



Citation: *PG v Minister of Employment and Social Development and WV*, 2024 SST 435

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** P. G.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Viola Herbert

**Added Party:** W. V.

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**Decision under appeal:** General Division decision dated May 19, 2023  
(GP-22-43)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Videoconference

**Hearing date:** April 2, 2024

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

**Decision date:** April 26, 2024

**File number:** AD-23-819

## Decision

[1] I am allowing this appeal. The Appellant is entitled to a Canada Pension Plan (CPP) survivor's pension.

## Overview

[2] This case involves two competing claims for a CPP survivor's pension.

[3] For many years, C. C. maintained relationships with two women. He was married to W. V., who lived in Ajax, Ontario. At the same time, he spent long periods with P. G. at her home in Calgary. Both women were aware of each other, but neither knew the true extent of C. C.'s double life.<sup>1</sup>

[4] C. C. and W. V. were married in 1995. For years, they lived in Ontario with their two daughters, N. C. and A. C., along with C. C.'s daughter from a previous relationship, C. E. In 2005, C. C. lost his job as a cable technician and moved to Calgary to find work as a welder. He told his wife that he would make money there, send it home, and visit for Caribana, Christmas, and whenever else he could.<sup>2</sup>

[5] It was an unconventional arrangement, but W. V. accepted it on the understanding that the separation was temporary and driven purely by economic circumstances. They remained married and resumed marital relations on the occasions when C. C. returned home.

[6] One day in 2008, W. V. received an anonymous telephone call. The caller told her that C. C. had fathered a daughter in Calgary. When W. V. confronted C. C., he admitted that the allegation was true. However, she forgave him, and their long-distance marriage continued as before. Over the years, C. C. would tell W. V. that the affair had ended and that P. G. and their daughter now lived in Montreal with her husband.

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<sup>1</sup> For convenience and clarity, I will depart from the conventions of formality and refer to the key players in this proceeding by their first names.

<sup>2</sup> Caribana, as it was then known, is a summertime festival of Caribbean culture annually held in the Greater Toronto Area.

[7] None of this was true. In fact, P. G. was unmarried and lived in Calgary. C. C. had moved into her duplex and they were living together as a family. P. G. knew that C. C. was still married and had children in Ontario, but he told her that they were separated and that the marriage was essentially over.

[8] Years went by. In August 2020, C. C. became severely ill in Calgary. He was found to have a blocked bowel and was soon diagnosed with stage 4 colon cancer. He underwent surgery, followed by radiation and chemotherapy, but none of these treatments worked. He was moved to hospice care and died on April 21, 2021.

[9] On May 10, 2021, W. V. applied for a CPP survivor's pension.<sup>3</sup> In her application, she declared that, although they were separated, she and C. C. were still married at the time of his death.

[10] On May 26, 2021, P. G. also applied for the survivor's pension.<sup>4</sup> Along with her application, she submitted a sworn statement declaring that she and C. C. had lived together for a "continuous period of one year" from "August 1, 2020 to May 21, 2021 [sic]."<sup>5</sup> The Minister of Employment and Social Development denied the application and awarded the pension to W. V.

[11] On August 16, 2021, P. G. asked the Minister to reconsider his decision. She submitted a second sworn statement, this time declaring that she and C. C. had lived together from January 10, 2019 to April 21, 2021.<sup>6</sup> In response, the Minister reversed his position and awarded the pension to P. G. instead of W. V.

[12] W. V. appealed the Minister's reversal to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and allowed the appeal. The General Division considered the evidence about C. C.'s living arrangements in the final year of his life and concluded that he was not in a common-law relationship with

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<sup>3</sup> See W. V.'s application for the CPP survivor's pension submitted on May 10, 2021, GD2-108.

<sup>4</sup> See P. G.'s application for the CPP survivor's pension submitted on May 26, 2021, GD16-94.

<sup>5</sup> See P. G.'s Statutory Declaration of Common-Law Union sworn on April 21, 2021, GD16-106.

