

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Connor Estate*,
2017 BCSC 978

Date: 20170613
Docket: P12638, P128 and P129
Registry: Chilliwack

In the Matter of the Estate of Patricia Colleen Connor, Deceased

Before: The Honourable Mr. Justice Kent

Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.
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Introduction

[1] Joseph Chambers ("Mr. Chambers" or "Joe") applies for a declaration that he was the "spouse" of Patricia Colleen Connor ("Ms. Connor" or "Patty") within the meaning of s. 2 of the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 ("WESA").

[2] Ms. Connor died on January 29, 2015. At the time of her death, she was not legally married, nor did she have any children. She had been predeceased by both her parents and her only full sibling, Karen Connor.

[3] Section 20 of WESA provides that the intestate estate of a person who dies leaving a spouse but no surviving descendants must be distributed to the spouse. If Mr. Chambers does not qualify as a "spouse" for this purpose, then it appears Ms. Connor's estate will be distributed to five half-siblings pursuant to s. 23(2)(c) of WESA. Ms. Connor did not know these five half-siblings who were her father's children by a subsequent marriage. These five half-siblings are the respondents to the present application and oppose the relief sought by Mr. Chambers. They acknowledge Ms. Connor had a long-term relationship with Mr. Chambers but deny that the two of them "had lived with each other in a marriage-like relationship for at least two years" before Ms. Connor's death.

Legal Framework

[4] Section 2 of WESA provides:

When a person is a spouse under this Act

2(1) Unless subsection (2) applies, 2 persons are spouses of each other for the purposes of this Act if they were both alive immediately before a relevant time and

- (a) they were married to each other, or
- (b) they had lived with each other in a marriage-like relationship for at least 2 years.

(2) Two persons cease being spouses of each other for the purposes of this Act if,

- (a) in the case of a marriage, an event occurs that causes an interest in family property, as defined in Part 5 [*Property Division*] of the *Family Law Act*, to arise, or
 - (b) in the case of a marriage-like relationship, one or both persons terminate the relationship.
- (2.1) For the purposes of this Act, spouses are not considered to have separated if, within one year after separation,
- (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
 - (b) they continue to live together for one or more periods, totalling at least 90 days.
- (3) A relevant time for the purposes of subsection (1) is the date of death of one of the persons unless this Act specifies another time as the relevant time.

[5] While it might be unusual, it is possible for a person who dies without a will to leave behind two or even more persons who might qualify as a "spouse" under *WESA* for the purposes of intestate estate distribution. Section 22 of *WESA* provides:

Two or more spouses

22(1) If 2 or more persons are entitled to a spousal share of an intestate estate, they share the spousal share in the portions to which they agree, or if they cannot agree, as determined by the court.

(2) If 2 or more persons are entitled to apply or have priority as a spouse under this Act in respect of an intestate estate, they may agree on who is to apply or who is to have priority, but if they do not, the court may make the decision.

[6] The evolution of legislation in British Columbia respecting any estate entitlement of "common-law spouses" in "marriage-like relationships" was exhaustively reviewed in *Austin v. Goerz*, 2007 BCCA 586. The Court observed:

[38] ... the terms "common law marriage", "common law relationship", and "common law union" are sometime confused and used with imprecision by both the general public and the judiciary ...

[[39] It is not necessary to discuss what constitutes a valid common-law marriage other than to say that it is based on an agreement into which both parties have the capacity to enter ... As Mr. Austin was not divorced from Mrs. Austin he lacked the capacity to enter into a common-law marriage. ...

[40] While capacity is necessary for a common-law marriage, it does not follow that it is required for a statutorily created marital equivalent. Absent specific inclusionary or exclusionary language, this will depend on the application of the relevant principles of statutory construction to the words chosen by the Legislature.

[41] **Nothing in the history of the statutory recognition of common-law relationships, as distinct from common-law marriages, supports the proposition that the Legislature intended to restrict these relationships to persons who could legally marry.** Although the terminology has changed over time – living as husband and wife, living together as married, living as spouses, living in a marriage-like relationship – **the focus has always been on the nature and character of the relationship.**

...

