



Citation: *TL v Minister of Employment and Social Development*, 2021 SST 664

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: (Claimant)

T. L.

Respondent: (Minister)

Minister of Employment and Social Development

Decision under appeal:

Minister of Employment and Social Development
reconsideration decision dated March 31, 2021 (issued
by Service Canada)

Tribunal member:

Raymond Raphael

Type of hearing:

Teleconference

Hearing date:

October 7, 2021

Hearing participants:

Appellant/Claimant

Decision date:

October 10, 2021

File number:

GP-21-1401

DECISION

[1] The Claimant and her former husband G. S. were not common-law partners at the time of his death. She is not entitled to the *Canada Pension Plan* (CPP) survivor's benefit.

OVERVIEW

[2] The Claimant and G. S. were married in April 1984. They separated in 2003. The Claimant states that this was because G. S. was an alcoholic and emotionally abusive. They divorced in January 2005. G. S. died in September 2020. In October 2020, the Claimant applied for the CPP survivor's benefit.¹ Although they lived at different residences, the Claimant stated that she and G. S. were common-law partners from 2017 until G. S. died in September 2020. The Minister denied her application both initially and on reconsideration. The Claimant appealed to the Social Security Tribunal.

[3] The Minister acknowledges that the Claimant and G. S. were involved in each other's lives at the time of his death. However, the evidence does not establish that they were common-law partners.

ISSUE

[4] I must decide whether it is more likely than not that the Claimant and G. S. were common-law partners at the time of his death.

Claimant's Account

[5] The Claimant stated that she left G. S. in 2003 because he was an alcoholic and emotionally abusive. She moved to an apartment with their son. G. S. remained in their house in St. Sault Marie until his death. She initially moved to an apartment and then to a house. G. S. gave her \$13,000 to purchase the house. After they divorced in 2005, she mostly lived a

¹ GD-7.

considerable distance from X and worked as a teacher. Her last teaching job was near X (about 5 hours away). She worked there from 2009 to 2014.

[6] In 2014, her job ended and she moved back to X. She purchased and moved to a house which was about three minutes away from G. S.'s house. From 2005 to 2014, she and G. S. were good friends, but they were not common-law partners. After 2014, their relationship started to change. She believes they were in a common-law relationship from 2017 until G. S.'s death in September 2020.

ANALYSIS

[7] To qualify for the CPP survivor's pension, the Claimant must establish that it is more likely than not that she and G. S. were common-law partners at the time of his death. She must also establish that they had been common-law partners for a continuous period of at least one year.²

[8] The Federal Court has stated that the factors that are indicative of a common-law relationship include the following:³

- 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, communicated 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.

² Paragraph 44(1)(d) and definitions of survivor in section 42(1) and of common-law partners in section 2(1) of the CPP.

³ *McLaughlin v. Canada (Attorney General)*, 2012 FC 556, paras 15,16

[9] I must focus on the period from 2017 to September 2020 (the relevant period) since this is the period during which the Claimant states she and G. S. were common-law partners.

[10] I now turn to each of the factors set out above during the relevant period.

Shelter

[11] They lived in separate residences about three minutes away from each other. The Claimant stated that she could not live in the same house as G. S. because of his alcoholism and controlling nature. Their relationship worked because they weren't living together. Although she stayed at his house on some occasions after they divorced⁴, she did not stay there during the relevant period. He never stayed at her house.

Sexual and personal behaviour

[12] They were not sexually intimate. The Claimant stated that this was because G. S. suffered from erectile dysfunction. Neither had a relationship with anyone else. They saw each other about three times a week. They also communicated by phone and text. They went to their son's house together. At Christmas time they slept over there. The Claimant did not share a bedroom with G. S. because he would pass out on the couch. G. S. asked her to marry him on two occasions in 2020. He told her that it would not be necessary for them to live together. She was considering this but he died unexpectedly.

Services

[13] At times, they made meals for each other and ate together. He paid to fix the roof on her house. He bought and installed a washing machine for her house. He cleared the snow from her driveway. He taught her how to drive a lawn mower to cut the grass. She painted his house. They celebrated birthdays and holidays together. They exchanged gifts on Christmas and birthdays.

⁴ The Claimant testified that she stayed at his house when she was recovering from a hysterectomy and on holidays etc. when she travelled back to St. Saint Marie when teaching. However, this was before 2017.

Social and Societal

[14] They did not participate in social activities together. The Claimant had social anxiety and did not go out. G. S.'s only social activity was going drinking with his "buddies."

Support and financial arrangements

[15] They had separate bank accounts and they kept their finances separate. Although they had a joint bank account, it had not been used since they separated in 2003. G. S. sent her irregular monthly amounts. He sent her about \$150 "here and there." In the two months before he died, G. S. sent her \$500 a month. Although he was on her health benefits plan, her benefits ended in 2014 when she stopped teaching. She made all of his funeral arrangements.

[16] The Claimant provided copies of two wills by G. S.⁵ She was the executor and beneficiary under the first will which was made in July 1993. This will was long before they separated and was automatically revoked by their divorce. The second will was dated October 2015. The Claimant was the executor but their children were the beneficiaries. However, G. S. never signed that will. I am not able to draw any conclusions from this unsigned document, which was dated about 10 years after the divorce. The Claimant testified that after G. S. died, she signed documents that transferred G. S.'s assets to their children.

Attitude and conduct concerning children

[17] They celebrated Christmas, Easter, Thanksgiving, and birthdays together with their two children.

My findings

[18] The extent to which the different factors of a common-law relationship should be taken into account varies with the circumstances of each case.⁶ Although a common-law relationship usually involves a common residence, each case must be determined on its own facts.⁷

⁵ GD1-17 to 32

⁶ *Molodowich v Penttinen*, 1980 CanLII 1537 (Ontario District Court), paragraph 16

⁷ *MHRD v Haynes* (June 28, 2001), CP 15179 (PAB), para 9.

[19] Separation due to an abusive relationship does not interrupt the common-law relationship, if there was a mutual intention to continue the relationship.⁸

[20] While unmarried couples may have almost infinite variations on a theme in their conjugal or cohabitations arrangements, a common-law relationship must have a core starting point. The core of the relationship is that the parties have by their acts and conduct shown a mutual intention to cohabit together in a marriage-like relationship of some permanence. If this core is absent, there can be no common-law relationship.⁹

[21] Although the Claimant and G. S. were good friends and had a close relationship at the time of his death, I am not satisfied that there was a mutual intention to be in a marriage like relationship.

[22] There is no core starting point to their having been in a common-law relationship. Although they communicated with and assisted each other, they kept their finances separate. They lived in separate residences. They never slept over at each other's home during the relevant period. Their only joint social activities were celebrating holidays and birthdays with their children. There is no evidence that they in any way represented to the community that they were common-law partners. G. S. asked her to marry him, but she only "considered it." In order to establish a common-law relationship there must be a mutual intention by both parties to engage in one.

[23] The Claimant has the burden of proof. She has not established that it more likely than not that she and G. S. were common-law partners at the time of his death.

CONCLUSION

[24] The Claimant is not entitled to the CPP survivor's pension.

[25] The appeal is dismissed.

Raymond Raphael
Member, General Division - Income Security

⁸ *MHRSD v. S.S.* (October 6, 2011), CP 27386 (PAB)

⁹ *MSD v. Pratt*, (April 11, 2006), CP 22323 (PAB), paras 43, 44