<sup>6</sup> See P. G.'s Statutory Declaration of Common-Law Union sworn on August 16, 2021, GD16-72.

P. G. when he died. The General Division awarded the survivor's pension to W. V., who was still C. C.'s legal spouse at the time of his death.

[13] P. G. then applied for permission to appeal to the Appeal Division. Last September, one of my colleagues on the Appeal Division granted her permission to appeal. Earlier this month, I held a hearing by videoconference to discuss this case in full.

[14] Now that I have considered submissions from all parties, I have concluded that P. G. is entitled to the survivor's pension. Although C. C. was married to W. V. I am satisfied that he established a common-law relationship with P. G. The evidence shows that he lived in a conjugal relationship with P. G. for roughly 13 years before his death.

## **Preliminary Matter**

[15] In December 2022, the law governing the appeals to the Social Security Tribunal changed.<sup>7</sup> Under the new law, the Appeal Division, once it has granted permission to proceed, must now hold a *de novo*, or fresh, hearing about the same issues that were before the General Division.<sup>8</sup> As I explained at the outset of the hearing, that meant I would not be bound by any of the General Division's findings. I also made it clear that I would be considering all available evidence, including new evidence, about whether the CPP survivor's pension belonged to W. V. or P. G.

## **Issue**

[16] For P. G. to succeed, she had to prove that she was in a common-law relationship with C. C. when he died.

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<sup>7</sup> See section 58.3 of the *Department of Employment and Social Development Act*. This appeal is subject to the new law, because P. G.'s application for permission to appeal was filed with the Tribunal on August 28, 2023, well after the new law came into force.

<sup>8</sup> The Appeal Division was previously restricted to considering three types of error that the General Division might have made in coming to its decision.

## Analysis

[17] This is a difficult case. W. V. and P. G. struck me as good and honest people, and each has a moral claim to be C. C.'s survivor. If I could, I would award the pension to both claimants. Of course, I can't, because there can only be one survivor under the law. Having applied that law to the available evidence, I am satisfied that P. G. was in a common-law relationship with C. C. at the time of his death.

[18] These are my reasons.

### **The burden of proof was on P. G.**

[19] Where there are competing interests between the legally married widow of a deceased contributor and an alleged common-law partner, there is a presumption that the pension goes to the legal widow. As a result, the burden was on P. G. to prove that she was living with C. C. in a conjugal relationship at the time of his death and had done so for a continuous period of at least one year.<sup>9</sup>

[20] W. V., on the other hand, didn't have to prove anything, although she did submit considerable evidence intended to show that she and her late husband maintained a deep relationship until the end of his life.

### **A married spouse is the survivor — unless the deceased contributor was in a common-law relationship**

[21] A CPP survivor's pension is payable to the survivor of a deceased contributor. A survivor is a person who was legally married to the contributor at the time of their death. However, if the contributor was in a common-law relationship at the time of their death, then the survivor is the contributor's common-law partner.<sup>10</sup>

[22] A common-law partner is a person who was cohabiting with the contributor in a conjugal relationship at the time of the contributor's death, having done so for a continuous period of at least one year.<sup>11</sup> The CPP doesn't contain a definition for the

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<sup>9</sup> See *Betts v Shannon* (2001), CP 11654 (PAB); *Canada (Attorney General) v Redman*, 2020 FCA 209.

<sup>10</sup> See *Canada Pension Plan*, section 42(1).

