Citation: *DB v Minister of Employment and Social Development and LW*, 2024 SST 150

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	D. B.
Respondent:	Minister of Employment and Social Development
Representative:	Viola Herbert
Added Party:	L. W.

Decision under appeal:	General Division decision dated April 18, 2023 (GP-21-1677)

Tribunal member:	Pierre Vanderhout
Type of hearing:	Videoconference
Hearing date:	January 18, 2024
Hearing participants:	Appellant Appellant's witnesses Respondent's representative Added Party
Decision date:	February 16, 2024
File number:	AD-23-707

Decision

[1] The appeal is dismissed. The Added Party remains entitled to a Canada Pension Plan (CPP) survivor's pension.

Overview

[2] This appeal is about the CPP survivor's pension triggered by the death of J. C. (the Contributor).

[3] In the last years of his life, the Contributor suffered from Multiple System Atrophy (MSA). Although his cognitive skills seemed to remain intact,[1] MSA eventually robbed him of the ability to walk, speak, and perform basic life functions. By October 2015, he had to move into the X Retirement Residence (X). He lived at X until he passed away on July 20, 2020. Because he contributed to the CPP for many years, a CPP survivor's pension is payable to his survivor.

[4] After the Contributor died, the Appellant and the Added Party both applied for the CPP survivor's pension. At first, the Minister of Employment and Social Development (Minister) granted the pension to the Appellant. But, after the Added Party applied, the Minister decided that the Added Party was entitled to the pension instead. The Appellant appealed that decision. However, the Minister upheld it. The Tribunal's General Division upheld it too. As a result, the Appellant appealed the General Division decision to the Appeal Division.

[5] The Appellant married the Contributor on June 17, 1989,[2] and was still legally married to him at the time of his death. However, they separated in about 2005. I saw no evidence of a formal separation agreement or divorce proceeding. After their separation, they both had relationships with other people.[3] In this appeal, I am only concerned with the Contributor's relationship with the Added Party.

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[1] See, for example, AD5-18.
[2] See GD1-5.
[3] See, for example, GD10-19.

[6] The Contributor and the Added Party began seeing each other in 2009.[4] The parties do not agree on when they became a common-law couple. However, everyone agrees that the Contributor and the Added Party had a common-law relationship between 2012 and mid-2015, when they lived together at the Added Party's home in X.

[7] In this appeal, I must decide whether the Contributor and the Added Party were still in a common-law relationship for the last year of the Contributor's life. The Appellant says the relationship ended in mid-2015, around the time that the Contributor bought and moved to a townhouse on X (the X Condo). The Added Party says the relationship continued until the Contributor passed away in July 2020.

[8] I find that the Added Party and the Contributor were in a continuous common-law relationship for at least the last year of the Contributor's life.

Issue

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

Analysis

[10] The *Canada Pension Plan* says that a survivor's pension shall be paid to the survivor of a deceased contributor who has made sufficient CPP contributions.[5] All parties agree that the Contributor made enough CPP contributions to trigger the payment of a survivor's pension.[6] They disagree on who is the Contributor's survivor.

[11] The CPP says that a deceased contributor's survivor is the common-law partner of the contributor at the time of the contributor's death. However, if the contributor did not have a common-law partner at the time of their death, the contributor's survivor is the person who was married to the contributor at the time of the contributor's death.

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[4] See, for example, GD10-37.
[5] See section 44(1)(d)(ii) of the *Canada Pension Plan*.
[6] See, for example, GD2-14. This letter explains how the Minister of Employment and Social Development (Minister) chose to award the pension to the Added Party rather than the Appellant. The Minister has never disputed that the pension is payable.

This means that the Appellant is entitled to the Contributor's survivor's pension **unless** the Added Party was the Contributor's common-law partner on July 20, 2020.[7]

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

[13] The *Canada Pension Plan* defines a contributor's common-law partner this way:[8]

> [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[.]

[14] This means that the Added Party must show that she continuously cohabited with the Contributor in a conjugal relationship for at least the one-year period ending on July 20, 2020. She must prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she continuously cohabited with the Contributor in a conjugal relationship for this period. If she does not prove this, then the Appellant must succeed in this appeal.[9]

Did the Added Party and Contributor cohabit in a conjugal relationship for the one-year period ending on July 20, 2020?

