



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. C. v. Minister of Employment and Social Development*, 2017 SSTGDIS 171

Tribunal File Number: GP-16-2297

BETWEEN:

**C. C.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**D. H.**

Added Party

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

---

DECISION BY: Carol Wilton

HEARD ON: August 10, 2017

DATE OF DECISION: November 15, 2017

## OVERVIEW

[1] The deceased contributor, J. C., passed away on August 31, 2015. The Added Party applied for the *Canada Pension Plan* (CPP) Survivor's Benefit on September 16, 2015 on the basis that she was the deceased contributor's common-law spouse; she was granted the benefit. His legal wife, the Appellant, applied for the same benefit on September 28, 2015. The Appellant's application was denied initially and at the reconsideration level. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on July 5, 2016.

[2] This appeal was heard in person for the following reasons:

- a) More than one party will attend the hearing.
- b) The method of proceeding is most appropriate to allow for multiple participants.
- c) The issues under appeal are complex.
- d) This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[3] The following people attended the hearing:

Appellant:	C. C.
Appellant's representative:	Daniel Toppari
Witness:	M. C. (son of the Appellant and the deceased contributor)
Added Party:	D. H.
Added Party's representative:	D. M.

[4] The Tribunal has decided that the Appellant is not eligible for a CPP survivor's pension for the reasons set out below.

## **EVIDENCE**

### **Documentary Evidence of the Added Party**

[5] In June 2008, the deceased contributor and the Added Party sold a condominium they owned together (GD2-70-71).

[6] The income tax return for 2014 for the Added Party and the deceased contributor indicated that he was living common-law (GD2-60-61).

[7] In her Statutory Declaration of Common-law Union, received on September 11, 2015, the Added Party wrote that she and the deceased contributor did not have a joint lease or own property jointly. They did not name each other as beneficiaries on their insurance. They did have a joint bank account. The period they lived together was from December 2013 to August 2015 (GD2-58).

[8] Facebook correspondence between the Added Party and M. C. in November 2013 indicated that he was delighted that his father was moving in with the Added Party. She reported to M. C. on his father's medical condition in November 2013 (GD2-50-51).

[9] The obituary of the deceased contributor from the *X Standard* referred to him as the "loving companion, partner and friend for more than two decades" of the Added Party (GD2-16).

[10] On September 11, 2015, the Added Party completed a "Statement – Spouses or Common-law Partners Living Apart for Reasons beyond their control." She stated that she and the deceased contributor started living apart for reasons beyond their control when he was admitted to a nursing home in May 2014, where he resided until his death (GD2-67).

[11] The deceased contributor's address on a document for auto insurance renewal in September 2015 was at X, where the Added Party lived. The plan was for the deceased contributor to continue to pay the insurance on the car, which was used by the Added Party (GD2-62-63). Both of them were listed on a chequing account (GD2-64).

[12] The Added Party completed a Questionnaire for the Respondent that was received on March 18, 2016. She stated that at the time of his death, she and the deceased contributor had

been living apart since as of May 2014 he was moved to a nursing home because of a leg amputation, Parkinson's disease, and confinement to a wheelchair. He lived at the nursing home from May 2014 until his death. She did not live with him at X (where he lived prior to being hospitalized). They did not live together for a period of at least one year immediately before his death (GD2-45 ff.).

[13] In correspondence that the Respondent received on March 15, 2016, the Added Party further wrote that she and the deceased contributor lived together for about 14 years and separated (in 2008) because of his change of behaviour, which was partly a result of Parkinson's disease. They were "really never apart. We were still a couple in all respects." She was his only advocate. In the spring of 2013 she went to the doctor with him and insisted that his leg be examined. He was given water pills, and she begged him to get another opinion, which he did not do. By November 2013, they decided that he could not live alone anymore, and that they should move in together. This was to happen in mid-December 2013. That same week, he had a heart attack and was hospitalized. His family moved all his furniture and clothing into her home and his address was changed. Unfortunately, his right leg was amputated and the doctors would not let him return home because of the extent of his care needs. From that time, the Added Party was his care provider. His son had told her that he knew she was taking good care of his father. His daughter was not reliable, so the responsibility for looking after him was hers. She said: "I was there for him every day for almost 2 years as he was my husband and he told everyone that I was his wife." The deceased contributor was of sound mind until his death. The Added Party wrote that she had handled almost all of his financial affairs, although his son handled the cable bill and "the odd benefits return." The deceased contributor stated on his income tax form that he was in a common-law relationship, a statement he did not make lightly (GD2-47).

