



Citation: *RC v Minister of Employment and Social Development*, 2021 SST 694

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

**Decision**

**Appellant:** R. C.  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated March 6, 2020 (issued by  
Service Canada)

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**Tribunal member:** Jackie Laidlaw  
**Type of hearing:** Teleconference  
**Hearing date:** October 19, 2021  
**Hearing participants:** Appellant  
Witness One : A. R.  
Witness Two : P. R.  
**Decision date:** October 29, 2021  
**File number:** GP-20-992

## **Decision**

[1] The appeal is dismissed.

[2] The Claimant, R. C., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

## **Overview**

[3] The Claimant was the partner of the deceased contributor, C. G., who died on December 20, 2018. The Claimant is appealing the decision to deny a CP survivor's benefit. The issue is whether the Claimant was the common law spouse of the deceased at the time of his death.

## **What the Claimant must prove**

[4] For the Claimant to succeed, she must prove she was the common-law partner of C. G. (the contributor) on December 20, 2018.

[5] A common-law spouse is defined for the purposes of a CPP survivor's benefit as a person who is cohabitating with the contributor in a conjugal relationship at the relevant time (December 20, 2018, the date of his death), having so cohabitated with the contributor for a continuous period of at least one year. For greater certainty, in the case of a contributor's death, the "relevant time" means the time of the contributor's death.<sup>1</sup>

## **EVIDENCE**

[6] From the outset, I would once again like to express my sympathies to the Claimant for the loss of C. G. While her claim is denied, and I have found she was not the common-law partner of the deceased at the time of his death, I do accept that they were in relationship.

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<sup>1</sup> Section 2 (1) of the CPP

[7] I have weighed a number of conditions which are considered when determining if a person is a common-law spouse: shared assets; insurance or beneficiary after death; common friends; living arrangements; shared responsibilities for the home and children, as well as testimony from the Claimant's friends, one being the sister of the deceased.

[8] The Claimant testified that they were in a monogamous relationship. They had always planned to marry but it never came to be. He kept some of his daily clothes in the drawer at home, and some of his belonging in his car. The deceased had drug addictions causing sex addictions with prostitutes. She stated that they fought a lot and she would kick him out of the house once every three months. He would leave for a few days and return. She said they always had a physical relationship.

[9] The Claimant filed for spousal support in 2016 at a Calgary court house. She stated she did it as a threat if he cheated on her, and because he was doing drugs and going to prostitutes. She does not recall what she put in her affidavit but she doesn't think she claimed they were separated. He was supposed to pay her \$400 a month, but never did. She was entitled to spousal support until he died.

[10] On her application for a survivor's pension<sup>2</sup> the Claimant first put the deceased's marital status at the time of death as "single", then changed it to "separated". She listed his home address as a different one from her own. She also noted that she was not still living together with him at the time of his death. This is one of the reasons the Minister has denied the claim. In her reconsideration request, <sup>3</sup>the Claimant stated that they were working on their issues and planning to live together again, after a short break, and were planning to marry. In her testimony, the Claimant stated that she does not know why she put down they were separated.

[11] He was at her place for the night a week before his death. He then went to work and then on a binge. The deceased's sister stated that she was called by the Claimant to help find him.

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<sup>2</sup> GD 2 4

<sup>3</sup> GD 2 14

## Friends and Family

[12] She stated that he was divorced from his first wife. She said he had two children, a daughter (age 25) and a son. However, the obituary notes he has three children.<sup>4</sup> She did not know the daughter S. S. until he died, and the deceased never spoke to her. His son, D., was friends with her son when they started dating. D. moved in to their basement from 2015 to 2016, then moved back to Grand Prairie where the deceased's father lives. She has never gone to the deceased father's home. She has not seen the deceased's father since he died.

[13] She has a daughter, C. C. The deceased brought her home from the hospital with the Claimant, and he has taken care of her as his own child since. He took her to school, bought her Christmas gifts and dinners and gave her money to shop for the Claimant. He took her on holidays. The daughter is in receipt of an orphan's benefit from the deceased death.

[14] The first witness, the sister of the deceased, stated that she lived in another town eight hours away and did not see them much. She and the Claimant are very close, and though she was close to the deceased, she did not speak with him much. She stated the couple have been together for 18 years. As far as she knows, they were always together. The deceased had a drug and alcohol addiction and would always leave for a few days, but they would always be a couple. She considered the Claimant her sister-in-law.

[15] The second witness has been a neighbour since 2006 when they moved in to the Claimant's house. She referred to the "matrimonial" home as "R. C.'s" home. The deceased would go away for a few days and then come back. He would move in and out. The last year he lived there it was not regular as they were having disputes. He was kicked out of the house monthly, then move back in. The deceased left his "stuff" in her yard, a few bags of hobby "stuff", boots, tools and fishing rods in her tool shed in the backyard. He put these items in the Thanksgiving of the year he passed. They had

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<sup>4</sup> GD 2 18

broken up in October and he moved back in November. His car was frequently there until December.

### **Shared Assets**

[16] The Claimant testified that they tried to have a have a bank account together in 2007 but he was an addict, so they abandoned the idea. They did not own a car, or any assets together.

