



Citation: *RA v Minister of Employment and Social Development and JH*, 2022 SST 725

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

## Decision

**Appellant:** R. A.  
**Respondent:** Minister of Employment and Social Development  
**Added Party:** J. H.

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated March 20, 2020 (issued by  
Service Canada)

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**Tribunal member:** George Tsakalis  
**Type of hearing:** Teleconference  
**Hearing date:** July 28 and November 25, 2021 and post-hearing  
documents  
**Hearing participants:** Appellant  
Appellant's son (witness)  
Appellant's daughter-in-law (witness)  
Added Party  
**Decision date:** July 15, 2022  
**File number:** GP-20-875

## Decision

[1] The appeal is dismissed.

[2] The Appellant, R. A., isn't eligible for a Canada Pension Plan (CPP) survivor's pension. This is because I find that that Added Party, J. H., was the common-law partner of the deceased contributor, J. A., as defined in the CPP.

[3] This decision explains why I made this finding.

## Overview

[4] The Appellant is the legally married spouse of the deceased contributor. She married the deceased contributor in 1969. They separated in around 2015. The deceased contributor passed away on January 29, 2018.

[5] The Appellant applied for a survivor's pension in February 2021. However, the Minister of Employment and Social Development (Minister) declined her application. This is because the Minister decided that the Added Party had resided with the deceased contributor in a conjugal relationship, continuously for a period of at least one year before his death.

[6] The Appellant says she is entitled to the survivor's pension because:

- The Added Party and the deceased contributor did not live in a common-law relationship at the time of his death;
- The Added Party and the deceased contributor did not live in the same residence;
- The Added Party did not provide care to the deceased contributor before he died. An adult guardianship file had to be opened because of financial and physical abuse that the deceased contributor suffered from in the last two months of his life;

- The deceased contributor was not faithful to the Added Party and he was on a dating website at the time of his death.
- The deceased contributor removed the Added Party from his will.

[7] The Minister says that the Added Party is entitled to the survivor's pension. The Minister was satisfied that the Added Party had provided enough documentation to prove that she was the common-law partner of the deceased contributor at the time of his death, and had been in such a relationship for at least one year at time of his death.

[8] The Added Party says she is entitled to the survivor's pension because:

- She and the deceased contributor dated in 2013 and 2014. They became common-law in December 2015.
- She and the deceased contributor worked together and shared each other's residences.
- She and the deceased contributor shopped together, ate meals together, slept together, and vacationed together.
- She and the deceased contributor were in the process of purchasing a condominium prior to the deceased contributor's illness and death.
- She cared for the deceased contributor prior to his death and the allegations that she neglected or abused him are false.

### **What the Added Party must prove**

[9] For the Added Party to succeed, she must prove that it is more likely than not that she was cohabiting with the deceased contributor in a conjugal relationship for a continuous period of least one year at the time of his death. If she fails to establish this,

the Appellant will be entitled to the survivor's pension because she is the legal married spouse of the deceased contributor.<sup>1</sup>

[10] The CPP describes a common-law relationship as being a conjugal relationship. The Federal Court of Appeal in a decision called *McLaughlin v. Canada (Attorney General)*, 2012 FC 556 decided that the generally accepted characteristics of a conjugal relationship include the following:

- Shelter, including consideration of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- Sexual and personal behaviour, including whether the parties have a sexual relationship maintain an attitude of fidelity to each other, communicate on a personal level, eat together, assist each other with problems or during illness or buy each other gifts;
- Services, including the roles they played in the preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- Social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members;
- Societal, including the attitude and conduct of the community towards each of them as a couple;
- Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property;

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<sup>1</sup> See subsections 2(1), 42(1) and paragraph 44(1)(d) *Canada Pension Plan, Betts v. Shannon* (September 17, 2001) CP 11654 (PAB), and *JR v. Minister of Employment and Social Development*, 2021 SST 113

- Attitude and conduct concerning any children.

[11] All the characteristics of a conjugal relationship may be present in varying degrees, but not all are necessary for the relationship to be conjugal.<sup>2</sup>

[12] Common-law relationships differ from legal marriages. There is often no specific evidence to show when common-law partners make a commitment to each other, such as a marriage certificate. Parties in a common-law relationship have to show by their acts and conduct, a mutual intention to live together in a marriage-like relationship of some permanence.<sup>3</sup>

[13] For the reasons that follow, I find the evidence showed that the deceased and Added Party lived in a common-law relationship, as defined in the CPP.

