A. K., the Appellant

Peter Gorski, Polish-English interpreter

INTRODUCTION

[1] The Appellant's application for a survivor's pension was date stamped by the Respondent on September 6, 2012. The application indicates that she and T. K., the deceased contributor, were married on August 14, 1976 in Szczecin Poland. On July 29, 2012, the deceased contributor died. The Appellant stated she was his wife for 32 years. They were not married at the time of his death. However, she is "the designated person and beneficiary to Canada Pension Plan from my ex-husband". She indicated she is under long-term care and a cancer survivor since 2000. She requires expenses medical supplies. She takes the position she and the deceased contributor were living in a common-law spousal relationship at the time of his death. His will specifies that she is to receive his Canada Pension Plan (CPP) pension.

[2] On October 4, 2012, the Respondent denied the Appellant's application based on the fact she was divorced from the deceased contributor and therefore, was not his spouse as defined in the CPP at the time of his death.

[3] The Appellant filed her reconsideration request on November 21, 2012. She stated she and the deceased contributor were living in a common-law relationship for at least 12 consecutive months prior to his death. The Respondent denied the Appellant's reconsideration request and took the position that although she and the deceased contributor remained close, they were living separate and apart prior to and following their divorce. Also, there were no records indicating they had resumed cohabitation at any time. The Appellant appealed the denial of her reconsideration request to the Social Security Tribunal (the Tribunal).

[4] The hearing of this appeal was in person for the following reasons:

- a) The issues under appeal are complex

- b) There are gaps in the information in the file and/or a need for clarification; and
- c) This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

Applicable CPP provisions

[5] Section 44(1)(d) of the CPP provides that a survivor's pension shall be payable to the survivor of a deceased contributor who has made contributions for not less than the minimum qualifying period provided the survivor meet certain conditions.

[6] Subsection 42(1) of the CPP defines a survivor in relation to a deceased contributor as either a person who was the common-law partner at the time of the contributor's death, or, if there was no such common-law partner, a person who was married to the contributor at the time of death.

[7] Subsection 2(1) of the CPP defines a common-law partner in relation to a contributor as a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited for a continuous period of at least one year. In the case of a contributor's death the "relevant time" means the time of the contributor's death.

ISSUE

[8] The Tribunal must determine whether the Appellant is a survivor in accordance with the CPP criteria.

Documentary Evidence

[9] In her November 2012 Reconsideration request, the Appellant stated the sole reason she and her spouse divorced (granted by mutual consent on April 19, 2008) was due to the serious health conditions of the deceased contributor that did not allow them to continue "normal marriage life". She stated he was very sick and as a result, he was very depressed. She states her

own health condition was very difficult at the time. As a result, she also became very depressed and “being crippling as woman, I made decision to apply for divorce in 2008.” She indicated she was diagnosed with rectal cancer and had surgical treatment with insertion of a stoma in the right side of her abdomen. In his last will dated May 1, 2012 executed 2 months before his death, the deceased contributor stated: “We are divorced but we are presently common law” and made her the beneficiary of his private and government pensions.

[10] In support of her position, the Appellant filed a letter dated November 16, 2012 from Dr. Ochocinski, family doctor, who indicated she was under his care since January 28, 2000, was diagnosed with rectal cancer and underwent surgical treatment with insertion of stoma, chemotherapy and revision of stoma. Dr. Ochocinski stated: “Since her medical problems she became depressed and being cripple (sic) as a women she has made decision to get divorce (sic) in 2008”.

[11] According to the Appellant, after the divorce, she and the deceased contributor were in a common-law relationship for more than 12 consecutive months until his death in July 2012.

[12] In support of her position, the Appellant filed a copy of the deceased contributor’s last will dated May 1, 2012 made approximately two month before he died. Under the terms of the will, the deceased contributor revoked all former Wills and Codicils and appointed his first-born son, H. K., as Executor and Trustee. In his place, he appointed his second born son, R. K. The deceased contributor gave his sons the right to be the beneficiaries of any life insurance he had in place. If his sons were not available, the Appellant was named beneficiary. The will contained also contained the following two clauses:

Private Pension – UA Local 46 Toronto Pension, 45 McIntosh Drive

I gave my Trustees the right to allocate all money in this pension is to go directly to my ex-wife (the Appellant), born on X X, X. This may be taken as lump sum or as a monthly basis. Whatever option she chooses, is her choice. The beneficiary is to be my ex-wife (the Appellant), born on X X, X. We are divorced, but we are presently common-law.