[14] In correspondence received on March 15, 2016, D. M., the Added Party's landlady at X in X from 2010 to 2015, confirmed the Added Party's account of her relationship with the deceased contributor, whom she had known as well. She wrote that they had separated in 2007 "due to difficulties in their relationship especially because of [the] undiagnosed medical condition that [the deceased contributor] had." They continued to be good friends and they vacationed together. Neither of them had any other relationships after separation. After the

Added Party moved into a house Ms. D. M. owned in X, they saw the deceased contributor regularly when he visited the Added Party or came to the D. M. home for social events.

[15] Ms. D. M. wrote that all of the deceased contributor's belongings had been moved to X in December 2013, a couple of days after his heart attack. He was never able to live at home after that; he spent five months in hospital before moving to a nursing home. The Added Party visited him every day and was with him when he died. When he was no longer able to drive, he gave his car to the Added Party. He wanted her name on a joint savings bank account, and she was responsible for his debit card. She made the arrangements and went with him to all appointments outside the nursing home. They declared themselves common-law spouses in the 2014 taxation year. The deceased contributor represented the Added Party as his wife. She believed that the two lived apart because of circumstances beyond their control (GD2-48-49).

[16] In correspondence received on March 16, 2016, the Added Party wrote that the deceased contributor started sharing the rent on the X address in December 2013. He continued to do so until he was admitted to a nursing home and became financially unable to share expenses. He added her to his chequing and savings accounts and gave her his bank card. She used money from the joint account for her own expenses also. She was represented as his wife and shared his life. Their separation was involuntary (GD2-52).

### **Evidence of the Appellant**

[17] The Appellant and the deceased contributor were married on June 18, 1960 (GD2-38).

[18] In 1988 the Appellant's solicitor requested a credit split of the deceased contributor's pension from Abitibi Price, Pensions Division (GD2-17).

[19] Letters from a property management company to the deceased contributor at X Drive in 2011 and 2012 enclosed annual lease renewal documentation (GD1-47).

[20] Income tax returns of the deceased contributor from 2012 to 2015 inclusive show his marital status as "separated" except in 2014, when it was listed as "common law" (GD1-9 ff.).

[21] A GST/harmonized sales tax credit notice for the year 2012 indicated that the deceased contributor was living on X (GD1-33).

[22] The deceased contributor was admitted to a long-term care facility in X (X X) on May 16, 2014 (GD1-19).

[23] Telephone directories for X for 2011, 2012, and 2013 show the deceased contributor's address as being on X, while the Added Party's was on X. In 2014, the Added Party's address was still on X (GD1-22-30).

[24] A notarized copy of the deceased contributor's will, dated November 22, 2004, appointed the deceased contributor's son M. C. as estate trustee. There was no mention of the Added Party in the will (GD1-34-43).

[25] A cheque drawn on the account of the Appellant was made payable to M. C. for "estate expenses funeral and reception." M. C. paid the funeral home charges, and was listed as the next of kin on the Proof of Death Certificate issued by the funeral home (GD1-44-45; GD2-20).

[26] The Respondent received a Statement of Separation of Legal Spouses or Common-law Partners from the Appellant on December 24, 2015. She stated that she and the deceased contributor had lived separate and apart from June 16, 1987 until his death on August 31, 2015. The deceased contributor lived in a common-law relationship with the Added Party (GD2-15. This form was unsigned).

[27] The Appellant told an agent of the Respondent on January 13, 2016 that the Added Party "exploited the situation by putting her name on a joint bank account and on [the deceased contributor's] car loan." She maintained that the deceased contributor and the Added Party "went their separate ways following the sale of their condominium in 2008" (GD2-12).

## **Testimony at the Hearing**

### ***The Added Party***

[28] The Added Party testified that she and the deceased contributor lived together for some 14 years before separating and selling their house in 2008. The deceased contributor had not yet been diagnosed with Parkinson's disease, but he was very difficult to deal with, and the two of

them had agreed that it was best for them not to live together any more. After the separation, they still visited friends together and travelled together, including taking a trip to San Francisco. She acknowledged that the deceased contributor participated in athletic activities with various groups of male friends.

