

ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

In the Matter of an Appeal

From the decision of the President of OMERS

By “The Appellant”

To the Appeals Sub-Committee

Heard on June 20 and 21, 2011

DECISION

1. Introduction

The Appellant, the designated beneficiary under the pension of [the] OMERS Member, brings this appeal to this Panel of the Appeals Sub-Committee of the OMERS Administration Corporation (the "Panel") from the July 19, 2010 decision of the President of OMERS pursuant to Section 41 of the OMERS Primary Pension Plan (the "Plan") wherein he concluded, based on the evidence and submissions before him that the Member and the Respondent were in a common-law relationship for at least three years prior to the Member's death on April 7, 2009. As such, the President determined that the Respondent was eligible for payment of a spousal survivor benefit from the Member's OMERS pension.

By this appeal, the Appellant seeks a determination from the Panel that the Respondent is not the Member's eligible surviving spouse under the provisions of the Plan and that he is not eligible for payment of a spousal survivor benefit from the Member's OMERS pension. The Appellant, who is the Member's minor stepdaughter, is the Member's designated beneficiary under the Plan. Section 19 of the Plan provides that, if at the date of death of the Member there is no surviving spouse or child of the Member eligible for a pension, the Member's designated beneficiary is entitled to a refund equal to the minimum value of the Member's pension.

The Appellant was represented by her mother ["The Appellant's Representative"].

The Respondent was represented by ["The Respondent's Counsel"] of [●] LLP.

This appeal proceeded by way of an oral hearing *de novo* on June 20 and 21, 2011.

2. Issue to be Decided by the Panel

At a pre-hearing conference held on November 22, 2010, on consent of the parties, the Panel exercised its discretion under Rule 3.5(a)(i) of the Rules for Appeal, to simplify this appeal to the following legal issue:

Did the continuous conjugal relationship between the Member and the Respondent exist for at least three years?

As a result, it was not disputed on behalf of the Appellant that the Member and the Respondent were in a conjugal relationship when the Member died on April 7, 2009. Nor was it disputed on behalf of the Appellant that, while the Member and the Respondent were in a conjugal relationship, their relationship was continuous. What was disputed on behalf of the Appellant and what concerned the substance of this appeal was when this conjugal relationship began.

3. Applicable Statutory Provisions and Plan Provisions

The relevant provisions of the Plan and the *Pension Benefits Act* are as follows:

Section 1 of the Plan defines spouse as:

"spouse" has the same meaning as in the *Pension Benefits Act*

Under subsection 1(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P8 (as amended) the term "spouse" is defined as:

"spouse" means either of two persons who,

- (a) are married to each other, or
- (b) are not married to each other and are living together in a conjugal relationship,
 - (i) continuously for a period of not less than three years, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined the *Family Law Act*.

Section 1 of the Plan defines surviving spouse as:

“surviving spouse” means the person who was the spouse of a the Member immediately before the Member’s death.

Section 19 of the Plan provides, in part, the entitlement of a designated beneficiary where at the date of death before retirement of the Member there is no eligible surviving spouse or child of the Member as follows:

- “(8) If, at the date of death of a the Member, there is no surviving spouse or child of the Member eligible for a pension under this section, the Member’s designated beneficiary, or estate if there is no designated beneficiary, is entitled to a refund of an amount equal to the minimum value of the Member’s pension.
- (4) For the purposes of this section, the minimum value of a the Member’s pension earned to the date of the Member’s death is the sum of
 - ...
 - and
 - (b) the commuted value of the Member’s pension in respect of credited service of the Member earned on or after the 1st day of January 1987.”

It is undisputed that the Appellant is the Member’s designated beneficiary. Absent an eligible surviving spouse, the Appellant is entitled to payment of the minimum value of the Member’s OMERS pension.

For the Respondent to be entitled to payment of a survivor benefit from the Member’s OMERS pension, he must establish on a balance of probabilities that, based on the evidence before the Panel and the arguments made by his counsel, he was the Member’s surviving spouse pursuant to the provisions of the Plan. This means that he must establish that he was in a continuous conjugal relationship with the Member and that relationship existed for at least three years prior to the Member’s death on April 7, 2009.

As discussed above, the parties have agreed that at the time of the Member’s death the Member and the Respondent were in a conjugal relationship and that relationship was continuous. Therefore, in order to establish that he was the Member’s surviving spouse, the Respondent only has to establish, on a balance of probabilities, that his continuous conjugal relationship with the Member existed for at least three years.