[43] Further, intestacy legislation has always recognized that concurrent claims can be made by both the lawfully married partner of the deceased and by a person whose entitlement is advanced on the basis of a marital-equivalent relationship with the deceased. ...

[44] Presently, s. 85.1 of the *Estate Administration Act*, which was enacted by the *Definition of Spouse Amendment Act, 1999*, specifically recognizes there can be more than one spouse on intestacy:

For the purposes of section 85, if 2 or more persons are entitled as a spouse they share the spousal share in the estate in the portions determined by the court as the court considers just.

This provision would have been unnecessary if the Legislature had intended capacity to be a pre-requisite to a "marriage-like relationship." Indeed, s. 85.1 is a positive indication that the Legislature contemplated that a deceased could leave behind both a lawfully married spouse and a common-law spouse.

...

[58] It is understandable that the presence or absence of any particular factor cannot be determinative of whether a relationship is marriage-like. This is because equally there is no checklist of characteristics that will invariably be found in all marriages. In this regard I respectfully agree with the following from the judgment of Ryan-Froslic J. in *Yakiwchuk v. Oaks*, 2003 SKQB 124:

[10] Spousal relationships are many and varied. Individuals in spousal relationships, whether they are married or not, structure their relationships differently. In some relationships there is a complete blending of finances and property - in others, spouses keep their property and finances totally separate and in still others one spouse may totally control those aspects of the relationship with the other spouse having little or no knowledge or input. For some couples, sexual relations are very important - for others, that aspect may take a back seat to companionship. Some spouses do not share the same bed. There may be a variety of reasons for this such as health or personal choice. Some people are affectionate and

demonstrative. They show their feelings for their "spouse" by holding hands, touching and kissing in public. Other individuals are not demonstrative and do not engage in public displays of affection. Some "spouses" do everything together - others do nothing together. Some "spouses" vacation together and some spend their holidays apart. Some "spouses" have children - others do not. It is this variation in the way human beings structure their relationships that make the determination of when a "spousal relationship" exists difficult to determine. With married couples, the relationship is easy to establish. The marriage ceremony is a public declaration of their commitment and intent. Relationships outside marriage are much more difficult to ascertain. Rarely is there any type of "public" declaration of intent. Often people begin cohabiting with little forethought or planning. Their motivation is often nothing more than wanting to "be together". Some individuals have chosen to enter relationships outside marriage because they did not want the legal obligations imposed by that status. Some individuals have simply given no thought as to how their relationship would operate. Often the date when the cohabitation actually began is blurred because people "ease into" situations, spending more and more time together. Agreements between people verifying when their relationship began and how it will operate often do not exist.

[Emphasis in original.]

[Emphasis added.]

[7] *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), which was also relied on in the case referred to above, was invoked in a recent WESA decision to identify generally accepted characteristics of a "marriage-like relationship", *Richardson Estate (Re)*, 2014 BCSC 2162:

[22] A leading authority with respect to the meaning of "marriage-like relationship" (sometimes also referred to as "cohabitation", *Campbell v. Campbell*, 2011 BCSC 1491 at para. 80) is *Molodowich v. Penttinen* (1980), 17 RFL (2d) 376 (ONDC):

[16] I propose to consolidate the statements just quoted by considering the facts and circumstances of this case with the guidance of a series of questions listed under the seven descriptive components involved, to varying degrees and combinations, in the complex group of human inter-relationships broadly described by the words "cohabitation" and "consortium":

(1) SHELTER:

- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?

- (c) Did anyone else occupy or share the available accommodation?

(2) SEXUAL AND PERSONAL BEHAVIOUR:

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?

(3) SERVICES:

What was the conduct and habit of the parties in relation to:

- (a) Preparation of meals,
- (b) Washing and mending clothes,
- (c) Shopping,
- (d) Household maintenance,
- (e) Any other domestic services?