<sup>11</sup> See *Canada Pension Plan*, section 2(1).

term “conjugal relationship.” However, the Federal Court of Appeal has said that the existence of a conjugal relationship depends on many factors, including:

- Shelter – whether the parties lived under the same roof;
- Sexual behaviour – whether the parties had sexual relations and were faithful to each other;
- Services – whether the parties prepared meals or performed other domestic services for each other;
- Social – whether the parties participated together in neighbourhood and community activities;
- Societal – whether the parties were seen as a couple by the community; and
- Support – whether the parties shared assets and finances.<sup>12</sup>

[23] 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>13</sup> The courts have also made it clear that, in order to qualify for a survivor’s pension, a claimant needs to live with a contributor in a marriage-like relationship for the **entire year** preceding the contributor’s death.<sup>14</sup>

### **Much of C. C.’s behaviour can be explained by his double life**

[24] In order to understand this case, one first has to understand that C. C. led two lives. He struggled keep those lives separate, and that struggle governed that last part of his life. It also shaped much of the evidence before me.

[25] Many of C. C.’s behaviours were driven by his need to conceal, deceive, obfuscate. In making her case, W. V. rightly noted that there was little hard evidence showing that C. C. and P. G. lived together in Calgary. If C. C. had in fact set up a joint household with P. G., she asked, where were the joint tenancy, the joint bank account,

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<sup>12</sup> See *Canada Pension Plan* sections 55.1 and 55.2.

<sup>13</sup> See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65. See also *McLaughlin v Canada Attorney General*, 2012 FC 556.

<sup>14</sup> See *Canada (Attorney General) v Redman*, 2020 FCA 209.

the joint utility bills, or any of the other documents that are normally generated when two people move in together?

[26] In my view, there was a good reason for the absence of a paper trail linking C. C. to P. G.'s residence in Calgary: C. C. wanted it that way. First, it gave him deniability: the fewer the documents with his name on them, the lower the risk he would get caught if his wife became suspicious. Second, it helped him protect his money: there were no jointly-owned assets for his wife to go after if she ever filed for separation.

[27] The length to which C. C. went to keep his lives separate is vividly illustrated by two incidents in which he lied to his wife:

- ***The Work Conference*** — W. V. testified that C. C. had always discouraged her from visiting him in Calgary, telling her that he rented rooms in a house that was unfit for visitors. However, in 2018, W. V.'s job took her to Calgary for a conference. Before leaving, she pressed C. C. for his address and, eventually, he reluctantly gave it to her. When she arrived at his supposed home, things seemed off — she noticed C. C.'s travel bag by the front door, and he did not show her his bedroom or his recording studio. She now realizes that it was all an act. Indeed, one of P. G.'s witnesses, F. L., testified that, around the same time, C. C. called him in a panic asking if he could borrow his house for the afternoon because his “ex-wife had randomly showed up.” W. V. and Ferris were probably talking about the same incident.
- ***The Hospital Admission*** — W. V. provided what appears to be a complete record of text messages between herself and C. C. in the last year of his life. When C. C.'s bowel ruptured in August 2020, W. V. asked him to allow her to visit him in Calgary: “I think I will rent a van and N. C., A. C. and I will drive down from next week Saturday... We're thinking of coming for 2 or 3 weeks.” C. C.'s reply: “W. V., are you nuts? Stop this... What foolishness are you on.”<sup>15</sup> However, W. V. continued to press him for information: “Give the

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<sup>15</sup> See text messages between W. V. and C.C. dated November 13, 2020, GD1-61.

number for the nurses station so that I can call to get updates on you. What floor and room are you in? Can you put my name on the list for calls so that they will speak with me. Just need updates please.”<sup>16</sup> A day later, the truth dawned on her: “I just don't understand why you keep lying to me. Take a look at the situation from my eyes. U gave me the name of the wrong hospital, my calls, when u do talk it's for 5 seconds and when I do track u down no one knows who I am and someone else's name is on your chart as wife.”<sup>17</sup>

[28] I recount these incidents to show that C. C. did not lead a typical life. He lied to his family and friends and arranged his affairs to hide one spouse from the other. He lied to P. G. too: she testified that C. C. told her he left W. V. because she cheated on him, a charge that W. V. vehemently denied. C. E., C. C.'s eldest daughter, said that her father “put us all in silos.”