Government Pensions

I gave my Trustees the right to apply and execute applications for government pensions in Canada as well as from another country, which would be the country of my birth, Poland.

The beneficiary is to be my ex-wife (the Appellant) born on X X, X. We are divorced but we are presently common-law.

[13] The Appellant filed a medical report dated August 8, 2012 completed by Dr. Ochocinski stating that the deceased contributor was under his care since 2002. He stated that the deceased contributor last visited his office on June 13, 2012 prior to his death on July 29, 2012. Despite his severe medical condition, he was completely alert and did not show any symptoms of impaired judgment. His mental status was normal.

[14] The Appellant filed an April 21, 2012 letter also written by Dr. Ochicinski. He stated he wrote it to support the Appellant's request to recover a pension after her late husband. He wrote: "(The deceased contributor) was known to me, unfortunately he passed away in July 2012 of lung cancer. In spite of their divorce, (the Appellant) took adequate care of her ex-husband." He went on to state she suffers from significant financial hardship as a rectal cancer survivor. She spends a lot of money to care for her stoma.

[15] The Appellant also filed a number of letters in support of her appeal.

[16] On December 22, 2012, H. K., eldest son of the Appellant and deceased contributor, wrote he spent many months with his father helping him to prepare his will. He states it was his father's request to make the Appellant one of the beneficiaries as they continued to be "in relations" as common-law partners until his death. He stated: "I want to confirm that divorce did not change my father's attitude towards my mother. That's why he included her in his will".

[17] On December 22, 2012, R. K., youngest son of the Appellant and deceased contributor, wrote the following:

The intention of my letter is to confirm that in spite of my parents' divorce their relationship remained as strong as when they were married.

I am the younger son of the deceased T. K. After my parents' divorce our family ties – as well as my parents' matrimonial ties – remained unbroken. Birthdays, Christmases, Easters and other family occasions – were celebrated together. My mom remained in close relation with my father.

[18] On December 30, 2012, E. N., first cousin of the deceased contributor wrote the following:

He (deceased contributor) was the ex-husband of (the Appellant). I know him since we were children. I was helping (the Appellant) in attending to her ex-husband while he was sick. (The Appellant) looked after him daily for at least last two years of his life. Although they had formal divorce they consistently did show matrimonial bond with each other. Knowing him so well, and to my best knowledge, I can say that after his divorce he did not have any other female companion besides (the Appellant).

[19] On February 29, 2013, the Appellant completed a Statutory Declaration of Common-Law Union. She stated she and the deceased contributor lived together for 4 years continuously from March 19, 2008 to July 29, 2012. She left blank those portions of the form which would indicate that she and the deceased contributor signed a residential lease, mortgage or purchase agreement relating to a residence in which they both lived, jointly owned property other than their residence, or had joint bank, trust, credit union or charge card accounts. She checked off the box stating that her common-law partner had life insurance that named her as beneficiary.

[20] On February 18, 2013, S. T. (last name illegible) wrote a letter stating she knew the Appellant and deceased contributor for 25 years. She stated: "They divorced in 2008 but despite of that they remain in very close relationship until T. K. death".

[21] On February 24, 2013, R. W. wrote a letter stated: "I, R. W., knew (the Appellant) and T. K. for over twenty years and confirm that after their divorce in 2008 their matrimonial relationship remained strong. Bond between them became even stronger in the last two years of T. K. life".

[22] The Appellant enclosed a copy of a document dated September 2, 2011 from St. Dominic Roman Catholic Church, where she states they were members for many years. She stated they were both registered in the parish as the couple living under the same address: X X Ave, in X. She took the position this document confirmed public recognition of their common-law partnership and common residence. The document is a letter addressed to Mr. and Mrs. T. K. & (the Appellant) from F. P., Parish Secretary. The letter is dated September 2, 2011. It asks whether they are still parishioners of St. Dominic Church. The box indicating Yes is marked off; the box inquiring whether their address and telephone number have changed was marked “no”. The Appellant provided a copy of the cover of the envelope indicating the form was sent to “Mr. and Mrs. T. K. and (the Appellant) at X X Ave, X, Ontario.

[23] The Appellant further enclosed a copy of a CRA T4A 2012 indicating she received a lump sum payment from UA Local 46 Pension Plan. Her address was listed as X X Blvd, X, On. Payment represented the death benefit payable on behalf of the deceased contributor. She also provided a copy of a UA Local 46 Benefit Plan Member’s statement in which the deceased contributor had named her as the beneficiary of his pension.

