



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CS v Minister of Employment and Social Development and BC*, 2020 SST 1239

Tribunal File Number: GP-19-1000

BETWEEN:

C. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

B. C.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Lianne Byrne

Teleconference hearing on: September 11, 2020

Date of decision: November 21, 2020

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) survivor's pension.

OVERVIEW

[2] The Minister received the Claimant's application for the survivor's pension on September 12, 2018. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE(S)

[3] Is the Claimant entitled to a CPP survivor's pension?

ANALYSIS

[4] Paragraph 44(1)(d) of the CPP sets out the eligibility requirements for the CPP survivor's pension. A survivor's pension shall be paid to the survivor of a deceased contributor who has made contributions for not less than the minimum qualifying period, if the survivor:

- (i) has reached 65 years of age, or
- (ii) in the case of a survivor who has not reached 65 years of age:
 - a. had at the time of the deceased contributor's death reached 35 years of age,
 - b. was at the time of the death of the contributor a surviving spouse with dependent children, or
 - c. is disabled.

[5] Subsection 42(1) of the CPP defines a survivor in relation to a deceased contributor as the person who was married to the contributor at the time of the contributor's death unless there was a person who was the common-law partner of the contributor at the time of the contributor's death.

[6] Section 2 of the CPP defines "common-law partner" as a person who is cohabiting with the contributor in a conjugal relationship at the relevant time (meaning at the time of the

contributor's death), having so cohabited with the contributor for a continuous period of at least one year.

[7] C. G. (the "Deceased Contributor") passed away on March 9, 2018¹. His place of death was noted to be X.

[8] The Added Party applied for a CPP Survivor's Pension on March 21, 2018. She indicated in her application that she was in a common-law relationship with the Deceased Contributor at the time of his death. She stated that they were living together at X.

[9] In support of her application, the Added Party completed a Statutory Declaration of Common-law Union dated March 21, 2018². She solemnly declared therein that she lived together with the Deceased Contributor for three years from September 20, 2015 to March 9, 2018. She stated that the Deceased Contributor had life insurance naming her as a beneficiary. The Added Party's application for the CPP Survivor's Pension was approved by the Respondent in May 2018.

[10] The Claimant subsequently applied for a CPP Survivor's Pension on September 12, 2018³. She indicated that she was married to the Deceased Contributor on May 10, 1986 and that they were still married at the time of his death. She noted that they were not living together at the time of his death. She listed the Deceased Contributor's home address at the time of his death as X.

[11] In support of her application, the Claimant completed a Statutory Declaration - Separation of Legal Spouses dated October 9, 2018⁴. She indicated therein that she and the Deceased Contributor lived separate and apart from February 24, 2002 to March 9, 2018 due to "work". She indicated that the Deceased Contributor was not living in a common-law relationship with anyone else during this separation.

[12] The Claimant's application was denied by the Respondent on October 18, 2018.

¹ GD2-12

² GD2-38

³ GD2-4

⁴ GD2-14

Summary of the Evidence

[13] The parties to this appeal submitted numerous documents. The Claimant and Added Party each called witnesses at the hearing. I have only included in these reasons a brief summary of the documentation and oral evidence that I find most relevant to the issue under appeal.

The Claimant's Evidence

[14] The Claimant's documentary evidence includes the following:

- A letter from the Added Party's lawyer, Patrick J. Kraemer, to the Canada Revenue Agency dated May 14, 2018⁵ stating that the Added Party is not the Executrix of the Deceased Contributor's estate and was not the spouse of the Deceased Contributor. His spouse was stated to be C. S..
- A handwritten note from the Claimant stating that she is the beneficiary of the Deceased Contributor's Registered Retirement Savings Plan and that she is still his legally married spouse.
- A statement from ManuLife Investments listing the Claimant as the beneficiary of the Deceased Contributor's plan.

The Claimant's Testimony

[15] The Claimant testified at the hearing that she was married to the Deceased Contributor in May 1986. They had two children. She stated that the Deceased Contributor had difficulty tolerating their children. He showed aggressive behaviour toward them at times. This is what led to their separation. In 2001, they began living separately, but she and the kids continued to see him on weekends. In 2002, their romantic relationship ended and they closed their joint bank accounts. After this, the Deceased Contributor visited the children once in a while. They never resumed cohabitation or a romantic relationship.

