



Citation: *JD v Minister of Employment and Social Development*, 2025 SST 923

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

**Decision**

**Appellant:** J. D.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated November 18, 2024  
(issued by Service Canada)

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**Tribunal member:** Carol Wilton

**Type of hearing:** Teleconference

**Hearing date:** August 26, 2025

**Hearing participant:** Appellant

**Decision date:** September 8, 2025

**File number:** GP-25-298

## Decision

[1] The appeal is dismissed.

[2] The Appellant, J. D., isn't eligible for the Canada Pension Plan (CPP) survivor's pension. This decision explains why I am dismissing the appeal.

## Overview

[3] D. G., the deceased contributor (contributor), was born in September 1963. The Appellant was born in December 1966. They married in September 1997 and divorced in June 2013. They had two daughters together, one in 1999 and one in 2001.

[4] The contributor lived with another woman, P. K., from 2012 to 2019. In February 2020, the two of them signed a separation agreement. The Minister stated that Ms. K. applied for a survivor's pension but was denied.<sup>1</sup>

[5] In January 2024, the contributor unexpectedly died of cancer.

[6] The Appellant stated that she and the contributor were in a common-law relationship from December 2020 until his death.

[7] The Minister says that the Appellant failed to prove she was in a common-law relationship with the contributor when he died for reasons including the following:

- On their 2022 income tax returns, she and the contributor recorded their marital status as divorced
- One of their daughters, N. G. (N.), not the Appellant, was the executor of his will
- The parties' marital status was listed as "divorced" on various documents
- The contributor didn't notify his employer that he and Ms. K. agreed that she'd have no entitlement to his work pension.

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<sup>1</sup> See GD4-4 and GD5-14 ff.

- The Appellant and the contributor lived in different homes. There is no documentary evidence that the Appellant and the contributor spent most of their time together, as she stated they did.

## What the Appellant must prove

[8] For the Appellant to succeed, she must prove that she was in a common-law relationship with the contributor for the year before he passed away.

## Matters I must consider first

### - The Minister's representative

[9] The Minister's representative stated she couldn't attend the hearing on the scheduled date. I offered her two other dates that week. However, she said she couldn't attend before mid-September 2025.

[10] I have an obligation to ensure that the hearing happens as quickly as possible.<sup>2</sup> So I decided to go ahead with it as scheduled.

## Reasons for my decision

[11] The CPP says that a survivor's pension shall be paid to the survivor of a deceased contributor. A survivor is the person who was the common-law partner of the contributor at the time they died.<sup>3</sup>

[12] Under the CPP, a common-law partner is a person who cohabited continuously with the contributor in a conjugal relationship for at least one year before the contributor's death.<sup>4</sup> An exception may be made if the appellant and the contributor separated for reasons beyond their control.<sup>5</sup>

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<sup>2</sup> See subsection 8(1) of the Tribunal's *Rules of Procedure*.

<sup>3</sup> Otherwise, the survivor is the legal spouse.

<sup>4</sup> See section 2 of the *CPP*.

<sup>5</sup> See *KH v. Minister of Economic and Social Development*, 2023 SST 384.

[13] The *Canada Pension Plan* does not define “cohabitation in a conjugal relationship.” However, a 2001 decision called *Betts* sets out which factors are usually relevant to that question.<sup>6</sup> I will call these the “Betts Factors”. The ones most relevant to the present case are:

- a) Travel together
- b) Shared use of assets
- c) Shared responsibility in running the household
- d) Expectation of continued mutual dependency
- e) Sexual relationship
- f) Care for one another when ill, and knowledge of medical needs
- g) Who made the funeral arrangements? Who paid for the funeral?
- h) Common residence
- i) Financial interdependence
- j) Beneficiary of will and insurance policy

[14] The importance of each of the *Betts* factors will vary widely.<sup>7</sup> However, a conjugal relationship usually involves the parties identifying themselves as “common law” and having some common financial interests.

## Reasons for my decision

[15] The Appellant was adamant that she and the contributor were in a common-law relationship for five years before his death.

[16] The Appellant had a very difficult time. In September 2023, she lost her mother. In January 2024, the contributor died.

[17] I am sympathetic to the Appellant. I am also aware that the evidence shows that their relationship had some characteristics of a common-law relationship. However, there are two factors to which I have given greater weight.

