



Citation: *Minister of Employment and Social Development v LM*, 2025 SST 409

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

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

**Respondent:** L. M.

---

**Decision under appeal:** General Division decision dated September 6, 2024  
(GP-24-1083)

---

**Tribunal member:** Pierre Vanderhout

**Type of hearing:** Videoconference

**Hearing date:** April 9, 2025

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

**Decision date:** April 23, 2025

**File number:** AD-24-685

## Decision

[1] The appeal is allowed. The Respondent is not entitled to a Canada Pension Plan (CPP) survivor's pension.

## Overview

[2] I will refer to the Appellant, the Minister of Employment and Social Development, as the "Minister" in this decision. I will refer to the Respondent, L. M., as the "Claimant." I will refer to the deceased D. S. as the "Contributor."

[3] The Claimant started dating the Contributor in 2001. She had children from a previous relationship. He did not. In 2003, they moved in together. They never married. However, they had a common-law relationship and lived in the same home for many years. I will refer to this home, on X, British Columbia, as the "X".

[4] In January 2022, the Contributor's mental health worsened. The police charged him with a criminal offence related to firearms. As a result, he and the Claimant had to stop living together in the X. They were not allowed to have any contact with each other. The Claimant started family law proceedings against him.

[5] The Contributor died on June 5, 2022.<sup>1</sup> The Claimant applied for a CPP survivor's pension in July 2023. She said she was in a common-law relationship with the Contributor when he died, although they were not living together at the time. She said the relationship started in June 2003.<sup>2</sup>

[6] The Minister denied the application initially and on reconsideration. The Minister said the Claimant and the Contributor were no longer common-law partners when the Contributor died.<sup>3</sup> The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). The General Division allowed her appeal. The General Division

---

<sup>1</sup> See GD2-10.

<sup>2</sup> See GD2-4 to GD2-5.

<sup>3</sup> See GD2-13 and GD2-24.

found that the Claimant and the Contributor had been common-law partners for at least the year leading up to his death.<sup>4</sup>

[7] The Minister applied to the Tribunal's Appeal Division for leave to appeal the General Division's decision. One of my Appeal Division colleagues granted the Minister leave to appeal. As a result, I held a *de novo* hearing in this appeal.

[8] The Minister accepted that the Claimant and the Contributor were common-law partners from 2003 until January 2022. However, the Minister said the Claimant was not entitled to a CPP survivor's pension because she did not continuously cohabit with the Contributor for the entire year leading up to his death in June 2022. The Minister said she repeatedly provided a separation date of January 2022. The Minister also noted that a majority of the relevant factors did not favour cohabitation in that last year.

[9] The Claimant said she and the Contributor remained committed to each other even when they were forced to live apart. She said they were soulmates. She said they planned to grow old together. She believed this appeal should never have happened. She said it was unfair that she, as a grieving widow, has had to go through this for three years. She noted that she and the Contributor spent more than a third of their lives together. She also said she remained responsible for his debts after he died.

[10] I must decide whether the Claimant is entitled to a CPP survivor's pension. She would be entitled to that pension if she and the Contributor remained in a common-law relationship for the last year of his life.

[11] I find that the Claimant is not entitled to a CPP survivor's pension. My analysis of this question follows.

## **Issue**

[12] The issue in this appeal is whether the Claimant is entitled to a CPP survivor's pension as the deceased Contributor's common-law partner.

---

<sup>4</sup> See AD1A-1.

## Analysis

[13] The *Canada Pension Plan* says a survivor's pension shall be paid to the survivor of a deceased contributor who has made sufficient CPP contributions.<sup>5</sup> The parties agree that the Contributor made enough CPP contributions to trigger the payment of a survivor's pension to an eligible person. They disagree on whether the Claimant meets the eligibility criteria.

[14] The *Canada Pension Plan* says a contributor's survivor is the contributor's common-law partner at the time of the contributor's death. However, if the contributor did not have a common-law partner when they died, the contributor's survivor is the person who was married to the contributor when the contributor died. This means that the Claimant is entitled to a survivor's pension if she was the Contributor's common-law partner on June 5, 2022.<sup>6</sup>

[15] I will now look at the meaning of "common-law partner."

