



Citation: *LC v Minister of Employment and Social Development*, 2024 SST 114

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

**Appellant:** L. C.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Ian McRobbie

---

**Decision under appeal:** General Division decision dated December 5, 2022  
(GP-21-1837)

---

**Tribunal member:** Kate Sellar

**Type of hearing:** In person

**Hearing date:** June 20, 2023

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** **February 7, 2024**

**File number:** AD-23-18

## Decision

[1] The appeal is allowed. The Claimant is eligible for the *Canada Pension Plan* (CPP) survivor's pension. These are the reasons for my decision.

## Overview

[2] L. C. (Claimant) was in a relationship with S. D. (the contributor) from 1984 to 1992. In 1992, the contributor started living at a separate address nearby. He was an engineer who did shift work. He was an alcoholic. The Claimant's relationship with the contributor was a significant part of her life, and it continued despite not living under the same roof. The contributor got sick with cancer, and he died on February 10, 2020.<sup>1</sup>

[3] The Claimant applied for a *Canada Pension Plan* (CPP) survivor's pension on December 4, 2020. The Minister refused the application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal, finding that she wasn't eligible for the survivor's pension. I gave the Claimant permission to appeal. I held a new hearing on the question of whether the Claimant is eligible for the survivor's pension.

## Issue

- a) Is the Claimant eligible for the CPP survivor's pension because she was cohabiting with the contributor in a conjugal relationship at the time of his death and continuously for at least a year before his death?

## Analysis

[4] In this decision, I will:

- Describe the definition of a survivor (and more specifically, the definition of a common law spouse) in the CPP; and

---

<sup>1</sup> See GD2-18.

- Explain how I've weighed all the factors to conclude that, on a balance of probabilities, the Claimant is the contributor's survivor under the CPP and is eligible for the survivor's pension.

## **How does a claimant become eligible for a survivor's pension under the CPP?**

[5] To receive a survivor's pension, the Claimant must show on a balance of probabilities that she meets the definition of a survivor in the CPP.

[6] The CPP says a survivor is a person who was the common-law partner to the contributor when the contributor died. If there is no eligible common-law partner, then the survivor is the person who was married to the contributor at the time of death.<sup>2</sup> A common-law partner means a person that cohabits with the contributor in a conjugal relationship for a continuous period of one year immediately before the contributor died.<sup>3</sup>

[7] The Federal Court listed factors that decision makers can consider in determining whether a person is a common-law partner:

- **Shelter**, including considerations of whether the parties live under the same roof, sleep together, and whether anyone else occupies or shares the available accommodation;
- **Sexual and personal behavior**, including whether the parties have sexual relations, 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 play in preparing meals, doing laundry, shopping, conducting household maintenance and other domestic services;

---

<sup>2</sup> See section 42(1) in the *Canada Pension Plan* (CPP) and the definition of "survivor".

<sup>3</sup> See section 2(1) in the CPP and the definition of "common-law partner".

- **Social**, including whether they participate 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; and
- **Children**, (if any) including the attitude and conduct the parties demonstrate toward them.<sup>4</sup>

[8] The critical question is whether the Claimant and contributor lived together in a marriage-like relationship at the time of his death and throughout the year before his death.

[9] The Minister argues that when the Claimant and the contributor don't live together, there must be strong evidence for the other factors to support a common law relationship. The Minister points me to several decisions from the General Division in support of this idea.

[10] I'll describe those cases the Minister relies on briefly here:

- *LC v Minister of Employment and Social Development*:<sup>5</sup> The contributor and the claimant had three children. The contributor moved into his brother's house until he could get sober. The contributor still helped with the children. The claimant organized the contributor's funeral. The claimant said they were in a committed relationship even though they couldn't live in the same house. There was no mutual intention to end the relationship. The claimant was eligible for the survivor's pension.

---

<sup>4</sup> See paragraphs 15-16 in *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

<sup>5</sup> *LC v Minister of Employment and Social Development*, 2017 CanLII 146680.