## **Comments regarding evidentiary findings**

[14] The law does not require me to refer to each submitted document. I am not required to refer to all the hearing evidence or answer every submission. The law requires me to identify the path that I made in reaching my decision.<sup>4</sup> Consequently, I will only refer to testimony that I feel was relevant to making my decision. The same goes for the documentary evidence.

## **Matters I have to consider first**

[15] The hearing proceeded on July 28, 2021 before a different Tribunal member. But the hearing did not finish. That Tribunal member's term expired. I was assigned to this appeal.

[16] The general rule is that the decision maker who decides the case must hear the evidence.<sup>5</sup> I held a prehearing conference with the Appellant and Added Party on October 22, 2021 because the July 28, 2021 hearing could be considered a nullity since

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<sup>2</sup> See *M. v. H.*, 1999 CanLII 686 (SCC) and *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

<sup>3</sup> See *Hodge v. Canada (MHRD)*, 2004 SCC 65 and *MSD v. Pratt*, (January 31, 2006), CP 22323 (PAB)

<sup>4</sup> See *Connolly v. Canada (Attorney General)*, 2014 FCA 294

<sup>5</sup> See *Iwa v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 SCR 282 and *High-Crest Enterprises Limited v. Canada*, 2017 FCA 88

I did not preside over the hearing. I advised the parties that they could start the hearing all over again or they could continue the hearing with me deciding the appeal. I advised the parties that I had read the file and had listened to the July 28, 2021 hearing recording. The parties agreed to continue the hearing with me. The hearing proceeded on November 25, 2021.

[17] After the hearing I asked the Appellant to provide a copy of an audio recording mentioned in the documents.<sup>6</sup> The Appellant was not able to provide a copy of the audio recording.<sup>7</sup> I provided a deadline for the receipt of the audio recording.<sup>8</sup> The Appellant said my deadline could not be met. She suggested that I could refer to a transcript of the audio recording or allow for extra time to submit it.<sup>9</sup> I have decided to not allow extra time for the submission of the audio recording. The audio recording has been referred to in the documents.

## **Reasons for my decision**

[18] I find that the Added Party and deceased contributor cohabited in a conjugal relationship for a continuous period of at least one year at the time of his death on January 29, 2018. I reached this decision after considering the factors for a conjugal relationship set out by the Federal Court in *McLaughlin*.

## **Shelter**

[19] The Added Party testified that she met the deceased contributor in the winter of 2012. They started dating around 2013. She did not see the deceased contributor from August 2014 to December 2015 because he was ill with cancer. She said the common-law partnership started at the end of December 2015. The deceased contributor had recovered from cancer and they made a commitment to each other. She said that she

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<sup>6</sup> See GD17

<sup>7</sup> See GD18

<sup>8</sup> See GD19

<sup>9</sup> See GD20

had a residence and so did the deceased contributor. But they spent a lot of time of together. She would sleep with the deceased contributor.

[20] The Appellant testified that the Added Party and the deceased contributor did not live together at the time of his death.

[21] The Added Party provided different addresses for herself and the deceased contributor on her survivor's application form.<sup>10</sup> This is because the evidence showed that she and the deceased contributor shared each other's residences. The Added Party submitted a declaration from a witness that said she and the deceased contributor lived together at their respective addresses.<sup>11</sup> The Added Party submitted a declaration from another witness that said she and the deceased contributor shared each other's residences.<sup>12</sup>

[22] Courts have recognized that parties having separate residences can live in a common-law relationship.<sup>13</sup> Courts have also recognized that not all elements of a conjugal relationship, which includes living together in the same residence, have to be present for such a relationship to exist.<sup>14</sup>

## **Sexual and Personal Behaviour**

[23] I find that the Added Party and deceased contributor had sexual relations, communicated with each other on a personal level, ate together, and assisted each other with problems or during illness and bought each other gifts.

[24] The Appellant and her son testified that the deceased contributor had affairs during the course of his relationship with the Added Party. They also said the Added Party neglected the deceased contributor before he died. They said the Added Party's neglect of the deceased contributor was so severe that they had to "rescue" the deceased contributor. They also submitted that the Added Party's abuse of the

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<sup>10</sup> See GD2-15-16

<sup>11</sup> See GD2-26

<sup>12</sup> See GD2-28

<sup>13</sup> See *Connor Estate*, 2017 BCSC 978 and *Climans v. Latner*, 2020 ONCA 554

<sup>14</sup> See *M. v. H.*, 1999 CanLII 686 (SCC) and *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

deceased contributor was so severe that an adult guardianship file was opened.<sup>15</sup> They said that the deceased contributor lived his last days in a hospital and he did not wish to see the Added Party.