[16] The *Canada Pension Plan* defines a contributor's common-law partner this way:<sup>7</sup>

[A] person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a continuous period of at least one year. For greater certainty, in the case of a contributor's death, the **relevant time** means the time of the contributor's death[.]

[17] This means the Claimant is entitled to a CPP survivor's pension if she **continuously** cohabited with the Contributor in a conjugal relationship for at least the one-year period ending on June 5, 2022. I must assess this on a balance of probabilities.

### **Did the Claimant and Contributor cohabit in a conjugal relationship for the one-year period ending on June 5, 2022?**

[18] The Claimant and Contributor did not cohabit in a conjugal relationship for the one-year period ending on June 5, 2022. I will now explain why.

---

<sup>5</sup> See section 44(1)(d)(ii) of the *Canada Pension Plan*.

<sup>6</sup> See section 42(1) of the *Canada Pension Plan*. The Federal Court of Appeal affirmed this in decisions such as *Dilka v Canada (Attorney General)*, 2009 FCA 90, at paragraph.

<sup>7</sup> See section 2(1) of the *Canada Pension Plan*.

[19] The *Canada Pension Plan* does not define “cohabitation in a conjugal relationship.” However, a 2001 decision called *Betts* sets out factors that are usually relevant to that question. I will call these the “Betts Factors.” The Betts Factors are:<sup>8</sup>

- (a) Financial interdependence
- (b) Sexual relationship
- (c) Common residence
- (d) Purchasing gifts on special occasions
- (e) Sharing of household responsibilities
- (f) Shared use of assets
- (g) Shared responsibility for children
- (h) Shared vacations
- (i) Expectation of mutual dependency
- (j) Beneficiary of will
- (k) Beneficiary of insurance policy
- (l) Where clothing was kept
- (m) Care for one another when ill, and knowledge of medical needs
- (n) Communications between the parties
- (o) Public recognition
- (p) Attitude and conduct of the community
- (q) Marital status on various documents
- (r) Funeral arrangements and descriptions

[20] Not all Betts Factors are relevant or persuasive in every case. It is not necessary for every Betts Factor to point to the same outcome.<sup>9</sup>

[21] “Cohabitation” is not always the same thing as “co-residence.” In some cases, two people can cohabit even if they do not live under the same roof.<sup>10</sup>

---

<sup>8</sup> See *Betts v Shannon*, (2001) 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 binding cases such as *Farrell v Canada (Attorney General)*, 2010 FC 34.

<sup>9</sup> See *Betts v Shannon*, (2001) CP 11654 (Pension Appeals Board), at paragraph 8.

<sup>10</sup> See *Hodge v Canada (MHRD)*, 2004 SCC 65, at paragraph 42. See also *Farrell v Canada (Attorney General)*, 2010 FC 34, at paragraph 15.

[22] Some Federal Court decisions, such as the *McLaughlin* decision, refer to a list of considerations that is much shorter than the Betts Factors list. However, on review, those other considerations cover the same ground as the Betts Factors.<sup>11</sup>

[23] Before I apply the Betts Factors to this case, I will set out the factual background in more detail. I will focus on what happened between Claimant and the Contributor in the months before his death on June 5, 2022.

– **Key background information about the period from January 2022 to June 2022**

[24] I accept that the Claimant and the Contributor were in a lengthy common-law relationship until January 2022. Objective evidence reinforces this finding. In both June 2009 and June 2021, pension plan documents named the Claimant as the Contributor's spouse and beneficiary.<sup>12</sup>

[25] One day around the third week of January 2022, the Claimant returned home to the X and saw the Contributor behaving oddly. She knew he had a long history of mental illness. She asked where his guns were. He said he put them somewhere for her protection, but she could not find them. She perceived his actions as a threat to her safety. She then called the police. He fled the X.<sup>13</sup>

[26] On January 26, 2022, police charged the Contributor with illegal possession of a firearm. Several conditions (the "Bail Conditions") were attached to his release from custody. In particular, he was not allowed to contact or communicate with the Claimant. Any contact had to be through a lawyer. He could not be within 50 metres of her, nor could he attend the X.<sup>14</sup> The Bail Conditions were still in place when he died.