[29] This all means that, when I consider the evidence, I can't take anything C. C. said or did at face value. It means that I have to take into account possible ulterior motives that he might have had for leaving so light a footprint in Calgary.

### **C. C. and P. G. lived under the same roof**

[30] P. G. testified that for many years she has rented a duplex on X Northeast in Calgary. She said that she first met C. C. through an online dating service in 2007. At the time, he was staying with a cousin in Calgary. He returned to Toronto, but on his next visit, he stayed with her, and he never moved out. In 2008, they had a child together. P. G. already had a daughter and two young sons from an earlier relationship. C. C. was good with kids, and they became a family.

[31] Every few months, C. C. would return to Toronto, usually for stays of a week or two. In the early years, he took these trips four or five times a year; later, he took them

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<sup>16</sup> See text messages between W. V. and C.C. dated November 17, 2020, GD1-62.

<sup>17</sup> See text messages between W. V. and C.C. dated November 18, 2020, GD1-62.



only twice a year — usually in August and December. He told P. G. that he went to Ontario to visit his daughters. He didn't tell her where he stayed, and she didn't ask.

[32] At the beginning of their relationship, P. G. understood that C. C. was married, but he told her that he and his wife were separated and in the process of getting a divorce. As time went by, she wondered why he had never divorced. He kept promising it was going to happen, but it never did. After a while, she stopped believing that anything was going to change.

[33] For her part, W. V. confirmed that C. C. returned to Ontario two or three times a year, but she stressed that he stayed with her at the family home in Ajax. She maintained that they resumed all aspects of their marital life, including sexual relations. She insisted that, when he was in Calgary, she and C. C. remained in daily contact by phone calls and texts.

[34] P. G. said that she had no idea C. C. was still in a relationship with his wife or that he was staying with her during his trips to Ontario. She knew that he regularly spoke to his older daughters, but she didn't notice him having conversations with their mother. She conceded that C. C. spent a lot of time alone in his recording studio, which at various times was in their basement or at offsite locations.

– **W. V. and P. G. agree that C. C. spent most of his time in Calgary**

[35] Although their interests were opposed, I found W. V.'s and P. G.'s accounts to have much in common. Both claimants agreed that C. C. deceived them about his relationship with each other. Both agreed that C. C. spent the vast majority of his time in Calgary. But they disagreed about where he lived in Calgary, with W. V. suggesting that there was no proof that C. C. actually lived with P. G.

– **C. C. left a faint, and possibly misleading, paper trail**

[36] As noted, the documentary evidence proving that C. C. lived with P. G. before his illness was sparse. There is a phone bill from January 2019 listing C. C. on P. G.'s

account.<sup>18</sup> There is a wedding invitation from 2016 addressed to both C. C. and P. G. at the X address.<sup>19</sup> There are automobile insurance confirmations naming C. C. as an insured driver on P. G.'s policy. There are also photos showing C. C., P. G., and their young daughter together at family and community events.

[37] Near the end of his life, C. C. completed an application to Alberta's disability benefits program in which he listed his address as X.<sup>20</sup> However, at around the same time, he also applied for CPP disability benefits, listing his address in two separate applications as a house on X Northwest, Calgary.<sup>21</sup> I asked P. G. about the discrepancy. She replied that C. C. sometimes used his cousin's address to receive mail, just in case W. V. attempted to trace his whereabouts.<sup>22</sup> I remarked that it was hard to see why C. C. would have used one address for a provincial disability application but another for a federal disability application. P. G. had no explanation, except to say that, since he was by then in a hospice, C. C. had likely not filled out the forms himself. She insisted that, whatever address he listed, he was living with her right up until he was admitted to first the hospital, then the hospice.

[38] In the end, I accepted what P. G. told me. The X address was puzzling, but it was consistent with much of the other evidence about C. C., a man who spent considerable energy covering up information about his past and present.