[29] The Added Party testified that the deceased contributor went into hospital in December 2013. He was expected to come home, and his children M. C. and C. H. moved his furniture and clothing to her place. He last paid for his own separate apartment probably in November 2013. As of December 2013, he helped pay for the X apartment, at least rent and cable, until he went into a nursing home and was unable to contribute to the rent on X for financial reasons.

[30] With regard to their financial arrangements, the Added Party acknowledged that they were not in each other's wills, did not hold Powers of Attorney for each other and did not have life insurance on each other. Each of them wanted the bulk of their estate to go to their respective children. The deceased contributor's life insurance and pension rights had gone to the Appellant under the terms of the separation agreement. The deceased contributor, however, wanted the Added Party to have his car, and instructed his son M. C. four times to make sure that he paid off the car loan from the proceeds of the estate. She and the deceased contributor did have a joint bank account; he put her name on his chequing account. Only his money went into that account, but the money that came out was for the expenses of them both.

[31] The Added Party stated that she had not paid anything towards the deceased contributor's funeral. The expenses were taken care of by M. C. and the Appellant. M. C. asked her to pay for the funeral out of the deceased contributor's bank account, but as she was not invited to the funeral lunch or mentioned in the service, she was unwilling to do so.

[32] The Added Party testified that she did not know who prepared the deceased contributor's tax returns before 2014. She acknowledged that in 2012 and 2013 they did not indicate that he was in a common-law relationship; this was because the two of them had not considered themselves common-law for a year at the time the tax returns were completed. Still, he told everyone after December 2013 she was his wife. No one knew they were not married. She would go to the nursing home almost every day and take him supper, but stayed away if his children were coming in. She did go to X for a month in 2015 after her sister's husband died to

help her sister because she was burned out looking after the deceased contributor. However, they talked every day while she was gone. She took him to all his doctor's appointments: the urologist, the eye doctor, and the family doctor. She celebrated Christmas and his birthday with him. The deceased contributor had never given her a ring, but they did celebrate an anniversary. Given the state of the deceased contributor's health, it was not possible for them to have a sexual relationship.

[33] The heart of the Added Party's case was that she and the deceased contributor intended to live together from December 2013. This never happened because of his health condition. The Added Party stated that he was devastated that he was unable to "come home." They were together almost every day for the next two years. She was the only person looking after him. She acknowledged that she and the deceased contributor would not have considered themselves in a common-law relationship if he had died in December 2013; this was because they were aware that it was necessary to be in such a relationship for a year in order to claim that status. The Added Party stated that she was not in the room when the 2014 tax return was signed. She indicated that the deceased contributor was unquestionably mentally competent at the time, and in fact was in full possession of his faculties until he went into a coma shortly before he died.

### ***The Appellant***

[34] The Appellant testified that she and the deceased contributor had been married for 27 years and had three children together. They never divorced. He took her to medical appointments in about 2007. She did not know much about his relationship with the Added Party, a subject she did not discuss with him, and her children did not discuss with her.

### ***M. C.***

[35] M. C., son of the deceased contributor and the Appellant (the son), testified that he spoke with his father once a week on the telephone, and visited him about every other month prior to December 2013. After December 2013, he visited him once a month. In November 2013, it was announced that his father was moving in with the Added Party, whom the son had not seen since 2008. The son held both Powers of Attorney for his father. His financial dealings on his father's



behalf were limited to putting some of his father's medical expenses on his own credit card, then paying himself back from his father's bank accounts. His father was able to handle most of his own financial affairs, and the son was involved only as a matter of convenience. His involvement with his father's medical care was largely limited to discussing his father's health issues occasionally with his father and the doctor at the nursing home.

[36] The son testified that he was the sole beneficiary of his father's tax-free savings account. His father had made sure that the Added Party would get the car, and the son paid off the car loan with proceeds from the estate. The son had made the funeral arrangements, whose costs came out of his line of credit. His mother subsequently reimbursed him from the proceeds of the deceased contributor's life insurance policy.

[37] The son testified that he expected that in December 2013 his father would move in with the Added Party. He helped move his father's possessions to her place.

