



Citation: *DP v Minister of Employment and Social Development*, 2025 SST 828

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	D. P.
Respondent:	Minister of Employment and Social Development
Representative:	Viola Herbert
Added Party:	S. Z.
Representative:	Victoria Jones

Decision under appeal:	General Division decision dated December 9, 2024 (GP-23-295)
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Tribunal member:	Neil Nawaz
Type of hearing:	Videoconference
Hearing date:	July 23, 2025
Hearing participants:	Appellant Respondent's representative Added Party Added Party's representative
Decision date:	August 7, 2025
File number:	AD-25-150

Decision

[1] I am dismissing this appeal. The Appellant is not entitled to a Canada Pension Plan (CPP) survivor's pension. Instead, the pension goes to the Added Party, who I find is the survivor of the late C. P. (the Contributor).

Overview

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

[3] C. P. was a contributor to the CPP. He and the Appellant were married in 1989 and separated in 2015, although they remained legally married for the rest of the Contributor's life.

[4] The Added Party met the Contributor in 2016, and they began living together the following year. The Contributor began to feel unwell in late 2020, and he was diagnosed with terminal pancreatic cancer in March 2021.

[5] In May 2021, the Contributor, who had lived in Edmonton for many years, moved to X, British Columbia. He said that, among other reasons, he wanted to be near his mother and brother in his final months. The Added Party remained in Edmonton, where she worked on contract as a corporate accounting professional, but she frequently visited the Contributor in X.

[6] The Contributor entered hospice care in March 2022 and passed away on April 27, 2022, after availing himself of Canada's medical assistance in dying (MAID) law.

[7] The Appellant applied for a CPP survivor's pension in May 2022.¹ In her application, she declared that, although they were separated, she and the Contributor were still married at the time of his death.

¹ See the Appellant's application for the CPP survivor's pension dated May 24, 2022, GD2-4.

[8] The next month, the Added Party also applied for the survivor's pension.² In her application, she declared that she had been the Contributor's common-law spouse from October 2017 until his passing.

[9] Service Canada, the Minister's public-facing agency, denied the Appellant's application and awarded the survivor's pension to the Added Party as the Contributor's common-law spouse. It determined that the Appellant had been cohabiting with the Contributor in a conjugal relationship for the 12 months immediately preceding his death.

[10] The Appellant appealed the Minister's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by videoconference and dismissed the appeal. It considered the Contributor's living arrangements during his final months and concluded that, despite moving to another province, he continued to be in a common-law relationship with the Added Party until his death. It confirmed the Minister's decision to award the survivor's pension to the Added Party.

[11] The Appellant then applied for permission to appeal to the Appeal Division. Earlier this year, one of my colleagues on the Appeal Division granted her permission to appeal. Last month, I held a hearing to discuss her appeal in full.

Issue

[12] This appeal was brought by the Appellant, but the burden of proof lies with the Added Party.

[13] The CPP survivor's pension goes to the legally married spouse of a deceased contributor — unless the contributor was in a common-law relationship at the time of his death. As a result, it was up to the Added Party to prove that she was the Contributor's common-law spouse when he passed away in April 2022.³

² See the Added Party's application for the CPP survivor's pension dated June 17, 2022, GD2-24.

³ See *Betts v Shannon* (2001), CP 11654 (PAB); *Canada (Attorney General) v Redman*, 2020 FCA 209.

Analysis

[14] There can only be one survivor under the law. Having considered the parties' submissions, I have concluded that the Added Party is the Contributor's survivor. I am satisfied that she was in a common-law relationship with the Contributor at the time of his death.

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

[15] 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 his death. However, if the contributor was in a common-law relationship at the time of his death, then the survivor is the contributor's common-law partner.⁴

[16] 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.⁵ *The Canada Pension Plan* doesn't contain a definition for the 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

⁴ See *Canada Pension Plan*, section 42(1).

⁵ See *Canada Pension Plan*, section 2(1).