[24] The Appellant also provided copies of photographs of her and the deceased contributor socializing during Easter 2012, the summer of 2011 and the fall of 2009 and of her caring for the deceased contributor in 2012.

Oral Testimony

[25] She and the deceased contributor married on August 14, 1976.

[26] Their divorce became final on April 19, 2008.

[27] The deceased contributor died on July 29, 2012.

[28] They lived together in the family home until approximately the summer of 2005 at which time she moved out. The family home address was located at X X Avenue (X). She, the deceased contributor and one of their two sons were living in the family home at the time she moved out. She and the deceased contributor had lived there together since they first purchased it in or around 1988. In 2005, she moved into X X Blvd (X) where their other son resided.

[29] She moved out of the family home in the summer of 2005 following her earlier diagnosis of colon cancer and operation in which she had an artificial colon implanted. She was diagnosed in or around 1999 or 2000 and operated on in 2000. Psychologically, she did not feel well or like a “real woman”. She was depressed. Therefore, she decided to leave the deceased contributor. It was mainly her decision to leave. Both she and the deceased contributor needed some time apart. He was also stressed.

[30] After she moved out, the deceased contributor remained in the X family home with their younger son.

[31] Between June or July of 2005 when she moved out of the family home and April 2008, when the Divorce papers were finalized, she was living at the X address. During this same period of time, the deceased contributor was living in the X family home.

[32] A relationship started to develop between the Appellant and the deceased contributor prior to the finalization of their divorce. It emerged during the spring of 2008 starting in or around March.

[33] When the Tribunal asked the Appellant why she would finalize the Divorce Judgment in April 2008 if a renewed relationship between her and the deceased contributor had just started, she stated it was just the start of their “good relationship” during which they began to understand each other and the deceased contributor become helpful with her stressful situation. She stated they began to accept each other as man and woman. It was like a turning point in their marriage. At that time, the divorce judgment was only a piece of paper. What was important to them was their mutual relationship, not a piece of paper.

[34] Between April 19, 2008 (the Divorce Judgment) and the deceased contributor’s death in July 2012, the Appellant’s official address was at X. However, commencing two years prior to the deceased contributor’s death, her actual address was at X. In July 2010, she moved back into X with all her belongings including her clothes. She continuously lived at X with the deceased contributor until his death in July 2012. She decided to move back into X at that time as they were both sick and needed each other (it was the start of his illness) and they wanted to be together.

[35] Between July 2010 and July 2012, she and the deceased contributor shared the same bedroom and bed at the X residence and maintained marital relations, although such relations predated her move back to X.

[36] She and the deceased contributor would go out together as a couple in the community. For example, they used to go to Church on Sundays. They went to family gatherings together and baptisms. The Appellant provided photographic evidence of such occasions.

[37] They would travel a short distance up north together on weekends as the deceased contributor liked to go fishing.

[38] Between July 2010 and July 2012, the Appellant's mail was delivered to X. Her son would bring the mail to her at X or she and the deceased contributor go together to retrieve the mail at X.

[39] The Tribunal asked the Appellant why she didn't abandon the pretense that X was her address and openly declare X as her actual address after she moved back into X in July 2010, e.g., direct Canada Post to deliver her mail to the X address. She stated the most important matter was the mutual relationship and that she did not mind going back to X to retrieve her mail.

[40] Between the time she moved out of the X in 2005 and the time she moved back into X in July 2010, she supported herself by working as an occasional teacher. Initially, the deceased contributor did not provide her with any support. However, in the spring of 2008, after their relationship resumed, they started helping each other. For example, if they went shopping together, they would share the expense. If they went up north, the deceased contributor would pay for one thing and she would pay for another. While she was living at X, the deceased contributor also provided some support to their younger son with whom she was living. This support also benefited her.

[41] They went shopping together and spent time together.

[42] When she did her taxes while living at X, the Appellant declared her marital status as single. Even after she moved back into the X address, she believes she continued to declare her

marital status as single. When asked why she did so, she stated there was no suggestion she do otherwise. She did not think it was important. She just filled out the papers and sent them in.

[43] In or around the end of 2011, the deceased contributor got very sick. Although she was working at the time, she would go with him to doctors' appointments if she could. If she could not manage the time away from work, their children would take the deceased contributor to his appointments.

[44] Prior to the deceased contributor's death, she had not made a will or taken out life insurance. She still has not made a will.

[45] She worked as a teacher in high school teaching physical education, English as a second language and drama. She believes the deceased contributor was named as the beneficiary of her teacher's pension. After his death, she received papers to update her information. At that time, she changed the beneficiary designation to her two sons.