4. Pre-Hearing Production Orders

A number of pre-hearing production matters were dealt with in this appeal. Set out below are those matters relating to documents and information that were referred to at the hearing of the appeal:

- (i) On November 22, 2010, at the Appellant's Representative's motion, the Chair of the Panel issued a production order requiring the Respondent to contact [★] Management Inc. ("★MI") to request that they provide directly to OMERS copies of the following documents that the Respondent had submitted with his initial appeal materials:
 - A Renewal of Lease Form, dated December 7, 2006, for the Member at [Address 1]; and
 - A "supplementary information regarding parking" form, dated April 28, 2006, for [Address 1].

★MI advised OMERS that it did not have these documents in its files. The Panel subsequently advised that it would take notice of the fact that ★MI did not have these documents in its files.

- (ii) On February 28, 2011, the Appellant's Representative requested that a summons be issued for a former colleague of the Member ["Former Colleague of Member"], who had provided the Appellant's Representative with certain files from the Member's computer, to confirm the authenticity of said documents. The matter was deferred until the Respondent's Counsel could obtain instructions on whether the Respondent would be challenging the authenticity of said documents. On March 16, 2011, the Respondent's Counsel advised that the Respondent would not be challenging the authenticity of the documents, but would, at the hearing, argue as to whether the documents were admissible, and if so, what weight that they should be given.
- (iii) On February 28, 2011, the Appellant's Representative requested that the Panel issue an order that the Respondent produce his personal income tax forms for 2006 through to 2009. This request was granted in part. An order was issued directing the Respondent to produce his personal income tax forms redacted for all personal information except his name, the year of the return and his marital status, or if no tax forms were filed, the Respondent's Counsel could indicate this in a letter, and the Panel would take notice of such fact. The Respondent's Counsel subsequently wrote to the Panel and advised that the Respondent did not file tax returns in these years.
- (iv) On February 28, 2011, the Appellant's Representative requested that a summons be issued for an unidentified bank manager at [● Bank], where the Member had banked, and where the Respondent had asserted in his initial written submissions that they had a joint companion bank account. The Panel declined to issue a summons but instead ordered the Respondent, through the Respondent's Counsel, to contact the bank and to request information about when the joint account was opened. On March 16, 2011, the Respondent's Counsel produced a letter from the bank advising that it could not locate account #[●], the account the Respondent had asserted was the joint companion account, but that the Respondent was going to the bank directly and would forward to the Panel any records that he found.
- (v) On March 18, 2011, the Appellant's Representative requested that the Panel make a production order directing the Respondent, through his counsel, to obtain, directly from [Benefit Provider], a copy of a "[●] Group Benefits Dependent Enrolment Change" form, a form that had been completed by the Member. The Respondent had submitted a copy of this form with his initial written submissions showing that the Respondent was added as the Member's dependent and the "commencement of cohabitation" date

on the form was listed as "26/01/06". On June 13, 2011, the Respondent's Counsel forwarded to the Panel, through its Designate, a copy of this form that [Benefit Provider] had provided her. The copy provided by [Benefit Provider] showed the "commencement of cohabitation" date as "01/01/07".

5. The Respondent's Evidence

The Respondent's evidence at the hearing relevant to when the conjugal relationship began may be summarized as follows:

In direct examination,

- (i) The Respondent stated that his first contact with the Member occurred in the fall of 2005, on a dating website called Plenty of Fish;
- (ii) The Respondent first met the Member in person in December 2005 at a local pub close to the Member's apartment at [Address 1] ("The Member's Apartment");
- (iii) The Respondent testified that he and the Member had dinner and he spent the night at the Member's Apartment because his home in [City] was far away;
- (iv) The Respondent and the Member met again in January 2006 at the [●] subway station. Dinner followed and the Respondent spent the weekend at the Member's Apartment;
- (v) At this time, the Respondent was living at his mother's home in [City];
- (vi) On January 21 or 22, 2006, the Respondent testified that he moved in with the Member;
- (vii) In early 2006, the Respondent met a long-term childhood friend of the Member's ["Member's Friend 1"], who the Respondent said stayed at the Member's Apartment two to three nights a week for the convenience of not driving back and forth to his residence. The Respondent could not recall when in 2006 that he first met the Member's Friend. The Member's Friend 1 was not called as a witness at the appeal;
- (viii) The Respondent did not meet anyone else in the Member's life around this time;
- (ix) The Respondent met ["Member's Friend 2"] at the Member's Friend 2's home in February 2006;
- (x) The Respondent testified that the Member met the Respondent's brother at his brother's house for his twins' birthday party in February 2006;
- (xi) The Respondent made reference to a [◆] Maintenance & Construction ("◆MC") estimate (Exhibit 12) for repainting, patching and repairing the Member's Apartment for \$3,980.00 and stated that ◆MC did the quoted work between March and April 2006. The Respondent said that he could not recall who paid for the work or how it was paid. The Member's signature was not on the estimate but the Respondent explained that only one signature was required. The Respondent did not have a receipt for the completion of the work;
- (xii) The Respondent owned a [●] car in April 2006. He made reference to a ★MI Supplementary Information Regarding Parking form bearing date April 28, 2006 (Exhibit 13). This was one of the documents that ★MI confirmed that it did not have a copy of in its files. The Respondent stated that he found this document in the Member's files and said that he did not know why it was put together, why it was submitted or who it was submitted to. He stated that he did not have a parking space at [Address 1] at that time. He also stated that he was unaware as to when he obtained a parking spot at [Address 1]. He testified that he believed that he obtained a

parking spot outdoors in late 2006. The Respondent did not know why he filled out the ★MI form and not the Member;

- (xiii) The Respondent also made reference to a ★MI Renewal of Lease Form (Exhibit 14) which he testified that he signed sometime between December 2006 and April 2007;
- (xiv) The Respondent made reference to an Adult General Passport Application (the "Passport Application") (Exhibit 14) signed by him on November 29, 2007 and in which he declared that all the statements made in the application were true. The Member signed as guarantor and the Respondent was referred to a box in the Passport Application completed by the Member stating that she had known the Respondent for 2.5 years. The Respondent stated that as of November 2007, he had known the Member for approximately two years;
- (xv) The Respondent made reference to four undated valentine cards (the "Valentine Cards") (Exhibit 16) and gave evidence about his recollection as to when he received the cards by the way the cards were signed. The Respondent stated that he thought that a "Nutty Valentine" card was given to him by the Member in February 2006;
- (xvi) The Respondent stated that he opened a joint bank account with the Member after 2006. He testified that he did not open a joint account with the Member in 2006 because it was still early in the relationship and that he and the Member did not feel there was a need to have joint accounts at the time. The Respondent said that when he first moved in with the Member, he contributed money for groceries, "going-out" and dinners but did not pay monthly household bills which were paid by the Member. In response to production order, [● Bank] had no documentation regarding a joint bank account between the Member and the Respondent. The Respondent did not produce any documentation of a joint account between him and the Member;
- (xvii) The Respondent made reference to a [Benefit Provider] Group Benefits Plan Member/Dependant Enrolment/Change Form ("●Form #1") (Exhibit 7) that he testified that he found in the Member's personal files and that he had submitted to OMERS with his initial appeal submissions. ●Form #1 has a co-habitation commencement date of "21/01/06". The Respondent stated that he had no knowledge as to who wrote this date on the form. The Respondent also made reference to a [Benefit Provider] form ("●Form #2") (Exhibit 8) obtained directly from [Benefit Provider] pursuant to a production order made in response to a request by the Appellant's Representative. ●Form #2 appears to be identical to ●Form #1 except that it has a co-habitation commencement date of "21/01/07".

In cross-examination,

- (xviii) The Respondent agreed that, in 2006, he did not meet the Member's good friend ["Member's Friend 3"] and ["Member's Friend 4"], both who were the Member's neighbours in [Address 1].
- (xix) The Respondent agreed that the Supplementary Information Regarding Parking form (Exhibit 13) was a document that he had submitted with his initial appeal submissions to substantiate that he was living with the Member since 2006;
- (xx) The Respondent agreed the Member was the sole lessee of the Member's Apartment;
- (xxi) When referred to the "Passport Application" (Exhibit 14), the Respondent agreed that the Member may have lied before the Commissioner of Oaths when she attested to knowing the Respondent for 2.5 years.

In examination by Panel members,

- (xxii) The Respondent stated that he began to pay monthly accounts for him and the Member probably in the latter part of 2007 when he and the Member established their joint account together. The Respondent testified that he had an “Infinity Account” with [●] Bank, which was his, and a linked “Companion Savings” account, which was both his and the Member’s. The Respondent testified that the bank could not find the records “Companion Savings” account;
- (xxiii) The Respondent stated that he was let go from a contract in 2005, in December and that he went back to work sometime between April, at the latest, and May 2006.