(4) SOCIAL:

- (a) Did they participate together or separately in neighbourhood and community activities?
- (b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?

(5) SOCIETAL:

What was the attitude and conduct of the community towards each of them and as a couple?

(6) SUPPORT (ECONOMIC):

- (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?
- (b) What were the arrangements concerning the acquisition and ownership of property?
- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

(7) CHILDREN:

What was the attitude and conduct of the parties concerning children?

[23] Other authorities have emphasized that this is not a checklist and "these elements may be present in varying degrees and not are all necessary for the relationship to be found conjugal" (*M. v. H.*, [1999] 2 SCR 3 at para. 59; cited in *Austin v. Goerz*, 2007 BCCA 586 at para. 57; the Court of Appeal equated "conjugal" with "marriage-like" in the same paragraph).

[8] In *Weber v. Leclerc*, 2015 BCCA 492, leave to appeal to SCC refused, [2016] S.C.C.A. No. 19, the Court again reviewed the case law respecting "marriage-like relationships", noting:

[23] The parties' intentions – particularly the expectation that the relationship will be of lengthy, indeterminate duration – may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.

[24] The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".

[25] Ms. Leclerc argues that approaches like that taken in *Molodowich v. Penttinen* are nothing more than "checklists", and do not adequately analyse the nature of a relationship. While I agree that a checklist approach is not appropriate, it is my view that cases like *Molodowich* are helpful as indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship.

[9] The question to be decided on this summary trial application is whether Mr. Chambers has proved on the balance of probabilities, and by way of properly admissible evidence, that for at least two years immediately before her death on January 29, 2015, he was living in a marriage-like relationship with Ms. Connor.

The Evidence Adduced on this Application

[10] Mr. Chambers has sworn three affidavits in support of his application. He also tenders 12 affidavits from friends and acquaintances of both himself and Ms. Connor, as well as Ms. Connor's aunt and uncle. The evidence adduced through these affidavits is almost entirely uncontroverted.

[11] The application respondents have no personal knowledge of the relationship between, and the circumstances of, Mr. Chambers and Ms. Connor. Through counsel, however, they have been able to secure document discovery from Mr. Chambers and the estate, and they also conducted an examination for discovery of Mr. Chambers on January 26, 2017. They have tendered a transcript of that examination for discovery, as well as copies of some of the documents that have been produced. They rely on this material as well as perceived "shortcomings" in the applicant's affidavit evidence to submit that Mr. Chambers has failed to meet the onus of satisfactorily proving the existence of a marriage-like relationship in the last two years of Ms. Connor's life.

[12] Some of the factual background is uncontroversial and is effectively admitted by both parties.

[13] Ms. Connor was born in Weyburn, Saskatchewan, on January 20, 1950. She had just turned 65 when she died on January 29, 2015.

[14] Ms. Connor was a criminal defence lawyer living and practising in Vancouver. She graduated from UBC Law in 1974 and was called to the British Columbia bar in 1975.

[15] Mr. Chambers is presently 59 years old. He had a career as a policeman, retiring from the Vancouver Police Department in September 2011. After his retirement he worked part time as a private investigator but since May 2013 has been employed at Abbotsford Regional Airport.

[16] Mr. Chambers and Ms. Connor met in 1993. Although they never lived together in the same house, they continued an intimate and sexual relationship from 1993 until Ms. Connor's death in January 2015, a relationship lasting a little over 21 years.

[17] When the relationship began, Mr. Chambers was already married. He and his wife had purchased a house in Mission in 1991. They had two children, a son who is presently 29 years of age and a daughter who is 26 years of age. The family

lived in the Mission house throughout Mr. Chambers' marriage, with the exception of a three-year period between 2006 and 2009, at which time his wife and their daughter lived in Oregon to be nearer to his wife's parents whose health was failing.