[46] She was stressed at the time of the deceased contributor's death. One of her sons handled the funeral arrangements. He was the decision maker although she gave him the money. During the funeral, there were a lot of guests. At the funeral, she was described as the deceased contributor's wife and received condolences as his wife. She sat in the front row at the funeral between her sons.

[47] Between June 2010 and July 2012, while she was living at X, the deceased contributor would handle the finances. She was working the entire time as a substitute teacher and had her own source of income. However, the deceased contributor would leave money on the table for grocery shopping. She might also pay for the groceries but they would share the groceries. They would cook together. If her car needed repairs, the deceased contributor would take it to the mechanic and pay for the repairs.

[48] The Tribunal asked the Appellant to comment on GD2-9, her November 21, 2012 letter to the Respondent in which she stated that at the time of the Divorce Judgment in April 2008, the deceased contributor was already very sick. The Tribunal reminded the Appellant she testified that the deceased contributor became sick in 2011 at which time he was diagnosed with cancer. She stated he was also sick in April 2008. He had high blood pressure and was on medication.

He was also very stressed and required a peaceful ambiance around him. His work as a plumber was also very stressful and he needed peace and quiet. The Appellant also explained that by stating she felt “crippled as woman”, she was referring to sexual relations.

[49] The Tribunal asked the Appellant some questions about her Application for the CPP Survivor’s pension completed in September 2012. The Tribunal noted she listed X as her mailing address but left blank the line for “Home Address, if different from mailing address” and asked her why she did not list X as her home address, given her testimony she lived at X between July 2010 and July 2012. She stated that officially she listed X everywhere and did not want to “mix things up” by listing X as her residence. The Tribunal also asked the Appellant why she negatively answered the question: “Were you still living together at the time of your spouse’s or common –law partner’s death. She stated she wanted to simplify everything with government officials by indicating she was living at X and did not want to “make a mess out of it”. Given her other dealings with the government, i.e., income tax, work, visa, she had represented X as her address.

[50] The Tribunal asked the Appellant why she didn’t simply change her official address to X. She stated she did not really think about any administrative changes. She stated that as a practical matter, friends, neighbors and everybody knew she was living at X.

[51] The Tribunal also asked the Appellant why she stated in her Statutory Declaration of Common Law Union that she and the Appellant lived together for 4 years continuously from March 19, 2008 and July 29, 2012, given her testimony that she moved into X in July 2010. She explained she meant that the relationship began to bloom between her and the deceased contributor starting in March 2008. They began to see each other and sleep together however she only moved in for good with the deceased contributor in July 2010.

[52] The Appellant explained a series of photographs contained in GD2. They included pictures of her and the deceased contributor in Easter 2012 at a family get together, her and the deceased contributor in the summer of 2011 at their son’s wedding, pictures of her caring for the deceased contributor in bed in 2012 (she stated he needed 24/7 care), pictures of her embracing the deceased contributor in the fall of 2009 at a family get together, and pictures of her and the deceased contributor at their granddaughter’s baptism in the summer of 2011.

[53] According to the Appellant, the most important thing was to stay and be together. The official or legal status was of least concern at the time. They wanted to be together and helped each other. She and the deceased contributor survived her colon cancer and when he got sick with lung cancer during the last two years prior to his death, their focus was on his health. They never thought about their legal status or documents. Each and every day was a gift. She never thought he would die.

[54] When he was still healthy enough, the deceased contributor discussed his will with the Appellant and his wish that she receive his money and CPP monies. He stated the monies belonged to her referring to the money described in his will. He stated that Canada is a democracy and that it would respect his last wishes.

[55] The reason he discussed financial matters with her is because her cancer requires her to purchase surgical supplies. His wish was she would have enough money to cover her expenses. In 2015, to date, she has spent about \$8,000.00 on surgical supplies and will have to spend an additional \$1,500.00 between now and the end of the year.

[56] She was the only woman in the deceased contributor's life. He told her the CPP survivor's pension would be for her because she had taken care of him.

SUBMISSIONS

[57] The Appellant submitted that she is entitled to the survivor's pension.