6. Evidence of [“Respondent’s Friend”] and Respondent’s Brother

The Respondent’s Friend’s evidence at the hearing relevant to when the conjugal relationship began may be summarized as follows:

In direct examination,

- (i) The Respondent’s Friend testified that he is a close friend and colleague of the Respondent;
- (ii) The Respondent’s Friend testified that he met the Member for the first time in February 2006 at a time when he was promoted as an inventory supervisor for [Employer Name]. A celebration of the Respondent’s Friend’s promotion was held at the Member’s Apartment with the Respondent’s Friend, the Member and the Respondent present;
- (iii) The Respondent’s Friend testified that he helped the Member and the Respondent launch and paint the Member’s boat in April or May, 2006;
- (iv) The Respondent’s Friend testified that he saw the Respondent and the Member together a lot in 2006 – several times that year.

In cross-examination,

- (v) The Respondent’s Friend testified that he could not recall when he met Member’s Friend 4, the Member’s next door neighbour, but he did recall that the Respondent had introduced him to Member’s Friend 4;

In examination by Panel members and counsel to the Panel,

- (vi) The Respondent’s Friend stated that when he attended dinner at the Member’s Apartment in February 2006 he noticed in the front hall closet several of the Respondent’s jackets, boots and shoes. The Respondent’s Friend said the Member and the Respondent cooked dinner and helped clean up. The Respondent’s Friend also stated that he saw male shaving products in the bathroom and a couple of the Respondent’s shirts in the master bedroom closet. The Respondent’s Friend confirmed that he had a number of drinks that night. The Respondent’s Friend agreed that his recollections of what was in the Member’s Apartment bathroom and closet were not solely based on the February 2006 visit, but were based on a variety of visits;
- (vii) The Respondent’s Friend advised that the date of his promotion was on or about November or December 2005 although he did not begin his position until towards the beginning of 2006.
- (viii) The Respondent’s Friend confirmed that he did not participate with the Member and the Respondent in public social events until after February, 2006;

The Respondent’s Brother’s evidence at the hearing relevant to when the conjugal relationship began may be summarized as follows:

In direct examination,

- (i) [The Respondent's Brother] is the Respondent's brother;
- (ii) In December 2005, the Respondent mentioned to the Respondent's Brother that he was speaking to someone through an internet dating site;
- (iii) The Respondent's Brother testified that he first met the Member in or around February 7, 2006 at his childrens' birthday party. Respondent's Brother said that when the Respondent advised Respondent's Brother's wife that he was attending the party, he told her that he was bringing his girlfriend, the Member;
- (iv) The Respondent's Brother recalled that, at the birthday party, the Member joked "he (the Respondent) came for a first date and never left";
- (v) The Respondent's Brother recalled visiting the Member's Apartment a few weeks after the birthday party, perhaps in March 2006. He said that recalled noticing the Respondent's boots, shoes and a picture of the Member and the Respondent on the dining room credenza;
- (vi) The Respondent's Brother saw the Member and the Respondent together either at Respondent's Brother's home, his parents' home or his sister's home;

In cross-examination,

- (vii) The Respondent's Brother testified that he thought that the Respondent moved out of his parents' house sometime in 2005/2006 and that he did not recall if the Respondent went back to his parents' house during 2007;

In examination by Panel members,

- (viii) The Respondent's Brother said he would pop in to the Member's Apartment if he was in the neighbourhood. He said that he recalled seeing a man's razor in the bathroom which he said was the Respondent's "because he's the only guy that I saw in the room in the apartment";
- (ix) The Respondent's Brother confirmed that he and the Respondent did not talk about the Respondent's intimate relationship with the Member;

7. Evidence of Member's Friend 5 and Member's Friend 5's Husband

- (a) Member's Friend 5's evidence at the hearing relevant to when the conjugal relationship of the Respondent and the Member began may be summarized as follows:

In direct examination,

- (i) Member's Friend 5 grew up with the Member as best friends;
- (ii) Member's Friend 5 stated that the Superintendent at the Member's Apartment advised that the Respondent did not live in the Member's Apartment in 2006. The Superintendent was not called as a witness and very little weight was given to Member's Friend 5's testimony regarding what the Superintendent may have said;
- (iii) Member's Friend 5 introduced 3 photographs (Exhibits 2, 3 and 4) said to be taken in the Member's Apartment on April 14, 2006, during a Danish "smorgasbord" celebration, purporting to show (1) that the Respondent was not present; and (2) the colour of the apartment walls;
- (iv) Member's Friend 5 testified that on April 14, 2006 there were only the Member's toiletries in the bathroom and only the Member's clothes in the bedroom;

- (v) Member's Friend 5 made reference to a "love note" (Exhibit 5) from ["Mr. X"], a person that Member's Friend 5 said the Member dated in 2006 and an update of the Member's dating web site profile (Exhibit 6). Both documents were printed from files on the Member's office computer which the Former Colleague of Member had provided the Appellant's Representative. Member's Friend 5 established the dates of the documents by referring to the dates the files were electronically marked that they had been created. Very little weight were given to these documents because: (i) their contents were quite vague; (ii) Mr. X was not called to testify (nor was his last name identified or apparently known); and (iii) the documents did not appear to be in original form. The "love note" was a Microsoft Word file which presumably was e-mailed to the Member, but no e-mail was produced. The dating site update was also a Microsoft Word file which presumably was posted on the dating site, but no copy of the profile on the dating site was produced;
- (vi) Member's Friend 5 made reference to the [Benefit Provider] Group Benefits Plan Member/Dependant Enrolment/Change Form (Exhibit 7) and to Exhibit 8, the identical form to Exhibit 7 save for a co-habitation commencement date of "21/01/07";
- (vii) Member's Friend 5 made reference to a picture (Exhibit 9) of a December 24, 2006 gathering at her house at which the Respondent was not present and stated that, at that time, the Member had never mentioned "his name once to us", referring to the Respondent;
- (viii) Member's Friend 5 testified that she did not believe the Respondent lived with the Member in 2006 and that, in 2006, the Member was "seeing a couple of other guys";
- (ix) Member's Friend 5 testified that it was not until mid-January 2007 that the Member first told Member's Friend 5 about her boyfriend, the Respondent. Further, Member's Friend 5 testified that she first met the Respondent on February 24, 2007 at a party held at the Member's mother's;

In cross-examination,

- (x) Member's Friend 5 agreed that at the April 14, 2006 Danish "smorgasbord" celebration, when she testified that she only saw the Member's clothing, she was unsure whether she checked all three of the Member's bedroom closets nor could she confirm whether the Member had three bedroom closets;

- (b) Member's Friend 5's Husband's evidence at the hearing relevant to when the conjugal relationship of the Respondent and the Member began may be summarized as follows:

In direct examination,

- (i) Member's Friend 5's Husband testified that he first met the Respondent on the occasion of the Member's Mother's 75th birthday party in February 2007;
- (ii) Member's Friend 5's Husband made reference to a CD given to him by the Respondent for a tribute to the Member at her funeral. Member's Friend 5's Husband stated that the CD contained 484 pictures on it and stated that there were no pictures before March 20, 2008;

In re-examination,

- (iii) Member's Friend 5's Husband testified that when the Respondent provided the CD he said that he did not have time to sort through the pictures and he simply dumped what was on the computer onto the CD.

8. Evidence of Member's Friend 2

Member's Friend 2's evidence at the hearing relevant to when the conjugal relationship of the Respondent and the Member began may be summarized as follows:

In direct examination,

- (i) Member's Friend 2 testified that she was a best friend of the Member for 30 years;
- (ii) Member's Friend 2 first met the Respondent when he came up to her place in [Town] in February 2007;
- (iii) Member's Friend 2 made reference to a photograph (Exhibit 20) said to be taken at the Member's Mother's 75th birthday held in the Member's Apartment;
- (iv) Member's Friend 2 testified that the Member, [herself], a friend and [Ms. Y] painted the Member's Apartment in 2005. In contrast, the Respondent testified that ♦MC had painted the Member's apartment early in 2006;
- (v) Member's Friend 2 testified that she initially believed the Member and the Respondent met in January 2006. This is what she stated in her witness statement. However, she said that, after putting all her time with the Member together and things done together, Member's Friend 2 subsequently believed the Member and the Respondent met in the beginning of 2007;

In cross-examination,

- (vi) Member's Friend 2 was referred to her witness statement (Exhibit 21) dated February 25, 2011 and to her undated statement (Exhibit 22). She admitted that at some point, she thought that the contents of her witness statement were correct but now she thinks that the timeline was different. She also agreed that, although the Respondent had initially e-mailed her the contents of the statement, she made changes to reflect her recollection of events at the time, but said that her recollection had now changed.

