



Citation: *RP v Minister of Employment and Social Development and BG*, 2025 SST 720

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: R. P.

Respondent: Minister of Employment and Social Development
Representative: Ian McRobbie

Added Party: B. G.

Decision under appeal: General Division decision dated September 17, 2024
(GP-24-23)

Tribunal member: Pierre Vanderhout

Type of hearing: In person

Hearing date: April 14, 2025

Hearing participants: Appellant
Respondent's representative
Added Party

Decision date: July 9, 2025

File number: AD-24-626

Decision

[1] The appeal is dismissed. The Claimant and the Added Party are subject to a division of unadjusted pensionable earnings (DUPE) for the period between January 1980 and December 1994.

Overview

[2] I will refer to the Appellant, R. P., as the “Claimant.” I will refer to the Respondent, the Minister of Employment and Social Development, as the “Minister.” I will refer to the Added Party, B. G., as the “Added Party.”

[3] The Added Party and the Claimant married on June 28, 1980. Although they had two children, the marriage did not last. They temporarily separated at least once before they separated for good in the 1990s. In January 2002, a court order dissolved their marriage. The divorce took effect on February 22, 2002.

[4] This appeal is nominally between the Claimant and the Minister. But it is really a dispute between the Claimant and the Added Party. It flows from the Added Party’s request for a DUPE (also known as a “credit split”). A credit split means that all CPP contributions made during the cohabitation are split evenly, regardless of who originally made them. This can have a big effect on each person’s CPP retirement pension.

[5] In May 2023, the Added Party applied for a credit split based on her marital cohabitation with the Claimant. The Minister found that the Claimant and the Added Party married on June 28, 1980, and separated on November 24, 1995. As a result, the Minister granted a credit split for the period of January 1980 to December 1994. The Minister upheld this decision on reconsideration.

[6] The Claimant then appealed to the General Division of the Social Security Tribunal (Tribunal). The General Division dismissed the Claimant’s appeal. The General Division found that the Claimant and the Added Party had cohabited between June 1980 and November 1995, except for two periods when they lived separate and apart.

However, due to the length and timing of those temporary separations, the credit split could continue even during those separations.

[7] The Claimant applied to the Tribunal's Appeal Division for leave to appeal the General Division's decision. He disputed the dates of both separations. He also argued that there was no reconciliation after the second separation. One of my Appeal Division colleagues granted leave (permission) to appeal. As a result, I conducted a *de novo* hearing to decide the period(s) of cohabitation. The Claimant and the Added Party filed new evidence and submissions.

[8] I must decide when the Claimant and the Added Party cohabited after their June 1980 marriage. Once I have determined when they cohabited, I can decide which periods of their marriage are subject to a credit split.

[9] I find that the Claimant and the Added Party cohabited from June 28, 1980, until November 25, 1995, when they separated for the last time. I find that they did not cohabit for two periods during their marriage: from June 28, 1981, to March 1, 1982, and from January 16, 1993, to November 11, 1993. As a result, the credit split applies from January 1980 until December 1994. My analysis below explains these findings.

Preliminary matters

[10] Shortly before the hearing, the Claimant was concerned that the Added Party may have learned my identity before he did.¹ I told the parties that I did not instruct anyone to share my identity before the hearing. I also explained that I was the Member closest to the hearing location. I then asked the Claimant whether he was making an allegation of bias. He said he was not. As a result, the hearing went ahead.

Issues

[11] The issues in this appeal are:

- a) When did the Claimant and the Added Party cohabit?

¹ See AD17-1.

b) For which years should a credit split apply?

Analysis

[12] The *Canada Pension Plan* says that a credit split **shall** be done after a divorce. The only requirement is that the Minister must receive the prescribed information.² Nobody disputes that the Minister received the prescribed information in this case. The question is which period should be covered by the credit split.

[13] In determining the period for the credit split, the only months to be considered are the months during which the two persons cohabited.³ However, the two persons are considered to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other.⁴

[14] In a 2004 decision called *Hodge*, the Supreme Court of Canada offered some guidance on cohabitation. While the *Hodge* decision arose from a common-law relationship, the Supreme Court said that cohabitation is a constituent element of a common-law relationship.⁵ This means that decisions about common-law cohabitation could also apply to cohabitation within a marriage.⁶

[15] The *Hodge* decision also said 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 [emphasis added].”⁷ In other words, a person cannot just terminate a relationship in their mind without doing more. Their conduct must also convincingly demonstrate that the relationship is over.

² See section 55.1(1)(a) of the *Canada Pension Plan*.

³ See section 55.1(4) of the *Canada Pension Plan*.

⁴ See section 55.1(2)(a) of the *Canada Pension Plan*.

⁵ See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65, at paragraph 42.

⁶ See also *CT v Minister of Employment and Social Development and EM*, 2024 SST 1350, at paragraph 35. While other Tribunal decisions are not binding, they can be of persuasive value.

⁷ See *Hodge*, *ibid.*, at paragraph 42.

[16] In a 2012 decision called *McLaughlin*, the Federal Court of Canada gave a list of factors to help determine whether two people were cohabiting with each other in a conjugal relationship. Those factors are:⁸

- **Shelter.** Did the parties live under the same roof? Did they sleep together? Did anyone else occupy or share the available accommodation?
- **Sexual and personal behaviour.** Did the parties have sexual relations? Did they maintain an attitude of fidelity to each other? Did they communicate on a personal level? Did they eat together? Did they help each other during problems or illness? Did they buy each other gifts?
- **Services.** What roles did they play in preparing meals, doing laundry, shopping, doing household maintenance, and other domestic services?
- **Social.** Did they participate together or separately in neighbourhood or community activities? How about with each other's family members?
- **Societal.** What was the attitude and conduct of the community towards each of them as a couple?
- **Support.** What were the financial arrangements between the parties for providing necessities and acquiring/owning property?
- **Attitude and conduct concerning any children.**

[17] If only the exact dates of cohabitation are in dispute, rather than the cohabitation itself, I may not need to apply the *McLaughlin* principles at each point.

When did the Claimant and the Added Party cohabit?

