



Citation: *The Estate of RC v Minister of Employment and Social Development and SL*, 2021 SST 825

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

# Decision

**Appellant:** The Estate of R. C.  
**Representative:** P. C.

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

**Added Party:** S. L.  
**Representative:** Barbara Warner

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decisions dated December 15, 2017, December 24, 2019 (issued by Service Canada)

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**Tribunal member:** George Tsakalis

**Type of hearing:** Teleconference

**Hearing date:** June 24, 2021

**Hearing participants:** Appellant's representative  
Appellant's witness  
Respondent observers  
Added Party  
Added Party's representative  
Added Party witnesses

**Decision date:** December 20, 2021

**File number:** GP-20-1170

## Decision

[1] The appeal is allowed.

[2] I find that the Added Party, S. L., did not cohabit in a conjugal relationship for a continuous period of at least one year before the deceased contributor, R. C. passed away.

[3] I find that the Added Party was not in a common-law relationship with the deceased contributor from 1998 to the date of his death in 2015.

[4] This means that the deceased contributor's and Added Party's Guaranteed Income Supplement (GIS) entitlement should be based on their marital status being single/divorced during that time.

[5] This also means that the Added Party is not eligible to receive a CPP survivor's pension.

## Overview

[6] This appeal deals with three separate appeals involving three different reconsideration decisions that are being heard jointly.

[7] The Appellant, the Estate of R. C., appealed a December 15, 2017 reconsideration decision of the Minister of Employment and Social Development (the Minister). The Minister refused to reconsider its initial decision that the deceased and Added Party had been in a common-law relationship since March 1991 under the *Old Age Security Act* (OAS Act). The OAS Act was amended in 2000 to extend benefits to all couples who had been cohabiting in a conjugal relationship for a continuous period of at least one year. The Respondent took the position that the Appellant estate continued to be overpaid by \$39,879.80 for the period of July 2000 (when the OAS Act was amended to provide benefits for common-law couples) to August 2015 (the month the deceased passed away) because the deceased contributor had been improperly paid GIS benefits at a higher single rate.

[8] The Appellant succeeded on its initial appeal to the Tribunal's General Division. The Tribunal member ruled that the deceased and Added Party were not in a common-law relationship under the OAS from at least 1998 until August 2015.

[9] The General Division's decision affected the Added Party's eligibility for a survivor's pension under the *Canada Pension Plan* (CPP). It also affected the amount of GIS benefits she was entitled to under the OAS Act.

[10] The Minister initially awarded the Added Party a survivor's pension. However, the Minister changed its position after receiving the General Division's decision. The General Division's decision meant that the Added Party was not entitled to the survivor's pension benefits she received from September 2015 to June 2019. She consequently owed the Minister \$9,710.21 for survivor's pension benefits she had received from September 2015 to June 2019.<sup>1</sup>

[11] The Added Party is now appealing two reconsideration decisions dated December 24, 2019. One of the reconsideration decisions involves a recalculation of her GIS benefits as a single pensioner under the OAS Act. The other reconsideration decision involves the Minister denying her entitlement to a survivor's pension.

[12] The Added Party eventually received a copy of the General Division's decision that she had not been in a common-law relationship with the deceased contributor after filing her Notice of Appeal with the Tribunal. The Added Party appealed the General Division decision to the Appeal Division, on the basis that the General Division should have added her as a party to that appeal. The Appeal Division allowed her appeal. The Appeal Division ordered the General Division to jointly hear the three appeals involving the reconsideration decisions mentioned above.

[13] The Appellant estate says that the deceased contributor and Added Party did not live in a common-law relationship because:

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<sup>1</sup> See AD1-26-27

- Even though the deceased contributor and Added Party lived together, the relationship was a landlord-tenant relationship, as opposed to a common-law relationship;
- The deceased contributor did not maintain an attitude of fidelity to the Added Party;
- The family of the deceased contributor did not consider the relationship to be a common-law relationship; and
- The deceased contributor and Added Party did not financially support each other.

[14] The Added Party says that she had been in a common-law relationship with the deceased contributor from March 1991 to the time of his death because:

- They lived together in a monogamous relationship;
- They provided domestic services to each other;
- They socialized together in neighbourhood activities and with each other's family members;
- Professionals, friends and family recognized the common-law relationship;
- They provided financial support to each other; and
- The deceased contributor's family recognized the common-law relationship.