[15] 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 as follows:[10]

(a) Financial interdependence

(b) Sexual relationship

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[7] 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.

[8] See section 2(1) of the *Canada Pension Plan*.

[9] See, for example, *Hodge v Minister of Human Resources Development*, 2004 SCC 65, at paragraph 6; and *Betts v Shannon et al.*, (2001) CP 11654 (Pension Appeals Board), at paragraph 6. Decisions of the Pension Appeals Board are not binding on the Tribunal, but they can be persuasive.

[10] 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.

(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

[16] 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.[11]

[17] Couples can still be common-law partners if medical reasons force them to live apart. "Cohabitation" is not always the same thing as "co-residence." Two people can cohabit even if they do not live under the same roof. Physical separation does not necessarily end the common-law relationship if the two people mutually intend to continue that relationship. A common-law relationship ends when either person regards it as over **and** has demonstrated that this state of mind is a settled one.[12]

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[11] See *Betts v Shannon*, (2001) CP 11654 (Pension Appeals Board), at paragraph 8.
[12] See *Hodge v Canada (MHRD)*, 2004 SCC 65, at paragraph 42; and *Farrell v Canada (Attorney General)*, 2010 FC 34, at paragraph 15.

[18] I note that some Federal Court decisions, such as the *McLaughlin* decision, refer to a list of considerations that is much shorter than the Betts Factors.[13] However, on review, those other considerations cover the same ground as the Betts Factors.

[19] Before I apply the Betts Factors to this case, I will set out the factual background in more detail. I will focus on the living arrangements of the Added Party and the Contributor.

– **Key background information about the living arrangements**

[20] As noted, the parties agree that the Added Party and the Contributor were in a common-law relationship by 2012.[14] This lasted until at least 2015. They may have been in a common-law relationship before then, when the Contributor owned a home on X.[15] The Added Party says their common-law relationship started in 2009.[16]

[21] The Contributor sold the X property in 2012, when he moved into the Added Party's X home. They lived together in the X home until 2015. However, the Appellant considers the Contributor's purchase and occupancy of the X Condo to be a turning point. She says the Contributor bought and occupied the X Condo himself. She says the Added Party's lack of involvement shows that the common-law relationship had ended.

[22] The Contributor made an offer to buy the X Condo on June 28, 2015. The offer was accepted. The offer had a closing date of August 12, 2015.[17] He occupied the X Condo on or shortly after the closing date.[18] Whether the Added Party also occupied the X Condo with him is a point of dispute. The Added Party said she moved into the townhouse with the Contributor but had a separate bedroom because of his MSA-induced nightmares.[19] She said she remained entirely devoted to her common-law

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[13] See, for example, the Federal Court decision in *McLaughlin v Canada (Attorney General)*, 2012 FC 556, at paragraphs 15-16.
[14] See AD1C-2 and AD9-5 to AD9-9. See also the Appellant's evidence beginning at 47:20 and 53:15 of the General Division hearing.
[15] See GD5-2 and GD5-11.
[16] See GD9-8, AD5-7, AD5-14, and AD5-18.
[17] See GD1-6.
[18] See GD5-2, GD10-1, and GD10-20.
[19] See GD9-10, AD5-8, and AD5-18.

spouse.[20] However, she spent most nights at the X home, for reasons set out in more detail below.

[23] The Contributor bought the X Condo mostly because of his MSA. He wanted to be close to medical care and services, since X is a small community some distance from the larger centre of X.[21] However, his MSA worsened so quickly that he could not continue living there. He fell frequently and needed constant supervision. The Added Party says that she and the Contributor fully intended to, and did, continue their common-law relationship after he bought the X Condo. She said his subsequent move to X was an involuntary separation.[22]

[24] The Contributor moved into X on October 8, 2015, so that he had a safe place to live.[23] This was only about two months after he moved into the X Condo. He then put the X Condo up for sale. The Added Party did not occupy the X Condo after the Contributor moved to X. The X Condo was sold in 2016.

[25] The Added Party did not move into X. She remained healthy and continued to work full-time. She occupied the X home for several more years.

[26] The Appellant cited evidence alleging the Added Party's lack of commitment to the Contributor while he occupied the X Condo. The Appellant's children E. C. and L. C., for example, stayed overnight at the X Condo on multiple occasions to keep an eye on the Contributor. Other family members appear to have done so as well. It appears that the Added Party rarely stayed overnight at the X Condo, although she had a bedroom there.[24] However, the key period is the year before the Contributor's death. While events before that period can be relevant, I am hesitant to rely too much on a two-month period that was nearly five years before he died.