[18] I find that the parties first cohabited on June 28, 1980. They last cohabited on November 25, 1995. However, they had two periods of separation when they did not cohabit. The first separation was from June 28, 1981, to March 1, 1982. The second

⁸ See *McLaughlin v Canada (Attorney General)*, 2012 FC 556, at paragraph 15.

separation was from January 16, 1993, to November 11, 1993. I will now explain how I made these findings.

[19] The Claimant and the Added Party agree that they married on June 28, 1980. They did not live together before then. They agree that they had a separation starting at some point in 1981 and ending at some point in 1982 (the First Separation). They did not cohabit during the First Separation. However, they do not agree on the exact dates of the First Separation.

[20] The Claimant and the Added Party agree that they had another separation in 1992 or 1993 (the Second Separation). They agree that they did not cohabit during the Second Separation. However, they do not agree on the dates. The Added Party said the Second Separation was brief and lasted only a few months in late 1993. The Added Party said they then separated for a third and final time in November 1995.

[21] The Claimant said the Second Separation was actually their final separation. He said the separation began in July 1992 and never ended. He admitted living in the same house as the Added Party up to November 1992, and from November 1993 to November 1995. However, he said they lived “separate and apart” under the same roof.

[22] I need to determine the dates of the First Separation and the Second Separation. I will start with the First Separation.

– **The First Separation started on June 28, 1981, and ended on March 1, 1982.**

[23] The Claimant and the Added Party married on June 28, 1980, in B. Ontario.⁹ They grew up and met in that city. The Added Party worked in B until June 20, 1980.¹⁰ However, after their marriage, they began to live together in N, Ontario. The Claimant had a job with a well-known Canadian bank (the Bank) in N. He already had an apartment there. The Added Party eventually worked there too. She had a job at a N boutique from October 1, 1980, to February 1, 1981.¹¹

⁹ See GD2-31.

¹⁰ See AD15-55.

¹¹ See AD15-56.

[24] The Claimant and the Added Party agree that they separated roughly a year after their marriage. The cause of the separation was the Claimant's involvement with another woman. He called her "VJ." The separation ended when the Added Party, who was by then pregnant with the Claimant's child, moved back in with him.¹²

[25] The Claimant and the Added Party agree that these two events bookended the First Separation. But they gave different dates for when those events took place.

What the Claimant said

[26] The Claimant has made many statements about the First Separation. These statements include:

<u>Statement Date</u>	<u>Start of Separation</u>	<u>End of Separation</u>
2001 ¹³	June 1981	June 1982
August 2, 2023 ¹⁴	June 1981	June 1982
<i>January 24, 2024¹⁵</i>	<i>June 28, 1981</i>	<i>June 1, 1982</i>
April 8, 2024 ¹⁶	June 28, 1981	June 6, 1982
April 8, 2024 ¹⁷	April 1981	June 6, 1982
January 6, 2025 ¹⁸	April 1981 or June 28, 1981	June 6, 1982
March 20, 2025 ¹⁹	April 1981	June 1982

[27] At the April 14, 2025, hearing, the Claimant said the First Separation started in April 1981. He said the date changed over time because he was "living separate and

¹² See, for example, GD5-1 and GD6-3.

¹³ See GD5-4. This is from an Affidavit in their divorce proceedings.

¹⁴ See GD2-21.

¹⁵ See GD8-1. A Minister's employee prepared this document. However, the Claimant later corrected other aspects of that document without commenting on these dates: see GD10.

¹⁶ See GD6-3, GD6-5, and GD6-7

¹⁷ See GD6-16 and GD6-17. In the same document (see preceding footnote), the Claimant gave a different start date for the separation.

¹⁸ See AD8C-4 to AD8C-5, AD8C-13, AD8C-15, and AD8C-16. The Claimant said he met and started seeing "VJ" in April 1981 but didn't tell the Added Party that the marriage was over until June 28, 1981.

¹⁹ See AD13-39, AD13-40,

apart” from the Added Party by April 1981 even though they lived under the same roof. He said he did not appreciate this distinction until later. He said he started a sexual relationship with VJ in April 1981. He said intimacy with the Added Party ended by then.

[28] The Claimant mentioned that April 1981 date in several documents before the hearing. But he said he did not mention VJ to the Added Party until June 28, 1981. He said he told her about VJ on the day of their first anniversary celebration in B.²⁰

What the Added Party said

[29] The Added Party has also made many statements about the First Separation. These statements include:

<u>Statement Date</u>	<u>Start of Separation</u>	<u>End of Separation</u>
April 24, 2023 ²¹	July 28, 1981	March 1, 1982
February 20, 2024 ²²	July 20, 1981	March 1, 1982
April 25, 2024 ²³	July 20, 1981	March 1, 1982
December 23, 2024 ²⁴	July 20, 1981	March 1, 1982
March 30, 2025 ²⁵	July 20, 1981	1982
March 31, 2025 ²⁶	July 20, 1981	March 1, 1982

[30] At the April 14, 2025, hearing, the Added Party affirmed that she found out about the Claimant’s affair with VJ on her birthday (July 13, 1981). This was about two weeks after their first anniversary celebration. She said she then called her mother and said she wanted to go home to B. She left N on July 20, 1981. She said the Claimant picked

²⁰ See GD6-3, GD6-5, and GD6-7.

²¹ See GD2-30.

²² See GD5-1.

²³ See GD7-5.

²⁴ See AD7A-1.

²⁵ See AD14-5.

²⁶ See AD15-2 and AD15-12.

her up on March 1, 1982, and brought her back to N from B. This was consistent with most of her prior evidence too.

Other evidence relating to the First Separation dates

[31] Despite their separation, the Claimant said he and the Added Party travelled together to Nassau, Bahamas, for a week on January 16, 1982.²⁷ He said the trip was at the invitation of the Claimant's ex-boss, but his ex-boss also invited the Added Party. The Claimant said he told the Added Party about the invitation, and she agreed to go. The Added Party denied this. She said they went to Nassau before they married.

[32] The Added Party's and Claimant's first child was born on October X, 1982. I see no dispute that the Claimant was the father.²⁸ This points to a conception date in early January 1982. While the Added Party denied going to Nassau that month, she said she had frequent contact with the Claimant even after the First Separation started.

[33] Two objective February 1982 letters confirm that the Added Party worked at a B department store between July 1981 and February 1982. Those letters highly recommended the Added Party for future work. They made clear that she was leaving her job because she was leaving the B area.²⁹

[34] I saw October 30, 2024, evidence about the First Separation, purportedly given by the Added Party's sister and brother-in-law. They said the separation ended in March 1982. However, the letter is not signed.³⁰ As a result, I do not rely on this document.