[25] The Added Party denied these allegations. I prefer the evidence of the Added Party to that of the Appellant and her son.

***The Added Party provided care to the deceased contributor***

[26] The Added Party testified that the deceased contributor had been diagnosed with stage 4 colon cancer in 2017. The deceased contributor then wanted to spend Christmas in Mexico, where he jointly owned a condominium with the Appellant. The Added Party said she was with the deceased contributor in Mexico in December 2017.

[27] The Added Party said she cared for the deceased contributor. She took him to medical appointments. She bathed him. The deceased's health continued to worsen.

[28] The Added Party did not have a good relationship with the Appellant and her children. She said the deceased contributor and Appellant were going through a difficult divorce. She produced an e-mail where she said that the Appellant and her family made her life difficult. The Added Party had only met a few members of the deceased contributor's family. She had only spoken to the deceased contributor's son. The Added Party said the deceased contributor's family hated her.<sup>16</sup> The Added Party said the deceased contributor was clearly dying of cancer when he returned to Canada with the Added party after spending Christmas in Mexico in 2017. The Added Party said the deceased contributor wanted to die at home.

[29] The Added Party and the Appellant had a telephone discussion on January 6, 2018. The Added Party made arrangements for the Appellant to visit the deceased

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<sup>15</sup> See GD4-1

<sup>16</sup> See GD12-24



contributor on January 7, 2018, despite the fact that the deceased contributor did not wish to see the Appellant.<sup>17</sup>

[30] On January 9, 2018, the Appellant sent an e-mail to Added Party. She wanted the Added Party to read this e-mail to the deceased contributor. The e-mail said the deceased contributor's son and daughter wanted to see him.<sup>18</sup> Also on January 9, 2018, the Added Party sent an e-mail to the Appellant's daughter about her seeing the deceased contributor later that day.<sup>19</sup> The Added Party testified that the deceased's contributor's daughter visited for him about 10 minutes.

[31] The Appellant testified that the deceased contributor sent a note to a friend called "R.". R. called the Appellant's son. The Appellant's son visited the deceased contributor on January 11, 2018. There is an audio transcript of at least a portion of this encounter in the file.<sup>20</sup> The transcript shows that the deceased contributor asked his son to kick the Added Party out of the house and change the locks. The deceased contributor said he did not want the Added Party there because she was controlling him, taking advantage of him, manipulating him and abusing him. The deceased contributor's son ended up asking the Added Party to leave. The Appellant described her son's actions on January 11, 2018 as a "rescue". The Appellant testified that the deceased contributor had no clothes on when her son visited. She also said that the police removed the Added Party from the house and that a police file was opened.<sup>21</sup>

[32] The Added Party gave her version of events on what happened on January 11, 2018. The Added Party said that the deceased contributor was in extremely poor health. He was rapidly losing weight. He was not eating and barely drinking. The Added Party testified that the deceased contributor did not want his family to know about his illness. He did not want to see the Appellant. But the Added Party wanted him to see his family before he died. She met the Appellant for the first time on January 7, 2018. The Appellant did not express any concerns about the care she provided to the Added Party.

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<sup>17</sup> See GD12-61

<sup>18</sup> See GD12-30

<sup>19</sup> See GD12-69

<sup>20</sup> See GD10-2-4

<sup>21</sup> See GD1-14

But the Appellant did ask the Added Party if she was making a claim on the deceased contributor's estate. The Added Party told her she would not make such a claim. She said the Added Party's daughter visited the deceased contributor for about 10 minutes. Another one of the deceased contributor's sons visited him before January 11, 2018.

[33] The Added Party testified that the deceased contributor's doctor visited him at his residence on January 10, 2018. The Added Party was present. The deceased contributor told his doctor that he wanted to die at home. The doctor did not have any objection to this and provided a prescription for Morphine. The Added Party got the Morphine prescription at 10:00 a.m. on January 11, 2018 and the deceased contributor began taking it that day. The Added Party said she fell asleep. She was awakened by the deceased contributor's son who said that they were going to the hospital. The deceased contributor's son asked her to leave. She asked the deceased contributor if he wanted her to leave. The deceased contributor accused her of manipulating her. She picked up a few things and left the house. She believes that using Morphine may have affected the deceased contributor's behaviour. She said never abused the Added Party and provided care for him.