- support – whether the parties shared assets and finances.⁶

[17] All the characteristics of a conjugal relationship may be present in varying degrees, but not all are necessary for the relationship to be conjugal.⁷ 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.⁸ Mutual intention must be deduced from available evidence.

The law says common-law couples don't necessarily have to cohabit

[18] 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.⁹ The one-year period must immediately precede the contributor's death.¹⁰ The word cohabitation doesn't necessarily mean co-residence. According to *Hodge*, the leading case about what a common-law relationship means under the *Canada Pension Plan*, it is possible for a couple to cohabit, even if they don't live under the same roof.¹¹

[19] Many cases have recognized that there can be valid medical, educational, or vocational reasons for a common-law couple to separate, provided they don't intend to end their relationship. These cases all involve couples who find themselves forced to live apart because of some external circumstance such as:

- a loss of capacity or terminal illness that sends one partner into a care home or hospice;¹²
- an academic acceptance or work placement that compels one partner to relocate in pursuit of their career; or

⁶ See *Canada Pension Plan* sections 55.1 and 55.2.

⁷ See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65. See also *McLaughlin v Canada Attorney General*, 2012 FC 556.

⁸ See *McLaughlin v Canada Attorney General*, 2012 FC 556.

⁹ See *Canada Pension Plan*, section 2(1).

¹⁰ See *Redman v Canada (Attorney General)*, 2020 FCA and *J.R. v Minister of Employment and Social Development*, 2021 SST 113.

¹¹ See *Hodge*, *supra* Note 7.

¹² See *CC v. Minister of Employment and Social Development*, 2017 SSTGDIS 171.

- a descent into drug addiction or alcoholism that makes one partner intolerable or dangerous to live with.¹³

[20] The main question in this case is whether the Contributor's cancer diagnosis and his decision to move to another province is comparable to any of the situations above. In my view, it is. The Contributor and the Added Party began living apart in May 2021 but, in all other important respects, their relationship remained the same. Only their living arrangements changed — triggered by the devastating news that the Contributor had less than a year to live.

The Contributor and the Added Party stopped cohabiting but only because of exceptional circumstances

[21] In this case, all agree that the Contributor and the Added Party were common law partners until May 2021, when the Contributor moved to X. Up to that point, their relationship had many of the hallmarks of a marriage:

- they lived under the same roof;
- they commingled assets and pooled expenses;
- friends and relatives regarded them as a loving and committed couple; and
- they named each other in their respective wills and gave each other enduring power of attorney over their affairs.

[22] Everything changed in March 2021, when the Contributor was diagnosed with stage four pancreatic cancer and given only a few months to live. The Added Party testified that the Contributor expressed his wish to move to X, where his mother and brother were living. She granted this wish, even though she knew it would be hard on her.

¹³ See *LC v Minister of Employment and Social Development*, 2024 SST 114 and *SM v Minister of Employment and Social Development*, 2025 SST 351.

[23] The Added Party testify that she was in no position to accompany the Contributor at that time. A professional accountant, she was working as a corporate controller under contract, a position that offered only limited scope for her to work remotely. She and the Contributor agreed that she would join him in X once her contract was up, and she put her house up for sale in July 2021.

[24] The Added Party also offered another reason for consenting to the Contributor's move to X. She said that, because the Contributor didn't like or trust his doctors in Edmonton, he had decided to forgo treatment. She disagreed with this decision and hoped that, by changing his medical team, he might be persuaded to fight his disease. As it turned out, that is what happened. He eventually agreed to submit to a gruelling round of chemotherapy. And while the treatment was ultimately unsuccessful, the Added Party believes that it extended his life for a few more months.

[25] It is surprising to hear that a committed couple would choose to live apart after learning that one of them had been diagnosed with a fatal disease. I found it unusual that the Contributor, given only a few months to live, wanted to move to another province without his significant other. And I found it equally unusual that the Added Party agreed to let him go. However, having heard the Added Party's testimony, I understood that she and the Contributor had good reasons for doing what they did: the Contributor wanted to spend his final days with his immediate family, especially his aged mother, and the Added Party had professional obligations that held her back.