[58] The Respondent submitted that the Appellant is not entitled to the survivor's pension because:

a) In order for a person to be considered as a the common-law partner of the deceased contributor, they must have been living in a marital-like relationship with the contributor at the time of their death and for a continuous period of one year before the time of their death.

b) The Respondent relies upon the definition of "survivor" in Subsection 42(1) of the CPP and the definition of "common-law partner" defined under Section 2 of the CPP.

c) The Respondent also relies upon the guidelines established in the Pension Appeals Board decision of *Betts. V. Shannon* (October 22, 2001) CP 11654 (PAB).

d) The deceased contributor passed away on July 29, 2012. Her application declared their marital status as Divorced and the home addresses provided on the application confirmed that the couple was not living together at the time of his death. A continuous period of cohabitation, from June 30, 2011 to July 29, 2012, must have existed between the Appellant and the deceased contributor, in order for her to qualify as the survivor and to be eligible for the survivor's pension.

d) A necessary element to be considered is whether she was cohabitating with the deceased contributor at the time of his death and for a period of not less than one year before the relevant time.

e) The address records on the Respondents' database and the address information as provided by the Appellant on her application confirms that each person maintained separate home addresses at the time of his death and that separate addresses were maintained since July of 2006. This directly contradicts her statutory declaration affirming that they were living together at the time of his death and from March 19, 2008.

f) An intention to maintain a mutual marital-home was not demonstrated. In contrast, each person maintained their mutual interest in living separate and apart from each other.

g) The Certificate of Divorce confirms the divorce took effect on April 19, 2008. This directly contradicts her Statutory Declaration that she and the deceased contributor lived together from March 19, 2008 until his death on July 29, 2012.

h) The Last Will of the deceased contributor dated May 1, 2012 (3 months before his death) indicates their relationship as being divorced but presently common law, but also refers to her as his ex-wife. His Will designates her as the beneficiary for his Government pensions in Canada and Poland. However, eligibility to a survivor's

pension under the CPP is based on qualifying as a survivor but cannot be assigned as a designated beneficiary.

i) The third party statements provided by her friends and relatives, although supporting a position that the couple maintained amicable contact and demonstrated that both persons attended the same family functions following the divorce, does not establish that they resumed living together in common-residence.

j) Based on the evidence, the Respondent determines that she continued to live separate and apart from him up to the time of his death. They are former spouses and not common-law partners as described under Section 2.1 of the CPP. Therefore, she is not the survivor who would be entitled to a survivor's pension as described under paragraph 42(1)(b) of the CPP.

ANALYSIS

[59] The Tribunal is satisfied, on balance, that the Appellant was the deceased contributor's common-law spouse at the time of his death.

[60] In determining whether persons are cohabitating, the Tribunal should consider elements such as continued financial interdependence, a sexual relationship, a common residence, expenses for each other on special occasions, a sharing of responsibilities in running the household, a shared use of assets, shared vacations, continued mutual dependency, the naming of each other as beneficiaries in the will of the other and as a beneficiary under insurance policies, where each kept their clothing, who cared for each person when ill, communication between the parties, public recognition of the relationship, what status was declared by the parties on various applications and other forms, and who took care of the deceased's funeral arrangements: *Betts v Shannon* (September 27, 2001), CP 11654 (PAB).

[61] The Appellant testified that at or around the time she and the deceased contributor finalized their divorce, they started to resume their relationship. It progressed to the point she moved back into their former family home and continuously resided with him for two years prior to his death in July 2012.

[62] Before proceeding further, the Tribunal will address the contradictory documentary evidence the Appellant previously filed with the Respondent. It is contradictory as between itself and is not entirely consistent with her oral testimony that she resided with the deceased contributor between July 2010 and July 2012.

[63] In her CPP Survivor's pension application, the Appellant check off a box indicating she was not living together with the deceased contributor at the time of his death. However, in her Statutory Declaration of Common Law Union, she stated she resided continuously with the Appellant between March 2008 and July 2012. The Tribunal notes that the statement in her Statutory Declaration that she was living with the deceased contributor is consistent with the Appellant's oral testimony that she and the deceased contributor were living together at the time of his death. This does not, however, resolve the inconsistency between her oral testimony, in which she stated that she and the deceased contributor resumed living together two years prior to his death, and her Statutory Declaration, in which she stated they lived together for four years between March 2008 and July 2012. When asked about this discrepancy, the Appellant explained that their relationship started to blossom in March 2008 at which time she and the deceased contributor started to see each other, she started staying over at X and they resumed marital relations. However, she also reaffirmed her earlier oral testimony that she moved into X "for good" in July 2010.