[34] I prefer the Added Party's version of events to that of the Appellant and her witnesses. I do not see any evidence in the file that the Appellant and the Appellant's daughter were concerned about the deceased contributor being abused or neglected when they saw him on January 7 and 9, 2018. The Added Party's testimony about Morphine use affecting the deceased contributor's behaviour on January 11, 2018 is plausible. There is no evidence the deceased contributor complained about the care he received when his wife, daughter, and other son visited him before January 11, 2018.

[35] The Appellant also said that a police file was opened. But I was never provided with a copy of the file. The Appellant said that an adult guardianship file was opened. But I never received a copy of the file.

[36] When I review the file documents and testimony, I find that the Added Party and deceased contributor lived in a marriage-like relationship for at least one continuous year before the deceased contributor passed away.

***The Added Party and deceased contributor had a sexual relationship***

[37] I am satisfied that the deceased contributor and Added Party had a sexual relationship. The Appellant conceded this in her testimony.

***The Added Party and deceased contributor and Added Party maintained an attitude of fidelity towards one another in the one year period before he died.***

[38] One of the Appellant's son's testified that he had access to the deceased contributor's computer and e-mails. He said that the deceased contributor was in contact with another woman in the fall of 2017. He also said that the deceased contributor maintained a profile with a dating website since the summer of 2017. The Appellant produced e-mails from another woman in 2016. She said that she loved the deceased contributor, but this e-mail was more than one year prior to his death.<sup>22</sup> The Appellant also produced a copy of the deceased contributor's profile on a dating website.<sup>23</sup> I do not see any evidence that he was active on that website in the year before he died.

[39] The fact that the deceased contributor may have had an affair with another women does not necessarily annul the common-law relationship he had with the Added Party. I am satisfied that the deceased contributor and Added Party lived in a marriage-like relationship of some permanence from December 2015 until the deceased contributor passed away. The evidence showed that the deceased contributor and Added Party assisted each other with problems or during illness.

***The Added Party and deceased contributor supported each with problems or during illness***

[40] The evidence showed that the Added Party provided the deceased contributor with emotional support when the deceased contributor was involved in litigation with one of his son's.<sup>24</sup> The deceased contributor reached out to the Added Party to discuss his illness with her.<sup>25</sup> On December 4, 2017, the deceased contributor sent an email to the

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<sup>22</sup> See GD10-19

<sup>23</sup> See GD10-32-34

<sup>24</sup> See GD12-37

<sup>25</sup> See GD12-42

Added Party and told her that his health deteriorated to the point that their love would have to be non-physical going forward.<sup>26</sup> I am also satisfied that the Added Party cared for the deceased contributor before he passed away. The Added Party produced a letter from an individual who confirmed she provided care to the deceased contributor after his cancer diagnosis.<sup>27</sup> I also accept the Added Party's evidence that the deceased contributor assisted her during difficult times. The deceased contributor picked her up from the hospital after she was injured in a car accident.

***The Added Party and deceased contributor communicated with each other on a personal level***

[41] Documents show that Added Party expressed her love for the deceased contributor.<sup>28</sup> The Added Party provided a declaration from a friend of the deceased contributor. This friend said that the Added Party and deceased contributor began living together in December 2015 and remained a couple until the deceased contributor passed away. He said that he often saw the Added Party and deceased contributor. He described the relationship as a strong and loving one. This friend said the deceased contributor described the Added Party as his "soul mate and lover".<sup>29</sup>

***The Added Party and deceased contributor ate together and gave each other gifts***

[42] I am satisfied that the Added Party and deceased contributor ate together. The Added Party testified that the deceased contributor did not cook and she would prepare meals. I am also satisfied that the Added Party and deceased contributor gave each other gifts. The Added Party said that the deceased contributor gave her a Valentine's Day gift.<sup>30</sup> She also brought the deceased contributor flowers when he was in the hospital.<sup>31</sup>

