



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DC v Minister of Employment and Social Development and LM*, 2020 SST 1008

Tribunal File Number: GP-20-395

BETWEEN:

**D. C.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

and

**L. M.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Raymond Raphael

Teleconference hearing on: September 17, 2020

Minister represented by: Anita Hoffman

Date of decision: October 5, 2020

## **DECISION**

[1] L. M. (L. M.) is the Added Party in this proceeding. I have decided that she was the common-law spouse of W. C. (W. C.) at the time of his death. She is entitled to the *Canada Pension Plan* (CPP) survivor's benefit.

## **OVERVIEW**

[2] D. C. (D. C.) is the Claimant in this proceeding. She and W. C. were married in July 1954, and separated in the late 1990s.<sup>1</sup> They did not divorce. W. C. died in January 2016. L. M. claims that she and W. C. were common-law partners from October 1996 until his death. D. C. does not dispute that W. C. lived at L. M.'s house from 1999 until February 2013, when he was moved into a nursing home. However, her position is that W. C. was a boarder in L. M.'s house and they did not have a common-law relationship.

[3] Both D. C. and L. M. applied for the CPP survivor's benefit. The Minister allowed L. M.'s application and denied D. C.'s. The Minister denied D. C.'s request for reconsideration, and D. C. appealed to the Social Security Tribunal.

[4] In November 2017, the General Division allowed D. C.'s appeal. L. M. did not attend the teleconference hearing. The General Division member proceeded in L. M.'s absence because it was the member's understanding that L. M. had notified the Tribunal that she did not wish to participate in the hearing. The member decided that D. C. was entitled to the survivor's benefit because L. M. had not established that it was more likely than not that she and W. C. were common-law partners at the time of his death.

[5] L. M. appealed to the Appeal Division. In May 2018, the Appeal Division dismissed L. M.'s appeal. L. M. then appealed to the Federal Court of Appeal (FCA). In September 2019, the FCA allowed L. M.'s appeal, and referred this matter back to the Appeal Division for reconsideration. The FCA found that L. M. had been denied natural justice because a staff

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<sup>1</sup> There is some confusion about the actual date of separation.

member at the Tribunal had mistakenly advised her that the Minister would protect her rights at the hearing. Because of this advice, she did not participate in the hearing.

[6] In February 2020, the Appeal Division allowed L. M.'s appeal and referred this matter back to the General Division for a *de novo* hearing. The Appeal Division found that the General Division had denied L. M. her right to be heard at the initial hearing.

## **ISSUE**

[7] I must decide whether L. M. and W. C. were common-law partners at the time of his death.

## **PRELIMINARY MATTER**

[8] I did not listen to or rely on the recording of the hearing before the initial General Division member. This was because the FCA determined that the General Division had denied L. M. natural justice by proceeding with the initial hearing in her absence.

## **ANALYSIS**

[9] L. M. must establish that it is more likely than not that she was cohabiting with W. C. as his common-law partner at the time of his death, and that they had so cohabited for a period of at least one year. If she fails to establish this, D. C. will be entitled to the survivor's pension.

## **Legal Principles**

[10] Although living under the same roof is not determinative of a common-law relationship, it is a significant factor to be taken into account in assessing the overall relationship.<sup>2</sup>

[11] The Federal Court has stated that the factors that are indicative of a common-law relationship include the following<sup>3</sup>:

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<sup>2</sup> *E.S. v. MHRSD* (July 24, 2012), CP 25586 (PAB). This decision is not binding but I find it persuasive.

<sup>3</sup> *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

- 1) Shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- 2) Sexual and personal behaviour, including whether the parties had sexual relations, maintained an attitude of fidelity to each other, communicates on a personal level, ate together, assisted each other with problems or during illness, or bought each other gifts;
- 3) Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- 4) Social, including whether they participated together or separately in neighbourhood and community activities, and their relationship with respect to each other's family members;
- 5) Societal, including the attitude and conduct of the community towards each of them as a couple;
- 6) Support, including the financial arrangements between them for provision of necessities and acquisition and ownership of property; and
- 7) Attitude and conduct concerning any children.

***L. M.'s oral and documentary evidence***

[12] The oral and documentary evidence in support of L. M.'s position is compelling. She testified and called two witnesses. She also filed numerous supporting statements from friends and relatives as well as extensive supporting documentation.

[13] L. M. testified that she owns a two-bedroom house. She and W. C. shared the same bedroom, and were intimate. No one else lived in the house. She took him to all of his medical appointments. They purchased gifts for each other and she arranged birthday parties for him. They went to church together. They went to social and community activities as a couple and people referred to them as "man and wife." People sent them invitations as a couple. His children were always welcome at the house and they went for dinners with his children. She cooked for him and did his laundry. She stated, "I did everything for him." She (together with his son David) arranged for him to move into a nursing home in February 2013. She visited him every day and was the first contact person with the nursing home for his care. She stated, "We loved each other and were in a common-law relationship until he died."