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[20] See, for example, GD9-12.
[21] See, for example, GD9-10.
[22] See GD2-50, GD2-54, GD9-10, GD9-12, GD9-18 to GD9-19, AD5-14, and AD5-18. See also the Added Party's evidence at the General Division hearing, starting at 1:05:50.
[23] See GD2-50, GD2-52, GD9-5, GD9-11 to GD9-13, GD9-95, GD9-99, GD10-1, and GD10-19.
[24] See GD5-8, GD9-10, GD10-19, GD10-21, GD10-26, AD5-8, and AD5-12.

[27] I also see some unique circumstances involving the X Condo. All parties accept that the Added Party and the Contributor owned a golden retriever named M. All parties also accept that such large dogs were not allowed in the X Condo. The Added Party and the Contributor eventually persuaded the X Condo board to allow M. to live there as a "service dog." It appears that this permission was not granted until the Contributor's last month at the X Condo.[25] By this time, the Contributor (and apparently the Added Party) had already begun looking for a retirement home or a nursing home.[26] The Federal Court has said that maintaining a separate residence because of pet concerns does not necessarily mean there is no conjugal relationship.[27]

[28] In the circumstances, it was reasonable for the Added Party to spend nights with M. at the X home. Once M. was allowed at the X Condo, it was only a matter of days or weeks before the Contributor moved to X. As such, it was also reasonable for the Added Party to spend nights at the X home (with M.) at that time.

[29] I will now apply the Betts Factors to the evidence in this appeal. For ease of reference, I put the first reference to each Betts Factor in bold. While my finding must address the final year of the Contributor's life, I have also looked at the evidence leading up to that final year. This is because my focus is on deciding whether the common-law relationship continued beyond 2015 and up to the Contributor's death. The parties already agree that a common-law relationship existed until at least 2015.

– Applying the Betts Factors

[30] The Contributor lived in a retirement home and had very little ability to move or communicate at the end of his life. His condition was so advanced that, in his final years, he ate through a feeding tube. As such, some Betts Factors have little or no relevance. It was no longer possible for him and the Added Party to have **a sexual relationship**. They could not **share household responsibilities** or **vacations**. **Sharing responsibility for children** was not relevant either, since they did not have

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[25] See GD1-9, GD1-10, GD5-8, GD9-10, and GD10-19.
[26] See GD9-15 and AD5-8. See also the Added Party's evidence at the Appeal Division hearing and her evidence at approximately 1:07:00 of the General Division hearing.
[27] See *Grein v Canada (HRSD)*, 2014 FC 650, at paragraph 10.

children together. Their children from prior relationships were all well into adulthood by this time. Because the Added Party was healthy and still worked full-time, she **could not have been expected to live at X** too. It also would not have been reasonable for her to **keep any of her clothing** at X.

[31] The Contributor's MSA made it difficult for some Betts Factors to apply equally to each person. For example, it would not have been reasonable for him to take care of the Added Party if she were ill. As a result, some Betts Factors can only be considered from one perspective.

- **Betts Factors that support a common-law relationship with the Added Party**

[32] The Added Party and the Contributor bought **gifts for each other** well after the Contributor moved into X. At the hearing, the Added Party said she bought the Contributor things such as clothes and a Dr. Ho foot circulation machine.[28] The Contributor bought the Added Party a diamond ring on June 21, 2017.[29] While this was before his last year, his ability to buy gifts was already markedly diminished by then. He also bought pyjamas for her one Christmas when he was already at X.[30]

[33] The Contributor was unlikely to be using the Added Party's assets in his day-to-day life. However, I see evidence that **the Added Party used some of the Contributor's assets** with his approval. In his will, he left his motorcycle and garden tractor to the Added Party.[31] While this will is from 2017, the tractor appeared to be with the Added Party already when the Contributor moved to X.[32] I see no suggestion that these bequests were ignored. This factor moderately supports the Added Party.