[27] On the same day, the Claimant's lawyer filed a Notice of Family Claim on her behalf. The Notice said the Claimant and the Contributor separated on January 20, 2022. The Notice requested an order for spousal support, an order for the equal division

---

<sup>11</sup> See, for example, the Federal Court decision in *McLaughlin v Canada (Attorney General)*, 2012 FC 556, at paragraphs 15-16.

<sup>12</sup> See GD4-3 and GD4-14.

<sup>13</sup> The Claimant said this at the Appeal Division hearing.

<sup>14</sup> See GD5-2 to GD5-3.

of family property and family debt, and various other orders. The other requested orders included a restraining order and an order for costs.<sup>15</sup>

[28] I saw no other documents in the file until the Claimant applied for the CPP survivor's pension in July 2023. However, she later made several statements about what happened in 2022.

[29] In July 2023, the Claimant said:

- She lived with the Contributor continuously from June 1, 2003, to January 18, 2022. When they separated, she started a family law proceeding for the division of assets.<sup>16</sup>
- She was in a common-law relationship with the Contributor at the time of his death but was not living with him at that time.<sup>17</sup>

[30] In September 2023, the Claimant signed a Statutory Declaration about the separation of common-law-partners. In that document, she said:<sup>18</sup>

- She and the Contributor last resided together on January 18, 2022.
- She and the Contributor lived separate and apart from January 18, 2022, to June 5, 2022.

[31] In October 2023, the Claimant and the Contributor's Estate consented to an Order from the B.C. Supreme Court in their family law proceeding (Consent Order). The Consent Order contained the following statements about their relationship:<sup>19</sup>

- The Claimant may apply for a division of unadjusted pensionable earnings (DUPE, or credit split) under the CPP.
- For the purposes of the credit split, they began cohabiting on June 1, 2003.
- For the purposes of the credit split, they separated on January 20, 2022.

---

<sup>15</sup> See GD1-9 to GD1-17.

<sup>16</sup> See GD2-11.

<sup>17</sup> See GD2-4 to GD2-5.

<sup>18</sup> See GD2-12.

<sup>19</sup> See GD2-20 to GD2-21.

- The portion of the Contributor's union pension subject to division with the Claimant was from June 1, 2003 (the start of cohabitation) to January 20, 2022 (the separation date).

[32] In November 2023, the Claimant applied for a CPP credit split. She made the following statements about her relationship with the Contributor:<sup>20</sup>

- They married on June 1, 2003.
- Their marriage ended on January 20, 2022.
- They last resided together on January 20, 2022.

[33] In June 2024, the Claimant affirmed that she and the Contributor separated on January 20, 2022.<sup>21</sup>

[34] At the General Division hearing in August 2024 and at the Appeal Division hearing, the Claimant said she had contact with the Contributor on June 4, 2022. This was the day before he died by suicide at the X.

[35] At the General Division hearing, the Claimant said her daughter and infant were in the hospital on June 4, 2022. The Claimant's infant granddaughter had suffered a seizure. The Claimant said her daughter saw the Contributor as her father. As a result, the Claimant called the Contributor and suggested that he come to the hospital. He apparently visited an hour later. The Claimant said she and the Contributor left the hospital together. They talked about their situation for a while at Tim Horton's.<sup>22</sup>

[36] At the General Division hearing, the Claimant said she and the Contributor spoke about what they could do to save their relationship. She said he wanted her to come home that day. She said they "were so in love." She said their lawyers had talked about the possibility of them getting back together.<sup>23</sup>

---

<sup>20</sup> See GD2-34.

<sup>21</sup> See GD1-3.

<sup>22</sup> See the General Division recording, at 0:40:05 to 0:43:03.