## **SUBMISSIONS**

[38] In submissions received on March 16, 2017 (GD8), the Added Party submitted that the Appellant does not qualify for a survivor's pension because:

- a) The Appellant received the deceased contributor's life insurance and General Motors pension, but this was a result of irrevocable provisions of the separation agreement;
- b) There was no provision in the deceased contributor's will for the Appellant;
- c) The deceased contributor gave the Added Party his car and put her name on his bank account, which was his way to include her in his estate;
- d) The car loan was to be paid off by the estate and he made it clear to his children that this was his wish;
- e) She had no information that the Appellant visited the deceased contributor regularly in the nursing home – neither he nor the nursing staff mentioned this;
- f) There was no mention of the Appellant in the obituary;

- g) The landlord offered to make the X apartment accessible, but the doctor would not allow the deceased contributor to come home; and
- h) The deceased contributor was aware that legally he could not claim common-law status until after living for a year in this status, so that he could not indicate on his 2013 tax return that he was living common-law.

[39] At the hearing, the Added Party submitted that she was entitled to the survivor's pension for the following reasons:

- a) The Added Party met the criteria of the CPP as a common-law spouse;
- b) It was her intention and that of the deceased contributor to live together beginning in December 2013;
- c) The deceased contributor gave up his apartment and his possessions were moved into her place;
- d) The deceased contributor was resident in a hospital from December 2013 to May 2014, but a hospital is not a residence. All his contact information was at X from December 2013; and
- e) They visited friends' cottages and went on vacations together after 2008.

[40] In correspondence to the Tribunal received on December 20, 2016 (GD7), the Appellant submitted that the Added Party's Questionnaire indicated that the date of separation between herself and the deceased contributor was May 2014, when he was moved to a nursing home. However, the two of them did not actually live with each other during 2013-2014.

[41] In correspondence received on January 6, 2016 (GD2-9), the Appellant submitted that she was the legal spouse of the deceased contributor. In particular:

- a) After the deceased contributor's heart attack and rehabilitation, it was out of the question for him to live at X because the landlord was not willing to do the renovations necessary to accommodate his special needs;

- b) His possessions were merely being stored at X, and it was a matter of convenience to have his mail directed to a personal residence. The family did not realize that this would result in his bank account being compromised, car ownership transferred and a car loan left outstanding; and
- c) The Appellant was recognized as the legal spouse by General Motors and London Life Insurance.

[42] In submissions accompanying the Notice of Appeal (GD1), the Appellant submitted that she qualifies for the survivor's pension because:

- a) She and the deceased contributor were married from 1960 to 1987 and never divorced;
- b) The deceased contributor lived in a common-law relationship with the Added Party in a home on X. This was sold in June 2008, and the two never resumed their common-law relationship;
- c) Most of their tax returns from 2008 to 2015 showed different addresses and indicated they were not in a common law relationship;
- d) The 2014 income tax return indicates that the deceased contributor was living common law; the only explanation for this is that it was an error. The Added Party had a friend of hers prepare the deceased contributor's income tax return; and
- e) Telephone book entries for 2012-2015 show the deceased contributor and the Added Party living at different addresses.

[43] In submissions received on April 19, 2017 (GD9), the Appellant submitted that two different situations are under discussion. One is that of a couple that had lived in a common-law relationship for a period of time being separated for health reasons. The situation of the Added Party was different in that she and the deceased contributor did not physically live together in 2013 or thereafter. She visited him regularly, but that is not the same as living together. She

continued: one must first establish the existence of a common-law relationship by living together or “cohabitating;” unless this has occurred first, there is no relationship to “separate.”

[44] At the hearing, the Appellant submitted that she was entitled to a CPP survivor’s pension on the following grounds:

- a) There was no common-law relationship between the deceased contributor and the Added Party at the material time because they did not live together in a conjugal relationship for a year prior to the deceased contributor’s death as required by the CPP legislation. That legislation provides for the continuation of a common-law relationship once it has been established, but not for the creation of a common-law relationship. No common-law relationship had been established before the deceased contributor went into hospital in December 2013;
- b) It is not possible to create a common-law relationship where none exists by referring to intent;
- c) Here, there are some indications of a close relationship, but it is not enough to establish a common-law relationship. The deceased contributor’s multiple health issues meant that he was not physically capable of outwardly doing what needed to be done to demonstrate he was in a common-law relationship. For example, he had to live in a hospital or nursing home, and was unable to socialize outside such venues;
- d) Your residence is where you eat and sleep; and
- e) Many signs of interdependence between the deceased contributor and the Added Party are lacking. They did not fully pool financial resources. For example, he paid rent on her place only until May 2014. They were not mentioned in each other’s wills and did not hold Powers of Attorney for each other. They were boyfriend/girlfriend but were not in a common-law relationship.