[34] The Contributor had an **expectation of mutual dependency** with the Added Party. He granted the Added Party a continuing power of attorney (along with L. C. and E. C.) for his personal property in September 2015.[33] He granted the Added Party a

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[28] She also mentioned this machine at AD5-5.
[29] See GD9-19, GD9-78, and AD5-10.
[30] See AD5-5.
[31] See GD2-56. This also appeared in an earlier document at GD2-53.
[32] See the recording from the General Division hearing (evidence of E. C.), at roughly 18:15.
[33] See GD9-47.

power of attorney for his personal care in July 2016. This was also granted to his sisters, B. C. and A. C.[34] I see no evidence that either power of attorney in favour of the Added Party was ever revoked.

[35] The Added Party was the Contributor's first point of contact for X during his last years. X's administrator, J. P., said the Added Party "was responsible for all [the Contributor's] decisions both financially and for his health concerns." J. P. said the Added Party also communicated the Contributor's "needs and wishes to everyone on his health care team."[35] J. P. later said that the Added Party "was actively involved in his well-being, providing emotional support, financial decisions, as his caregiver and companion."[36] When the Added Party was sometimes unable to stay for long in 2017, the Contributor became worried.[37]

[36] Similarly, the Added Party clearly **cared for the Contributor when he was ill**. As noted, she was his primary contact at X. She took care of his medications.[38] She took him to medical appointments.[39] She advised family members when he was available (or not) to attend events or to have visitors.[40] Due to his condition, the Contributor could not have cared for the Added Party when she was ill.

[37] **In his will,** the Contributor left the Added Party **a significant bequest:** his RRSP at Assante Wealth Management.[41] While he made this will in 2017, I see no evidence that it was ever replaced. However, I see no evidence about whether the Added Party had a will.

[38] Similarly, the Added Party was the **beneficiary of a life insurance policy** held by the Contributor with Purple Shield.[42] The Contributor was **not** the beneficiary of a life

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[34] See GD9-45.
[35] See GD9-64, GD9-100 to GD9-101, and AD5-1.
[36] See GD9-64, GD9-68, GD9-100, and GD9-101.
[37] See GD5-13.
[38] See GD10-20 and GD10-22.
[39] See GD2-60, GD9-43, GD9-12, GD9-13, GD9-64, GD9-101, AD5-1, and AD5-4.
[40] See AD5-24 and AD5-25.
[41] See GD2-57.
[42] See GD2-52 and GD2-54. See also the Added Party's evidence at the Appeal Division hearing.

insurance policy held by the Added Party. However, the Added Party testified that she did not have one.[43]

[39] The Contributor's ability to communicate was greatly restricted in the last year of his life. He could not speak and could only communicate by using a picture board. Nonetheless, the evidence suggests that **he was still communicating with the Added Party**. In May 2020, she did a "window visit" with him during the most restrictive part of the COVID-19 pandemic.[44] She was also with him hours before he died.[45] At the hearing, she said she texted him regularly at bedtime. She said this continued right up to July 2020.

[40] I also see evidence that the Contributor's wishes were being expressed through the Added Party. This continued well into his stay at X. In October 2018, for example, the Added Party informed family members that the Contributor did not want to go anywhere on his birthday. He preferred to have people visit him at X.[46] His affection for and relationship with the Added Party was shown through an anniversary card he likely gave her in 2018 or 2019. The card says, "[...] you're the one I want forever by my side and in my heart." His poor writing shows this was near the end of his life.[47]

[41] The Appellant was also in regular contact with the Contributor in the last year of his life. I will address the impact of that contact later in this decision.

[42] During the Contributor's life, **people appeared to recognize him and the Added Party as common-law partners**. In May 2017, a lawyer met with both of them about a power of attorney.[48] In January 2018, the Contributor's financial advisor confirmed that his Assante RRSP would pass "to [his] spouse" (the Added Party) when he died.[49] In July 2020, only five days before the Contributor died, the Added Party's

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[43] The Added Party gave this evidence at the Appeal Division hearing.
[44] See GD2-61 and GD9-50.
[45] See AD5-9 to AD5-10.
[46] See AD5-25. The Added Party sent out similar messages for him earlier that year: See AD5-24.
[47] See GD9-18 to GD9-19 and GD9-75 to GD9-76.
[48] See GD9-15 and GD9-56.
[49] See AD5-3.

friend, P. J., emailed the Added Party to ask her how things were going. P. J. referred to the Contributor as the Added Party's "husband."[50] At the Appeal Division hearing, the Added Party said her previous contact with P. J. had been between a few months and a year before the July 2020 email from P. J. This supports the common-law relationship continuing through the last year of the Contributor's life.