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<sup>26</sup> See GD12-43

<sup>27</sup> See GD2-33

<sup>28</sup> See GD12-47

<sup>29</sup> See GD2-26

<sup>30</sup> See GD12-39

<sup>31</sup> See GD12-67

***The Added Party and deceased contributor's common-law relationship did not end before he died***

[43] The Appellant testified that the deceased contributor did not want to see the Added Party after his January 11, 2018 hospital admission. However, I do not believe that the common-law relationship between the deceased contributor and Added Party ended before he passed away. The law says that a common-law relationship ends when either party regards it as being finished and demonstrates by their conduct, that the decision to end it is a settled one.<sup>32</sup>

[44] I find that the deceased contributor did not end his common-law relationship with the Added Party before he passed away. The Appellant testified that the deceased contributor was lucid in the hospital and he did not want to see the Added Party. The Added Party said that they had to change his rooms on several occasions because the Added Party kept visiting, contrary to the wishes of the deceased contributor.

[45] The Added Party testified that a friend of the deceased contributor's told her where he could be found in the hospital. She went to visit the deceased contributor on January 13, 2018. It was the Appellant who told her to leave, and not the deceased contributor. She said the deceased contributor motioned with a wave of his hand for her to leave and shrugged his shoulders with "a whatever look."<sup>33</sup>

[46] The Added Party produced e-mails from the deceased contributor's lawyer, which I place significant weight on because the lawyer is not a family member. He is someone whom the deceased contributor confided on in over the years, and he is not someone who has any stake in the outcome of this appeal. The deceased contributor's lawyer said that the deceased contributor's family hated the Added Party. The lawyer visited the deceased contributor at the hospital when the deceased contributor was in a lucid state. The deceased contributor told his lawyer that he did not want to see the Added Party in the hospital. However, the lawyer believes that the deceased contributor wanted to live his last days in peace and did not want to fight with the Appellant over the

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<sup>32</sup> See *Hodge v. Canada (MHRD)*, 2004 SCC 65

<sup>33</sup> See GD12-91

presence of the Added Party.<sup>34</sup> The deceased contributor's lawyer also completed a declaration saying that the deceased contributor and Added Party lived in a marriage-like relationship and that the deceased contributor represented the Added Party as his spouse.<sup>35</sup>

[47] The Appellant produced an e-mail dated September 14, 2017. She said that she had met with the deceased contributor and the deceased contributor told her that the Added Party was no longer his girlfriend.<sup>36</sup> But I place little weight on this document. The evidence showed that the deceased contributor and Added Party were in Mexico for Christmas and independent witnesses confirmed the Added Party provided care to the deceased contributor until he went to the hospital on January 11, 2018.<sup>37</sup>

[48] I accept the evidence of the Added Party and the deceased contributor's lawyer that the deceased contributor did not end the common-law relationship before he died. I agree that the deceased contributor told the Appellant and his children that he did not want to see the Added Party in the hospital because he wanted to maintain peace with them. It was not because he ended the relationship.

## **Services**

[49] The Added Party testified that the deceased contributor did not cook and she would prepare meals. She also said they went shopping together. I have no reason to disbelieve her evidence.

## **Social**

[50] The Added Party provided a list of events that she and the deceased contributor attended during their relationship. This included a wedding, a celebration of life, lunch engagements, a graduation party, and Friday night social outings. They also spent Christmases at a condominium.<sup>38</sup>

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<sup>34</sup> See GD12-60

<sup>35</sup> See GD2-29

<sup>36</sup> See GD10-45

<sup>37</sup> See GD2-33-34

<sup>38</sup> See GD12-62-65

[51] I have no doubt that the Added Party and deceased contributor socialized with one another and participated in community events together. The Added Party produced multiple declarations from individuals who confirmed they socialized together.<sup>39</sup>

[52] The Added Party did not have a good relationship with the deceased contributor's family. It was apparent during the hearing that the Appellant and her family did not like the Added Party.

[53] I also note the deceased contributor did not seem to have a good relationship with his own family. The Appellant testified that she had a difficult relationship with the deceased contributor. She said that she did not believe the deceased contributor loved her or their children. The deceased contributor and the Appellant appeared to have a strained relationship over the running of a family business. The deceased contributor also did not appear to have a good relationship with one of his son's. The deceased contributor sent his son an e-mail on June 30, 2017 threatening a restraining order because of his son's behaviour toward the Added Party.<sup>40</sup>

[54] In reviewing the evidence, I find that the Appellant and her children did not have much involvement with the deceased contributor in the last few years of his life. The deceased contributor did not even want to tell them about his stage 4 cancer diagnosis. When I consider evidence about the deceased contributor's mode of living, I prefer the evidence of the Added Party to that of the Appellant and her witnesses because she spent more time with him in the last few years of his life. I am satisfied that the Added Party and deceased lived in a conjugal relationship, which was confirmed by multiple witnesses.