[15] The Minister initially took the position that the deceased contributor and Added Party had been in a common-law relationship dating back to March 1991.<sup>2</sup>

[16] However, the Minister changed its position before this hearing. The Minister now takes the position that the Added Party and deceased contributor had not been in a common-law relationship since at least 2008 because:

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<sup>2</sup> See GD2-491-492

- Even though the deceased contributor and Added Party had lived together, the deceased contributor had his own bedroom;
- The deceased contributor's living arrangement with the Added Party was for room and board;
- The deceased contributor and Added Party did not publicly represent themselves as common-law partners; and
- The deceased contributor and Added Party did not financially support each other as would be expected in a common-law relationship.

## **What the parties must prove**

[17] I released an interlocutory decision before the hearing where I decided that the Claimant and Added Party bear the onus of proving their cases on a balance of probabilities.<sup>3</sup> This is because the parties are appealing different reconsideration decisions to the Tribunal. The general rule is that the burden of proof before the Tribunal rests on an applicant appealing a decision of the Minister.

[18] These three appeals come down to a similar issue, which is whether the Added Party and deceased contributor had cohabited in a conjugal relationship at the time of the deceased contributor's death, and they had so cohabited for a continuous period of one year.<sup>4</sup>

[19] If the Added Party had lived in a common-law relationship with the deceased contributor as defined under the CPP, she would be entitled to a CPP survivor's pension.

[20] If the Added Party had not lived in a common-law relationship with the deceased contributor as defined under the CPP, she would not be entitled to a CPP survivor's

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<sup>3</sup> See IS13

<sup>4</sup> See subsection 2(1) *Old Age Security Act*, subsection 2(1), 42(1) and paragraph 44(1)(d) *Canada Pension Plan*. The *Old Age Security Act* and the *Canada Pension Plan* have the same definition for a common-law partner.

pension. This would mean that she would owe the Minister money for survivor's benefits that she had received from September 2015 to June 2019.

[21] The OAS Act provides for the payment of a GIS benefit to low-income OAS pensioners. GIS benefits are based on the pensioner's current marital status and income received in the previous calendar year. Pensioners who are not married or living in a common-law relationship are considered single and have their GIS eligibility assessed on the basis of their own income. Pensioners who have spouses or common-law partners are assessed on the basis of their joint income.<sup>5</sup> Generally, single pensioners receive higher GIS benefits than those who are married or are in a common-law relationship.

[22] If the Added Party had lived in a common-law relationship with the deceased contributor, as defined in the OAS Act, she and the deceased contributor would have been entitled to receive the GIS benefit at a common-law or married rate. This would mean that the Minister had overpaid the deceased contributor \$39,879.80 for the period of July 2000 to August 2015. This is because the deceased contributor received the GIS at the higher single rate.

[23] If the Added Party had not lived in a common-law relationship with the deceased contributor, as defined in the OAS Act, she and the deceased contributor would have been entitled to receive the GIS benefit at a single rate. This would mean that the Minister had not overpaid the deceased contributor GIS benefits for the period of July 2000 to August 2015. This is because the deceased contributor would have properly received GIS benefits at the single rate.

[24] The CPP and the OAS Act describe a common-law relationship to be a conjugal relationship.

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<sup>5</sup> See section 12 *Old Age Security Act*

[25] The Federal Court of Appeal in a decision called *McLaughlin v. Canada, Attorney General*, 2012 FC 556 ruled that the generally accepted characteristics of a conjugal relationship include the following:

- Shelter, including consideration of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- Sexual and personal behaviour, including whether the parties have 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 played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- Social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members;
- Societal, including the attitude and conduct of the community towards each of them as a couple;
- Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property;
- Attitude and conduct concerning any children.

[26] 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>6</sup>

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<sup>6</sup> See *M. v. H.*, 1999 CanLII 686 (SCC) and *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

[27] Common-law relationships differ from legal marriages. There is often no specific evidence to show when common-law partners make a commitment to each other, such as a marriage certificate. Parties in a common-law relationship have to show, by their acts and conduct, a **mutual** intention to live together in a marriage-like relationship of some permanence.<sup>7</sup>

[28] For the reasons that follow, I find the evidence showed the Added Party and deceased contributor had not lived in a common-law relationship, as defined in the CPP and OAS Act, at the time of the deceased's passing for a continuous period of at least one year.