[16] She acknowledges that the Deceased Contributor lived with the Added Party at X. She admits that she never discussed the Deceased Contributor's living arrangements with him. She

⁵ GD2-19

never visited him at this residence. Nonetheless, she feels that he had no choice but to move there.

[17] With respect to the Added Party, she met her once. The Deceased Contributor did not introduce them, but the Claimant introduced herself. The Claimant did not see the Added Party again until after his death at his funeral.

[18] The Claimant felt that the Added Party was mean to her children. She had no relationship with them. She feels that the Added Party controlled the Deceased Contributor and interfered with his ability to see his children. She states that the children had very little to do with the Deceased Contributor because of the Added Party.

[19] The Claimant heard from a friend that the Deceased Contributor was not happy and wanted to move out of X. She never discussed this directly with the Deceased Contributor.

[20] The Claimant was on holidays when the Deceased Contributor passed away. She returned to find out that the Added Party had made funeral arrangements without her involvement. The Claimant wanted to pay for the Deceased Contributor's funeral expenses using her credit card. Her daughter informed the Added Party, but the Added Party paid for the funeral using funds from the Deceased Contributor's bank account. The Claimant is upset about this. She is also upset that the Deceased Contributor did not undergo an autopsy.

[21] The Claimant plans to sue the funeral home. She feels that the Added Party had a good relationship with a worker there named P. She feels that P. lied in the documentation by stating that the Added Party was the Deceased Contributor's spouse.

[22] The Claimant acknowledges that she had not spoken to the Deceased Contributor since he moved to X.

The Claimant's Witnesses

[23] K. W., the Deceased Contributor's nephew, testified that he communicated regularly with the Deceased Contributor until his grandmother became ill in approximately 2015. The Deceased Contributor was living with K. W.'s grandmother at the time. However, when his grandmother had to be moved to a nursing home, the Deceased Contributor had to move out of

the house. K. W. stated that the Deceased Contributor had no choice but to move in with the Added Party at X.

[24] K. W. helped the Deceased Contributor move to X, where he had his own bedroom and personal belongings. He did not know the arrangements between the Deceased Contributor and the Added Party. K. W. saw the Deceased Contributor a few times after the move, but not at X.

[25] After his grandmother passed away, the Deceased Contributor initiated a lawsuit, alleging that he was thrown out of the house and the house was sold illegally. The lawsuit involved the Deceased Contributor and the Added Party on one side and K. W. and his parents on the other. He is not sure if the Added Party was technically named in the lawsuit, but he described her as being on the Deceased Contributor's side. The lawsuit prevented the parties from communicating freely. It was resolved in early 2017, after approximately one year.

[26] He was asked about the Deceased Contributor's relationship with the Added Party. He knows that they met through their work. He is not sure whether they were dating or "friends with benefits" before the Deceased Contributor moved into X. He is not sure what transpired while they were living together. He confirmed that the Added Party was at some family events, but he could not say whether she was there as the Deceased Contributor's girlfriend. He remembers that his grandmother did not approve of her.

[27] B. S., the Deceased Contributor's sister, also testified at the hearing. She explained that the Deceased Contributor lived with their mother until she had to be moved to a nursing home. Their mother's home had to be renovated and sold. Therefore, the Deceased Contributor had no choice but to find another place to live. He was upset with B. S.

[28] His only option was to move in with the Added Party and her brother at X, which he did. B. S. helped with the move. She was told by the Added Party that the Deceased Contributor would be a boarder paying rent. He had his own room. She only went inside the house 1-2 more times after that.

[29] The Added Party was not initially invited to family gatherings because the Deceased Contributor's mother did not like her. However, later on, she attended Christmas, Easter and a birthday celebrations held at B. S.'s home. She was introduced as his "friend".

[30] The Deceased Contributor passed away at X. After he died, the Added Party made the funeral arrangements. The Added Party sat in the front row.