[17] There is a replacement debit card<sup>5</sup> in evidence, dated July 26, 2021, which had her address on it. She stated it may be an automatic replacement card. When questioned why it would come three years after he died in 2018, she explained that his bank account has not been closed yet.

[18] The Claimant has rented the house since 2006 when they moved in. She stated he lived at that address off and on, and never formally moved out. In 2006 and 2009 he did not live there. When they fought, he would go for three days until he cooled off. He would also be away from the home for work sometimes for a period of 21 days.

[19] Since they moved in 2006, she was responsible for the rent to the owner. Technically, she is the tenant. The deceased paid her rent. When he stayed for the night he would contribute for the day financially. They agreed he would pay \$20 a day whenever he stayed at the house. Other months, he would pay more for utilities if she was short on funds. He also did some upkeep on the house.

[20] There is a letter in evidence that the Claimant wrote to Service Canada in 2013<sup>6</sup> stating that he does not live at her home and is not permitted to use her home address in any form as his home address.<sup>7</sup> The Claimant testified that she wrote that out of anger during one of their fights, when he had been away for two days.

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<sup>5</sup> GD 8 2

<sup>6</sup> GD 2 21

<sup>7</sup> GD 2 21 September 3, 2013

[21] When she filed her taxes she listed herself as “single”. The Claimant stated she does not know why they did that. She and he filed their taxes separately.

### **Funeral planning, the will and beneficiary**

[22] The deceased did not have a will or insurance. They did not list each other as beneficiaries.

[23] The Claimant testified that no one, including her, has done anything with his finances. They all walked away. She did, however, state that his bank account had not closed, which was evidenced by the replacement debit card three years later.

[24] When the deceased died, the police came to her home, not to speak to her, but to speak to D. his son to let him know about the death. She has no idea how the police got her address, and assumed it was the deceased’s last known address. The police did not tell her he had died, until she asked. They asked her what was her relationship with the deceased, and she said he was her boyfriend. She was not the first to be called when he died. She was not called at all. She found out from the police, who were there to inform his son not her.

[25] His daughter and son took care of the funeral. She does not know why. Because all his family lives in Grand Prairie, eight hours away, the funeral was in Grand Prairie. She did go to the funeral and stayed at her parent’s home there.

[26] The funeral home did not contact her as the deceased’s spouse, or the next of kin, and she had no contact with them until she called them to ask for a copy of the death certificate. The funeral home had to ask S. S.’s consent, which was given. The daughter, S. S., and the son, D., paid for the funeral.

[27] The deceased was cremated and his daughter S. S., her daughter C. C., his sister A., and she have the ashes. S. S. gave her the ashes and also gave her permission to get his car from the impound. The car was unfortunately sold at auction before she could retrieve it. She did not receive the money for the sale, if there was any.

[28] On the application for funeral expenses<sup>8</sup>, the daughter S. S. is listed as the nearest relative of the deceased.

[29] She was not listed in the obituary.<sup>9</sup> Her daughter, C. C., was listed. She testified that she has no idea why she was not in the obituary.

### **Care and Companionship**

[30] It has been established that the deceased was a drug abuser. I accept as his partner, she was responsible at times for his care.

[31] The Claimant stated that the deceased never ended up in hospital so she does not know if was listed as the person to call in an emergency.

[32] She was not the person who was called first when he died. The police did not come to her door to inform her, but to inform his son.

### **Reasons for my decision**

[33] I accept that the Claimant, and her friends who testified, considered the Claimant and the deceased a couple. However, that is not what I must determine.

[34] I must determine if the Claimant lived with the deceased continuously for the year prior to his death in a conjugal common-law relationship.

[35] I cannot accept that the Claimant was living with the deceased in a common-law relationship at the time of his death. She herself noted they were separated on her application. Her excuse is implausible, simply that she does not know why she put that down. She also noted on the reconsideration request that they were working on issues and planning on living together in the future. This in itself indicates they were not living together at the time of his death, and that they had not lived together continuously for one year following his death.

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<sup>8</sup> GD 2 26

<sup>9</sup> GD 2 18

[36] There are facts that indicate they were not common-law partners. The police did not know her status when they came to find his son, not her, to announce his death. She was not listed in the obituary at all, not as a friend, girlfriend, or common-law spouse. They did not share any assets together. He paid her rent, on the basis of \$20 a day for the days he stayed over. That does not indicate a common-law relationship. It suggests more a girlfriend/boyfriend relationship as she told the police.

[37] The most compelling evidence is that she filed for, and was still entitled to, spousal support in 2016, two years before his death. Spousal support is money paid from one spouse to the other after they separate or divorce. Common-law partners are entitled to claim spousal support, but they still must be separated. Applying for, and receiving spousal support is a relatively complicated process which takes time. It is inconceivable that the Claimant filed for support, and it was allowed, just because the Claimant was angry for a few days.

[38] I accept the deceased was, at one point, a common-law partner to the Claimant. He acted as a father to the Claimant's child. I also accept that they had been in a relationship, in a variety of forms, for many years. However, they were not common-law partners at the time of his death.

[39] Therefore, the Claimant is not entitled to a survivor's benefit.

## **Conclusion**

[40] The appeal is dismissed.

Jackie Laidlaw  
Member, General Division – Income Security Section