The start of the First Separation

[35] After nearly 45 years, it is hard to determine when the First Separation began. Both the Claimant and the Added Party have given different dates. In 1981, nobody created any documents specifically about the First Separation. Almost all evidence in this appeal consisted of mere statements made more than four decades after the events

²⁷ See GD6-3 and AD8C-15.

²⁸ See GD5-5.

²⁹ See GD5-2 and GD5-3.

³⁰ See AD7A-21 to AD7A-23.

in question. Many such statements were made, particularly in the last few months leading up to this hearing.

[36] I do not accept that the First Separation began on either of the 1981 dates (July 20 and July 28) suggested by the Added Party. By July 28, she was already working at a store in B.³¹ She had moved out of N on July 20. In my view, this precludes a July 28 separation.

[37] I also cannot find that the First Separation started on July 20. The Added Party left N that day, but also said she learned of the Claimant's affair with VJ on July 13, 1981. She was naturally upset. She then called her mother in B and said she wanted to return. I find it more likely that at least one of the spouses wanted to live separate and apart by July 13, and (as set out in *Hodge*) demonstrated that intention through their actions. This precludes July 20 as the start of the First Separation.

[38] However, I also have concerns with the separation date now advanced by the Claimant. His current position is that his affair with VJ started in April 1981, and that the First Separation started then. I see no independent or objective evidence of this. More importantly, he said he did not tell the Added Party about VJ until June 28, 1981.

[39] It is possible that a person could want to continue a conjugal relationship, despite having an affair. I also do not see any other behaviour that persuasively shows the Claimant's intention to separate in April 1981. He said his sexual relationship with the Added Party had ended by April 1981, but the Added Party denied that they ever had any issues with that part of their relationship.³² While I see no objective evidence either way, it is unlikely that their sexual relationship ended in April 1981.

[40] For example, the Claimant and the Added Party conceived a child around early January 1982. They clearly continued their sexual relationship even when separated. The Claimant used the words "think of the hormones" when describing this period of his life.³³ He and the Added Party celebrated their first anniversary in June 1981. I find it

³¹ See AD14-5.

³² See AD7A-18, for example.

³³ See AD1B-2. The Added Party's evidence at AD7A-18 also supports this.

unlikely that she would have travelled with him to B for a first anniversary celebration if they had already been without sexual activity for a few months.

[41] In the circumstances, I must consider his disclosure of the affair to the Added Party as determinative. In my view, this means that neither he nor the Added Party demonstrated the intention to separate, as required by *Hodge*, until at least June 28. Other decisions also indicate that a spouse's intention to separate, as required by *Hodge*, must also be demonstrated to the other spouse.³⁴ In this case, that is not present until June 28 at the very earliest.

[42] As noted, I find it unlikely that the Added Party would have attended their first anniversary celebration in another city if she were already aware of the Claimant's affair with VJ and his desire to separate. I find it likely that, at the earliest, she found out about VJ on June 28, 1981.

[43] As *Hodge* precludes a separation before June 28, 1981, it follows that the First Separation began when the Claimant told the Added Party about VJ. I do not need to consider the *McLaughlin* factors on this point. This means the First Separation likely started on June 28 (their first anniversary) or July 13 (the Added Party's birthday).

[44] A June 28, 1981, separation would mean that the Added Party waited more than three weeks before leaving N. It also means that the Claimant chose to disclose his affair with VJ at (or right after having) the first anniversary party. On the other hand, July 13 was only one week before the Added Party said she left N. She also said her mother and "Jack" sent her the bus fare. A July 13 separation would mean that the Claimant chose to disclose his affair with VJ on the Added Party's birthday.

[45] Neither date is without its problems. However, on a balance of probabilities, I find June 28, 1981, to be slightly more likely. I prefer this date because the Claimant said June 1981 was the separation date in an affidavit from 2001 (the 2001 Affidavit). That

³⁴ See *Dunphy v Boulard*, 2021 BCSC 2506, at paragraph 33. See also *H.S.S. v S.H.D.*, 2016 BCSC 1300, at paragraph 42. British Columbia Supreme Court decisions are not binding on the Tribunal but can have persuasive value.

affidavit was from their divorce proceeding.³⁵ All other statements in this appeal from the Claimant and the Added Party about the VJ “disclosure” were made in 2023 or later.

[46] The 2001 Affidavit has problems too. Only the first two pages are clearly present. The signature page is missing, although I found what appears to be a signature page elsewhere in the file.³⁶ Other portions of the affidavit appear to be scattered throughout the file too.³⁷ But I see no intact copy of the full 2001 Affidavit in the file. Nor does every page appear. I asked the Claimant whether he signed the 2001 Affidavit. He said he did sign an affidavit, although he could not say whether he signed this exact one.

[47] These concerns can affect reliability, as the Claimant pointed out. These concerns would have carried a lot of weight if there was other documentary evidence about the separation date from 2001 or earlier.

[48] Unfortunately, I see no other remotely contemporaneous evidence setting the First Separation’s start date. Despite the obvious concerns, the Affidavit is more than 20 years closer to the events in question than any other statement from the Claimant or the Added Party. It is the best available evidence on this point, despite its flaws. As a result, it tips the scales in favour of a June 28, 1981, start date for the First Separation.

The end of the First Separation

[49] The Added Party has consistently said the First Separation ended on March 1, 1982. The Claimant has mostly said the First Separation ended on June 6, 1982, although he once said it was June 1, 1982. However, as noted, they agree that the First Separation ended when the Added Party moved back to N from B.

[50] I accept that the Added Party’s return to the Claimant in N, after the discovery of her pregnancy, would mark the end of the First Separation. This means it is not necessary to resort to the *McLaughlin* factors. However, establishing a precise date is challenging. Again, the events took place more than 40 years ago. I see no objective

³⁵ See GD5-4.

³⁶ See AD7A-65.

³⁷ See, for example, GD7-20.

evidence that specifically supports either of the dates given by the Added Party and Claimant. At the time, nobody recorded the date that she moved back.