[45] In submissions received on October 26, 2016 (GD6), the Respondent submitted that the evidence before the Tribunal did not support a determination that the Appellant satisfied the requirements as an eligible survivor under paragraph 42(1)(a) of the CPP. In particular:

- a) The Added Party's statutory declaration affirms that she was the deceased contributor's common-law partner at the time of his death and for more than one year;
- b) The Appellant's statutory declaration acknowledged that the Added Party was recognized as the deceased contributor's common-law partner;
- c) The deceased contributor's obituary "clearly conveys recognition that a common-law relationship did exist" between the deceased contributor and the Added Party at the time of his death. It supports an understanding that she was not publicly viewed as his former common-law partner, but "a loving companion, partner and friend of more than two decades;"
- d) The Added Party stated in March 2016 that the parties intended to continue their relationship after the sale of their principal residence. The sale was related to a change in the deceased contributor's health condition;
- e) The deceased contributor and the Added Party continued to view themselves as common-law partners and not former common-law partners;
- f) According to the Added Party, she and the deceased contributor had definite plans to move him into her residence, and his furniture was moved in. His move to X was beyond the control of the couple;
- g) The Added Party's residence could not accommodate the deceased contributor's special needs;
- h) The deceased contributor and the Added Party continued to maintain strong economic ties: a joint bank account, transfer of the vehicle, and receipt of his mail at the X address;
- i) The Appellant was recognized as the legal spouse by General Motors and London Life Insurance, but this was part of the separation agreement; and
- j) There is no evidence that the deceased contributor was incapacitated, and nothing to substantiate allegations of disreputable activity on the part of the Added Party with regard to his bank accounts or income tax return.

## TEST FOR A SURVIVOR'S PENSION

[46] The Added Party must prove on a balance of probabilities that she falls within the definition of the survivor of the deceased contributor as provided in the CPP legislation. The burden of proof is hers (*S.K. and Minister of Human Resources and Skills Development v. B.E.* (July 9, 2010) CP25866 (PAB)).

[47] Paragraph 44(1)(d) of the CPP provides that a survivor's pension is payable to the survivor of a deceased contributor who has made contributions for not less than the minimum qualifying period provided the survivor meets certain conditions.

[48] Subsection 42(1) of the CPP defines a survivor in relation to a deceased contributor as either a person who was the common-law partner at the time of the contributor's death, or, if there was no such common-law partner, a person who was married to the contributor at the time of death.

[49] Subsection 2(1) of the CPP defines a common-law partner in relation to a contributor as a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited for a continuous period of at least one year. In the case of a contributor's death the "relevant time" means the time of the contributor's death.

[50] The Supreme Court of Canada has also stated that "the CPP mandates that the pension be paid to the person who is in a spousal relationship with the contributor at the time of the contributor's death." The Court held as follows:

cohabitation in this context [i.e. a common-law relationship] is not synonymous with co-residence. Two people can cohabit even though they do not live under the same roof and, conversely, they may not be cohabiting in the relevant sense even if they are living under the same roof .... [A] common law relationship ends "when either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one" (*Hodge v. Canada (Minister of Human Resources Development)*, [2004] 3 SCR 357 [*Hodge*], at paras. 6, 42).

[51] In determining whether the partners are cohabiting, the Tribunal should consider elements such as continued financial interdependence, a sexual relationship, a common residence, expenses for each other on special occasions, a sharing of responsibilities in running

the household, a shared use of assets, shared vacations, continued mutual dependency, the naming of each other as beneficiaries in the will of the other and as a beneficiary under insurance policies, where each kept their clothing, who cared for each person when ill, communication between the parties, public recognition of the relationship, what status was declared by the parties on various applications and other forms, and who took care of the deceased's funeral arrangements (*Betts v. Shannon and Minister of Human Resources Development* (October 22, 2001), CP11654 (PAB) [*Betts*]).<sup>1</sup>

[52] There is case law to the effect that “where parties are in a conjugal relationship, they can be separated for a period of time without in any way affecting the quality of that relationship.” Examples of involuntary separation would include a hospital stay, or the deployment of one of the parties as a member of the military outside Canada. The key consideration is the intention of the parties. A conjugal relationship “terminates when one of the parties to the relationship intends the termination” (*A.L. v. D.P. and Ministry of Human Resources and Skills Development* (November 16, 2011), CP 27238 (PAB) [*A.L.*], at paras. 35-36, and 39).