### **Comments regarding evidentiary findings**

[29] The Appellant argued that the Added Party's evidence could not be believed because she had been convicted of stealing a large sum of money from an elderly couple.<sup>8</sup> However, the fact the Added Party was convicted of this crime does not disentitle her to a survivor's pension.

[30] The Added Party argued that she suffered physical abuse at the hands of the deceased contributor. I agree with the Added Party that women often stay in abusive relationships. But my task is not to focus on the character traits of the parties. My task is to focus on whether the Added Party and deceased contributor cohabited in a conjugal relationship for a continuous period of at least one year before his death.

[31] The law does not require me to refer to each submitted document. I am not required to refer to all the hearing evidence or answer every submission. The law requires me to identify the path that I made in reaching my decision.<sup>9</sup>

[32] I will only refer to documents, testimony and submissions that are relevant to the issue that I have to decide, which is whether the Added Party and deceased contributor

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<sup>7</sup> See *Hodge v. Canada (MHRD)*, 2004 SCC 65 and *MSD v. Pratt*, (January 31, 2006), CP 22323 (PAB)

<sup>8</sup> See IS6-376

<sup>9</sup> See *Connolly v. Canada (Attorney General)*, 2014 FCA 294



cohabited in a common-law relationship for a continuous period of at least one year at the time of the deceased contributor's passing.

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

[33] The Added Party's legal representative requested a videoconference hearing. She submitted that credibility is at issue and that I need to have the opportunity to assess the demeanour of all the parties and witnesses. Her legal clinic was set up in such a way that her client and witnesses could participate in separate and secure rooms by videoconference.

[34] The Claimant's preferred to proceed by way of teleconference.

[35] The *Social Security Tribunal Regulations* state that the Tribunal has discretion to determine the form of hearing.<sup>10</sup> The Federal Court of Canada has rejected the argument that a videoconference hearing is necessary to make a credibility determination.<sup>11</sup>

[36] I decided to proceed by way of teleconference. I found that proceeding by teleconference respected the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.<sup>12</sup> I found that a hearing by teleconference was the most expedient way to proceed in this appeal.

## **Reasons for my decision**

[37] I find that the Added Party and deceased contributor did not cohabit in a conjugal relationship for a continuous period of at least one year at the time of his death in August 2015. I reached this decision by considering the factors for a conjugal relationship as set out by the Federal Court in *McLaughlin*.

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<sup>10</sup> See section 21 *Social Security Tribunal Regulations*

<sup>11</sup> See *Brochu v. Canada (Attorney General)*, 2019 FC 113

<sup>12</sup> See subsection 3(1) *Social Security Tribunal Regulations*

## **Shelter**

[38] I am satisfied that the Added Party and deceased contributor had lived together since 1991. The deceased contributor's daughter, who represented the Appellant estate, confirmed that the Added Party and deceased contributor lived together before his death. The deceased contributor's son also testified that the Added Party and deceased had lived together since 1991.

[39] However, the fact that the parties lived together does not automatically show that they lived in a common-law relationship.<sup>13</sup>

## **Sexual and personal behaviour**

[40] The deceased contributor's son and daughter both testified that the deceased contributor had relationships with other women while he lived with the Added Party. They did not often visit the deceased contributor and the Added Party. When they did visit, they did not see the deceased contributor and Added Party eating together. The deceased contributor's daughter did not believe they shared a bedroom. She said the deceased contributor lived with the Added Party in a two bedroom apartment and they kept separate bedrooms. She also said she did not think they shared a bedroom because they only saw the deceased contributor's property in his own bedroom when they picked up his belongings after his death. The deceased contributor's daughter provided a statement saying the Added Party told her she caught the deceased contributor in bed with another woman.<sup>14</sup> The deceased contributor's children also said he did not want to see the Added Party in the hospital before he passed away.

[41] The Added Party testified that she slept in the same bed and maintained a sexual relationship with the deceased contributor until a few months before he died. She did not have a relationship with another man when they lived together. She did not know if the deceased contributor had any other girlfriends, but she said she was with him all the time. She said they ate together and he took care of him during illnesses. She went to

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<sup>13</sup> See *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65

<sup>14</sup> See IS6-78

the hospital every day before he passed away. She was with the deceased contributor when he passed away at their apartment.