[31] E. S., B. S.'s husband, testified at the hearing that he had a good relationship with the Deceased Contributor prior to his move to X. He saw him approximately once per month while he still lived at his mother's house. He met the Added Party a few times when she came to his house for Christmas, Easter, and a birthday party. He does not remember how she was introduced.

[32] He explained that the Deceased Contributor had to move from his mother's house because she did not have any money. E. S. had been paying all of her expenses. The Deceased Contributor moved to X. E. S. assisted with the move. He recalls the Added Party making it clear that the Deceased Contributor was moving in as a boarder.

[33] After this move, he did not see the Added Party or the Deceased Contributor. After his death, E. S. attended the funeral. The Added Party sat in the front row on the right side.

[34] He acknowledged that the Deceased Contributor and the Claimant had been separated for many years at the time of his death.

The Added Party's Evidence

[35] The Added Party provided a number of documents, including:

- Documents confirming the Deceased Contributor's address as X, including a Health Card Renewal Form, statement from his dentist⁶, Driver's license⁷, T4E from CRA, prescription⁸, and a document from the Ministry of Transportation⁹.
- Confirmation from American Income Life Insurance Company dated February 12, 2017 that it had received instructions from the Deceased Contributor to change the beneficiary to the Added Party, who was stated to be his girlfriend.

⁶ GD2-40

⁷ GD2-48

⁸ GD2-47

⁹ GD2-49

- Statement from American Life Insurance Company noting that the Added Party was the Deceased Contributor's common law spouse¹⁰.
- Invoice from the Westmount Memorial Celebration Centre addressing the invoice to the Added Party.
- Notification of death form completed by the Added Party¹¹.
- An Enrolment for Group Insurance form completed on October 1, 2016 by the Added Party, which indicates that she and the Deceased Contributor were common law spouses since September 19, 2015.
- An e-mail from S. B., a worker at an employment centre, which was addressed to both the Added Party and the Deceased Contributor to ask how the Deceased Contributor was doing in his new job. The Added Party responded that the Deceased Contributor had been doing well, but passed away.
- An In-Memoriam prepared by the Added Party on the anniversary of the Deceased Contributor's death.¹²
- The Added Party's application for the CPP Death Benefit dated April 3, 2018¹³, in which she indicates that she and the Deceased Contributor were in a common-law relationship, living together at X.

The Added Party's Testimony

[36] The Added Party testified that she first met the Deceased Contributor when he worked as a truck driver and she worked as a shipper receiver. They became friends and began a romantic relationship approximately 12 years ago.

¹⁰ GD2-44

¹¹ GD2-55

¹² GD3-13

¹³ GD2-30

[37] The Added Party lived with her brother at X in a house they inherited from their parents. She and the Deceased Contributor had discussed moving in together, but this was expedited when he was “thrown out of his home”. He moved into X on September 19, 2015.

[38] His boxes were placed in the spare bedroom of the home. He set up this room so that he could have his own space and display his belongings. He did not want to move into the Added Party`s bedroom because she displays her collection of Barbie dolls in her room. They were planning to reorganize so that they could share a bedroom. However, they decided to keep separate bedrooms because the Added Party had to wake up at 5:00 a.m. for work and the Deceased Contributor did not want to wake up that early. They did share a bed on weekends and in the summertime, when she is off from work.

[39] The Added Party, the Deceased Contributor and R. C. each paid the same amount into a bank account used for household expenses, including hydro, satellite television, and groceries. The Added Party and the Deceased Contributor did not share a bank account because he did not think it was necessary. However, the Added Party had access to his bank account and he had access to her credit card.

[40] The Added Party and the Deceased Contributor jointly owned a trailer. They used it to go on trips together, including to Manitoulin Island and Pelee Island. They spent most of the summer months living in the trailer.

[41] She and the Deceased Contributor did everything together. Sometimes her brother would tag along. She drove the Deceased Contributor everywhere he needed to go. All of the Added Party`s friends were also friends with the Deceased Contributor. She brought the Deceased Contributor to her work parties and parties hosted by her friends. The Added Party and the Deceased Contributor would host New Years` Eve parties together.

[42] The Added Party and the Deceased Contributor were exclusive to one another. They maintained a normal sexual relationship up until the time of his death.