[51] I prefer to assess the First Separation's end date through the lens of the available objective evidence, although it is indirect. That evidence relates to the Added Party's resignation of her B job in February 1982.

[52] The February 15, 1982, letter from the B store's merchandise manager is compelling. That letter makes it clear that the Added Party had already decided to leave the B area.³⁸ She was likely aware of her pregnancy by that point. She obviously had been in recent intimate contact with the Claimant. If she had decided to leave B, where her family lived, she likely would have been returning to N.

[53] Given that intention, I find it more likely that the Added Party would have returned to the relationship with the Claimant on March 1, 1982. The letters from the B store affirm that she had been an excellent employee.³⁹ I do not see why she would have left that work in February but waited until June to return to N.

[54] The Claimant also said the "right and only moral thing for me to do was to have her move back in and we would raise the child together."⁴⁰ This implies that they decided to reconcile once he learned of the pregnancy. I find it more likely that this happened shortly before March 1982 than shortly before June 1982. By June 1982, the Added Party would have already been pregnant for about five months.

[55] I note that, in the 2001 Affidavit, the Claimant said he did not begin to cohabit again with the Added Party until June 1982. However, unlike the First Separation start date, I see more reliable objective evidence about the First Separation end date. The B store letters are from early 1982 and I find them more probative of events that took place in early 1982.

³⁸ See GD5-3.

³⁹ See GD5-2 and GD5-3.

⁴⁰ See GD6-3.

[56] The Claimant and the Added Party do not agree on when they went to Nassau. But it does not matter. Nobody disputes that they had intimate relations around January 1982 and that this led to their son's birth in October 1982.

[57] I will now determine the dates of the Second Separation.

– **When was the Second Separation?**

[58] I find that the Second Separation started on January 16, 1993, and ended on November 11, 1993. I will now explain how I made this finding.

[59] The Claimant and the Added Party agree that they cohabited for an extended period after the end of the First Separation.

[60] The Claimant and the Added Party agree that they separated for a second time due to the Claimant's relationship with a woman named "JB". However, the Claimant and the Added Party disagree on the timing and nature of the Second Separation. The Claimant said he and the Added Party never cohabited again after he became seriously involved with JB in 1992. The Added Party said they briefly separated in 1993, but they cohabited again until their final separation in November 1995.

[61] As with the First Separation, it is helpful to set out what the Claimant and Added Party have said about the exact timing of the Second Separation.

What the Claimant said

[62] The Claimant has made many statements about the Second Separation. These statements include:

<u>Statement Date</u>	<u>Start of Separation</u>	<u>End of Separation</u>
2001 ⁴¹	January 1993	November 1993
August 2, 2023 ⁴²	1992	mid-1994

⁴¹ See GD5-4 to GD5-5.

⁴² See GD2-21.

January 25, 2024 ⁴³	1992	1993
April 8, 2024 ⁴⁴	December 4, 1992 (“formal”)	November 11, 1993
April 8, 2024 ⁴⁵	July 1992	November 1993
April 8, 2024 ⁴⁶	July 1992	[none]
January 2025 ⁴⁷	Late November 1992	November 11, 1993
January 2025 ⁴⁸	July 1992	[none]
March 2025 ⁴⁹	July 1992	[none]

[63] At the April 14, 2025, hearing, the Claimant continued to affirm that he and the Added Party separated for the second and final time in 1992. While he knew JB before July 1992, he said that was when they became “very involved.” He said he moved into JB’s house on December 4, 1992. He said he moved back into the matrimonial home with the Added Party around November 11, 1993, but maintained that they were merely “co-existing” (not “cohabiting”) and remained “separated.” He said his relationship with JB continued throughout the rest of his “co-existence” with the Added Party.

What the Added Party said

[64] The Added Party has also made many statements about the Second Separation. These statements include:

<u>Statement Date</u>	<u>Start of Separation</u>	<u>End of Separation</u>
May 8, 2023 ⁵⁰	[does not mention a separation around this time]	
February 22, 2024 ⁵¹	Unable to recall	

⁴³ See GD3-1.

⁴⁴ See GD6-3, GD6-5, and GD6-17.

⁴⁵ See GD6-17.

⁴⁶ See GD6-17, GD6-18, GD6-19, GD6-20.

⁴⁷ See AD8C-6 and AD8C-7.

⁴⁸ See AD8C-16.

⁴⁹ See AD12-8, AD12-9, and AD13-42.

⁵⁰ See GD2-30.

⁵¹ See GD5-1.

April 25, 2024 ⁵²	September 1993	November 11, 1993.
July 16, 2024 ⁵³	November 1993	June 1994
November 7, 2024 ⁵⁴	September 1993	November 1993
December 2024 ⁵⁵	September 1993	November 1993
March 2025 ⁵⁶	September 1993	November 1993

Other evidence regarding the separation

[65] In April 2024, JB wrote that she lived with the Claimant from December 4, 1992, to November 11, 1993, but said nothing about July 1992.⁵⁷ In January 2025, she affirmed those cohabitation dates but said they both considered their anniversary to be July 1992.⁵⁸ JB and the Claimant are still together today. JB has been the Claimant's spouse since the end of the Claimant's relationship with the Added Party. JB did not give evidence at the Appeal Division hearing.

[66] "DB" wrote that the Claimant and the Added Party were still together and sleeping in the same bed in August 1992, Christmas 1992, and February 1993.⁵⁹ DB is the Added Party's best friend. DB did not give evidence at the Appeal Division hearing.

[67] In May 2024, an employee of the Minister (whom I will call "RH") documented various information received from the Claimant. RH described a January 24, 2024, telephone call with the Claimant and a January 25, 2024, e-mail from the Claimant. In that e-mail, the Claimant corrected some information he gave RH the previous day.⁶⁰

[68] RH's May 2024 notes say the Claimant believed the Second Separation lasted from November 1993 to June 1994. However, I cannot rely on RH's account. She wrote

⁵² See GD7-6, GD7-8, and GD7-11.

⁵³ See GD11-2, which accepts GD8-1 to GD8-2.

⁵⁴ See AD7B-25.

⁵⁵ See AD7A-1, AD7A-81, and AD7A-82.

⁵⁶ See AD14-7.

⁵⁷ See GD6-29.

⁵⁸ See AD8C-2 and AD8C-3.

⁵⁹ See AD7A-25 and AD7A-27.