[42] The Added Party's first cousin testified that the Added Party and deceased were like a husband and wife. They shared everything together. They ate together and shopped together. The Added Party had a monogamous relationship with the deceased contributor. She also said the Added Party was with the deceased contributor when he passed away at their apartment.

[43] It is difficult to evaluate the hearing evidence. The deceased contributor's daughter testified that the deceased contributor had relationships with other women when he allegedly lived common-law with the Added Party. She also told the Minister that she was not aware of her father dating anyone else while he lived with the Added Party.<sup>15</sup> The Claimant's children lived in different cities from the Added Party and the deceased contributor. The Added Party was adamant that she lived in a common-law relationship. The Added Party's witness said the relationship was a common-law relationship.

[44] However, the documentary evidence did not show that the deceased contributor and Added Party showed, by their acts and conduct, a mutual intention to live together in a marriage-like relationship of some permanence. What I also found damaging to the Added Party's case is that she wrote to the Minister in 2011 and said that he had his own room.<sup>16</sup>

[45] The Added Party completed a statutory declaration in August 1998, saying that she had not lived in a common-law relationship with the deceased contributor since March 1998.<sup>17</sup> The deceased contributor also submitted a similar statutory declaration to the Minister in September 1998.<sup>18</sup> The deceased and Added Party also signed a

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<sup>15</sup> See GD2-75

<sup>16</sup> See IS6-895

<sup>17</sup> See IS6-884

<sup>18</sup> See IS6-885

statement in September 1998, saying they had not lived in a common-law relationship since March 1998.<sup>19</sup>

[46] The Added Party advised the Minister that she was single when she applied for the GIS in September 2003.<sup>20</sup>

[47] The deceased contributor described his marital status as common-law in his tax returns from 1992 to 2008.<sup>21</sup> He described himself as single in his tax returns from 2009 to 2013.<sup>22</sup>

[48] The Added Party submitted a letter from a lawyer, who she testified had employed her for almost 30 years. The lawyer said the Added Party approached the deceased contributor on numerous occasions to establish a common-law relationship. But the deceased contributor refused. The deceased contributor eventually agreed to recognize an existing common-law relationship and the Added Party approached the Canada Revenue Agency (CRA) to start the process for changing their marital status. However, the deceased contributor changed his mind. The lawyer says the deceased contributor physically coerced the Added Party into reversing the process with the CRA.<sup>23</sup>

[49] The documentary evidence shows the deceased contributor sent an objection to the CRA about any change to his marital status in January 2013. He described the Added Party as his landlord and said they were not living in a common-law relationship.<sup>24</sup> He wrote to the CRA in April 2013 and said he had received letters stating that he owed money because of change in his marital status. He said he had no idea why his marital status had changed from single.<sup>25</sup>

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<sup>19</sup> See IS6-886

<sup>20</sup> See IS6-893

<sup>21</sup> See IS6-264-298

<sup>22</sup> See IS6-299-308

<sup>23</sup> See IS6-592-593

<sup>24</sup> See GD2-453

<sup>25</sup> See GD2-441

[50] The Added Party's legal representative said that the deceased contributor wanted single status to gain a financial advantage with the CRA. But I find the deceased contributor's dealings with the CRA show that he did not intend on having a common-law relationship.

[51] The Added Party claimed that she had been physically abused by the deceased contributor. She introduced evidence that said she had been physically coerced by the deceased contributor into reversing the process for changing his marital status with the CRA.

[52] However, I have doubts about the Added Party's credibility.

[53] The Added Party sent the deceased contributor's son an e-mail in July 2016. She said she did not think the estate of the deceased contributor would have to pay anything if she got a survivor's pension. She said the deceased contributor's son would only have to tell the Minister that the estate is closed and the estate would not have to pay anything. She said the deceased contributor did not declare that he was in a common-law relationship, but the Minister advised her that she was "entitled to some of his pension." She believed that she deserved the pension because he only paid half the rent, a small portion of the groceries, and half of the television. She said that receiving a little bit of his pension would not hurt the deceased contributor or his family. She said she took care of the deceased contributor and that she loved him, even though she endured abused from him. What I find significant about this e-mail is that the Added Party said the deceased contributor's son called her a liar.<sup>26</sup> It is clear after reading the documents that the deceased contributor's son did not recognize a common-law relationship.