- *CC v Minister of Employment and Social Development*:<sup>6</sup> The contributor was in a relationship with the added party for more than two decades. The contributor was in a nursing home the entire last year of his life. He had no property with the added party, they didn't name each other as beneficiaries in their insurance (the contributor was married). They had a joint bank account. She was his advocate, and they were still a couple in all respects. The Claimant was eligible for the survivor's pension.
- *IM v Minister of Employment and Social Development*:<sup>7</sup> The claimant stated in his application that he was no longer living with the contributor when he died. The claimant stated that they were separated common-law partners. On reconsideration, the claimant explained that he was in a common-law relationship with the contributor when the contributor died. They lived under the same roof, but they had different addresses as part of their investment plan. The claimant accepted responsibility for the misstatements on the initial application about their addresses. The other written documentation supported a continued common-law relationship including the will, the life insurance policies, and the bills that showed joint occupancy of their home. The claimant made the funeral arrangements. The death certificate stated that the claimant was the contributor's partner and executor. The claimant was eligible for the survivor's pension.
- *JL v Minister of Employment and Social Development*:<sup>8</sup> The claimant and the contributor each had their own address to maintain public entitlements in the US and in Canada. However, for most of each month they lived under the same roof. The contributor referred to the claimant as his common law spouse in his will. The contributor left the claimant all his assets to the claimant. The claimant was not involved in the funeral.

---

<sup>6</sup> *CC v Minister of Employment and Social Development*, 2017 CanLII 145695.

<sup>7</sup> *IM v Minister of Human resources and Skills Development*, 2014 CanLII 94622.

<sup>8</sup> *J. L. v Minister of Employment and Social Development*, 2015 CanLII 102989.

- *SC v Minister of Employment and Social Development*:<sup>9</sup> The contributor was an abusive alcoholic, and he moved out. The relationship continued. There is no evidence before the Tribunal that she or the contributor moved on to have an intimate relationship with anyone else following their physical separation in 2004, or that the contributor wished their relationship to be at an end. Soon after their physical separation in 2004 the claimant moved into a rental property near the family home, where the contributor remained. They each lived alone. She regularly attended the family home to care for the contributor. She brought him meals, cleaned, and did yardwork. She was his primary care giver. They held a joint investment and chequing account. The claimant first discovered the contributor's body after he died during a routine visit to check up on him. The claimant had possession of his remains. The claimant was eligible for the survivor's pension.

[11] In my view, these decisions don't not stand for the proposition that claimants must meet a higher onus to show they were in a conjugal relationship if they were not residing with the contributor at the time of death and continuously for one year prior. The CC case above is especially notable it was a relationship that lasted decades and weren't living together in the last year of the contributor's life due to illness. The Claimant in CC was found to be a survivor for the purpose of the pension.

[12] Second, these decisions aren't binding. The Minister hasn't provided binding case law to support their position. The Supreme Court of Canada has made it clear that cohabitation is not synonymous with co-residence.<sup>10</sup> Two people can cohabit even though they do not live under the same roof and, conversely, they may not be cohabiting in the relevant sense even if they are living under the same roof. Periods of physical separation might not end the common law relationship if there was a mutual intention to continue.

---

<sup>9</sup> *S. C. v Minister of Employment and Social Development*, 2015 CanLII 99321.

<sup>10</sup> See paragraph 42 in *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65.

[13] I'm not aware of any binding precedent on that issue from the federal courts on the standard claimants must meet on other factors if they don't live at the same address.

[14] The Minister has not disputed that the parties were in a relationship for decades, since the mid-1980's, that they stopped living together in 1992, and that they maintained some kind of relationship until he died. The Minister argues that the Claimant hasn't shown that she was in a common law relationship within the meaning of the CPP with the contributor when he died in February 2020 and continuously for one year prior.

[15] I cannot conclude that when claimants did not live under the same roof as the contributor, there is a higher standard that applies to the remaining factors to consider in deciding whether the relationship is common-law.

[16] There's no question that the Claimant and contributor had a close relationship, the question is whether it meets the test for a common law relationship. I must focus on the last year of the contributor's life.

## Applying the factors

- **The Claimant didn't live at the same address as the Claimant since 1992. Given the reasons behind this (both historically and in the final year of the Claimant's life), this isn't a strong factor weighing against the existence of a common law relationship.**

[17] There's no doubt that the Claimant and contributor stopped living under the same roof many years before he died. In fact, they hadn't lived at the same address together under the same roof since 1992. This is a relevant factor in considering whether they were in a common law relationship.