[43] They gave each other gifts on special occasions. In May 2016, the Deceased Contributor brought the Added Party to the mall and into a jewelry store. He had picked out an engagement ring with the help of his mother. He bought the ring for the Added Party and they were engaged.

They would joke that they were “engaged not to be married” because neither of them felt they needed a piece of paper to solidify their commitment.

[44] The Added Party described her relationship with the Deceased Contributor’s mother as initially a rocky one. However, once his mother moved to the nursing home, she realized that the Added Party was the one bringing her son for visits. From that point on, they got along great. His mother often called to talk to the Added Party on the phone. The Added Party even took her to doctors’ appointments and out to lunch. She would buy her wine in tetra packs and crackers to keep in her room at the nursing home.

[45] The Added Party admits that she did not have a good relationship with the Deceased Contributor’s children. She denies ever trying to interfere in their relationship with their father. He did not speak to his children for 8 months. She would tell him to call them and offered to drive him to visit, but he wanted no part of it. He was very stubborn at times.

[46] The Added Party explained that the Deceased Contributor was involved in two motor vehicle accidents. The second one may have been the result of a seizure. After the second accident, he spent one week in the hospital. She would visit him.

[47] Throughout the time they lived together, she often had to call an ambulance because he was having a seizure. She took care of him by finding him good doctors, taking him to all of his appointments, and making sure he took his medications. She attended almost all of his medical appointments because he always wanted her to be there. If she could not get time off work, she would arrange for her best friend to take him. She checked up on him every morning before she left for work to make sure he was okay.

[48] She was asked to explain the letter from her lawyer, which stated that she was not Deceased Contributor’s spouse. She explained that the Claimant made it very clear that she wanted to take on the role of executrix of the Deceased Contributor’s estate. The Added Party did not want to fight. Her lawyer advised her to send this letter as a way to resolve the issue. It was drafted solely for the purpose of allowing the Claimant to act as executrix.

[49] She was also asked about why she and the Deceased Contributor had not indicated that they were common law spouses in their tax returns. She explained that they had not been

together for a full year the first time she filed her taxes and then did not make the change in subsequent years. She did not have professional assistance at the time.

[50] After the Deceased Contributor's death, the Added party contacted the police so that they could contact his family. When they were unsuccessful, she asked for help from one of the Deceased Contributor's friends. She made all of the funeral arrangements. She posted a notice in the newspaper. She paid for the funeral with funds from the Deceased Contributor's bank account. She stayed by his coffin during visitation. She sat in the front row at his funeral.

[51] She does not understand why the Claimant and some of the Deceased Contributor's family members feel that they can judge her relationship with the Deceased Contributor when they lived nowhere near them. They did not call him, not even on his birthday, which was two weeks before he died. Even two days after he passed away, they were screaming at her that they needed a death certificate.

The Added Party's Witness

[52] R. C., the Added Party's brother, testified at the hearing. He lives at X.

[53] He met the Deceased Contributor in approximately 2005, when he was introduced as the Added Party's boyfriend. He attended "a few" family functions with the Added Party, where he was introduced as her boyfriend.

[54] The Deceased Contributor was "kicked out" of his mother's home. He moved in with R. C. and the Added Party at X. He had his own bedroom in the house.

[55] He described the Added Party and the Deceased Contributor as a lovely couple. They spent a lot of time together and got along well. He is well aware of their relationship because he lived with them and saw it all.

[56] R. C. often shared meals with the Added Party and the Deceased Contributor. The Added Party and the Deceased Contributor often did the groceries together, although R. C. would sometimes go with them. They all shared responsibility for household maintenance. The Deceased Contributor usually did all of the outdoor maintenance.

[57] They all paid \$500 per month for household expenses. None of them considered this money to be rent, but rather a sharing of the household expenses. The Deceased Contributor never asked for a receipt to claim this amount in rent for income tax purposes.

[58] The Added Party and the Deceased Contributor took vacations together. They jointly owned a trailer. They would go up North to their friends' cottage or to Point Pelee.

[59] They would take care of each other when one of them was sick. The Added Party drove the Deceased Contributor to all of his doctors' appointments.