– **Many witnesses placed C. C. in P. G.'s home**

[39] In an effort to make up for the lack of paper trail, P. G. submitted numerous written testimonials aimed at showing that she and C. C. long cohabited as a couple in Calgary:

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<sup>18</sup> See Telus bill dated January 11, 2019, AD9-11.

<sup>19</sup> See invitation to a wedding held on September 10, 2016, AD9-7.

<sup>20</sup> See C. C.'s application for Alberta's Assured Income for the Severely Handicapped program dated February 11, 2021, GD16-50. The unredacted version of this document was submitted on March 20, 2023, but it was not labelled by the Tribunal.

<sup>21</sup> See C. C.'s application for the CPP disability pension dated February 23, 2021 (GD16-8) and March 2, 2021 (GD16-30). The unredacted versions of these documents were submitted on March 20, 2023, but it was not labelled by the Tribunal.

<sup>22</sup> Refer to recording of Appeal Division hearing at 1:15:30.

- T. B. wrote that he was C. C.'s friend for 20 years. He said that, around 2013, he reconnected with C. C. in Calgary and saw him living with P. G. and their daughter and P. G.'s three other children.<sup>23</sup>
- J. S. wrote that he had known C. C. 2007, when he moved to Calgary. He described C. C. as devoted father to his daughter, A. C., as well as a devoted common-law partner to A. C.'s mother, P. G., with whom he lived.<sup>24</sup>
- K. A. confirmed that P. G., her longtime friend, had been in a long-term relationship with C. C. since 2007. She said that she and her daughter spent many nights at their home located on X, where C. C.'s studio was located.<sup>25</sup>
- O. I. wrote that he had known C. C. since 2005 and had collaborated with him on various music productions. He recalled visiting C. C. and P. G. in 2007 for a two-week stay at their Calgary home.<sup>26</sup>

[40] P. G. also produced many witnesses, who testified at both the General Division and Appeal Division hearings that C. C. and P. G. spent years living together in Calgary:

- C. G. said that she studied steel pan under C. C. and often visited his home, where he lived with P. G. and their daughter and his stepchildren.
- J. K. said that he was friends C. C. and P. G. for more than 10 years and frequently dined at their home and attended social events with them.
- A. B., one of P. G.'s daughters from a previous relationship, said that C. C. lived with her mother for years. She said that she regarded him as her stepfather.

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<sup>23</sup> See undated letter by T. B. of Ajax, Ontario, GD9-54.

<sup>24</sup> See letter dated December 12, 2022 by J. S. of Calgary, Alberta, GD9-56.

<sup>25</sup> See letter dated August 9, 2023 by K. A. of Calgary, Alberta, AD1B-7.

<sup>26</sup> See letter dated December 12, 2022 by O. I. of London, England, AD9-16.

- A. C., C. C.'s daughter with P. G., said that she had always lived with her father, from her birth to his death.
- C. E., C. C.'s eldest daughter, said that, when she first went to Calgary, she stayed with C. C. and P. G. at their home, where they lived with her kids from an earlier relationship, and G. G., P. G.'s mother.
- C. D. said that she first met C. C. in 2019, when she signed on as one of his steel pan students. She quickly became close to him and P. G., who he introduced as his "wife." Until his illness, they saw each other nearly every day at each other's homes and at community events.
- T. S. said that he met C. C. and P. G. in 2014 and was regularly invited to their home for dinner and studio sessions.
- D. L. said that he and C. C. were fellow musicians who went back more than forty years. He said that he knew C. C. when he was with W. V. in Ajax but didn't find out about his second family until 2015. After that, he visited C. C. and P. G. five or six times in Calgary, staying with them in C. C.'s basement studio. He said that he saw nothing to indicate that C. C. and P. G. were anything other than a couple in a committed relationship.
- F. L. said that he first met C. C. in 2009. He had a friend who told him that there was a music producer with a studio in the neighbourhood. After making contact, C. C. invited him to his home, where he met P. G. He attended many backyard barbeques at their place, and P. G. was always with him. He also recalled that C. C. once brought W. V. to his house in Calgary for a visit and introduced her as his "wife," a description he found surprising. C. C. later explained that he and W. V. were in the process of getting a divorce.
- D. C., C. C.'s brother, testified that, whenever he visited C. C. in a Calgary hospital after his cancer diagnosis, he observed P. G. taking care of C. C.,

even taking over some of the nurses' duties to assist him when possible. He confirmed that he, P. G., and C. E. paid for the funeral.