[64] The Tribunal rejects the Appellant's statement in her Statutory Declaration that she and the deceased contributor lived together continuously for 4 years between March 19, 2008 and July 29, 2012 and further rejects her position that their newly blossoming relationship constituted "continuously living together". Whether the relationship between the Appellant and deceased contributor between March 2008 and July 2010 contained the hallmarks of cohabitation while living apart is another question. However, as the Tribunal accepts the Appellant's evidence, as discussed below, that she resided continuously with the deceased contributor in a common law relationship for more than one year prior to his death, i.e., July 2010 and July 2012, it is not necessary for the Tribunal to determine whether the period of the blossoming relationship between the Appellant and deceased contributor between March 2008 and July 2010 amounted to cohabitation.

[65] The Tribunal has also considered the fact the Appellant checked off a box on the CPP Survivor's Application indicating she was not still living together with the deceased contributor at the time of his death. The Appellant explained in her testimony she believed that by answering the question in the manner she did, she was maintaining consistency with her official position taken with other government agencies that she was residing at X. The Tribunal notes that if this was, in fact, the Appellant's intention, she was working at cross-purposes with her own stated intention because she completed the Statutory Declaration at the same time indicating she and the deceased contributor were, in fact, living together at the time of the deceased contributor's death in July 2012 and had been doing so for four years.

[66] Despite the confusion in the Appellant's documentary evidence, the Tribunal accepts the Appellant's clarifying oral testimony, which it accepts as genuine and plausible, to the effect that at or around the time the divorce was finalized in April 2008, she and the deceased contributor had just renewed their relationship which progressed to the point she moved back into the former matrimonial home in or around July 2010.

[67] The Tribunal further accepts the Appellant's testimony as credible, given their divorced status, that between July 2010 and July 2012, the relationship between her and the deceased contributor assumed many of the features indicative of cohabitation.

[68] The Tribunal finds that despite maintaining X as her official address, between July 2010 and July 2012, the Appellant physically resided at X with the deceased contributor. During that period of time, they shared the same bedroom and had marital relations.

[69] They spent time together, went up north together on weekends during which the deceased contributor went fishing, cooked together and pooled their financial resources for groceries. The deceased contributor financially contributed toward the Appellant's care, e.g., taking her car to the mechanic and paying for the repairs. They attended family functions together, e.g., their granddaughter's baptism in the summer of 2011. The Appellant provided photographs in support of her position.

[70] The Tribunal further accepts that after the deceased contributor became sick, the Appellant cared for him in the family home at X.

[71] The Appellant filed letters from a number of individuals, the contents of which support a finding that the matrimonial relationship between the Appellant and deceased contributor remained strong even after their 2008 divorce. Such evidence is corroborative of the heart of the Appellant's evidence that she and the deceased contributor re-established a marital relationship after their divorce. For example, in her February 24, 2013 letter, R. W., wrote that the bond between the Appellant and deceased contributor became even stronger during the last two years of the deceased contributor's life. This time frame coincides with the Appellant's oral testimony that she moved in with the deceased contributor during the last two years of his life.

[72] The evidence supports a finding that family and friends of the Appellant and deceased contributor saw them as having re-established a marital relationship after the 2008 divorce. Although none of the letters expressly stated that the Appellant and deceased contributor resided together between July 2010 and July 2012, neither do they contradict the Appellant's evidence on this point. They do, however, corroborate the Appellant's evidence as to a renewed relationship between her and the deceased contributor, which she states had its onset in the spring of 2008 culminating in her moving back into the prior family residence with the deceased contributor in July 2010.

[73] Significantly, the Appellant also filed a copy of the deceased contributor's last will dated May 1, 2012 made approximately two months before he died. He specified that he and the Appellant were divorced but were "presently common law". Although he did not put a time frame on the date they started living together common law, this is a significant piece of evidence which supports the Appellant's position that at the time of the deceased contributor's death, she was residing with him in a common law relationship.

[74] The Appellant further testified she was present at the deceased contributor's funeral and was acknowledged as his spouse.

[75] In combination with the Appellant's oral testimony attesting to numerous aspects of the relationship between her and the deceased contributor which are indicative of cohabitation, and the letters filed by family and friends, the evidence, on balance, satisfies the Tribunal that the Appellant and the deceased contributor continuously cohabitated in a common law relationship between July 2010 and July 2012. This satisfies the statutory requirement that the Appellant was

the common law partner of the deceased contributor at the time of his death, having so cohabited for a continuous period of at least one year.

CONCLUSION

[76] The Appellant is a survivor in accordance with the CPP criteria in relation to the deceased contributor. Accordingly, she is entitled to receive the CPP survivor's pension.

[77] The appeal is allowed.

Jeffrey Steinberg
Member, General Division - Income Security