[55] I also found the Added Party to be a credible witnesses. The Appellant attacked her credibility and integrity as an individual. But I see no reason to disbelieve the Added Party's evidence. She gave detailed evidence about the nature of her relationship with

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<sup>39</sup> See GD2-24, 26, 27, 28, 32 and 33

<sup>40</sup> See GD12-31

the deceased contributor and provided voluminous documents that confirmed the existence of a common-law relationship since December 2015.

[56] The Added Party obviously did not have a good relationship with the deceased contributor's family. The deceased contributor's family did not recognize a common-law relationship. But that does not nullify the common-law relationship between the deceased contributor and Added Party.

## **Societal**

[57] The Added Party produced multiple declarations and statements showing that people recognized a common-law relationship between her and the deceased contributor. They were described as a couple, soul mates and lovers, spouses and a married couple who did everything together.<sup>41</sup>

[58] The Appellant also produced statements from people who did not recognize a common-law relationship between the deceased contributor and Added Party.<sup>42</sup> The difficulty that I have with the evidence gathered by the Appellant is that it seems the Appellant or her son were trying to gather evidence that showed the relationship between the deceased contributor and Added Party was not a serious one. The Appellant's son contacted one witness who expressed "utter surprise" at the son's request for information. This witness said that he socialized with the deceased contributor and Added Party. He added that he never saw a hint of dissention between the deceased contributor and Added Party.<sup>43</sup>

[59] I also prefer the declarations provided by the Added Party to the statements provided by the Appellant. The declarations provided by the Added Party contained more details about how long the individuals knew them as a couple and the nature of their relationship. While the statements provided by the Appellant contained a lot of speculative thoughts.

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<sup>41</sup> See GD2-24, 26, 29,31

<sup>42</sup> See GD1-6 and 7, GD5-5-6, GD10-29-30, and GD11-3

<sup>43</sup> See GD12-74



## Support

[60] The Added Party testified that the deceased contributor had a business with his family, which involved the ownership and management of multiple properties. The Added Party said she played a role at the company. This caused conflict with the Appellant's family, who did not want her involved in the business. The Added Party said there were times when she collected rents. She also managed a property that was in the deceased contributor's name and was not connected to the family business.

[61] The Appellant testified that she jointly owned the condominium in Mexico that was used by the deceased contributor and Added Party. Her son testified that his father invited him to join the family business in 2007. But their relationship fell apart because of the Added Party. He eventually returned to the family business in 2016. The Appellant produced an e-mail from the deceased contributor dated January 17, 2018 that said the Added Party was not allowed on any company properties.<sup>44</sup>

[62] I accept the Added Party's evidence that she played an active role at the company. She produced witness statements showing that she collected rents.<sup>45</sup> She produced a statement from another witness who said the Added Party worked closely with the deceased contributor in his business.<sup>46</sup> I do not place much weight on the deceased contributor's January 17, 2018 e-mail about the Added Party not being allowed on company properties. This e-mail was written near the end of the deceased contributor's life, after his hospitalization. I am satisfied that the evidence shows that the deceased contributor was trying to keep peace with his family near the end of his life, and that he did not intend to end his relationship with the Added Party.

[63] The Appellant testified that the deceased contributor did not include the Added Party in his will. She also testified that she payed for the deceased's funeral. I place little weight on this evidence.

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<sup>44</sup> See GD10-7

<sup>45</sup> See GD2-31

<sup>46</sup> See GD2-35-39

[64] As stated above, the Appellant and her family did not have a good relationship with the Added Party.<sup>47</sup> The deceased contributor's lawyer confirmed this in an e-mail dated May 7, 2018. The lawyer said that the deceased contributor initially planned on providing for the Added Party arising from his marital type relationship with her. However, the deceased contributor did not do this because he was concerned with the prospect of litigation and antagonism from the Appellant and his family.<sup>48</sup>

[65] The Appellant provide an unsigned will where the deceased contributor gave his shares in the company to his children and grandchildren. He gave the rest of his estate to both the Appellant and Added Party.<sup>49</sup> There is another will signed by the deceased contributor on January 10, 2018, where he decided to leave his estate to his children and grandchildren. He did not leave anything to the Appellant and Added Party.<sup>50</sup>