[18] The Claimant testified that the contributor was an engineer running a plant for 37 years. He worked shifts. He worked three dayshifts, had two days off, and then worked three night shifts. By the time the contributor turned 50, he was not sleeping, and he was an alcoholic. He went to inpatient detox treatment twice. The Claimant was working business hours and needed to sleep. The Claimant ran a business out of her home.

[19] The contributor moved three blocks away and rented an apartment. The Claimant testified that when the contributor moved, he took some of what they had at their place together and they made it “our” place over there. They hung pictures and she helped to decorate. She said that he received some mail at her house in 2011, 2012, 2013 and 2017.

[20] The Claimant explained that the contributor stopped drinking in the five years before he died. The Claimant did not move back in with him. He got throat cancer and had a full laryngectomy, followed by two surgeries. He experienced a lot of pain.<sup>11</sup>

[21] The reason for the separate addresses is, in my view, quite important.

[22] First, the Claimant and the contributor had reasons for living at separate addresses for many years, that had to do not with how close their relationship was. This choice was about the health and well being of the parties, and in my view, was a way of maintaining the partnership despite challenges brought about by the contributor’s alcoholism and his work schedule, which affected the Claimant. This is not unlike situations in which a couple live apart because someone is in the hospital or a care home – the reason for the physical separation is a health-related and should not be a significant barrier to a finding of a common law relationship. I find that the parties did not intend (nor did they actually) break up when the contributor moved three blocks away.

[23] The Minister notes that the Claimant and the contributor didn’t live together even after the contributor stopped drinking in the years before his death. I do not consider this inconsistent with a common-law relationship in this appeal. The Claimant gave evidence not just about the contributor’s drinking, but also about other factors that helped explain why living apart made sense for them as a couple, including:

- his shift work schedule;
- his social habits (he kept to himself);

---

<sup>11</sup> See GD2-10 and 17.



- the nature of her living situation (including the fact that she eventually opened a bed and breakfast in her home).

[24] Second, the Claimant testified that even when the contributor developed cancer, they didn't move back in together. By then, he was comfortable at his address, and he was on a lot of medication. I accept that caring for the Claimant while maintaining her own address was not inconsistent with a common law relationship at that point, given the history of their relationship. They maintained that relationship over many years with separate addresses. I find that the Claimant assisted the contributor during his illness, attending medical appointments with him and helping him in his home.

- **The Claimant and the contributor had a sexual relationship. This is a factor weighing in favour of finding a common law relationship.**

[25] The Claimant testified and I accept that she and the contributor had a sexual relationship since the mid-1980's. They were exclusive almost the whole time except for a brief time when the Claimant had a child. I accept that their sexual relationship changed when the Claimant was sick with cancer during the last year of his life.

[26] In my view, this is an important factor here because they maintained an exclusive relationship for many years.

- **The Claimant and the contributor communicated on a personal level, ate together with some regularity, assisted each other with problems, and bought each other gifts. This is a factor weighing in favour of finding a common law relationship.**

[27] The Claimant testified that for years, she and the contributor ate dinner together at her house when he had the day shift. She testified that they used both houses equally, he walked between them.

[28] When the Claimant had surgery for cancer, they saw each other more. In August 2015 he was off work and started to receive short term and then later long-term disability. Particularly in the last year of his life, the Claimant testified that she saw the contributor every day or every second day because he needed care and support. The Claimant went to all the contributor's appointments and support meetings.

[29] The Claimant testified that in terms of gifts, the contributor spoiled her “quite nicely,” and that she bought him a lot of flowers.

[30] The Minister argued before the Appeal Division hearing that the specifics of some of these aspects of the relationship weren’t clear at the General Division level. For example, how often the Claimant ate meals with the contributor or what specifically she did to help him while he was ill. However, I’m satisfied that the Claimant’s estimation about seeing the Claimant every day or every second day in the final year of his life was sufficiently specific. This information was not challenged at the Appeal Division hearing.