[54] I found the evidence of the deceased contributor's son and daughter more persuasive. The deceased contributor's daughter testified that the Added Party and deceased contributor may have been in boyfriend and girlfriend relationship in the early years of their relationship. The deceased contributor's son also told the Minister that the

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<sup>26</sup> See IS6-125

deceased contributor and the Added Party may have been in a relationship at one point. But that relationship did not exist at the time of the deceased contributor's death.<sup>27</sup>

[55] The deceased contributor's daughter said that the Added Party approached her while the deceased contributor was hospitalized. The Added Party told her the only thing she ever wanted from the deceased contributor was his pension. The deceased contributor's daughter thought this was inappropriate.<sup>28</sup>

[56] The Added Party denied ever telling the deceased contributor's daughter that all she ever wanted from the deceased contributor was his pension. But it appears that she had been seeking ways to obtain a survivor's pension before the deceased contributor passed away.

[57] The Added Party wrote to the Minister in July 2011 and described him as his spouse. She said he paid half the rent and they prepared their income taxes separately. She asked the Minister if she was entitled to half of his CPP pension on his death.<sup>29</sup> She also tried to have the deceased contributor change his marital status to common-law with the CRA before he passed away, without success.

[58] An investigator employed by the Minister interviewed the Added Party in 2016. She told the investigator that the deceased contributor lived in the apartment. He could have left at any time because the rental agreement was in her name only and she was the one responsible for paying the rent. She was frustrated that the deceased contributor would not acknowledge a common-law relationship "on paper" and that he did not pay his fair share of the expenses. She brought this up with the deceased contributor, who told her that he was only willing to pay a certain amount. She did not mind providing him with financial support because his health was not the greatest and she was afraid he would get worse if she did not take care of him.<sup>30</sup> The Minister's

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<sup>27</sup> See IS6-403

<sup>28</sup> See IS6-75

<sup>29</sup> See IS6-895

<sup>30</sup> See IS6-136

investigation did not show a mutual intention on the part of the deceased contributor to live in a marriage-like relationship with the Added Party.

[59] When I review the documentary evidence it is clear that the deceased contributor did not show an intention that a common-law relationship existed between him and the Added Party.

[60] I also have doubts about the Added Party's credibility. I do not have the same doubts about the credibility of the deceased contributor's children. I can certainly understand them opposing the Added Party's survivor's pension application after the Minister demanded money from the deceased contributor's estate after the Minister awarded the Added Party a survivor's pension. However, the deceased son clearly opposed the awarding of a survivor's pension to the Added Party before the Minister demanded payment from the estate.<sup>31</sup> The evidence showed that the deceased contributor's family did not recognize a common-law relationship.

### **Services**

[61] The deceased contributor's daughter testified that she believed the Added Party and deceased contributor prepared their own meals. The deceased contributor liked to cook. She was told he did his own laundry. She did not know who cleaned the apartment that he lived in. The deceased contributor's son did not know who performed the housekeeping tasks.

[62] The Added Party testified that she prepared meals for the deceased contributor. She said in an e-mail that she did the laundry, shopped, and maintained the household.<sup>32</sup>

[63] However, the fact that the deceased contributor and Added Party may have performed household services for one another does not mean that they cohabited in a

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<sup>31</sup> See the July 2016 e-mail from the Added Party to the deceased contributor's son at GD6-125. The Minister informed the Appellant estate in December 2016 that it owed the Minister \$39,879.80 for GIS benefits that the deceased contributor received from July 2000 to August 2015. This letter is at GD2-371-372.

<sup>32</sup> See GD1-70

common-law relationship. This is because other factors that I have to look at as set out in *McLaughlin* do not support a common-law relationship.

## **Social**

[64] The deceased contributor's daughter testified that the Added Party and the deceased contributor were not in a common-law relationship. She said the Added Party and the deceased contributor visited her on two occasions. They did not sleep together. The deceased contributor would also visit her alone. She never considered the Added Party a mother figure or a member of the family. The deceased contributor's son testified that he did not trust the Added Party and never spoke to her on the telephone.