[43] Many other people later affirmed that the Contributor and the Added Party were a common-law couple until the Contributor's death. T. B. (friend of the Added Party),[51] A. H. (friend of the Added Party),[52] J. P. (administrator at X),[53] M. A. (pharmacist and the Added Party's employer),[54] T. J. (the Added Party's financial advisor),[55] Dr. William Tillmann (the Contributor's doctor),[56] C. B. (friend of the Contributor and the Added Party),[57] and Dr. Nemat Daraei (the Contributor's mother's doctor) each supported this by letter or affidavit.[58] Other than T. J., I find it hard to see how any of these people could gain financially from affirming the ongoing common-law relationship. Others had no personal interest either.

[44] **The attitude and conduct of the community and family members** is more complicated. Many of the people cited in the "public recognition" section above would qualify as "community members." I saw little or no "community" evidence denying an ongoing common-law relationship between the Contributor and the Added Party.

[45] However, after the Appellant's entitlement to the CPP survivor's pension was cancelled, the Contributor's family members began to deny that the relationship lasted until his death. They suggested that the relationship ended with the Contributor's move to the X Condo. They said his sole legal ownership of the X Condo, and the Added

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[50] See AD5-20.
[51] See GD2-67.
[52] See GD2-66.
[53] See GD9-16, GD9-64, and GD9-100.
[54] See GD9-12 and GD9-43.
[55] See GD2-69.
[56] See GD9-16 and GD9-62.
[57] See GD9-18, GD9-70, and GD9-94 to GD9-96.
[58] See GD9-16 and GD9-60.

Party's non-continuous presence there, proved that it was no longer a conjugal relationship. These family members included E. C., L. C., A. C., B. C., and the Contributor's daughter-in-law, K. B. This evidence took the form of many statements filed before the hearing. L. C., E. C., and J. also gave similar evidence at the Appeal Division hearing.

[46] As noted above, I find the Added Party's reasons for not residing exclusively at the X Condo to be reasonable and consistent with an ongoing relationship. Similarly, it was reasonable for the Contributor to be the sole legal owner, as the Added Party already owned a home in her name.

[47] However, I also find the timing of the statements from the Contributor's family members to be critical. Together with the funeral director, the Appellant, E. C., L. C., and A. C. drafted both the obituary and a "bookmark" that was handed out at the Contributor's funeral. The wording in both documents was as follows:[59]

> [The Contributor] is survived by his mother O. C. and predeceased by his father W. C., was a loving companion to [the Added Party], and will be sadly missed by his children [L. C.] and [E. C.] and their mother [the Appellant].

[48] The obituary wording clearly suggests that, from the family's perspective, the Added Party and the Contributor were still in a relationship at the time of his death. This is very different from the position later taken by the Appellant, E. C., L. C., and A. C. at the hearing and in their written submissions. Only after the Appellant's survivor's pension was cancelled did she and the Contributor's family members say that the Added Party and the Contributor stopped being a couple in 2015. This is completely at odds with calling the Added Party the Contributor's "loving companion" at the time of his death.

[49] E. C. and L. C. wrote that they were just "trying to be inclusive" of the Added Party.[60] L. C. also wrote that the wording "should not be considered as hard fact," as it

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[59] See GD2-63 and GD9-84. See also AD1B-3.
[60] See GD10-22.

was "not something that was fact checked." However, at the same time, L. C. said, "we did want to recognize that [the Added Party] had been a meaningful part of his life at some point, and not remove her entirely."[61]

[50] At the hearing, L. C. said the Contributor still cared for the Added Party, although they no longer had a common-law relationship. L. C. said they decided to acknowledge that the Added Party "had once been a loving companion." E. C. said they were a caring family that did not like conflict. He said the Contributor cared for a lot of people, so they thought the suggested wording would be nice. A. C. said the Contributor's family members were simply being "very kind" and went with the wording suggested by the funeral home. A. C. added that the Added Party was invited to one of the post-death meetings "out of kindness." A. C. also said the Contributor told her he did not want the Added Party at his eventual funeral.