– **The Claimant and the contributor divided some work in terms of preparing meals, doing laundry, shopping, and completing household maintenance. This is a factor that weighs in favour of finding a common law relationship.**

[31] I’m satisfied that the Claimant sometimes helped the contributor with groceries and laundry and buying cat food. The contributor helped the Claimant by doing maintenance at the Claimant’s house because she owned her property and he rented.

[32] In the year before he died, the contributor was not well, and it’s clear the Claimant helped him a great deal with household duties. I accept that she attended many medical appointments with him.

[33] In a letter in the General Division file, a friend of the Claimant’s stated that the contributor didn’t drive, and the Claimant took him grocery shopping and on other errands.<sup>12</sup> The letter doesn’t hold the same weight as sworn testimony that is subject to cross examination, but it’s relevant and consistent with the Claimant’s evidence about the closeness of her relationship with the contributor. The friend also described the Claimant as a caregiver, which I take to mean she cared for the contributor, not that she was a paid caregiver through a multi-decade period of illness.

[34] The Minister argued that there wasn’t sufficient evidence of a shared living situation here. In my view, this factor weighed in favour of a common-law relationship: there’s no need for parties to share all housework to be in a common-law relationship.

---

<sup>12</sup> GD5-1.

This is especially so when one person in the partnership is ill with cancer and on disability leave from work.

- **The Claimant and the contributor’s social lives (and the way they were viewed by their community), to the extent that it applies given their situation, is a factor in favour of finding common law relationship.**

[35] The Claimant testified (and I accept) that the contributor was a loner. The Claimant also explained that she is an only child and her mother died when she was 19. The Claimant said that the contributor wasn’t in contact with his family at all. The contributor didn’t travel and take vacations, in part because of his work and schedule. The parties weren’t active members of a faith community. I accept that the Claimant and the contributor spent a lot of time together, even if they didn’t socialize with extended family or friends together regularly.

[36] The contributor died just before the COVID-19 pandemic shut-downs, so the funeral arrangements fell through and ultimately it was just the Claimant and one other person. The Claimant explained that there was no obituary and no funeral home involved. The Claimant and the contributor seemed to be a key part of each other’s social lives, and this is a factor in favour of finding a common law relationship.

- **The Claimant and the contributor didn’t require financial support from each other, but the contributor did name the Claimant as a beneficiary for his life insurance.**

[37] The Claimant and the contributor didn’t have shared bank accounts. The Claimant explained that the contributor paid his rent at his apartment, and she paid the taxes at the house she lived in that she inherited from her mother. They didn’t pay each other’s bills as neither of them needed financial assistance from each other.

[38] The contributor named the Claimant as a beneficiary in his life insurance.<sup>13</sup> The contributor’s marital status on his public service pension plan document states that he was single. However, it names the Claimant as the beneficiary.<sup>14</sup>

---

<sup>13</sup> See GD2-21.

<sup>14</sup> See GD2-20.

[39] But on the other hand, the Claimant was not named as the next of kin on the death certificate.<sup>15</sup>

[40] On her income tax filing in December 2020, the Claimant stated that she was single. At the hearing when asked about this, the Claimant testified that she was still in shock when she completed that form. On cross examination, she agreed that given the amount of time that had passed since the contributor's death, she wasn't in shock. She testified about the anxiety she felt clearing out the contributor's place (during the pandemic), the grief she was experiencing, and the changes to her job.

[41] Clearly, the fact that the Claimant wrote that she was single on her income tax filing is inconsistent with the notion that she was in a common law relationship. However, I do think that the nature of the Claimant's relationship with the contributor was complex given how long they were an exclusive couple even though they didn't live at the same address and that he was sick with cancer in the last year of his life. So while this paperwork is a factor that goes against finding a common law relationship, I find this is only one factor in list of many, and that on balance, this relationship was common law, even if that isn't the option the Claimant chose on her income tax form in 2020 after the contributor died.

[42] When it comes to financial arrangements, given that the parties were not dependent on each other financially, I give a lot of weight to the fact that the deceased Contributor's insurance documents listed the Claimant as a beneficiary. So although they didn't rely on each other financially for day-to-day matters, when given the opportunity to name a beneficiary for a benefit, the contributor named the Claimant.