<sup>23</sup> See the General Division recording, at 1:00:29 to 1:02:16.



[37] At the General Division hearing, the Claimant confirmed that this June 4, 2022, meeting was their only direct contact since the January separation. She tried to contact the Contributor once about a friend's death, but his lawyer warned her not to do that.<sup>24</sup>

[38] At the Appeal Division hearing, the Claimant described a similar series of events on June 4, 2022. But she added that she and the Contributor had decided to ask their lawyers to get rid of the restraining order. She also said the mediation scheduled for June 6, 2022, was both to work out their separation terms and to see if they could reconcile.

[39] The Claimant confirmed that the mediation had been scheduled about a month before June 6, 2022. In other words, it was scheduled long before their contact on June 4, 2022. I saw no objective evidence about that mediation session. In particular, I saw no objective evidence that the mediator had planned to discuss reconciliation.

[40] I will now apply the Betts Factors to the evidence in this appeal.

#### – Applying the Betts Factors

[41] The Betts Factors show that the Claimant and the Contributor stopped cohabiting in a conjugal relationship in January 2022. The vast majority of Betts Factors suggest that they no longer cohabited. A handful are neutral. Only one of the eighteen Betts Factors points to cohabitation. I will now explain this finding in more detail. I have put the first reference to each Betts Factor in **bold print**.

#### *Betts Factors which suggest no cohabitation*

[42] The Claimant and the Contributor did not live under the same roof from roughly January 20, 2022, until the Contributor's death on June 5, 2022. This makes it harder to establish cohabitation in a conjugal relationship. However, as noted above, it is not impossible. The problem for the Claimant is that their lack of contact means that many of the Betts Factors point away from cohabitation during that period.

---

<sup>24</sup> See the General Division recording, at 0:39:09 to 0:40:05, 0:44:22 to 0:45:12, 0:50:07 to 0:51:18, 0:54:01 to 0:54:19, and 1:00:03 to 1:00:29.

[43] The Claimant described only one instance of direct contact with the Contributor after the January 2022 criminal charge. A serious illness to her granddaughter prompted the contact. The Claimant said they expressed an intention to reconcile during that contact on June 4, 2022.

[44] However, the lack of contact, the Bail Conditions, and the restraining order in place during that period mean that many Betts Factors preclude success for the Claimant. Specifically, the Claimant and the Contributor could not have a **sexual relationship**, a **common residence**, or an **expectation of continued dependency** continuously after January 2022. Nor could they **share household responsibilities**, **share the use of assets**, or **share vacations** continuously after January 2022.

[45] Other than on June 4, 2022, there was no direct **communication between the parties** after January 2022.<sup>25</sup> The terms of the Bail Conditions and the restraining order prohibited such contact. They could only communicate through their lawyers. A single case of direct contact is not consistent with cohabitation.

[46] Given the Bail Conditions, the restraining order, and the ongoing family law proceeding, the factors of **public recognition** and the **attitude and conduct of the community** also point away from cohabitation. The Contributor was afraid of any suggestion that they were in contact, as that would violate his Bail Conditions.<sup>26</sup> Such fear is not consistent with a publicly recognized cohabitation. Nor can I see the community approving a relationship that violated Bail Conditions and a restraining order.

[47] Other Betts Factors did not depend as much on the lack of contact. But most of them did not support cohabitation either.

[48] At the Appeal Division hearing, the Claimant said she and the Contributor **did not buy gifts for each other on special occasions** in the months leading up to June 5, 2022.

---

<sup>25</sup> See the General Division hearing recording, at 0:44:22 to 0:44:42.

<sup>26</sup> See, for example, the General Division hearing recording, at 0:39:09 to 0:40:05, 0:42:02 to 0:43:03, and 0:44:22 to 0:45:12.