[53] Further, in *Beaudoin v. Canada (Minister of National Health and Welfare)*, 1993 CanLII 2961 (FCA)), the Court endorsed a Pension Appeals Board decision that, since section 2 of the CPP Act “does not specifically state that the continuous period of one year must ‘immediately precede the death,’ I do not think we should give it that interpretation” (quoting *Minister of National Health and Welfare v. Decoux*, (July 3, 1991) CP 20146 (PAB)).

## **ANALYSIS**

[54] The onus is on the Added Party to prove, on a balance of probabilities, that she is entitled to a CPP survivor's pension. The Tribunal finds that she discharged this onus.

[55] The Tribunal found that both the Added Party and the son were credible in giving their testimony. The Appellant testified briefly about her relationship with the deceased contributor, corroborating information already in the file. She stated that she knew almost nothing about any other matters related to this proceeding. Accordingly, her credibility was not in issue.

---

<sup>1</sup> Decisions of the Pension Appeals Board are not binding on this Tribunal, but are persuasive.

[56] A number of facts are not in dispute in this proceeding, including the fact that the deceased contributor and the Appellant were never divorced. In addition, there is no dispute that the Added Party and the deceased contributor had a long-standing common-law relationship of some 14 years prior to 2008. They had stopped living together at about that time. In about November 2013, they decided to move in together again. He gave up his apartment, and his possessions were moved into her residence. Their plans to live together, however, were thwarted by a sudden change for the worse in his medical condition in December 2013. They did not live under the same roof thereafter. There is no credible suggestion that the deceased contributor lacked the mental capacity to make decisions about his financial affairs or the information on his income tax return.

[57] The issue before the Tribunal is whether the Added Party was the deceased contributor's common-law partner at the time of his death, pursuant to subsection 42(1) of the CPP. In order to qualify as a common-law partner, the Added Party would have had to have cohabited with the deceased contributor in a conjugal relationship at the time of his death and for at least one year prior to his death, according to subsection 2(1) of the CPP.

[58] It is trite law to say that every case turns on its own facts.<sup>2</sup> In the present case, the Tribunal's decision follows the flexible approach of the Supreme Court in the *Hodge* decision to matters of personal relationships. The Tribunal notes that, according to *Hodge*, "two people can cohabit even though they do not live under the same roof." Further, the Court stated that under the CPP, the survivor's pension is to be "paid to the person who is in a spousal relationship with the contributor at the time of the contributor's death."

[59] The Added Party submitted that the key issue was the intention of the parties, and she and the deceased contributor intended to live together from December 2013, but were prevented from doing so by his health problems. Unfortunately, intent alone is insufficient to establish a common law relationship.

---

<sup>2</sup> In *B.G. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 229, a member of the Appeal Division of the Tribunal concluded that the Appellant was not entitled to a CPP survivor's pension as a common-law spouse of a deceased contributor on the basis that almost none of the *Betts* factors applied to the relationship. In *R.L. v. Minister of Employment and Social Development*, 2017 CanLII 37119, a member of the Tribunal found that there was no common-law relationship partly on the basis that there was no reason for the parties to live in separate residences other than the reluctance of one of them to agree to marriage.



[60] The key submission of the Appellant was that, since the parties did not actually live together in the period between December 2013 and the deceased contributor's death in August 2015, they did not cohabit for a year prior to his death, as required by the CPP legislation. She acknowledged that a common-law relationship was not necessarily synonymous with co-residence, as stated in *Hodge*. However, she drew a bright-line distinction between a conjugal relationship that had been interrupted by, for example, hospitalization or unavoidable work obligations, and one that could not be interrupted because it had not started.<sup>3</sup>

[61] The Tribunal has considered whether the Added Party should be considered as the deceased contributor's caretaker from December 2013 rather than his common-law spouse. The *Oxford Living Dictionaries* defines caretaker as "a person employed to look after people or animals." As there is no evidence of an employment relationship between the two, the Tribunal finds that the Added Party was not the deceased contributor's caretaker.