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<sup>6</sup> *Betts v. Shannon*, (92001) CP 11654 (Pension Appeals Board). Although this is not a binding decision, it is persuasive and is frequently cited in Tribunal decisions. It has also been cited in cases such as *Farrell v. Canada (Attorney General)*, 2010 FC 34. The list of Betts Factors is much longer. Partly because of a lack of evidence, I have focused on the Betts Factors for which there is information before me.

<sup>7</sup> The Federal Court said this in *McLaughlin v. Canada (Attorney General)*, 2012 FC 556.

[18] First, the parties didn't consistently represent themselves as common-law to the government.

[19] Second, they had an almost complete separation of property.

**- Evidence suggesting a common-law relationship**

**o The Appellant's evidence**

[20] There is evidence of characteristics of a common-law relationship in information provided by the Appellant and others.

[21] The Appellant's Statutory Declaration of Common-Law Union stated that she and the contributor lived together continuously from December 1, 2020, until his death on January 2, 2024.<sup>8</sup> She testified that they had spent more time together after she retired in June 2022.

[22] The Appellant stated that she and the contributor travelled together. They had a family trip to Jamaica with their daughters in 2019. They split the cost of trips to Mexico in 2022 and 2023.<sup>9</sup> They went camping together, sharing the costs.<sup>10</sup> She stated that they left clothing at each other's homes.<sup>11</sup>

[23] There is one piece of documentary evidence that the parties were living together in 2022. The Appellant provided an email confirmation of a reservation at an Ontario provincial park for August 2022. It was dated in March 2022. It went to the contributor's email address, but the address box cited the Appellant's name at the contributor's address.<sup>12</sup> I don't find this compelling evidence that the parties were continuously living together in a common-law relationship for at least a year before the contributor's death.

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<sup>8</sup> See GD2-28.

<sup>9</sup> See GD2-7-9, 23.

<sup>10</sup> See GD2-35. There was also a family trip to Jamaica in 2019. See GD2-23.

<sup>11</sup> See GD5-5-6.

<sup>12</sup> See GD2-5.

[24] The parties represented themselves as a couple in social settings.<sup>13</sup> However, it appears that in December 2023 the contributor sometimes socialized independently with people close to him. On December 26, 2023, he visited a friend and on December 27, 2023, his sister and her husband, according to the Appellant's testimony. Both of those visits were without the Appellant.

[25] The Appellant stated that she and the contributor worked on home projects in both places.<sup>14</sup> She testified that she would do grocery shopping for them both on the way to his home because it was cheaper and there was more variety.

[26] The Appellant stated that she and the contributor were in a sexual relationship. They slept in the same bed.<sup>15</sup>

[27] In November 2023, the Appellant contributed \$10,000 towards the contributor's mortgage after receiving an inheritance from her mother.<sup>16</sup>

#### ○ **Future plans**

[28] The Appellant said she and the contributor wanted to sell their respective homes eventually and buy a new home together.<sup>17</sup> They were waiting for their younger daughter to finish university and their older daughter to find a secure job.

[29] In August 2024, J. L., Presbyterian minister, stated that he and the Appellant had discussed the possibility that she and the contributor would remarry after their children were "settled into their life patterns."<sup>18</sup>

#### ○ **Health concerns**

[30] The Appellant was very involved in the contributor's end-of-life care. In mid-December 2023, he received a diagnosis of cancer. The Appellant travelled with him to

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<sup>13</sup> See GD5-5-6.

<sup>14</sup> See GD2-34.

<sup>15</sup> See GD2-35.

<sup>16</sup> See GD2-27.

<sup>17</sup> See GD2-36, GD2-12, email from Jeremy Lowther, pastor, August 2024.

<sup>18</sup> See GD2-12. He said they had been together "for quite some time."

Sudbury for medical tests.<sup>19</sup> On December 27, she took him to hospital in Orangeville. The plan was for the contributor to live at the Appellant's home while he was undergoing chemotherapy and possibly radiation.<sup>20</sup> The Appellant was with him when he died.<sup>21</sup> Unfortunately, he died on January 2, 2024, before he could receive such treatment.

- **Funeral**

[31] At the hearing, the Appellant testified that several people were involved in organizing the funeral: herself, her daughters, and the contributor's sister. The funeral took place in the town where the Appellant lived.