[65] The Added Party testified she spent Christmas with her mother, the deceased contributor, and the deceased contributor's mother. She had a good relationship with the deceased contributor's mother. She believed that she had a good relationship with the deceased contributor's children. The Added Party said she cared for the deceased contributor before he passed away, including helping him get dressed.

[66] The Added Party's cousin testified that the Added Party and the deceased contributor socialized together. The deceased contributor's sister would attend social events. She said the Added Party's family recognized the relationship between the Added Party and the deceased contributor as a common-law relationship.

[67] The documents show that the deceased contributor's family did not recognize a common-law relationship. The Claimant estate submitted statements from other family members who did not recognize a common-law relationship.<sup>33</sup> The deceased contributor's obituary described the Added Party as his long-time companion.<sup>34</sup> The deceased contributor's son permitted the Added Party to have a vial of the deceased contributor's ashes after cremation.<sup>35</sup> However, I do not believe that this action

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<sup>33</sup> See IS6-81-84

<sup>34</sup> See GD2-283

<sup>35</sup> See GD2-366



necessarily acknowledged recognition of a common-law relationship, but rather a recognition that the Added Party and deceased contributor had been long time friends.

### **Societal**

[68] The deceased contributor's daughter testified that the deceased contributor did not represent himself as being in a common-law relationship with anyone. She believed that the deceased contributor was a boarder at the Added Party's apartment. She was involved in drafting the obituary and described the Added Party as a companion because she had been a friend of the deceased contributor.

[69] The Added Party testified she and the deceased contributor had been in a common-law relationship since 1991. They socialized together as a common-law couple. They were recognized as a common-law couple by their landlady, their doctor, and the community.

[70] However, the documents show that the Added Party and the deceased contributor did not represent themselves as a common-law couple.

[71] The Added Party and the deceased contributor completed a statutory declaration saying they had separated in 1998.<sup>36</sup> A court document from 2003 described the Added Party as being divorced.<sup>37</sup> The Added Party had applied for and received the GIS as a single person since February 2004.<sup>38</sup>

[72] The Added Party wrote to the Minister in July 2013 that the deceased contributor would not acknowledge a common-law relationship.<sup>39</sup> This does not show the deceased contributor intended to live in a common-law relationship with the Added Party. In addition, the Added Party told the Minister that the deceased contributor rented his own room. This contradicted her hearing evidence that they shared a bedroom.

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<sup>36</sup> See IS6-884 and 885

<sup>37</sup> See IS6-491

<sup>38</sup> See IS6-893-894 and IS14-2

<sup>39</sup> See IS6-898

[73] The Added Party told the Minister in July 2013 that she began living common-law in January 2012.<sup>40</sup> But this contradicts her hearing evidence and her submissions that the common-law relationship began in 1991.<sup>41</sup>

[74] The Added Party provided a list of friends and relatives who agreed that she lived in a common-law relationship with the deceased contributor.<sup>42</sup> However, I agree with the deceased contributor's daughter to not give much weight to this document because many of the signatures on this list have the same handwriting.

[75] The Added Party provided statements from a lawyer, a property manager, a friend, and a family doctor to support her position that she lived in a common-law relationship with the deceased contributor.<sup>43</sup> After reviewing these statements, I agree with the Minister that I should not place much weight on them because the signers of these statement simply assumed they were a common-law couple because they lived together.<sup>44</sup> The statement provided by the Added Party also contained little detail about their day to day relationship and mode of living.

### **Support**

[76] The deceased contributor's daughter testified that the deceased contributor was retired when he passed away. He did not own property. She never discussed the financial arrangements he had with the Added Party. She only knew that he paid the Added Party room and board. The deceased contributor did not own a vehicle. The Added Party drove him.

[77] The deceased contributor's son testified he was named the executor of the deceased contributor's estate. The deceased contributor left the Added Party \$5,000.00 in his will, and the rest went to the deceased contributor's family. He said the Added

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<sup>40</sup> See IS6-897

<sup>41</sup> See IS18-4

<sup>42</sup> See IS6-619

<sup>43</sup> See GD2-75, 76, 232, 263, 266, 276 and IS6-592-593

<sup>44</sup> See IS6-816-821 and IS14-6

Party had nothing to do with the planning or payment of the funeral. The deceased contributor's son was named as the next-of-kin on the death certificate.<sup>45</sup>

[78] The Added Party said the deceased contributor paid half the rent and some of the groceries. The deceased contributor received mail at her apartment. The deceased contributor paid for half of the property insurance. The deceased contributor paid for the dresser and the bed that they both used. She acknowledged that the deceased contributor lent her money. She approached the deceased contributor many times to do their taxes together. But he always refused. The deceased contributor's name was never added to the lease.