[60] The Added Party would plan birthday celebrations for the Deceased Contributor. The Deceased Contributor bought her a nice diamond engagement ring in 2016. They would both openly state that they were engaged.

[61] The Deceased Contributor never talked about leaving X. As far as R. C. is aware, he was not planning to go anywhere. When the Deceased Contributor passed away, it was the Added Party who made all of the funeral arrangements.

Submissions

[62] The Claimant submits that she qualifies for a survivor's pension because:

- a) She was the legal wife of the Deceased Contributor at the time of his death.
- b) The Added Party was not the common-law partner of the Deceased Contributor at the time of his death, but a boarder in her home.

[63] The Respondent submitted that the Claimant does not qualify for a survivor's pension because:

- a) The evidence does not support a determination that the Claimant is the survivor of the Deceased Contributor.
- b) The evidence in this case shows that the Deceased Contributor had a common-law spouse, the Added Party, at the time of his death. Therefore, the Claimant is not entitled to a survivor's pension.

[64] The Added Party submitted that the Claimant does not qualify for a survivor's pension because:

- a) She was in a common-law relationship with the Deceased Contributor for more than one year at the time of his death.

[65] It is clear from the evidence that the Claimant and the Deceased Contributor were married in May 1986 and remained married at the time of his death. The Claimant has acknowledged, and I find, that they separated in approximately 2002. They never resumed a romantic relationship after their separation.

[66] I noted that, where there are competing interests between the legally married widow of a deceased contributor and an alleged common-law partner, there is a *prima facie* presumption that the benefit goes to the legal widow. As a result, the burden will be on the alleged common-law partner to prove that she was living with the deceased contributor in a conjugal relationship at the time of the contributor's death and had lived with the deceased contributor in a conjugal relationship for a continuous period of at least one year (*Betts v. Shannon* (October 22, 2001), CP 11654 (PAB)). Therefore, the Added Party must prove on a balance of probabilities that she was living with the Deceased Contributor in a conjugal relationship at the time of the Deceased Contributor's death for a continuous period of at least one year.

[67] In this case, it is evident from the documentary evidence, and all of the parties agree, that the Deceased Contributor was living at X, a home jointly owned by the Added Party and R. C.. It is also clear that the Deceased Contributor moved there in September 20, 2015, when he had to leave his mother's home. He remained continuously there and passed away in this house. I therefore find that the Added Party and the Deceased Contributor were living together from September 20, 2015 until the date of his death on March 9, 2018, as indicated in the Added Party's Statutory Declaration of Common-law Union.

[68] I must now consider whether the Added Party and the Deceased Contributor were living together in a conjugal relationship at the time of his death and had been living in a conjugal relationship for a continuous period of at least one year. The Tribunal considered that the definition of "common-law partner" does not contemplate an assessment of whether that person

committed breaches of trust or engaged in other wrongful conduct to the detriment of the deceased (*McLaughlin v. Canada (Attorney General)*, 2012 FC 556) (“*McLaughlin*”). Furthermore, as stated in *McLaughlin*, the Supreme Court of Canada confirmed in *M. v. H.*, [1999] 2 SCR 3, that the factors that ought to be used to test whether a conjugal relationship exists include shared shelter, sexual and personal behavior, services, social activities, economic support, children and the societal perception of the couple.

[69] I also considered the features of a common-law relationship set out by the Pension Appeals Board in *Betts v. Shannon* (October 22, 2001), CP11654 (PAB), which include, among others, financial interdependence, a sexual relationship, a common residence, a sharing of responsibilities, shared use of assets, the expectation each day that there will be continued mutual dependence, named beneficiary in the will or insurance policy of the other, who cared for the other who was ill, communication between the parties, public recognition of the parties, the attitude and conduct of the community and the parties’ families toward the parties, what marital status was declared by the parties on various applications/forms, who took care of the deceased’s funeral arrangements and how the parties were described in the funeral notice. Not all of these factors must be present in order to find that there is a common-law relationship between the Added Party and the Deceased Contributor. The core of the common-law relationship is that the parties have, by their acts and conduct, shown a mutual intention to live together in a marriage-like relationship of some permanence (*MSD v. Pratt* (April 11, 2006), CP 22323 (PAB)).