[66] I do not believe that the deceased contributor leaving the Added Party out of his last will means that a common-law relationship did not exist. I believe that the last will reflected the deceased contributor's desire to avoid conflict with his family by leaving part of his estate to the Added Party, as stated by his lawyer. The deceased contributor also left the Appellant out of his last will. I also place significant weight on the fact that the deceased contributor was prepared to leave a significant amount of his estate to the Added Party. I believe this showed that the deceased contributor wanted to provide for the Added party, which shows a marriage type relationship. In addition, it was clear that the Appellant's family was very concerned about the deceased contributor leaving his estate to the Added Party. This concern was reflected in an e-mail from the deceased contributor's daughter-in-law dated May 2, 2017.<sup>51</sup>

[67] I do not place much weight on the Appellant paying for the deceased contributor's funeral. The Appellant and her family blocked the Added Party's from having access to the deceased contributor after his hospitalization.

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<sup>47</sup> See for example GD12-32-35

<sup>48</sup> See GD12-16

<sup>49</sup> See GD6-9-12

<sup>50</sup> See GD6-12-16

<sup>51</sup> See GD12-32

[68] The Appellant also said that the Added Party dropped any claim to the deceased's estate.<sup>52</sup> The Appellant and the Added Party have been involved in litigation relating to the deceased contributor's estate. But the Added Party not pursuing an estate litigation claim does not stop her from receiving a survivor's benefit under the CPP, if she could prove that she cohabited with the deceased contributor in a conjugal relationship for a continuous period of at least one year at the time of his death. I have found that the Added Party proved her case.

[69] I am satisfied that the deceased contributor and Added Party provided mutual support for each other. The Added Party conceded that she did not own property with the deceased contributor. They did not have a joint bank account. They had no life insurance policies. However, the Added Party explained that the deceased contributor had not finalized his divorce with the Appellant and that he ran a family run business. The deceased contributor's accounts and properties were in the name of the business. I am satisfied that the Added Party played a role in the deceased contributor's business, which was confirmed by various witnesses. I accept the Added Party's evidence that the deceased contributor allowed her to drive his vehicle. I also accept the Added Party's evidence that they bought furniture together.

[70] The evidence showed that the Added Party and deceased contributor were planning on spending their lives together. They were both looking at purchasing a condominium together.<sup>53</sup> However, the purchase never took place because the deceased contributor had not finalized his divorce and because of his illness.

### **Attitude and conduct concerning any children**

[71] The Added Party did not have children. She did not have a good relationship with the deceased contributor's children but that does not mean that a common-law relationship did not exist. I am satisfied the Added Party that it was more likely than not

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<sup>52</sup> See GD5-4

<sup>53</sup> See GD12-53

that she was cohabited with the deceased contributor in a conjugal relationship for a continuous period of least one year at the time of his death.

## **Final comments**

[72] The Added Party and cohabited with the deceased contributor in a conjugal relationship from December 2015 to the deceased contributor's death on January 29, 2018.

[73] I made this finding for the following reasons:

- Even though the Added Party and deceased contributor did not live in the same residence, I am satisfied that they spent a lot of time together and shared each other's residences.
- The Added Party and deceased contributor had a sexual relationship, they maintained an attitude of fidelity to each other in the last year of the deceased contributor's life, they communicated on a personal level, they ate together, and assisted each other with problems or during illnesses;
- The Added Party and deceased contributor shopped together and prepared meals together;
- The Added Party and deceased contributor participated in social activities together;
- The Added Party and deceased contributor's common-law relationship was recognized by people in their professional and social circle;
- The Added Party and deceased contributor provided mutual financial support to one another.

[74] There were allegations of infidelity on the part of the deceased contributor. But I do not believe that this nullified the existence of a common-law relationship. I am satisfied that the deceased contributor loved the Added Party and they had a marriage-

like relationship. I am also satisfied that he never terminated his common-law relationship with the Added Party.

[75] I also found the Added party to be a credible witness. I have no reason to doubt her evidence, including her evidence about caring for the deceased contributor when he was ill.

## **Conclusion**

[76] The Added Party and deceased contributor cohabited in a conjugal relationship for a continuous period for a continuous period of at least one year at the time of his death on January 29, 2018.

[77] This means the Added Party, and not the Appellant, is eligible for the survivor's pension.

[78] This means the appeal is dismissed.

George Tsakalis  
Member, General Division – Income Security Section