[51] I struggle with these explanations. The Appellant, L. C., and E. C. all later said that the Appellant and the Contributor had agreed to renew their wedding vows but were unable to do so before the Contributor's death.[62] However, L. C. and E. C. were not present when this was allegedly discussed. Just as importantly, I see very little evidence about the specifics of this plan. The Appellant's witnesses focused on who was present (the Appellant, A. C., B. C., and brother-in-law B.) rather than on the details of the plan.[63]

[52] At the hearing, I asked the Appellant about this plan. She said the renewal of vows was her idea, because the Contributor could no longer speak. She said she posed the question to him just before the COVID-19 pandemic and he agreed. But I saw no evidence about how or when this might happen, or who would conduct the proceedings. These details would be especially important given the Contributor's inability to speak and his advanced physical decline.

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[61] See AD1B-5.
[62] See GD1-23, GD10-1, GD10-20, GD10-22, GD11B-1, AD1C-2, AD8-1, and AD9-4.
[63] See GD10-1.

[53] Despite this evidence about renewing wedding vows, the Appellant (along with A. C., E. C., and L. C.) still decided to refer to the Added Party as the Contributor's "loving companion" in his obituary. This points to an ongoing common-law relationship. Similarly, despite A. C.'s later statement that the Contributor did not want the Added Party at his funeral, she still permitted the Added Party's significant involvement at the funeral and the "loving companion" language.

[54] In the circumstances, I cannot place much weight on the evidence about renewing wedding vows. I prefer to place more weight on the statements and actions demonstrably made while the Contributor was still alive or immediately following his death. For that reason, I find that family and community members viewed him and the Added Party as common-law spouses up to the time of his death.

[55] Another Betts Factor concerns **the funeral and how parties were described**. One portion of this factor favours the Added Party: She was described as the Contributor's "loving companion." She also did the graveside reading, at the request of his family members. She also arranged for the fire department's involvement because the Contributor used to work there. However, other aspects of this Betts Factor favour the Appellant, since the Contributor's family members appeared to handle the bulk of the other funeral arrangements.[64] As for the costs of the funeral, the Contributor's original intention was that the money would come from his bank accounts.[65] In my view, the "loving companion" description is so clear and direct that it outweighs the other aspects and favours a common-law relationship.

- **Betts Factors that do not support a common-law relationship with the Added Party**

[56] The Contributor and Added Party had relatively **little in the way of financial interdependence**. They did not have joint credit card or bank accounts. They did not own a home together.[66] However, the Added Party did use the Contributor's bank card

[64] See AD5-7 and AD5-15
[65] See GD2-53.
[66] See GD2-52, GD2-54, and GD2-60.

and cheques on his behalf. She paid bills and made deposits for him.[67] This mitigates their apparent independence in a minor way.

[57] The Added Party said she and the Contributor filed their taxes independently.[68] At the hearing, she said **they reported themselves as single** for tax purposes. However, she suggested that the Contributor described himself as common-law on one government form in 2015. Even if true, the many other "single" declarations outweigh it.

- **Conclusion on the Betts Factors**

[58] The Betts Factors do not provide a unanimous answer. They also have some limitations: some factors are irrelevant or relatively weak. Overall, however, I find that the factors favour a common-law relationship between the Added Party and the Contributor for at least the final year of his life.

[59] Applying the Betts Factors is not a strict mathematical exercise. Some factors may carry different weights, depending on the specific circumstances.[69] In this case, the Contributor had a terminal illness that profoundly affected his quality of life. This means that factors related to his care are more important than usual. These factors favoured the Added Party.

[60] Similarly, the sheer number of statements or witnesses does not decide the case. The timing of the statements and the witness relationships are vital. In this case, the Added Party and the Appellant differ on who should succeed. But at least some of the Appellant's witnesses may have had a personal interest in the outcome. The Appellant repeatedly said she would make sure that E. C. and L. C. would receive the survivor's pension proceeds.[70] This does not mean that I disbelieve their evidence. However, where I see contradictions, I prefer statements from those who have no personal interest in the outcome.

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[67] See GD9-15, GD10-16, AD5-4, and AD5-10.
[68] See GD2-60 and GD9-9.
[69] See, for example, *Brandon v MHRD*, (2001) CP 14937 (Pension Appeals Board). Decisions of the Pension Appeals Board are not binding on the Tribunal, but they can be persuasive.
[70] See, for example, AD9-7.