[26] Furthermore, I accepted that the Added Party intended to join the Contributor in British Columbia as soon as was practically possible. She tried to sell her house but was hindered by COVID-19 lockdowns. By the following spring, after restrictions eased and the real estate market recovered, the Contributor's health further declined, leading to his decision to enrol in MAID.

[27] During the final 11 months of the Contributor's life, his living arrangements changed, but his relationship with the Added Party did not. As we will now see, the two of them continued to display many of the hallmarks of a common-law relationship, even

if they were living in separate communities. I saw nothing in the evidence to suggest that they intended to end or significantly alter their relationship.

The Contributor and Added Party remained bound after May 2021

[28] Although the Contributor moved to another province after his cancer diagnosis, he and the Added party maintained all their other ties. They were no longer sharing a residence, but their lives remained intimately intertwined.

– The Added Party regularly visited the Contributor

[29] The Added Party testified that she visited the Contributor as often as possible after he moved to X.¹⁴ She said that he stayed with his mother at first and then moved to brother's home during the great B.C. heatwave in the summer 2021.

[30] In separate emails, the Contributor's brother and sister-in-law confirmed that the Added Party visited them several times for extended periods. They said that, during those visits, the Added Party slept in the same bedroom as the Contributor and took on the role of his primary caregiver, cooking special meals for him and ensuring that he was as comfortable as possible. When the Added Party wasn't in X, they called each other every day. There was no doubt they were a couple deeply in love.¹⁵

– The Added Party and Contributor continued to name each other as beneficiaries

[31] It appears that the Added Party and Contributor never completely co-mingled their finances. Even when they were living together, they apparently kept separate bank accounts, credits cards, and telecom accounts.¹⁶ I don't find that surprising. People who find each other in middle age have usually already established themselves, and they often don't find it necessary or convenient to merge every aspect of their lives.

¹⁴ The Added Party submitted a calendar indicating that she visited X nine times between May 2021 and April 2022 for durations between two and 10 days. See GD16-174.

¹⁵ See emails dated August 28, 2024 and August 29, 2024 by, respectively, S. P. (GD14-10) and N. N. (GD14-12).

¹⁶ I am making this assumption because the file contained no documents indicating otherwise.

[32] Still, the Added Party and Contributor did, to some extent, rearrange their finances to benefit each other, typical of people involved in a committed relationship:

- The Added Party listed the Contributor as her dependent on her dental, drug and extended health services plans.¹⁷
- The Contributor listed the Added Party as his dependent on his retirement investment account.¹⁸
- The Contributor named the Added Party as the executor of his will in December 2019, and he left her three-quarters of the residue of his estate. In his personal directive, signed at the same time, he appointed the Added Party to be his agent.¹⁹
- The Contributor granted the Added Party general power of attorney in April 2021.²⁰ He made a small exception — perhaps understandably so — for matters involving his ongoing divorce proceedings, which he delegated to his brother.

[33] The Contributor entrusted the bulk of his affairs to the Added Party shortly before he left for X, which suggests that he considered the separation to be temporary. During the following year, he never changed his will, which suggests that his decision to live apart from the Added Party had nothing to do with any chill in their relationship. It appears that the Added Party was mentally competent to the end, as indicated by his enrollment in MAID, a process that can only take place if a physician is satisfied the subject is capable of making informed healthcare decisions.

¹⁷ See the Added Party's Victor Green Shield insurance benefits card, GD2-60. See also the Added Party's Alberta Retired Teachers' Association claims summary, January 1, 2021 to December 31, 2021, GD16-3.

¹⁸ See the Contributor's ATB Securities investment report for the period from January 1 to March 31, 2022, GD2-55.