– **W. V.'s witnesses did not help her case**

[41] W. V. also had witnesses, but they did little to undermine P. G.'s claim that C. C. was living with her in the 13 years leading up to his death. W. F. wrote a letter saying that he hosted C. C. and W. V. for a Christmas dinner in 2019.<sup>27</sup> N. C., W. V.'s elder daughter with C. C., testified that her father visited them every few months and lived with them at their home in Ajax. J. J., who knew C. C. for 15 years, said that his friend visited Ajax maybe four or times a year. However, W. V. herself said that, toward the end of his life, C. C.'s visits to Ajax dwindled to two per year.

[42] W. V.'s witnesses demonstrated that C. C. was spending a few weeks of the year in Ajax, but they said nothing about where and how he was spending the rest of his time. It is clear that C. C. worked for years as a welder in Calgary, and there was little on the record to suggest that he was living anywhere else but P. G.'s duplex on X. C. C. was not a wealthy man, but he had a girlfriend, the mother of his child, who wanted him in her home. I have to ask: if he was not living with P. G. and his child, then where else would he have been likely living in Calgary? The bulk of the available evidence strongly suggested that he moved in with P. G. in 2007 and remained there until he entered hospice care in January 2021.

– **P. G. continued to cohabit with C. C. in his final months**

[43] The last three months of C. C.'s life qualify as an involuntary separation and would count as a period of cohabitation with P. G., even though they did not actually live under the same roof at the time of his death.<sup>28</sup>

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<sup>27</sup> See letter dated January 19, 2023 by W. F. of Ajax, Ontario, GD11-2.

<sup>28</sup> See *A.L. v D.P. and Ministry of Human Resources and Skills Development* (November 16, 2011), CP 27238 (PAB).

### **C. C. was not faithful to P. G.**

[44] P. G. testified that she and C. C. had remained romantically intimate until he fell ill in the summer of 2020. However, even though they cohabited together for many years, C. C. was not faithful to P. G. W. V. testified that she and C. C. resumed sexual relations whenever he returned to Ajax, and I believed her. I was reinforced in this belief when I looked at their text messages, which revealed a level of intimacy deeper than one might expect to see between estranged spouses.

[45] P. G. said that she was committed to C. C. and had no idea what he was doing on his trips to Ajax. However, his sexual behaviour counts as a strike against her claim, although not a fatal one.

### **C. C. and P. G. did things for each other**

[46] By all accounts, C. C. and P. G. shared a cozy domestic life. They not only lived together, they cooked and ate meals together as a family. They split domestic chores and helped each other in the way that people do when they're in a committed relationship. C. C. assumed the role of father, not just to A. C. but to P. G.'s three children from her previous relationship, and he took an active part in their lives, attending school concerts and sporting events.

[47] I don't doubt that C. C. behaved in much the same way when he was with W. V. and their children in Ajax. But that doesn't change the fact that he spent far more time with P. G. — enough time to establish a common-law relationship with her.

### **C. C. and P. G. presented themselves as a couple**

[48] C. C. was an outgoing man with a wide social circle. He was an active figure in Calgary's Caribbean community, and his passion for music made him many friends. Every one of P. G.'s witnesses testified that she was always by his side. She attended festivals with him, hosted dinners, and accommodated his friends and relatives when they visited Calgary from out of town. Several witnesses testified that, after C. C. died, they were surprised to learn that P. G. was not actually his "wife," since he had consistently described and presented her as such.