[61] In this case, most of the independent witnesses supported the Added Party. This included professionals such as Dr. Tillmann, Dr. Asadollahi, and Dr. Daraei. Dr. Tillmann said the Added Party and the Contributor had been common-law spouses from at least 2015 to the Contributor's death.[71] Dr. Asadollahi had known the Added Party since 2012 and said the Added Party and the Contributor remained a couple until the Contributor's death. Dr. Asadollahi supported this by describing the Added Party's role in the Contributor's health care.[72] Dr. Daraei had known the Added Party and Contributor since 2013. Dr. Daraei said they had been a couple since then and described the Added Party's role in providing care and support to both the Contributor and the Contributor's mother.[73]

[62] J. P.'s evidence also strongly supported the Added Party. I note that J. P., as the care home administrator, refused to give A. C. a supportive statement regarding A. C.'s involvement in the Contributor's care. After discussing A. C.'s request with the X management team, J. P. wrote the following:[74]

> According to our records, [the Added Party] was the main contact for [the Contributor]. She was actively involved in his well-being, providing emotional support, financial decisions [*sic*], as his caregiver and companion. We cannot issue you a reference letter with false information.

[63] I also find that most of the evidence supporting the Appellant was created only after the CPP survivor's pension was in dispute. I see no persuasive evidence that the Added Party and the Contributor intended to end their common-law relationship. The possible exception to this would be evidence relating to the Appellant's increased presence in the Contributor's life shortly before he died. I will examine this separately below.

[64] Finally, the analysis followed in decisions such as *McLaughlin* would have led me to the same conclusion. The social, societal, and personal behaviour categories in

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[71] See GD9-62.
[72] See GD9-43.
[73] See GD9-60.
[74] See GD9-68. The original request from A. C. is at GD9-66.

McLaughlin were especially relevant in this case. The evidence in this appeal favours the Added Party in each of those categories.

– **Other issues raised by the Appellant**

[65] The Appellant raised many issues in this appeal. I will briefly address some of them below. However, none of them affect the outcome of this appeal.

○ **Inconsistencies and falsehoods**

[66] Many of the submissions by the Appellant and her witnesses focus on alleged inconsistencies or falsehoods in the Added Party's statements.[75]

[67] Firstly, I base my conclusion above heavily on objective evidence, rather than statements made as part of these proceedings. I also consider the totality of the evidence, rather than each piece of evidence in isolation. Nonetheless, I find that inconsistent or erroneous statements were not confined to one party.

[68] For example, L. C. noted that a May 2020 newspaper article said the Contributor had been at X for six years. That article arose from an interview with the Added Party.[76] The six-year period is clearly incorrect, as all parties accept that the Contributor moved there in October 2015. So, although he had been there for parts of six calendar years, his actual stay there was just under five years.

[69] At the same time, the Appellant and her witnesses have given different years for her "reconciliation" with the Contributor. She refers to a reconciliation in 2016,[77] while L. C. and E. C. say this happened in 2017.[78] While the **nature** of any potential reconciliation is potentially relevant and will be discussed further below, the slight difference in the calendar year is not material or relevant to my decision. Similarly, the above error in the May 2020 newspaper article is not material or relevant either.

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[75] See, for example, the materials submitted by the Appellant at GD13-1, AD1B-3, and AD9-6 to AD9-8.
[76] See GD9-50.
[77] See GD2-18.
[78] See GD10-19 and GD10-22.

[70] I see many such inconsistencies in the evidence. This does not surprise me. The Contributor had a terrible illness. MSA took its toll on both him and those who cared for him. The COVID-19 pandemic disrupted lives and routines. Witnesses worked full-time, went to school, or were not regularly in X. In this decision, I have only addressed inconsistencies that are potentially relevant to the outcome of this appeal.

- **The potential reconciliation**

[71] When I discussed the attitude of family members toward the common-law relationship, I considered the relationship between the Appellant and the Contributor at the very end of his life. The Appellant, L. C., and E. C. all later said the Appellant and the Contributor had agreed to renew their wedding vows. A. C. said that the Contributor did not want the Added Party at his funeral. However, as I discussed above, the Appellant, L. C., and E. C. still agreed that the Contributor's obituary would refer to the Added Party as his "loving companion." They also allowed her to do the graveside reading. These actions both point to an ongoing common-law relationship acknowledged by his family members.