[18] Both children moved out of the family home in Mission in 2010. In March 2012 Mr. Chambers and his wife separated. He moved to a basement suite in his sister's house in Maple Ridge. Matrimonial proceedings were instituted in December 2012 and concluded in March 2015, at which time a divorce order was granted and the former matrimonial home was sold.

[19] Mr. Chambers did not tell his wife about his relationship with Ms. Connor throughout the years. He made up various excuses for his frequent absences from the home, *i.e.*, attendance at training courses, sleeping over at the police station facilities in Vancouver rather than driving back to Mission, *et cetera*.

Chambers' Affidavits

[20] Mr. Chambers describes meeting Ms. Connor in 1993 and falling in love. He deposes that they had a continuous intimate and sexual relationship from 1993 until her death, although sexual relations ceased in the last few months of Ms. Connor's life when her health deteriorated.

[21] Mr. Chambers lived in Mission during the period 1993 to 2012 and during his tenure as a policeman in Vancouver. Depending on his shifts, he and Ms. Connor had lunch or dinner often. He visited her home and the two spoke on the phone or texted almost every day.

[22] For the first eight years (1993–2001) Mr. Chambers would sleep over at Ms. Connor's home approximately once a week and thereafter twice a week until 2009 (his wife was living in Oregon between 2006 and 2009). From 2009 to 2012 he slept at Ms. Connor's home approximately once a week. By 2012 Ms. Connor had become a "hoarder" and her apartment was full of clutter (as evidenced in photographs attached to one of Mr. Chambers' affidavits). For that reason he no

longer slept over at her home but they continued to have sexual relations either at his home or elsewhere when they travelled as a couple.

[23] Mr. Chambers and Ms. Connor travelled and took vacations together every year. In 2009 Ms. Connor purchased a vacation club membership for both herself and Mr. Chambers jointly at Palace Resorts in Cancun, Mexico. Thereafter the couple vacationed at various places in Mexico almost every year and any unused weeks in the membership program were sold to their friends. In addition to travelling to Mexico, Mr. Chambers and Ms. Connor went to Seattle for weekends twice a year, took some cruises originating in California, and twice rented a house in Palm Springs. One of the cruises took place in March 2014 and the couple also spent time in Las Vegas in August 2014, which was the time that Ms. Connor's health started to significantly deteriorate.

[24] While travelling or vacationing the couple referred to each other as "husband" and "wife". Various photographs of the couple vacationing together and attending social events are attached to the affidavits.

[25] Mr. Chambers and Ms. Connor kept their finances completely separate, although they both used the same financial advisor. However, Ms. Connor's financial resources were much more substantial than those of Mr. Chambers and she commonly paid for the more substantial expenses of their activities together.

[26] From 2007 forwards, Ms. Connor gave Mr. Chambers the online passwords to her bank account at the Vancouver Police Credit Union telling him to access the account if he needed money. Over the years her password included "Chambers" and Mr. Chambers' police personal identification number (PIN). She gave him money to pay off a credit card bill when he was between jobs following his retirement. After he separated from his wife in 2012 and moved into the basement suite at his sister's house in Maple Ridge, Ms. Connor bought him furniture, appliances and decorations. She found him a lawyer for his divorce action and gave him money for his legal fees right through to August 2014.

[27] In January 2008, Ms. Connor made Mr. Chambers the beneficiary of her RRSP which, at the time of her death, had accumulated to \$410,000. She told Mr. Chambers that she had made a will leaving "most everything" to him along with a bequest to her aunt, Marjorie Pringle. Attempts to find that will following Ms. Connor's death proved fruitless. Hence the intestacy proceeding.

[28] At the time of separation from his wife, Mr. Chambers considered moving in with Ms. Connor in Vancouver. He says such a move was no longer possible because of her hoarding illness, the effect of which was that there was no longer room for him because of all the clutter. He implored Ms. Connor to get psychiatric help with the problem but she refused to do so. She had given him a key to her condominium and he continued to visit her there. She was also welcome at his apartment, however she disliked the drive to Maple Ridge from False Creek and generally preferred to be in her condominium "amongst her stuff".