⁶⁰ See GD3-1 and GD8-1 to GD8-2.

her account more than four months after the call in question. More importantly, her account clearly misstates what the Claimant wrote on January 25, 2024.

When did the Second Separation start?

[69] The Claimant and the Added Party agree on what triggered the Second Separation, at least in terms of living in separate places. The Added Party was doing laundry when she discovered a movie ticket stub in the Claimant's pants pocket. It was for two people. She confronted the Claimant about it. He disclosed his involvement with JB, and he moved out of their home.⁶¹

[70] At the time, nobody recorded the precise date that the Claimant moved out. But I see no way to reconcile the different dates given by him and the Added Party. Their accounts were not even internally consistent, as each gave more than one start date.

[71] The Claimant said the ticket stub was for a movie called "The Bodyguard." The Added Party did not independently state the movie's name, although she referred to "The Bodyguard" when discussing the Claimant's arguments.⁶² On a balance of probabilities, I find it likely that "The Bodyguard" was the movie on the ticket stub.

[72] "The Bodyguard" was a very famous movie. I take official notice that this movie was released on November 25, 1992.⁶³ That fact is easily ascertainable. The movie was likely in theatres for a couple of months afterward. This suggests that the Claimant's involvement with JB was discovered at some point shortly after November 25, 1992. This means he moved out of the matrimonial home shortly after November 25, 1992.

[73] Before I make a precise finding about the start of the Second Separation, I must address the Claimant's claim that he stopped cohabiting with the Added Party long before he moved out. He claimed he stopped cohabiting with the Added Party in July

⁶¹ See GD6-3, GD7-8, AD8C-18, and AD14-7.

⁶² See, for example, AD7A-6.

⁶³ "Official notice" is the Tribunal's equivalent of "judicial notice." Judicial notice applies to two types of facts. The first type is so notorious or generally accepted that no reasonable person would dispute it. The second type is capable of immediate and accurate demonstration by readily accessible sources of indisputable accuracy. See *R. v Find*, [2001] SCC 32, at paragraph 48.

1992, although he still lived in their home. He said he had been seriously involved with JB since at least that time. This resembles his position on the First Separation.

[74] While the Claimant said he stopped cohabiting with the Added Party in July 1992, I see no reliable objective evidence of this. More importantly, he said he did not tell her about JB until she confronted him about the ticket stub. This means neither he nor the Added Party demonstrated (let alone to the other person) the intention to separate, as required by *Hodge*, until the stub was discovered. This would be the earliest date I could consider for the start of the Second Separation.

[75] It is possible that, even when the Claimant's involvement with JB was discovered, he still wanted to continue his relationship with the Added Party. However, the Added Party could also have demonstrated the intention to separate upon learning of his involvement with JB. On a balance of probabilities, I find that at least one of them wanted to separate. I accept that the ticket stub confrontation marked the start of the Second Separation, even though it may not have been the Claimant's wish.

[76] As a result, I find that the Second Separation started on or after November 25, 1992. The table above shows the Claimant advanced a date of late 1992 or January 2023. The Added Party mostly pointed to September 1993, although she initially did not recall the Second Separation and later endorsed evidence from RH that pointed to a different date. However, I have already found RH's evidence to be unreliable.

[77] As noted, the 2001 Affidavit was made more than 20 years before the other statements by the Claimant and the Added Party. In the 2001 Affidavit, the Claimant said the Second Separation began in January 1993.⁶⁴ I find this to be slightly more reliable than the much later statements given in this proceeding.

[78] The January 1993 date fits in with the other evidence. January 1993 began roughly five weeks after "The Bodyguard" was released. The movie was likely still in

⁶⁴ See GD5-4.

theatres then. There likely also was a brief delay between when the Claimant went to the movie and when the Added Party discovered the stub.

[79] I acknowledge the Added Party's evidence pointing to September 1993 as the Second Separation start date. They might have separated then. I cannot say with certainty that it started in January 1993. However, based on the evidence before me, I find January 1993 more likely. As the 2001 Affidavit gave no specific date in January, I find January 16, 1993, as the Second Separation's start. It is that month's midpoint.

[80] I still need to determine if and when the Second Separation ended. However, I first need to decide when the Claimant moved back into the matrimonial home.

When did the Claimant move back into the matrimonial home?

[81] The Claimant and the Added Party consistently say that the Claimant moved back in November 1993. This includes the 2001 Affidavit, which was much closer to the events in question.⁶⁵ In some cases, the Claimant and the Added Party are more specific and say it was on November 11, 1993.⁶⁶ The written evidence from JB also provides the same date of November 11, 1993.⁶⁷

[82] While I see no truly objective evidence specifying November 11, 1993, I accept that the Claimant moved back on this date. The date does not appear to be in dispute. I have no reason to prefer another date.

Preliminary discussion of when the Second Separation may have ended

[83] I must now decide whether the Second Separation ended when the Claimant moved back into the matrimonial home on November 11, 1993. I will begin by setting out the key events during this period.

[84] As of November 11, 1993, the Claimant and the Added Party both lived in a house on X in L, Ontario (the L House). Real estate and tax documents show they

⁶⁵ See GD5-4 to GD5-5, AD7A-82, AD13-14, and AD14-7.

⁶⁶ See GD6-4, GD6-17, GD6-18, GD7-11, and AD12-9.

⁶⁷ See GD6-29 and AD8C-3.

jointly owned the L House.⁶⁸ They lived in the L House before the Second Separation. The Added Party continued to live there when the Second Separation started.

[85] The Claimant and the Added Party moved to a home on Y in U, Ontario (the Y House), in September 1994. They were the joint owners of the Y House.⁶⁹ They moved from L to U because the Bank transferred the Claimant to a new job in T. They stopped living in the same house and went their separate ways at some point in November 1995.

[86] In the 2001 Affidavit, the Claimant said he and the Added Party separated on November 25, 1995.⁷⁰ Later that year, his divorce petition said they had lived separate and apart since November 24, 1995.⁷¹ However, more recently, he said he moved out on November 11, 1995.⁷² The Claimant said this was when they stopped “co-existing” under the same roof. He said they never started cohabiting again, in either the L or Y Houses, after he moved back to the L House in November 1993.