[49] The evidence shows that C. C. and P. G. socialized as a couple and presented themselves as a couple in the last 15 years or so of C. C.'s life. Of course, C. C. concealed this relationship from some people — but only those he left behind in Ajax. For reasons that I have explored, C. C. did not acknowledge P. G. to W. V., their two daughters, and her friends and family in Ontario. But after C. C. moved to Calgary, they became a relatively minor part of his life. I am satisfied that, beyond a small group of people, anyone else observing C. C. and P. G. as they lived their lives in Calgary would have regarded them as being in a relationship akin to marriage.

### **C. C. and P. G. were financially interdependent — up to a point**

[50] As mentioned, C. C. and P. G. did not share assets. She rented her duplex, and she and C. C. owned their vehicles separately, although she did insure him and his car on her policy.

[51] Nor did they pool their income or share a joint bank account. They kept their finances more or less separate. It appears that all of the utilities were in P. G.'s name, just as they had been before C. C. moved into her home. It also appears that C. C. continued to pay for some of the utilities at the home that he used to share with W. V., just as he had done before he left for Calgary.

[52] That said, C. C. contributed to household expenses at X. He did so by periodically transferring money — when he had it — to P. G.'s account. He did something similar to meet his family obligations in Ajax, sending money to W. V. on an ad hoc basis.

[53] As discussed above, C. C.'s need for secrecy likely drove him to keep his name off leases, accounts, and other traceable documents. He may also have been motivated by a desire to conserve his funds and control his expenditures. Still, even if C. C. didn't always pay an equal share, I am satisfied that he and P. G. were nonetheless mutually responsible for the maintenance of their home and family in a way that is characteristic of a couple in a marriage-like relationship.

[54] I acknowledge that C. C. continued to be listed as W. V.'s spouse on her work benefits for years after he left for Calgary. However, it is not difficult to see why he was content to leave this arrangement in place. W. V., who had a stable job in the healthcare industry, likely had better benefits than P. G., who had experienced at least one significant career interruption. Several witnesses testified that C. C. was averse to conflict. He couldn't bring himself to end his marriage, because he didn't want to hurt W. V., and because he knew that he would take a financial hit if he did so.

[55] C. C.'s will, which he executed five months before his death, says a lot about how he regarded his relationship with P. G. during the last year of his life.<sup>29</sup> In it, he referred to P. G. as his "spouse" and named her as his sole heir and executor. Although it falls short of definitive proof that C. C. was cohabiting in a conjugal relationship with P. G. for the entire year leading up to his death, it certainly suggests that their relationship was enduring and deep.

## Conclusion

[56] This was a hard case. W. V. and P. G. are both sympathetic claimants who discovered that the person whom they regarded as their spouse had been deceiving them for years. But however much they both deserve a survivor's pension, I had to follow the facts and law where they led me. In the end, I had to conclude that C. C. was in a common-law relationship with P. G. at the time of his death.

[57] Common-law relationships differ from legal marriages. Parties in a common-law relationship have to show, by their acts and conduct, a mutual intention to live together in a conjugal relationship of some permanence.<sup>30</sup> Although C. C. was not faithful to P. G., I was nonetheless able to deduce that he intended to be in a marriage-like relationship with P. G., as indicated by evidence that he lived with her, that he helped support her and their child, that he presented her as his spouse to the community, that

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<sup>29</sup> See Last Will and Testament of C. C. dated November 12, 2020, GD9-93. Also see the Appellant's Power of Attorney (GD7-16) and his Personal Healthcare Directive (GD7-12), both signed on November 12, 2020.

<sup>30</sup> See *McLaughlin v Canada Attorney General*, 2012 FC 556.



he left her everything in his will. Although W. V. was still his wife when C. C. died, her claim to the pension was trumped by the existence of a common-law spouse.

[58] The appeal is allowed. P. G. is entitled to the CPP survivor's pension.



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Member, Appeal Division