[79] The Added Party's cousin testified that she did not know about the financial arrangements between the Added Party and the deceased contributor. It was her understanding they split some expenses.

[80] I agree there is some evidence of mutual financial support. It appears that the Added Party and deceased contributor contributed towards the payment of the property insurance on the apartment.<sup>46</sup> There is also evidence that the deceased contributor co-signed on a car loan.<sup>47</sup>

[81] However, the majority of the documents provided do not support a finding that the Added Party and deceased contributor cohabited in a common-law relationship at the time of his death.

[82] The Added Party and deceased contributor listed themselves as living in a common-law relationship from 1992 to 2007 on their income tax returns. They listed themselves as being single in their 2008 to 2015 tax returns.<sup>48</sup> The Added Party and deceased contributor collected the GIS as single persons.

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<sup>45</sup> See IS6-495

<sup>46</sup> See IS6-601

<sup>47</sup> See IS6-615

<sup>48</sup> See IS6-177

[83] The Added Party completed a questionnaire stating that she and the deceased contributor did not have life insurance policies.<sup>49</sup> She declared that they did not jointly sign a residential lease, nor did they hold a joint bank account.<sup>50</sup> She confirmed that they filed their income taxes separately.<sup>51</sup>

[84] Documents shows that the deceased contributor lent the Added Party money, which does not show a shared financial life.<sup>52</sup>

[85] The deceased contributor named his son, and not the Added Party, as the executor of his estate. He left the Added Party \$5,000.00 with the rest of his assets to be divided by his family.<sup>53</sup>

[86] The Added Party also told the Minister during the course of its investigations that the deceased contributor did not want to be added as a beneficiary on her medical insurance plan.<sup>54</sup>

[87] The documentary evidence also shows rent receipts and cheques confirming that the deceased contributor paid the Added Party rent, which is more indicative of a landlord-tenant, as opposed to a common-law partnership.<sup>55</sup>

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

[88] The deceased contributor's son and daughter gave evidence that they did not have a good relationship with the Added Party. The Added Party said she believed that she had a good relationship with the deceased contributor's children. However, it is clear after hearing the evidence that the deceased contributor's children did not spend much time with the Added Party and did not regard her as a family member.

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<sup>49</sup> See IS6-106-107

<sup>50</sup> See IS6-598

<sup>51</sup> See IS6-895

<sup>52</sup> See GD2-427, IS6-48 and 50

<sup>53</sup> See IS6-396

<sup>54</sup> See IS6-822

<sup>55</sup> See IS6-536-564

[89] The Claimant estate submitted cards sent by the deceased contributor to his children and grandchildren. The cards were only signed by the deceased contributor. The Added Party is not mentioned.<sup>56</sup>

### **Final comments**

[90] The parties to a common-law relationship have to show a mutual intention to live together in a marriage-like relationship of some permanence. A common-law relationship cannot exist without the mutual intention of both parties.<sup>57</sup>

[91] The evidence showed that the Added Party and deceased contributor lived together since 1991. However, the fact that the parties lived together is not enough to show a common-law relationship.<sup>58</sup>

[92] I find that the parties did not live in a marriage-like relationship. The Added Party told the Minister that the deceased contributor had his own room.<sup>59</sup> The Added Party and the deceased contributor did not represent themselves as a common-law couple. They both collected the GIS at a single rate. The deceased contributor's family did not recognize a common-law relationship. The Added Party and the deceased contributor did not have a shared financial life. The evidence showed the deceased contributor lent money to the Added Party and expected it to be paid back. This type of behaviour is more indicative of a debtor-creditor, as opposed to a common-law relationship.

[93] The Added Party's legal representative asked me to give greater weight to the evidence of the Added Party's witnesses because they saw the Added Party and deceased contributor more often. However, the evidence and statements provided by the Added Party witnesses were vague. They assumed the Added Party and deceased contributor were a common-law couple because they lived together. But that is not enough to prove a common-law relationship.