[87] The Added Party said on many occasions that November 25, 1995, was when they stopped cohabiting and separated for the last time.⁷³

[88] There are some minor inconsistencies about when the Claimant moved out of the Y House. However, I find it likely that the Claimant moved out of the Y House on November 25, 1995.

[89] The Claimant and the Added Party gave very different versions of what happened in their lives between November 11, 1993, and November 25, 1995. I will now set out their accounts.

The Claimant's account of the November 1993 to November 1995 period

⁶⁸ See AD15-68 and AD15-60.

⁶⁹ See AD15-61 to AD15-62.

⁷⁰ See AD5-5.

⁷¹ See GD2-36.

⁷² See GD6-4, AD8C-8.

⁷³ See GD2-26, GD5-1, GD7-11, AD7A-81, AD7A-82, and AD14-9.

[90] The Claimant said he moved back to the L House in November 1993 only because the Bank would soon transfer him to the T office. He said he developed a plan with JB to get her a job in that office too. They could then live together in the T area. He said he went back to the L House so that the Bank's relocation program could also move his children to the T area. He did not want them to stay in L, as it would be too far away.⁷⁴

[91] The Claimant said his return to the L House was just for convenience.⁷⁵ He said he had no communication, conjugal relationship, or sex with the Added Party during the last months at the L House or at any time at the Y House. He said they did not share finances. His only concern was the children. Otherwise, he said his focus was on JB. He ate many meals with her, got together with her every weekend, and was "very sexually involved" with her.⁷⁶

[92] The Claimant said he and the Added Party both put up virtual "walls" between themselves. As noted, he described this as merely co-existing under the same roof. He said they were not a couple and were not like a family. He rarely ate at home. They did no family activities or vacations. He said their finances were separate. He said he had no interaction with the community. He said he continued his relationship with JB throughout this period, especially when one of them had to travel for work.⁷⁷

[93] The Claimant admitted moving into the Y House with the Added Party. But he maintained that they were only "co-existing" because he did not have enough money to move out. He said they were simply a couple of people waiting for their life partners to join them. He said they did not give each other gifts. However, he also said that money was tight, so they had no "frivolous spending."⁷⁸

[94] The Claimant admitted sharing a bedroom with the Added Party in the Y House, but said this was because he had no alternative. He said the children needed their own

⁷⁴ See GD6-4 and AD8C-17.

⁷⁵ See GD6-18.

⁷⁶ See AD1B-5, AD8C-16, AD13-43, and AD13-44. See also his evidence at the Appeal Division hearing.

⁷⁷ See GD6-4, GD6-18, AD8C-7, AD8C-8, AD8C-17, AD8C-19, AD13-43, and AD13-44.

⁷⁸ See AD8C-8, AD8C-19, AD13-43, and AD13-44.

bedrooms, and the fourth above-ground bedroom was converted into a computer room for both him and the children. They were about 10 and 12 years old at the time. He refused to let anyone sleep in the basement bedroom. He said it did not comply with the building code because the basement did not have a second exit. He said a friend's wife died in a basement fire and his friend was badly burned.⁷⁹

[95] The Claimant said he moved in with JB in November 1995, once she had obtained a job in the T office and began living in the U area.⁸⁰

The Added Party's account of the November 1993 to November 1995 period

[96] The Added Party's account of this period is very different. She said she and the Claimant attended marital counselling in L during the Second Separation, at the Claimant's urging. After a couple of sessions, they went to Niagara Falls for two nights. She said they agreed to get back together on that trip, with the Claimant wanting to move back before Christmas. While she was willing to take him back and try again, she also told him that he would have to work hard to earn her trust back.⁸¹

[97] The Added Party said the Claimant's involvement with JB had ended. She also said they considered the Claimant's T opportunity together and decided to go after thinking it over for a few days. They wanted to build their future life in the T area.⁸² She said they shared the household chores at this time. She said things were fantastic when they reunited, although the money was very tight.⁸³

[98] The Added Party said they faced some challenges when they moved to the Y House. Their new home was damaged. Maggots were in the garage. They could not get their kids into local schools. She said the Claimant did not like his manager. However, she said they worked together to overcome such challenges. They made a point of

⁷⁹ See AD1B-5, AD8C-17, and AD8C-19.

⁸⁰ See GD6-4, AD8C-8, AD8C-17, and AD8C-19.

⁸¹ See AD7A-81, AD7B-25, AD14-7, and AD15-4.

⁸² See GD7-9 and AD7A-82.

⁸³ See AD14-8 and AD15-4.

spending lots of time with the children so that the relocation was not too difficult for them. They all had dinner together. They went to the park together.⁸⁴

[99] The Added Party said things started to fall into place after a few months. They did some renovations. The Claimant's manager hired her to do some temporary work in T, so they went to work together each day. She said, "no walls were up." They went on a three-week vacation to see his family. While they did not meet many of the neighbours, they had local family visits and gatherings on special occasions.⁸⁵

[100] The Added Party said their relationship had challenges like any other family, but they were happy 95% of the time. They ate dinner together every night and prepared meals together. She denied mere "co-existence," and said she would never have moved to the T area just to co-exist. She had to leave her L friends, job and life behind. Their children also had to leave their friends, schools and sports behind.⁸⁶

[101] The Added Party said she and the Claimant shared a bed throughout their entire marriage. She said they had a loving relationship during this time. She said they had a great sexual relationship and that aspect of their marriage "never needed any help." She said their sex life improved once they got back together in November 1993.⁸⁷

[102] The Added Party said the Claimant had no concerns about the Y House's basement bedroom when their son lived there for two years. Nor did he have any concerns about it when their daughter lived there or when their family visited and used that bedroom. She said the room had a bed, and it was used as a bedroom.⁸⁸

[103] The Added Party said she and the Claimant had joint finances and a single household under one roof. She cooked breakfast for him every day. They reviewed the household finances every week. They went shopping together. She said they shared shelter, sleeping arrangements, intimacy, and household chores. They supported their

⁸⁴ See AD14-8. See also her evidence at the Appeal Division hearing.

⁸⁵ See GD7-9 and AD14-8.

⁸⁶ See GD7-3 and GD7-9.

⁸⁷ See AD7A-18, AD7A-28, and AD14-8.