[70] The Claimant and her witnesses firmly believe that the Added Party and the Deceased Contributor were not in a common-law relationship at the time of his death. They all pointed out that the Added Party stated that he would be a boarder in her home. However, I put very little weight on their testimony about the relationship between the Added Party and the Deceased Contributor. They all acknowledge that they had very little contact with the Deceased Contributor or the Added Party after he moved to X. In fact, as K. W. testified, they were involved in contentious litigation that prevented them from communicating at times. Therefore, they were not in a position to know the details of the relationship between the Added Party and the Deceased Contributor.

[71] I found R. C.'s testimony, on the other hand, to be particularly persuasive because he lived at X with the Added Party and the Deceased Contributor and knew details about their relationship.

[72] A finding that the Deceased Contributor was simply a boarder would be at odds with the bulk of the evidence. The following evidence indicates that the Added Party and the Deceased Contributor were common law partners:

- K. W. testified that the Added Party was involved in a lawsuit initiated by the Deceased Contributor against K. W. and his parents.
- The Added Party and the Deceased Contributor had mutual friends and attended social events together.
- The Added Party and the Deceased Contributor maintained a sexual relationship while they lived at X.
- The Added Party and the Deceased Contributor exchanged gifts, including an engagement ring bought for the Added Party by the Deceased Contributor.
- The Added Party brought the Deceased Contributor to visit his mother.
- The Added Party brought the Deceased Contributor's mother to her doctors' appointments, bought her wine and crackers to keep in her room, and had telephone conversations with her.
- The Added Party brought the Deceased Contributor to his doctors' appointments and made arrangements for her friend to take him if she could not get the time off from work.
- The Added Party took care of the Deceased Contributor when he was sick and checked on him every morning before she left for work.
- The Added Party helped the Deceased Contributor find a job.

- The Added Party and the Deceased Contributor jointly owned a trailer that they used to go on trips together.
- Funeral arrangements were made by the Added Party.
- The Added Party stood by the Deceased Contributor's casket at visitation and sat in the front row at his funeral.
- The Added Party was named as a beneficiary of the Deceased Contributor's life insurance policy.

[73] I considered that the Added Party and the Deceased Contributor did not always share a bedroom at X. However, I accept the Added Party's explanation that he did not want to move into her bedroom because she displayed her Barbie collection. Although she had planned to reorganize so they could share a bedroom, they decided to keep separate bedrooms because the Added Party had to wake up at 5:00 a.m. for work and the Deceased Contributor did not want to be awakened. I also accept that they shared a bed on nights she did not have to work and spent most of the summer together in the trailer.

[74] I considered that the Deceased Contributor's children did not have a relationship with the Added Party. However, it is also evident that they almost never communicated with their father after he moved to X.

[75] There is no credible evidence to support the Claimant's submission that the Deceased Contributor did not want to live at X and planned to move away.

[76] I considered that several documents on file were ambiguous regarding the nature of the relationship between the Added Party and the Deceased Contributor. For example:

- a) The Added Party did not indicate in her tax returns that she and the Deceased Contributor were common-law partners.
- b) Her lawyer wrote that she was not the Deceased Contributor's spouse.
- c) She is listed as the Deceased Contributor's companion in the funeral notice.

[77] If these documents are examined on their own, they may cast doubt on the Added Party's submission that she and the Deceased Contributor were common-law partners. However, when they are examined in the context of the remaining documentary evidence on file and the testimony from the Added Party and R. C., the Added Party and the Deceased Contributors have shown, by their acts and conduct, a mutual intention to live together as common-law partners.

[78] Therefore, I find that, on a balance of probabilities, the Added Party was living with the Deceased Contributor in a conjugal relationship at the time of the Deceased Contributor's death for a continuous period of at least one year. Pursuant to subsection 42(1) of the CPP, the Claimant is not entitled to a CPP survivor's pension since the Added Party was the common-law partner of the Deceased Contributor at the time of his death.

CONCLUSION

[79] The appeal is dismissed.

Lianne Byrne
Member, General Division - Income Security