In re-examination,

- (i) Member's Friend 2 stated that she no longer believed that the contents of Exhibit 21, her original witness statement, were true.

The Panel placed very little weight in Member's Friend 2's testimony because of the marked shift from what she said in her witness statement to what she testified at the hearing.

9. Decision

Having considered all of the evidence presented by the parties, including the evidence summarized above, and the submissions made by the parties' representatives, this Panel concludes that the Respondent has not established, on a balance of probabilities, that the continuous conjugal relationship between him and the Member existed for at least three years. Therefore, this Panel determines that the Respondent is not the surviving spouse of the Member under the Plan. This conclusion is founded on the following reasons:

- There was insufficient evidence for the Panel to conclude that the conjugal relationship between the Member and the Respondent began early in 2006 as asserted by the Respondent;
- The Panel referred to *Molodowich v Penttinen* [1980] O.J. No. 1904 (Ont. Dist. Ct.), a decision of the Ontario District Court, defining the generally accepted characteristics of a common-law (conjugal) relationship. The *Molodowich* decision states that not every characteristic of a conjugal relationship need to be present, or present in the same degree,

in order for a conjugal relationship to be established. The factors will vary from case to case.

- The Respondent's evidence was that he moved into the Member's Apartment in January 2006. However, Member's Friend 1, who the Respondent testified was staying in the apartment two to three times per week, was not called to confirm the date that the co-habitation began nor was the Respondent's mother called to confirm the date when the Respondent moved out of her home.
- The documentary evidence before the Panel does not support the Respondent's assertion that the conjugal relationship commenced early in 2006:
 - a) the ♦MC Quote was not signed by the lessee, the Member, and the Respondent was unaware as to who paid for the quoted work or how it was paid;
 - b) The Respondent's evidence was that he did not have a parking space in [Address 1] in 2006 nor could he advise with any certainty as to when he obtained a parking space in [Address 1]. However, The Respondent testified that the Supplementary Information Regarding Parking form (Exhibit 13) was a document that he had filled out and that he had submitted with his initial appeal submissions to substantiate that he was living with the Member since 2006, even though it was not accurate. No explanation was given as to why an inaccurate document was submitted;
 - c) Very little weight was given to the Passport Application because it was admitted by the Respondent that the Member had provided inaccurate information as to the length of time the Member and the Respondent had known each other;
 - d) The Panel finds that ●Form #2, obtained directly from [Benefit Provider's] files, is likely a more reliable document than the ●Form #1 which the Respondent said that he found in the Member's personal files. No explanation was provided for the discrepancy between the dates of co-habitation on the two documents. The date of commencement of co-habitation in ●Form #2 does not support the Respondent's assertion that he and the Member were in a conjugal relationship for at least three years;
 - e) Little weight was placed on the undated valentine cards produced by the Respondent as he was unable to establish when the cards were received;
- The Panel found the Respondent's Friend's and Respondent's Brother's evidence to be credible. However, taking a generous view of the evidence adduced by the Respondent, the Respondent's Friend and the Respondent's Brother, the Panel finds that there were not enough characteristics of a conjugal relationship present between the Member and the Respondent at the beginning of the 3-year period to support a finding that the Member and the Respondent were in a conjugal relationship for at least three years. At the time, there was very little recognition of a conjugal relationship by the community in which the Member and the Respondent resided. There was no evidence of a joint bank account in existence at any time in 2006. The Respondent was not a party to the lease of the Member's Apartment. The Respondent did not file tax returns indicating that he and the Member were in a common-law relationship in 2006 (he did not file any tax returns). No evidence as to sexual relations was adduced, little was said of domestic services, and during 2006 the Member appeared to pay all monthly accounts.

For the foregoing reasons, the Appellant's appeal is granted and the decision of the President is set aside. The Appellant, as the Member's designated beneficiary, is entitled to a refund equal to the minimum value of the Member's pension pursuant to the provisions of the Plan.

John Goodwin, Chair

David Carrington

Michael Power¹

¹ Michael Power took part in the hearing, the Panel's deliberations and concurred in the Panel's decision. Unfortunately, he was ill when these reasons were finalized and could not sign them.