⁸⁸ See AD7A-28.

children and talked about their days at the dinner table. She said their families, friends, and neighbours considered them a couple.⁸⁹

[104] However, by November 1995, the Added Party became concerned by changes in the Claimant's conduct. She said his temper came back. The culminating incident took place when the Claimant allegedly grabbed their son by the neck and pushed him up against a wall. She said the Claimant threw their son out onto the street. This was the last straw for her. She told the Claimant that she hated his guts, and wanted him to move out. She said he left the house soon after.⁹⁰

How to determine what actually happened from November 1993 to November 1995

[105] The Claimant and the Added Party were aware of the cohabitation factors set out in the *McLaughlin* decision. They each made submissions on how their version of events either proved or disproved cohabitation under *McLaughlin* during this two-year period. However, their two versions of events are so fundamentally different that I cannot reconcile them. Instead, I must prefer one account over the other.

[106] Before determining that, I acknowledge that it is possible for people to live under the same roof and yet still not cohabit. It is also possible for people to cohabit but live in different places. The Supreme Court of Canada affirmed this in *Hodge*.⁹¹ In law, the Claimant's argument is plausible.

[107] I also accept that the Claimant had contact with JB during this period. She also worked for the Bank. He moved in with JB soon after leaving the Y House. He may have been unfaithful to the Added Party in these last two years, whether with JB or someone else. He admitted a history of infidelity. He said he had been with many other women

⁸⁹ See AD15-8. See also her evidence at the Appeal Division hearing.

⁹⁰ See GD7-16, AD7A-28, AD7A-82, AD14-9, and AD15-45.

⁹¹ See *Hodge, ibid.*, at paragraph 42.

during his marriage to the Added Party.⁹² However, infidelity in itself does not necessarily mean that a conjugal relationship has ended.⁹³

[108] Other people submitted written evidence about this period. JB said her relationship with the Claimant continued during this period. She said he moved back to the Added Party so their children could be relocated to the T area.⁹⁴ However, the Added Party's friend DB affirmed that the Added Party ended the marriage when the Claimant threw their son against the wall by his throat.⁹⁵

My findings on what actually happened between November 1993 and November 1995.

[109] I ultimately prefer the Added Party's version of events over the last two years of their marriage. I find that the Claimant's account of mere "co-existence" understates the likely extent of his relationship with the Added Party. I will give some examples of why I prefer her account.

[110] My first concern is the 2001 Affidavit. In that document, the Claimant said the Second Separation ended in November 1993 when he tried to reconcile with the Added Party. He said their final separation was in November 1995.⁹⁶ He said this more than 20 years before his statements in the current proceeding. It is not at all consistent with merely "co-existing". In August 2023, he also said he reconciled with the Added Party in mid-1994, although he then amended that date to 1993.⁹⁷

[111] It was not until April 2024 that the Claimant put forth an account resembling the one set out above.⁹⁸ Even then, he referred to a November 1993 reconciliation with the Added Party.⁹⁹

⁹² See GD6-3.

⁹³ See *Brandon v Minister of Human Resources Development*, (2001) CP 14937 (Pension Appeals Board), at paragraph 38. While decisions of the Pension Appeals Board are not binding on the Tribunal, they can have persuasive value.

⁹⁴ See GD6-29, AD8C-2, and AD8C-3.

⁹⁵ See AD7A-27.

⁹⁶ See GD5-5.

⁹⁷ See GD3-1 and GD3-2.

⁹⁸ See GD6 generally.

⁹⁹ See GD6-5.

[112] In October 2024, the Claimant said he just wanted the family law proceeding to be over with when he signed the 2001 Affidavit. He said it cost money to have lawyers constantly revise documents, and he felt correcting errors would make no difference to the outcome.¹⁰⁰ However, this does not enhance the reliability of his other statements.

[113] Another area of concern was the Claimant's account of the 1992 marriage counselling. He did not mention marriage counselling until March 2025. He said he was living with JB and thought the counselling would be a waste of time. However, JB was apparently OK with him seeing the counsellor. The Claimant then said the counsellor's final statement was this:

“He stated that you were a very mentally disturbed individual and you should seek professional help quickly. And that the whole marriage breakdown was because of your actions. You were very angry with him.”¹⁰¹

[114] I do not find this statement to have an air of reality. I find it unlikely that a marriage counsellor would make such unprofessional and inflammatory statements about a counselling participant. In any case, the assignment of blame also contradicts the Claimant's own description of events. At the very least, the Claimant's admitted involvement with JB was a major factor in the Second Separation.

[115] I also have concerns with the Claimant's explanation for the sleeping arrangements in the Y House. He did not dispute that he shared a bedroom (and bed) with the Added Party. However, he suggested he had no choice because he had nowhere else to sleep.

[116] This does not have an air of reality either. The Y House was very large. It had more than 2,700 square feet of living space. It had four bedrooms upstairs and a fifth bedroom in the basement. It had a “huge den” that opened to a family room. It had separate living and dining rooms. The master bedroom was 23 feet by 12 feet.¹⁰²

¹⁰⁰ See AD1B-5.

¹⁰¹ See AD13-34.

¹⁰² See AD7A-31.

[117] The Claimant said the Y House's extra upstairs bedroom was reserved as a computer room for the children and himself. If insurmountable "walls" were really between the Claimant and the Added Party, I do not see why they could not have found another place for him to sleep. This could have been the fourth upstairs bedroom. They could then have set up the computer in the basement, the den, the family room, or another room in this large house.

[118] The Claimant explained that all the rooms in the Y House were "all occupied and I did not want to disrupt the children." This included the fourth upstairs bedroom.¹⁰³ However, he also said he had no relationship with the Added Party even when they were still in the L House. They did not move to the Y House until September 1994. In that case, it would not have been disruptive to the children to set up the Claimant in the fourth bedroom at that time. Obviously, the children had not used that room before September 1994.

[119] The Claimant also said he refused to sleep in the basement because of an alleged building code issue and the possibility of a fire tragedy. He said the problem was a lack of a second exit (stairway) from the basement. However, I find it unlikely that this was a building code issue. Very few houses have more than one stairway to the basement. Many basements have no walkout exit. The Added Party said basement rooms comply if they have a window that allows escape.¹⁰⁴ I find this more plausible.