¹⁹ See the Contributor's Last Will and Testament executed December 13, 2019, GD2-34. See also his Personal Directive executed the same day, GD2-37.

²⁰ See the Contributor's Enduring Power of Attorney, April 9, 2021, GD2-21.

– **The Contributor continued to express love and devotion for the Added Party**

[34] The Contributor left a considerable volume of letters and emails that documented his thoughts and feelings as he battled cancer in the final months of his life. Throughout this record, he frequently expressed his deep affection for the Added Party:

- “Proposing to you on the most [sic] holiest day of the year made plenty of sense to me. You have continually proven your love to me.” The Contributor added that he planned to marry the Added Party pending his divorce.²¹
- “Please know that I was very appreciative of your visit. Sure, it was only for few days, but with you, they were very special days. I hope you sell your home quickly so that we can continue our togetherness journey in X ... I love you more than words can say and I pray that God will continue to Bless you forever and a day.”²²
- “I appreciate my Baby’s vote of confidence and being by my side as I undertake this fight. Loving you every which way possible.”²³
- “S. Z. — my impassioned love, S. Z., of all the goodbyes I’m reciting this day, yours is the most challenging and awkward one for me to deliver. Sure, our hearts have only been intertwined for less than five years, but we have lived and loved for a lifetime that other couples could only dream of.”²⁴
- “S. Z. has been with me for the past ten days and had just left X on Sunday. From S. Z.’s loved infused meals through to a plethora of alleviating care initiatives, I truly feel Blessed that God partnered me with a Heaven-sent angel.”²⁵

²¹ See holiday card signed by the Contributor in December 2020, GD14-8.

²² See the Contributor’s email dated May 24, 2021, GD16-69.

²³ See the Contributor’s email dated June 25, 2021, GD16-38.

²⁴ See the Contributor’s email dated September 24, 2021, GD16-50.

²⁵ See the Contributor’s email to friends and family dated November 9, 2021, GD16-56.

- “When depressed, Saint S. Z. inspires me. When physically hurting, Saint S. Z. comforts me. When my spiritual belief is challenged, Saint S. Z. reassures me. When lacking energy, Saint S. Z. reinvigorates me.”²⁶
- “Your loving attentiveness has kept me on this path of a healing health in which I could never do without you.”²⁷

[35] These are not the words of a person who had decided to end, or materially alter, his relationship with his life partner. They are the words of someone who regarded their time apart as temporary. They tell me that, even though they were physically apart for much of the time, the Contributor continued to cohabit in a conjugal relationship with the Added Party until his passing.

[36] In their correspondence, the Added Party returned the Contributor’s expressions of love. However, there was one thing that bothered me: I couldn’t understand why, given their mutual devotion, the Added Party was not present for the Contributor’s medically assisted death on April 27, 2022. At the hearing, the Added Party explained that, while she realized the Contributor was in pain, she was against suicide on religious grounds and did not want to be present when it happened.²⁸ Having noted the Added Party’s references to her faith in her emails, I accepted that explanation.

– The Contributor continued to refer to the Added Party as his spouse

[37] The Appellant points to instances in which the Added Party and Contributor referred to each other as mere friends after they stopped living in the same residence. There is an email from June 2021, in which the Contributor referred to the Added Party as his “good friend.”²⁹ There is also an extract from a document, apparently an application for MAID signed in July 2021, in which the Added Party referred to the Contributor as a “friend.”³⁰

²⁶ See the Contributor’s email dated December 6, 2021, GD16-67.

²⁷ See the Contributor’s handwritten Valentines Day note dated February 14, 2022, GD16-71.

²⁸ The Added Party briefly referred to her principled objection to MAID in an undated letter – see GD16-173.

²⁹ See the Contributor’s email dated June 13, 2021, GD16-39,

³⁰ See MAID application signature page dated July 20, 2021, GD1-15.