[43] The Claimant explained that the contributor didn't have a will. The Claimant sorted through the contributor's belongings, donating much to goodwill, and giving the contributor's tools to her daughter. She kept the contributor's train set.

---

<sup>15</sup> See GD2-18.

[44] In my view, some of the evidence here weighs in favour of finding a common law relationship (like the life insurance), and some of it weighs against finding a common law relationship (like the Claimant listing herself as single on the tax documents).

- **The Claimant and the contributor don't have children together, and the Claimant's child was an adult in the year before he died.**

[45] The Claimant and the contributor didn't have children together. However, the Claimant testified that in 2000, they were apart for a short time and that she had a daughter. I accept that the Claimant did not have a relationship with the father of her child after the child was born. Her daughter's father was in their lives in any capacity for several years only. To the extent that the contributor and the Claimant were ever not exclusive, I find that this was a short period of time leading up to the birth of the Claimant's daughter, long before the last year of the contributor's life.

[46] The contributor gave the Claimant's daughter gifts throughout the years but was not responsible for her care.

[47] In the last year of the contributor's life, her daughter was grown, and the Claimant spent a great deal of time with the contributor.

## **In Summary**

[48] The factors I can consider are non-exhaustive and they will weigh differently depending on the case. The Claimant owned her home and contributor had lived alone for many years. He didn't sleep. He was a recovering alcoholic, and in the last year of his life he was sick with cancer. The Claimant and the contributor each had their own income and didn't rely on each other that way. They shared the cost of things like groceries.

[49] In my view, the Claimant and the contributor had a life together that, when you consider the factors globally, was more than just a relationship – it was a common-law relationship. They had a shared living situation in the last year of his life, even if the Claimant slept at her house several blocks away. The contributor was a loner. Their social life that year will not tell us much about whether their relationship was common-

law. The Claimant owned her own home and had income; the Claimant was financially independent from the contributor. It doesn't seem fair to find a lack of common law relationship simply because neither party was dependent on the other financially. They didn't need to pool resources that way. They didn't have joint bank accounts, and neither do other survivors who are married, for example.

[50] The Claimant and the contributor were not merely friends, lovers, neighbours, or in a caregiving relationship. I'm satisfied that they were in a long-term common-law relationship. They shared a life together and were partners – and that life included complications stemming from the nature of the contributor's gruelling work schedule, his eventual alcohol dependency, and later, his cancer. They were not connected to their families of origin in the way that some people are.

[51] No two common-law relationships are organized in the same way. The factors need to be flexible enough that a person can still be eligible for the CPP survivor's pension even when their social or family connections, their social lives, or their health.

[52] When I consider all the factors in the unique circumstances of this relationship, I'm satisfied that the Claimant is the contributor's survivor. Like marriages, common-law relationships are unique to the individual people who are involved. The Claimant and the contributor were in a unique situation for the following reasons:

- They were in a long-term relationship that lasted many years.
- They lived at separate addresses for decades because of both work and health-related needs, but they were in an exclusive relationship for decades except for a very short time in which the Claimant had a child. They were certainly exclusive in the last year of the contributor's life. The contributor's alcoholism as well as his extremely challenging work schedule meant that he needed his own space, particularly to sleep in at night.
- The contributor was a loner, so the ways in which members of the community or extended family may have viewed his relationship is not as applicable as it might otherwise be.

- The contributor was sick with cancer in the last year of his life and the Claimant saw him very regularly during this period and spent more time with him.
- There wasn't financial dependence, but the contributor named the Claimant as a beneficiary on his life insurance, which in this case shows financial connection more than that of a close friend or caregiver.
- The Claimant listed herself as single in tax documents, and the contributor didn't name the Claimant as his next of kin. But they were in a conjugal relationship in the last year of his life.

[53] I'm satisfied that the Claimant was not just the contributor's girlfriend, friend, or caregiver when he died. She was his common law spouse and therefore she is eligible for the CPP survivor's pension.

## **Conclusion**

[54] I'm allowing the Claimant's appeal. The Claimant is eligible for a CPP survivor benefit.

Kate Sellar  
Member, Appeal Division