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<sup>56</sup> See IS6-60-74

<sup>57</sup> See *MSD v. Pratt*, (January 31, 2006) CP 22323 (PAB)

<sup>58</sup> See *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65

<sup>59</sup> See IS6-898

[94] I am satisfied that the Added Party and deceased contributor socialized together. But the evidence showed the deceased contributor did not recognize a common-law relationship after 1998. The Added Party also swore a statutory declaration stating that the common-law relationship ended in 1998.

[95] The Added Party said the deceased contributor acknowledged a common-law relationship and she approached the CRA to change their marital status.<sup>60</sup> However, the deceased contributor eventually filed a notice of objection with the CRA and asserted that he was single. The documentary evidence also showed that the Added Party did not represent herself as being in a common-law relationship with the deceased contributor in her dealings with the Minister prior to his death.

[96] The Added Party wrote to the Minister in 2011 and asked if she qualified for a survivor's pension. A survivor's pension was something that she clearly wanted. However, the deceased contributor did not recognize a common-law relationship, which would have given the Added Party the survivor's pension that she desired.

[97] I find that the evidence did not show the existence of a common-law relationship after 1998, when both the Added Party and deceased contributor declared they had stopped living in such a relationship. I do not see that the deceased contributor showed an intention to live in a marriage-like relationship of some permanence with the deceased contributor. The evidence also showed that the parties did not cohabit in a marriage-like relationship at the time of the deceased contributor's death.

[98] Even though the parties lived in a common-law relationship from 1992 to 1998, the Added Party is still not eligible for a survivor's pension. This is because the Claimant had to have been in a common-law relationship for a continuous period of one year before the deceased contributor's death.

[99] The Added Party's legal representative referred me to a Tribunal case that said the continuous one year period of cohabitation did not have to be for the one year

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<sup>60</sup> See IS6-476

period immediately before the death of a deceased contributor.<sup>61</sup> The Tribunal case mentioned a decision of the Federal Court of Appeal called *Beaudoin*, which suggested the one year cohabitation period did not have to immediately precede a deceased contributor's death.<sup>62</sup>

[100] However, the Federal Court of Appeal in a case called *Redman* said that the Federal Court of Appeal never explicitly ruled that a party did not have to be in a conjugal relationship with a deceased contributor for a year leading up to their death.<sup>63</sup> The Federal Court of Appeal referred the *Redman* case back to the Tribunal's Appeal Division to interpret the definition of "common-law partner" set out in the CPP.

[101] The Tribunal's Appeal Division decided that claimants can only qualify for a survivor's pension if they lived with a deceased contributor for the one year period immediately before their death.<sup>64</sup> I have decided to follow this decision, even though I am not bound by it because I find it persuasive. The Appeal Division analyzed the text, context and purpose of the definition of common-law partner when it made its decision.

[102] This means that the Added Party is not entitled to a survivor's pension because even though she cohabited with the deceased contributor in a conjugal relationship from 1992 to 1998, she did not cohabit with the deceased contributor in a conjugal relationship in the one year period immediately before his death.

[103] My decision also means the GIS entitlement of the Added Party and deceased contributor should be based on their being single, as opposed to being in a common-law relationship.

## Conclusion

[104] The appeal is allowed.

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<sup>61</sup> See *J.H. v. Minister of Employment and Social Development*, 2016 SSTGDIS 54

<sup>62</sup> See *Beaudoin v. Canada (Minister of National Health and Welfare)*, 1993 CanLII 2961 (FCA)

<sup>63</sup> See *Canada (Attorney General) v. Redman*, 2020 FCA 209

<sup>64</sup> See *J.R. v. Minister of Employment and Social Development*, 2021 SST 113

[105] I find that the Added Party, S. L., did not cohabit in a conjugal relationship for a continuous period of at least one year before the deceased contributor, R. C. passed away.

[106] I find that the Added Party was not in a common-law relationship with the deceased contributor between 1998 and the date of his death in 2015.

[107] This means that the deceased contributor's and Added Party's GIS entitlement should be based on their marital status being single/divorced during that time.

[108] This also means that the Added Party is not eligible to receive a CPP survivor's pension.

George Tsakalis  
Member, General Division – Income Security Section