[29] When Mr. Chambers retired from the VPD, he and Ms. Connor talked about planning their future together. Ms. Connor stated that she wished to keep working. They agreed that he should find other employment so more money would be available for them to do things together. Before he took the job managing security screeners at the Abbotsford airport in May 2013, he and Ms. Connor discussed the implications of him working in Abbotsford, realizing that it would reduce the amount of time they would be able to spend together. It was a joint decision that he would take the job and that the two of them would continue to be together on weekends, on their trips, mid-week when work permitted, and for social occasions as had previously been the case. When they did not see each other, the couple spoke on the phone or texted almost every day.

[30] Mr. Chambers says that he loved Ms. Connor, she loved him, and they told each other that frequently. He was monogamous with her (except for his early marriage years) and he believes Ms. Connor was faithful to him. They had intended to have a future together.

Ms. Connor's Health Problems

[31] Some of Ms. Connor's health records were put into evidence, without objection. Her mother had died of lung cancer in 1997. Her younger sister also died of lung cancer in December 2014. Ms. Connor herself was on "anti-cancer" medication for several years before her death, which caused some difficulties with her immune system.

[32] In August 2014, Mr. Chambers and Ms. Connor vacationed in Las Vegas. She was most noticeably uncomfortable and very short of breath. At Mr. Chambers' insistence, she visited a doctor upon their return to Vancouver whereupon she was diagnosed with diabetes and put on medication.

[33] In October 2014 Ms. Connor was visiting friends in Prince George. She was tired and sleep deprived because of work. As she was climbing stairs after dinner, she became dizzy and fell backwards, hitting her head on the floor. She was unconscious for some time. She attended Prince George Hospital where a CT scan revealed no evidence of acute pathology.

[34] On January 25, 2015 Ms. Connor's aunt entered Ms. Connor's apartment to check up on her when she had failed to answer a phone call. She found Ms. Connor lying on the floor. She was transported to Vancouver General Hospital. CT scans of her head revealed an acute chronic subdural hemorrhage. She was admitted to the intensive care unit with myocardial infarction. She developed acute kidney failure. She underwent neurosurgery on January 29 to evacuate the hematoma. During this procedure she became pulseless and stopped breathing. She was placed on a ventilator but resuscitative efforts were eventually unsuccessful.

Marjorie Pringle Affidavit

[35] Ms. Pringle was Ms. Connor's aunt and also the bookkeeper for her law practice. She first met Mr. Chambers in 1996. She says he and Ms. Connor were "together as a couple for over 20 years". She "never saw her with, or heard her speak about, another man romantically." She "believed them to be in love with each

other and committed to each other's welfare". Because of his long-time relationship with Ms. Connor, she "accepted [Mr. Chambers] as one of the family".

Christopher Johnson Affidavit

[36] Mr. Johnson was Ms. Connor's best friend and had known her since 1987. He is a lawyer. He met Mr. Chambers approximately 15 years ago and thereafter the Mr. Johnson and his partner frequently went out for dinner, socialized, and took holidays with Mr. Chambers and Ms. Connor. Among other things, Mr. Johnson states in his affidavit:

- "I believe theirs was a love match. Patty told me as much and once referred to Joe as the love of her life. Sometimes she referred to him as 'my man'. I observed them holding hands and kissing while in public."
- "I knew from conversations with her that she wanted Joe to divorce his wife and felt that he would be much better off with her. She was very happy when he and his wife got divorced."
- "During the time I knew them, she never dated another man. Our relationship was such that she would have told me if she had."
- "Joe was the only person she really fully trusted. He was her confidante."
- "Patty did not make friends easily. She was very outspoken, tended to see things in black and white and could be difficult to be with from time to time. The fact that hers and Joe's relationship lasted as long as it did is for me the best evidence of his love for and commitment to her."
- "On several occasions she told me that when she died, she wanted to take care of her aunt and leave the rest to Joe. She told me that she had signed her RRSP to Joe. She told me that she had left a will in which her aunt and Joe were the sole beneficiaries."