[32] The obituary notice for the contributor identified him as the "beloved husband of J." and the "dear son-in-law" of the Appellant's parents.<sup>22</sup>

- **Evidence against a common-law relationship**

- **The parties told authorities that their marital status was "divorced"**

[33] A Federal Court of Appeal decision held that it was reasonable to decide a case based on what a couple told tax and social welfare authorities about their marital status.<sup>23</sup>

[34] The Appellant's and the contributor's 2022 income tax returns stated that their marital status was "divorced". They gave different addresses, at locations about 2 ½ hours away from each other.<sup>24</sup> These returns were prepared in April 2023 and stated their marital status as of December 31, 2022.<sup>25</sup> They were not representing themselves to the tax authorities as common-law at the beginning of 2023.

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<sup>19</sup> See GD2-21.

<sup>20</sup> See GD2-11, note from Dr. John Neary, family doctor, August 2024.

<sup>21</sup> See GD2-66.

<sup>22</sup> See GD5-3.

<sup>23</sup> See *Dilka v. Canada (Attorney General)*, 2009 FCA 90. Decisions of that court are binding on me.

<sup>24</sup> See GD2-47, 55.

<sup>25</sup> See GD5-2.

[35] In a similar vein, N. recorded the contributor's marital status as divorced on her application for the death benefit and on the application for the children's benefit for her sister.<sup>26</sup>

[36] On her 2023 tax return, the Appellant stated that she was common-law with the contributor. His tax return for that year, prepared after his death, stated that they were common-law.<sup>27</sup> By the time these tax returns were prepared, however, the Appellant was aware of the test for a survivor's pension, and the contributor had passed away.

○ **Financial arrangements were largely separate**

[37] The Appellant and the contributor had almost complete separation of property.

[38] The Appellant testified that the contributor was poor at paperwork. But he made a will, she testified, in 2022 or 2023. She received nothing under the will. His daughter N. was the executor. N. and her sister received the proceeds of his life insurance policy.

[39] The Appellant was not a joint tenant of his home, nor the contributor of hers. Their daughters inherited his home.

[40] The Appellant and the contributor had no joint bank, trust, credit union or credit card accounts.<sup>28</sup>

[41] When the contributor went to hospital in December 2023, he gave his doctor permission to speak to the contributor about his health condition.<sup>29</sup> If she had held powers of attorney for him, this would not have been necessary.

[42] The contributor had a pension from his employer. It provided for a pension for his survivor. In February 2020, Ms. K. signed a waiver that meant she wasn't entitled to the

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<sup>26</sup> See GD2-90, 105, dated in January 2024.

<sup>27</sup> See GD2-75, 76.

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

<sup>29</sup> See GD2-11.



survivor's pension.<sup>30</sup> She nevertheless collected it.<sup>31</sup> The contributor never transferred the survivorship rights in his employee's pension to the Appellant.

[43] The Appellant testified that her daughter N. paid for the funeral from the contributor's bank account.

### **The Appellant and the contributor were not separated for reasons beyond their control**

[44] The Appellant isn't claiming involuntary separation. She is claiming that she and the contributor were common-law in the year before he passed away.

### **Conclusion**

[45] I am dismissing the appeal.

[46] On their 2022 tax returns, both the Appellant and the contributor stated that their marital status was "divorced." They each had their own home. There is no documentary evidence that she and the contributor consistently lived together in the year before he died. They didn't share bank accounts or credit cards. She didn't pay for the funeral or collect the death benefit. The Appellant received no benefit under the contributor's will or insurance policy and wasn't the executor of his estate.

[47] The Appellant stated that the contributor paid into the CPP for decades. He had only collected three CPP retirement cheques. She thought that she should get the survivor's pension because of all the years he had contributed to the CPP.

[48] I am sympathetic to the Appellant's circumstances. She testified that she and the contributor loved each other, and I believe her.

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<sup>30</sup> See GD5-4.

<sup>31</sup> See GD2-89.

[49] However, I must follow the law. I can't make decisions based on compassion or special circumstances.<sup>32</sup>

[50] I find that the Appellant isn't eligible for a CPP survivor's pension. She has not proven that she and the contributor were in a common-law relationship for the entire year before his death.

[51] This means the appeal is dismissed.

Carol Wilton

Member, General Division – Income Security Section

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<sup>32</sup> *Langlois v. Canada (Attorney General)*, 2018 FC 1108