[62] The Tribunal has also considered whether the Added Party should be considered simply as a friend of the deceased contributor from December 2013. It is not disputed that, because of his health issues, the deceased contributor was not capable of a sexual relationship by December 2013. Moreover, although the Added Party was a joint account holder on one of the deceased contributor's accounts, the reverse was not also true. They were not mentioned in each other's wills, did not hold each other's Powers of Attorney, and did not have insurance on each other's lives. They did not exchange rings. All of these would have been indicia of an interdependent relationship, and their absence suggests that the relationship was one of friendship. Moreover, the deceased contributor's funeral was paid for out of the proceeds of a life insurance policy whose beneficiary was the Appellant, not by the Added Party.

[63] On the other hand, the Tribunal notes that there are strong indications that the Added Party and the deceased contributor were cohabiting in the sense identified in *Hodge* at the time of his death. The deceased contributor gave up his apartment, and his possessions were moved into

---

<sup>3</sup> The Appellant referred the Tribunal to a decision of the General Division, where the issue was whether a survivor's pension was payable in circumstances where the parties had lived together for less than a year (*R.L. v. Minister of Employment and Social Development*, 2017 SSTGDIS 26). The Tribunal was not persuaded that this decision was relevant to the matter before it.

the Added Party's residence. Even after his hospitalization, the expectation was that they would live together, and for several months he paid his share of the rent at the address of the Added Party. Bearing in mind the difficult circumstances of the Added Party and the deceased contributor, particularly his health condition, the Tribunal accepts that these are indications of cohabitation. The Tribunal also finds that their separation was involuntary and was a result of his health condition; they had intended to move in together, but his doctors would not allow him to leave a health care facility. The Tribunal also notes there is no evidence that either of them took steps to terminate the relationship.

[64] The Tribunal further notes that from December 2013 until his death, the Added Party visited the deceased contributor almost every day, usually bringing him dinner. The Added Party took the deceased contributor to doctor's appointments and to meals afterwards. He used her home, rather than that of one of his children, as his mailing address. Her testimony, which was not disputed, was that he introduced her as his wife and that after December 2013 the people they encountered did not know that they were not married. They indicated on their 2014 tax returns that they were in a common-law relationship, a step neither of them took lightly. He wanted her to have his car, and insisted that the car loan be paid out of his estate. The amount in his joint account with her became hers alone when he died. They celebrated his birthday, Christmas, and an anniversary together. The obituary of the deceased contributor publicly recognized that he had been the "loving companion, partner and friend for more than two decades" of the Added Party. Although the Added Party was not the beneficiary of the deceased contributor's life insurance or pension, the arrangements for these had been established many years before at the time of the deceased contributor's separation from the Appellant.

[65] Taking all of the foregoing factors into account, along with the holding of the *Hodge* case that cohabitation for the purposes of the CPP does not require that the parties live together, the Tribunal finds that the Added Party and the deceased contributor met enough of the criteria listed in *Betts* to establish cohabitation from December 2013 to the time of the deceased contributor's death. Moreover, the Tribunal finds that the Added Party is the person who was in a spousal relationship with the deceased contributor, as required by *Hodge*. Taking all of these factors into

account, the Tribunal finds that the Added Party and the deceased contributor were in a common-law relationship from December 2013 to the date of his death.

[66] In the alternative, the Tribunal has considered the application of the rationale in *Beaudoin* to the facts of this case. There is no dispute that the Added Party and the deceased contributor were in a common law relationship for many years prior to 2008, thus satisfying the requirement of subsection 2(1) of the CPP that the parties have cohabited for a continuous period of at least one year. The Tribunal notes that although they no longer lived together after 2008 because of his health condition, they socialized together, and took trips together. The Added Party stated that they were never really apart. There is no indication that either of them had a relationship with another person. Moreover, the obituary of the deceased contributor from the *St. Catharines Standard* referred to him as the “loving companion, partner and friend for more than two decades” of the Added Party. Even though there may have been an interruption of the common-law relationship, the Tribunal has found that the Added Party and the deceased contributor had been living in a common-law relationship for more than a year before the deceased contributor’s death, and it was not necessary for the continuous period of actual physical cohabitation to have occurred immediately prior to his death.<sup>4</sup>

[67] For the foregoing reasons, the Tribunal finds, on a balance of probabilities, that the Added Party rather than the Appellant is entitled to a CPP survivor’s pension.

## CONCLUSION

[68] The appeal is dismissed.

Carol Wilton

---

<sup>4</sup> See also *J.H. v. Minister of Employment and Social Development* (2016 SSTGDIS 54).

Member, General Division - Income Security