[14] She acknowledged that they never had a joint bank account or joint credit cards. Her earnings went into her account. After February 1999, he opened his own account<sup>4</sup>, and his pensions went into that account. He did not have any other source of income. She paid the mortgage from her account. They paid together for household expenses and other items.

[15] T. P. (L. M.'s sister) testified that L. M. and W. C. went to family gatherings together. She believes they started to live together in 1996. She (T. P.) visited and often stayed over at the house. She visited them about 10 to 20 times a year. L. M. and W. C. shared the same bedroom. W. C.'s clothes and personal belongings were in that bedroom. They referred to each other with terms of affection. They went to weddings and other family events as a couple.

[16] S. F. (the human resource manager where L. M. worked) testified that L. M. spoke about W. C. in the same way other employees spoke about their spouse. She would talk about the things they were doing together. She listed W. C. as her spouse on both her benefit and pension applications. She made many requests for leave so she could take W. C. to medical appointments. She asked for an exception to the usual policy not permitting employees to go home at lunch, so she could go home to check on W. C.. She used her benefits package to purchase items for W. C. such as wheel chairs, medications, and a special chair.

[17] I am setting out below the most significant excerpts from some of the numerous supporting letters from friends and relatives filed by L. M.

- March 16, 2016, A. C., W. C.'s granddaughter: W. C. resided with L. M. from 1996 to 2013; L. M. visited him daily after he moved into nursing home.<sup>5</sup>
- November 21, 2017, E. K., D. C.'s brother: L. M. and W. C. lived common-law, L. M. saw him every day in nursing home.<sup>6</sup>
- November 23, 2017, E. D.: at their home numerous times, saw love and affection between them, L. M. attended to all of his wants and needs, made him feel loved and needed.<sup>7</sup>

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<sup>4</sup> Prior to this he had a joint account with D. C.

<sup>5</sup> GD2-32

<sup>6</sup> AD1A-16 to 17

<sup>7</sup> AD1A-13

- November 23, 2017, J. P.: lived in common-law relationship until W. C. died.<sup>8</sup>
- November 27, 2017, C. D.: were a happy couple, L. M. visited him every day in the nursing home.<sup>9</sup>
- November 28, 2017, J. S., friend: spent time at their home including overnight, definitely not roommates, a loving couple.<sup>10</sup>
- November 29, 2017, L. H.: provided homecare services for W. C., L. M. and W. C. were considered a common-law couple, L. M. instrumental in W. C.'s care, provided both love and support.<sup>11</sup>
- December 1, 2017, P. S., relative: lived common-law for 22 years, continually professed love and showed affection for each other.<sup>12</sup>
- December 19, 2017, A. T., W. C.'s great niece: L. M. took great care of W. C., they were always kissing, hugging, and showing affection.<sup>13</sup>
- December 19, 2017, N. L., L. M.'s co-worker: at their home on many occasions, stayed overnight, L. M. and W. C. shared bedroom, always kissed and expressed love for each other.<sup>14</sup>
- December 19, 2017: D. K.: L. M.'s love for W. C. apparent, she often spoke of her love for him, devastated when he went to nursing home, visited him daily.<sup>15</sup>
- December 31, 2017, D. M., registered nurse at nursing home: L. M. provided for W. C.'s medical needs, took him to appointments, advocated on his behalf.<sup>16</sup>

[18] I am setting out below the most significant excerpts from other supporting documents filed by L. M.:

- November 2003: L. M.'s Blue Cross prescription drug and dental service plan card indicating W. C. as spouse.<sup>17</sup>

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<sup>8</sup> AD1A-14

<sup>9</sup> AD1A-18

<sup>10</sup> AD1A-12

<sup>11</sup> AD1A-4

<sup>12</sup> AD1A-8

<sup>13</sup> AD1A -10

<sup>14</sup> AD1A-15

<sup>15</sup> AD1A-11

<sup>16</sup> AD1A2

<sup>17</sup> GD2-22

- February 16, 2011: M. M., RN: letter addressed to W. C. (care of L. M.), application for personal homecare accepted.<sup>18</sup>
- November 19, 2013: Manulife Letter: addressed to L. M., coverage of wheel chair for W. C. approved.<sup>19</sup>
- June 30, 2015: Extendicare invoice for W. C.'s accommodation, addressed to L. M..<sup>20</sup>
- February 16, 2016: Dr. Isfeld, dentist: W. C. listed as L. M.'s spousal dependant.<sup>21</sup>
- March 16, 2016, Extendicare: L. M. was first contact, visited daily, and called regularly for updates; purchased wheelchair, looked after all medical requirements, took to all medical appointments.<sup>22</sup>
- November 17, 2016: Life Benefits Solutions: W. C. listed as L. M.'s spouse as of September 2011 under L. M.'s group benefits plan.<sup>23</sup>
- November 21, 2017: picture of tattoo of W. C.'s initials on L. M.'s leg, done in August 2015.<sup>24</sup>
- November 21, 2017: Great West Life: L. M. had family coverage with W. C. listed as spouse.<sup>25</sup>

***D. C.'s oral and documentary evidence***

[19] D. C. stated that she and W. C. were together for 45 years and raised four children. They worked together and he paid into the CPP while they were together. After W. C. became sick, he didn't know what he was doing. She acknowledged that L. M. and W. C. might have been living together as common-law partners. She stated, "maybe they did live common-law ... but this was just an affair ... she (L. M.) took advantage of an old sick man who didn't have the brains to make decisions."