[120] The Claimant also described being disturbed by the alleged death of his friend's wife in a basement fire. He said that his friend also suffered severe burns. But he never named those people or provided any key details. I found the Added Party's evidence on this issue much more plausible too. She had known the Claimant since she was 15 years old. She had been married to him since 1980. She said she had never heard of such a traumatic event involving his friend. She noted that their children and other family members occupied the basement bedroom with the Claimant's knowledge.¹⁰⁵

¹⁰³ See GD6-4.

¹⁰⁴ See AD7A-28. See also the Added Party's evidence at the Appeal Division hearing.

¹⁰⁵ See AD7A-28.

[121] I also have difficulty with the Claimant's assertion that all aspects of their lives, including their finances, were separate during this time. The objective evidence shows this is not true. He and the Added Party jointly owned the L House throughout their occupancy.¹⁰⁶ They jointly purchased the Y House. They had at least two mortgages on that property. In 1994, the Added Party was the beneficiary of the Claimant's retirement savings plan.¹⁰⁷

[122] More generally, I have difficulty with the Claimant's position on the Bank's relocation assistance program. To utilize this program, he not only moved in with the Added Party again, but also shared a bed and even purchased a new home (with two mortgages) in another city jointly with her. At that point, he continued to share a bed with her despite having 2,700 square feet of living space.

[123] I also find it difficult to accept that he had no communication with the Added Party, despite these highly unusual living arrangements.

[124] As I prefer the Added Party's account of these final two years, I find that the Claimant and the Added Party did cohabit during this period.

[125] The *McLaughlin* factors support this conclusion for the two-year period:

- **Shelter.** The Claimant and Added Party lived under the same roof and slept together.
- **Sexual and personal behaviour.** While the Claimant may not have maintained an attitude of fidelity to the Added Party, this was a common theme throughout their marriage. Otherwise, I found that they likely communicated on a personal level, ate together, and helped each other during problems. I saw no evidence of gifts, but both said that money was very tight at this time. The Claimant said they did no "frivolous spending."

¹⁰⁶ See AD15-58 and AD15-60.

¹⁰⁷ See AD15-61 to AD15-63.

- **Services.** The Claimant and the Added Party either performed their share of household duties or did them together.
- **Social.** The Claimant and Added Party did not know many of their neighbours in U. But they engaged together often with their family members.
- **Societal.** It is difficult to describe the attitude and conduct of the community towards them. However, the Claimant's manager hired the Added Party. This shows that they and at least some members of the community acknowledged their relationship.
- **Support.** I found that the Claimant and the Added Party jointly acquired and owned property during this period. I also find that they shared finances, such as the mortgage on the Y House. She was his RRSP beneficiary.
- **Attitude and conduct concerning any children.** The Claimant and the Added Party each played a role in caring for the children, especially with respect to meals, leisure, and adjusting to their new home.

[126] Before applying the law regarding credit splits to the cohabitation periods, I would like to comment on the many photos that were filed. These came from both the Added Party and the Claimant. However, I found these to be of little or no probative value in this appeal. The photos often had handwritten dates on the back, or digital date stamps generated by the camera itself.

[127] The Claimant asserted that date stamps are often inaccurate. He said cameras reset the date when the battery dies. He gave many examples of photos that contained an incorrect date stamp.¹⁰⁸ I agree that such dates are not very reliable. However, handwritten dates on the backs of photos (or on greeting cards) can also be inaccurate, especially if written long after the photos were taken or the cards were sent.

¹⁰⁸ See AD8C-11.

[128] Besides concerns over dating photos taken thirty or more years ago, I find the photos to be of little value for other reasons. Many are indistinct. Others cannot establish much more than presence, as opposed to shedding light on the nature of relationships at a particular time.

[129] Finally, the Claimant and the Added Party have interpreted some photos differently. When combined with the other concerns, and the passage of time, the photos retain little value in this appeal. I prefer objective evidence that was dated accurately at the time. Examples of such evidence include lawyers' letters, bank statements, tax bills, and letters from employers.

For which years should a credit split apply?

[130] A credit split applies from January 1980 to December 1994. Here is why.

[131] The Claimant and the Added Party first cohabited on June 28, 1980. Their final cohabitation ended on November 25, 1995. They lived separate and apart during the following periods: June 28, 1981, to March 1, 1982 (First Separation), and January 16, 1993, to November 11, 1993 (Second Separation).

[132] Despite these separations, they do not affect the overall period of cohabitation. This is because they qualify as temporary separations. Temporary separations are deemed not to interrupt cohabitation if the following conditions are met:¹⁰⁹

1. The separation is for less than one year, and
2. The separation is immediately followed by a period of cohabitation (reconciliation) of more than 90 days.

[133] In this case, both the First Separation and the Second Separation lasted for less than one year. Each was followed by an immediate resumption of cohabitation for more than 90 days. This means the two separations are deemed not to interrupt the period of

¹⁰⁹ See sections 55.1(1), (2), and (4) of the *Canada Pension Plan*, and section 78.1(1) of the *Canada Pension Plan Regulations*. See also *RC v Minister of Employment and Social Development and BC*, 2022 SST 665, at paragraph 22. While Tribunal decisions are not binding, they can have persuasive value.

continuous cohabitation. This means the Claimant and the Added Party cohabited continuously from June 28, 1980, to November 25, 1995, despite the two separations.

[134] The CPP credit split starts with the first month of the year that the parties married or started to cohabit in a conjugal relationship.¹¹⁰ For the Claimant and the Added Party, the date for both events is June 28, 1980. This means the credit split period must start with January 1980.

[135] For a credit split, the parties are considered not to have cohabited at any time during the year in which they started to live separate and apart.¹¹¹ As the parties began to live separate and apart on November 25, 1995, the credit split cannot extend beyond December 1994.

[136] The credit split covers the same period determined by the General Division. While the periods for the First Separation and Second Separation are slightly different, those differences do not affect the credit split period. Thus, although the findings leading to my final decision are slightly different, I consider the appeal dismissed.

Conclusion

[137] The appeal is dismissed. A credit split between the Claimant and the Added Party shall apply for the period between January 1980 and December 1994.

Pierre Vanderhout
Member, Appeal Division

¹¹⁰ See section 78.1(1)(a) of the *Canada Pension Plan Regulations*.

¹¹¹ See section 78.1(1)(b) of the *Canada Pension Plan Regulations*.