Marie Ahrens Affidavit

[37] Ms. Ahrens is a lawyer in Prince George. She first met Ms. Connor in the late 1980s. They were colleagues and girlfriends who confided in each other. By 2001, she knew from Ms. Connor that Mr. Chambers was already a feature in the former's life.

[38] It was at Ms. Ahrens' house that Ms. Connor had her fall in mid-October 2014. After the death of Ms. Connor's sister on December 2, 2014, Ms. Ahrens invited her to return to Prince George to spend Christmas with her family. Ms. Connor declined, preferring to stay in Vancouver. They texted each other on Christmas morning at which time Ms. Connor stated she was going for breakfast with Mr. Chambers.

[39] For the celebration of Ms. Connor's life at a special sitting of the Provincial Court on February 10, 2015, Mr. Chambers supplied the photographs of Ms. Connor which adorned the hallway and courtroom. He also attended the ceremony and was seated in the front row.

[40] She states, "Joe [was] there for Patty to the end, through many difficult circumstances, including Jeannie's protracted illness and Patty's hoarding issues. I regarded them as a couple who took care of one another."

Joy Heiberg Affidavit

[41] Ms. Heiberg has been a friend of Mr. Chambers for 27 years. She first met Ms. Connor in 2010 on a vacation in Vernon and thereafter Ms. Heiberg and her husband holidayed with the couple in Maui and saw each other socially. She states in her affidavit:

- "They seemed in every way a couple. They doted upon each other. She fussed over him and he over her. That is to say, that each ensured that the other's needs were met."
- "Patty confided to me that she loved Joe and wanted him to be divorced. My impression from our conversations was that she did not wish to be married but wanted them to spend more time together".
- "Their relationship seemed that of loving and caring spouses. They appeared intimate with each other and spoke well of, and to, each other".

Mark Berry Affidavit

[42] Mr. Berry is a lawyer who has known Ms. Connor since 2001. He worked as her junior for some time but after he left her employ the two of them continued to be

friends and would socialize from time to time. Among other things, he deposes in his affidavit:

- "From my observations of them, I believe that Joe and Patty were a romantic partnership. From my association with them, and with the people they worked with, I believe that it was common knowledge that they were 'a couple'".
- "I was aware from her that she knew of his wife. She spoke of Joe extracting himself from that situation and that when she retired they would have a life together."
- "I found out that she had had a fall when she was up in Prince George [October 2014] and that her condition had gotten worse when she came back to Vancouver. She told me that it was Joe who insisted she go to the hospital for treatment and it was he who took her there. She was stubborn and I do not believe that she would have listened to anyone else."

Findings of Fact, Analysis and Conclusions

[43] The respondents argue that it was not legally possible for Mr. Chambers and Ms. Connor to have a marriage-like relationship until after Mr. Chambers had separated from his wife. They submit "it is a legal impossibility to have two co-existing marriage-like relationships that are recognized by the court".

[44] I respectfully disagree with this proposition. The issue is reviewed in detail in *Austin*, at para. 6 above. It is correct to say that a person who is not legally divorced does not have the legal capacity to enter into a common-law marriage. However, such capacity is not a pre-requisite for the statutorily contemplated "marriage-like relationship" referred to in s. 2(1)(b) of *WESA*.