[49] The **Contributor executed a will** on May 19, 2022, that made the Claimant's son (not the Claimant) his sole beneficiary. This does not support cohabitation. The Claimant gave different accounts about whether the Contributor had a will before then. But she confirmed that she personally did not have a will before June 5, 2022.<sup>27</sup>

[50] The Claimant and the Contributor **were not financially interdependent** after January 2022. They did not have joint bank, trust, credit union, or credit card accounts.<sup>28</sup> The Claimant confirmed that, during this time, she and the Contributor did not send any money to each other.<sup>29</sup>

[51] In fact, the Claimant took steps in January 2022 to protect her financial interests. This led to each party being responsible for any of their own debts that the Consent Order did not specifically address. The Consent Order also had each party retain several individually owned financial accounts without any division or sharing.<sup>30</sup>

[52] The Claimant **did not arrange the Contributor's funeral**. The Claimant's son did that.<sup>31</sup> As with the lack of financial interdependence, this does not support cohabitation.

[53] The Claimant repeatedly described herself and the Contributor as "separated," when asked to provide **their marital status on various documents**. These incidents are summarized in the following paragraphs.

[54] As noted above, she initiated a family law proceeding in January 2022 and said they separated on January 20, 2022.<sup>32</sup> In July 2023, she said they lived together until January 18, 2022, and then separated.<sup>33</sup> In July 2023, she also said she was still in a common-law relationship. However, at the same time, she said they were no longer

---

<sup>27</sup> See the General Division hearing recording, at 0:54:42 to 0:57:01. See also the Claimant's evidence at the Appeal Division hearing.

<sup>28</sup> See GD2-11.

<sup>29</sup> See the General Division hearing recording, at 0:54:01 to 0:54:19.

<sup>30</sup> See GD1-9 to GD1-17 and GD2-22.

<sup>31</sup> See the General Division hearing recording, at 0:54:19 to 0:55:13.

<sup>32</sup> See GD1-10.

<sup>33</sup> See GD2-11.

living together when he died.<sup>34</sup> In September 2023, she said she and the Contributor lived separate and apart from January 18, 2022, until his death.<sup>35</sup>

[55] In October 2023, the Claimant agreed to the terms of the Consent Order. The Consent Order confirmed that cohabitation lasted from June 1, 2003, until January 20, 2022. The Consent Order affirmed that January 20, 2022, was the separation date.<sup>36</sup> In November 2023, the Claimant said their marriage ended on January 20, 2022, when they last lived together.<sup>37</sup> At the same time, she took the position that they were still common-law partners even though they “had split up.”<sup>38</sup>

[56] Even when appealing to the Tribunal in June 2024, the Claimant admitted that she and the Contributor separated on January 20, 2022.<sup>39</sup>

[57] The Claimant may not have fully understood the distinctions between words such as co-residence, cohabitation, separation, and common-law partnership. But, starting in January 2022, she consistently referred to herself as “separated”. She also took legal steps consistent with separation and the end of the common-law partnership.

*Betts Factors which are neutral about cohabitation*

[58] The Claimant previously said she and the Contributor named each other as beneficiaries on their respective life insurance policies.<sup>40</sup> However, at the Appeal Division hearing, she said **they did not have life insurance policies** when the Contributor died. As a result, I cannot assign any real weight to this factor.

[59] The Claimant said she arranged, through their lawyers, for the Contributor to live in the X starting on May 1, 2022. This was because he was struggling with his mental health and could not support himself. He had been “couch surfing.” As she had a steady

---

<sup>34</sup> See GD2-4 and GD2-5.

<sup>35</sup> See GD2-12.

<sup>36</sup> See GD2-21.

<sup>37</sup> See GD2-35.

<sup>38</sup> See GD2-17.

<sup>39</sup> See GD1-3,

<sup>40</sup> See GD2-11.

income, she said she rented a small 400-square foot apartment for herself from that day forward.

[60] The Claimant confirmed that the Contributor **kept no clothing at her small apartment**. Indeed, he never visited there. She said she left some of her clothing at the X when she moved out in May 2022, because her new apartment was so small. However, leaving her clothes at the X did not appear to be connected to cohabitation. This factor does not favour or point away from cohabitation.