[72] Despite my findings about that evidence, I accept that the Appellant and the Contributor resumed communications and got back on speaking terms toward the end of his life. I accept that she visited the Contributor and had contact with him via text messages or Skype. This was a significant change from the bad feelings that arose from their original separation in 2005.

[73] However, a thawing between the Appellant and the Contributor is not fatal to the common-law relationship between the Added Party and the Contributor. The Appellant was not just "anyone." She was still legally married to the Contributor. She was the mother of his children. He retained his cognitive capacity, despite his physical decline. He was likely pleased that his children would no longer have to pick sides between their parents. I also note that the Appellant's later contact with him was often in the presence

of others.[79] At the hearing, the Added Party said the Appellant texted her for permission to visit the Contributor in or around December 2016.

[74] Similarly, I place no weight on the fact that the Appellant and her children saw the Contributor after the Added Party saw him for the last time. They all saw him in the hospital, just a couple of hours before his death. Given the pandemic, it was impossible for everybody to see him at the same time. The Added Party said she had been with him all day, up to that point.[80] At the hearing, she said they were still wearing the bracelets they had given each other.

[75] In the circumstances, the contact between the Appellant and the Contributor does not affect my finding about his relationship with the Added Party.

- **Involvement of others in the Contributor's care**

[76] The Appellant often noted that the Added Party did not attend to every concern involving the Contributor. She also says other people often took him to appointments too. E. C. and L. C. gave similar evidence.[81] The suggestion is that the Added Party was no longer in a common-law relationship with the Contributor.

[77] I accept that the Added Party did not attend to every concern. However, I do not find this to be persuasive. The Added Party said she often forwarded information to family members. She said he had "a very large family who kindly volunteered to help with some of his needs." She said she "did not see an issue with delegating some of the challenges to them on occasion."[82]

[78] I find this reasonable. While the Added Party said she took the Contributor to "the majority" of his medical appointments, she still worked full-time for financial reasons.[83]

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[79] See, for example, GD10-1, GD10-19, AD1B-4, AD5-9 to AD5-10. At the hearing, the Appellant said that she would see the Contributor with her father, on her own, or with L. C. She also saw the Contributor with A. C. and B. C.
[80] See AD1B-4, AD5-9 to AD5-10, and the recording of the General Division hearing, at 1:11:45.
[81] See, for example, GD10-20.
[82] See AD5-14. She also mentioned this at the Appeal Division hearing, adding that they were "caring and willing to help."
[83] See AD5-4 and AD5-8.

Her employer commented on how frequently she received calls from X and took time off work to get the Contributor to appointments.[84] At the same time, the Added Party also helped the Contributor's mother with her medical appointments and care.[85] In these circumstances, I make no negative inference about the Added Party's delegation of some roles to members of the Contributor's family.

o Promise to direct pension proceeds to children

[79] The Appellant often referred to the Contributor's apparent wish to direct his survivor's pension to his children. At the hearing, she challenged the Added Party to respect those wishes if the Added Party were successful in this appeal.

[80] While the Appellant referred to a "promissory note" concerning this wish, she admitted at the hearing that the Added Party never signed one. The Added Party also said she never signed anything of the sort. She submitted that the Contributor's 2017 will already captured his wishes.

[81] In any case, the Tribunal cannot order a party how to use a CPP survivor's pension. The *Canada Pension Plan* sets out who is legally entitled to receive such a pension, but goes no further. I must interpret and apply the provisions set out in the *Canada Pension Plan*. Nothing in the *Canada Pension Plan* could apply to or enforce such a wish by the Contributor.

– Final comments on this proceeding

[82] This proceeding appears to have driven the Added Party apart from the Appellant and the Contributor's family. This is unfortunate, given the evidence about the Contributor himself. By all accounts, he was a caring and generous man.

[83] I cannot force the parties to forget their differences. I can only decide who is entitled to the survivor's pension. However, the standard in this case is a "balance of probabilities." While the Added Party has been successful in meeting that standard, this

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[84] See GD9-43.
[85] See GD9-16 and GD9-60.

does not mean that **all** the evidence favours her or that everything she said is correct. It also does not mean that everything from the Appellant has been incorrect. I urge the parties to remember this.

Conclusion

[84] The appeal is dismissed. The Added Party remains entitled to the CPP survivor's pension.

Pierre Vanderhout
Member, Appeal Division