[38] But these references were outweighed by the Contributor's many other statements suggesting he regarded the Added Party as his spouse. In his 2020 income tax return, which was likely completed just before he went to X, the Contributor referred to the Added Party as his "common-law spouse."³¹ In a cohabitation agreement signed in June 2021, the Added Party and Contributor acknowledged that they were in an "adult interdependent relationship by virtue of their cohabitation and economic interdependence at the present time and continuously since October 1, 2017."³² In the last year of his life, the Contributor called the Added Party his "significant other" and his "forever soulmate."³³

– The cohabitation agreement supported the Added Party's claim

[39] A point of contention in this proceeding was how to characterize the cohabitation agreement, which the Added Party and Contributor signed in June 2021, just after the Contributor left for X.

[40] The purpose of the agreement, which was drafted by a lawyer, was to determine "the status, ownership, and division of all of their property and debts, owned or acquired by either or prior to their cohabitation or during their cohabitation."³⁴ It said, among other things, the following:

- The Contributor had relocated to his mother's residence in X, but the parties did not consider the relocation to be a separation. The Added Party declared her intention to eventually join the Contributor.
- The parties agreed that they didn't hold any property jointly and that any income would be deemed to be earned solely by the party who earned it.

³¹ See the Contributor's T1-2020 redacted summary, GD2-57.

³² See the Cohabitation Agreement between the Added Party and Contributor dated June 4, 2021, GD16-22.

³³ See the Contributor's correspondence dated June 27, 2021 (GD16-50) and September 14, 2021 (GD16-49).

³⁴ See the Added Party and Contributor's Cohabitation Agreement, GD16-22.

- The parties acknowledged that the Added Party had given the Contributor a loan of \$90,139. That amount included outstanding rent and household expenses in the amount of \$2,000 per month.

[41] This agreement cut both ways. On one hand, it unequivocally declared that the Added Party and Contributor considered the relocation to not be a separation, and it confirmed their intention to eventually resume their co-residence. On the other hand, it set out what, on the face of it, appeared to be a commercial arrangement involving accrued rent and outstanding debt. The Appellant noted that, in a typical common-law relationship, partners do not keep ledgers documenting what they owe each other. She argued that the Added Party and Contributor's relationship was better categorized as one between roommates or good friends.

[42] However, having heard from the Added Party, I didn't see it that way. The Added Party explained that she and the Contributor entered into the cohabitation agreement for the specific purpose of protecting their respective assets from the Appellant herself. She said that the Contributor, who was embroiled in a protracted divorce proceeding that involved child support and division of property issues, wanted to define their relationship while making it clear that they didn't pool their resources. The Contributor, under the advice of his family lawyer, believed that this would reduce the risk of a claim on the Added Party's assets. The "rent" and the "debt," she said, were merely nominal, meant to document the reality that, though the Contributor was the Added Party's romantic partner, he nevertheless derived a financial benefit (and she a cost) from their cohabitation.

[43] I accepted this explanation. The cohabitation agreement, looked at as a whole, was clearly drafted as a defensive measure against ongoing or anticipated litigation. It's no coincidence that the agreement was entered into just after the Contributor and Added Party decided to temporarily live apart. They presumably wanted there to be no mistake that they remained a common law couple, but they also wanted to shield their assets, pooled or not, from the Appellant. I see the agreement as part of an attempt by

the Contributor, as he faced death, to put his affairs in order for the benefit of his loved one.

[44] In all, the cohabitation agreement supports the Added Party's survivorship claim.

Conclusion

[45] The Appellant and the Added Party were both sympathetic claimants whose lives were intimately tied to the late Contributor. However, under the *Canada Pension Plan*, there can only be one survivor. I followed the law and the evidence where they led me and, in the end, I concluded that the Added Party had met the burden of showing that she was in a common-law relationship with the Contributor when he died. Even though they were living in different cities at the time, I was satisfied that the Added Party and Contributor continued to cohabit in a conjugal relationship after May 2021.

[46] The appeal is dismissed.



Member, Appeal Division