[61] Finally, **shared responsibility for children** is not a significant factor. The Claimant and the Contributor did not have any children together. He had no children of his own. Her children were born a long time ago. Her son reached age 38 in 2022.<sup>41</sup> Her daughter already had a family of her own in 2022. The Contributor may have had a connection to the Claimant's children, but a connection is different from having shared responsibility for parenting them in the key 2022 period.

#### *Betts Factors which favour cohabitation*

[62] I see no suggestion that the Claimant and the Contributor actively cared for each other when they were ill after January 2022. However, I am satisfied that the Claimant still **knew the Contributor's medical needs** during that time. In particular, she knew he had significant mental health needs. While she did not describe any health concerns of her own around then, I find it likely that he would have known of any. This is the only Betts Factor that favours cohabitation up to June 5, 2022.

#### *Impact of my findings on the Betts Factors*

[63] Taken together, the Betts Factors show that the Claimant and the Contributor did not cohabit in a conjugal relationship for the full year leading up to his June 2022 death. This means that the Minister's appeal is successful. In turn, this means the Claimant is not entitled to a CPP survivor's pension.

---

<sup>41</sup> See the General Division hearing recording, at 0:54:19 to 0:54:42.

### *Applicable timing of the Betts Factors*

[64] I acknowledge that the outcome of this appeal could have been much different if the Contributor had passed away before the January 2022 firearm incident. Many of the Betts Factors could support cohabitation in a conjugal relationship before then. For example, they regularly took vacations together before January 2022.

[65] The Claimant said the courts had recognized her common-law relationship. As a result, she could not understand why she might not be entitled to the CPP survivor's pension. However, the court recognition of her common-law relationship only applied until January 2022. The CPP survivor's pension requires **continuous cohabitation in the year before the Contributor's death**. This means that the outcome of this appeal is not inconsistent with what happened in the Claimant's other proceedings.

[66] I also acknowledge that the period of separation was much shorter than the earlier period of cohabitation. However, the *Canada Pension Plan* does not assess entitlement to a survivor's pension that way. The key issue is whether the cohabitation was continuous in the last year of the Contributor's life. In this case, it was not.<sup>42</sup>

### **– Final comments on this appeal**

[67] The Claimant expressed some frustration at the end of the Appeal Division hearing. She did not think it was fair that a widow should have to fight so hard for what she was entitled to receive. She said the process was detrimental to her mental health.

[68] I fully accept that the Contributor's suicide at the X was traumatic for the Claimant. I also acknowledge that it must have been very difficult for her to relive these events at two separate hearings.

---

<sup>42</sup> I note that the Tribunal's Appeal Division reached the same conclusion in *JR v Minister of Employment and Social Development*, 2021 SST 113. The facts in JR were somewhat similar to this appeal. In JR, the parties separated for five months in the last year of the contributor's life. They then reconciled for four months before the contributor died. The claimant in JR was not entitled to a CPP survivor's pension. While other Appeal Division decisions are not strictly binding, they can have persuasive value.

[69] Appeals involving CPP survivor pensions are, by their very nature, difficult for the participants. In each case, a special person has died. That, in itself, is upsetting. In each case, the parties also view the situation differently.

[70] However, I cannot base my decision on the fact that parts of the appeal process may have been repetitive or upsetting. Each side had appeal rights, and each appealed to the Tribunal once. The Claimant was entitled to her initial appeal at the General Division. The Minister was entitled to this Appeal Division proceeding, as leave to appeal was granted.

[71] I am compelled to apply the law, as written, to the facts of the case. I must do this even if the emotional toll is not spread evenly among the participants. That uneven toll is certainly present in this appeal. But I cannot bend the legal requirements because of an unequal mental or emotional impact.<sup>43</sup>

## **Conclusion**

[72] The appeal is allowed. The Claimant is not entitled to a CPP survivor's pension. She was no longer the Contributor's common-law partner when he died. This means she was not his survivor.

Pierre Vanderhout  
Member, Appeal Division

---

<sup>43</sup> See, for example, *Miter v Canada (Attorney General)*, 2017 FC 262, at paragraph 35.