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<sup>18</sup> AD6-33

<sup>19</sup> AD6-37

<sup>20</sup> AD6-58

<sup>21</sup> GD2-20

<sup>22</sup> GD2-30

<sup>23</sup> GD2-1

<sup>24</sup> AD1C-1

<sup>25</sup> AD1E-2

[20] D. C. also relied on documentation from November 1999 to February 2000. This appears to relate to her concerns about a reduction in her Old Age Security spousal allowance<sup>26</sup> and/or her January 2000 application for a division of unadjusted pensionable earnings (DUPE).<sup>27</sup> This documentation supports that at least as of that time W. C. was “boarding” with the L. M.<sup>28</sup>

[21] I have given little weight to this documentation for two reasons. First, it relates to the relationship between L. M. and W. C. during the period 1997 to 1999. It does not relate to their relationship during the 15 years after that time. Second, there is no clear evidence as to the reasons for, and the circumstances under which, this documentation was prepared.

### *Factors Indicative of common-law relationship*

[22] I now turn to each of the factors set out in paragraph 11, above.

#### *Shelter*

[23] I am satisfied that L. M. and W. C. lived together at W. C.’s house from at least 1999 until he was moved into a nursing home in February 2013. No one else lived in the house. L. M. visited him daily in the nursing home, was the contact person for his care, and made sure his needs were taken care of. W. C.’s move to a nursing home was an involuntary separation. It did not terminate the common-law relationship.

#### *Sexual and personal behaviour*

[24] I accept L. M.’s evidence that they were sexually intimate and shared the same bedroom. T. P.’s testimony as well as numerous supporting letters confirmed this. L. M. stated that they were in a committed monogamous relationship.<sup>29</sup> They purchased gifts for each other and L. M. arranged birthday parties for W. C..

#### *Services*

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<sup>26</sup> GD2-53

<sup>27</sup> GD2-66 to 67

<sup>28</sup> Statutory declarations, November 17, 1999, GD2-61 - 62; Interview report, December 5, 1999, GD2-63-64; Processing observation, December 3, 1999, GD2-65; Statutory declaration, February 22, 2000, GD2-69; Letter from Service Canada, February 25, 2000, GD2-70

<sup>29</sup> IS7-5



[25] L. M. cooked for W. C. and did his laundry. She took him to medical appointments and made the arrangements for him to move into a nursing home. W. C. was covered as a spouse under L. M.'s group benefit plans. L. M. arranged homecare for W. C. and (together with his son D. C.) made the arrangements for him to move into the nursing home.

***Social***

[26] They went to social and community activities as a couple. They went to church together.

***Societal***

[27] People sent them invitations as a couple and referred to them as "man and wife." They were affectionate towards each other in front of other people.

***Support and financial arrangements***

[28] There was no joint property or lease. They lived in a house owned by L. M. There were no joint credit cards. There were no joint bank accounts. L. M. named W. C. as a spouse for her employment benefits. She paid for the mortgage and they shared other expenses.

***Attitude and conduct concerning children***

[29] W. C.'s adult children were always welcome at the house and they went for dinners together.

**My findings**

[30] The extent to which the different factors of a common-law relationship should be taken into account varies with the circumstances of each case.<sup>30</sup> I must keep in mind the endlessly variable nature of marriage in our society and assess the specific circumstances, to determine if L. M. and W. C. had a marriage like relationship.<sup>31</sup>

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<sup>30</sup> *Molodowich v Penttinen*, 1980 CanLII 1537 (Ontario District Court, paragraph 16)

<sup>31</sup> *A.L v D.P and MHRSD* (November 16, 2011), CP 27238 (PAB).

[31] It is not appropriate for me to evaluate the quality of their relationship.<sup>32</sup> Nor is it appropriate for me to consider whether D. C. or L. M. is more deserving of the survivor's benefit. The sole question before me is whether W. C. and L. M. were in a common-law relationship for at least one year before W. C.'s death.

[32] I have no hesitation in finding that L. M. has established that she and W. C. were common-law partners from at least 1999 until W. C.'s death in January 2016. They lived together at L. M.'s home until February 2013, when W. C. was moved to a nursing home. This was an involuntary separation, and did not terminate the common-law relationship.

### **CONCLUSION**

[33] L. M. is entitled to the survivor's benefits.

[34] D. C.'s appeal is dismissed.

Raymond Raphael  
Member, General Division - Income Security

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<sup>32</sup> *McLaughlin*, above