[45] The respondents also submit that any evidence related to the nature of the relationship between Mr. Chambers and Ms. Connor before the date of Mr. Chambers' separation from his wife, *i.e.*, March 2012, "is entirely irrelevant to determining whether a marriage-like relationship existed in the two years prior to the death of Ms. Connor". Again, I must respectfully disagree. If a "marriage-like relationship" existed between Mr. Chambers and Ms. Connor before March 2012, Mr. Chambers could continue to be Ms. Connor's "spouse" within the definition of

WESA provided their relationship was not "terminated" as contemplated by s. 2(2) of WESA. Such termination was commented on in *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65 at para. 42:

... cohabitation is a constituent element of a common law relationship. "Cohabitation" in this context is not synonymous with co-residence. Two people can cohabit even though they do not live under the same roof and, conversely, they may not be cohabiting in the relevant sense even if they are living under the same roof. Such periods of physical separation ... [may] not end the common law relationship if there was a mutual intention to continue. ... subject to whatever provision may be made in a statute, 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".

[46] The respondents do not deny that there was a long-standing relationship of some sort between Mr. Chambers and Ms. Connor. They submit, however, that it was simply a long-standing "affair" which did not amount to a "marriage-like relationship" and particularly so in the two-year period immediately preceding the death of Ms. Connor. In that regard they point out:

- the parties maintained two entirely separate residences and did not live under the same roof;
- each undertook their own separate domestic tasks such as meal preparation, shopping, tending to clothing and household maintenance;
- no mingling of finances occurred;
- sexual relations between them in their respective households were significantly reduced in the last two years;
- Ms. Connor's hospital records identified her marital status as single and indicated Mr. Chambers as an alternative contact identifying him as a "friend";
- Ms. Connor identified herself as "single" on her tax returns and Mr. Chambers identified himself as "separated" after 2012;
- Mr. Chambers identified his wife as his "current spouse" in the spousal declaration for his municipal pension plan application in September 2011, a designation that was never changed;

- in August 2013 Mr. Chambers declared for the purposes of his group benefits with Manulife Financial that he had no common-law spouse and he did not declare Ms. Connor as a beneficiary;
- Mr. Chambers' children had no involvement in the life of Ms. Connor and indeed the son was never even introduced to her; and
- neither Mr. Chambers nor Ms. Connor displayed photographs of each other in their respective residences.

[47] I agree that not all of the *Molodowich* factors existed in the relationship between Mr. Chambers and Ms. Connor. The fact that they did not live under the same roof and that they each kept separate finances might, without more, militate against a finding of a "marriage-like relationship". But the *Molodowich* factors are not a checklist and it is not necessary for each "box" to be ticked before a marriage-like relationship can be found to exist.

[48] The parties provided a wide variety of cases as examples of circumstances where a marriage-like relationship was found to exist or not exist, as the case may be, and each devoted some effort to raise factual points of distinction in their favour. However, while much guidance might be found in this case law, the simple fact is that no two cases are identical (and indeed they usually vary widely) and it is the assessment of evidence as a whole in this particular case which matters.

[49] The evidence tendered on behalf of Mr. Chambers is uncontroverted. I accept all of it without reservation and find as a fact that the events described in that evidence occurred and that the characterization of the relationship between Mr. Chambers and Ms. Connor by the affiants was accurate and appropriate.

[50] The evidence is overwhelming and I find as a fact that Mr. Chambers and Ms. Connor loved and cared deeply about each other, and that they had a loving and intimate relationship for over 20 years that was far more than mere friendship or even so-called "friendship with benefits". I accept Mr. Chambers' evidence that he would have liked to share a home with Ms. Connor after the separation from his wife, but was unable to do so because of Ms. Connor's hoarding illness. The evidence amply supports, and I find as a fact, that Mr. Chambers and Ms. Connor loved each

other, were faithful to each other, communicated with each other almost every day when they were not together, considered themselves to be (and presented themselves to be) "husband and wife" and were accepted by all who knew them as a couple.

[51] As a result of, and as part of, their relationship, Ms. Connor assisted Mr. Chambers financially and intended to bestow upon him the benefits of both her financial resources while alive and her estate upon her death. Designating Mr. Chambers as the beneficiary of her RRSP speaks volumes. While the evidence on this point is perhaps thin, I find it more probable than not that Ms. Connor actually executed a will leaving most of her estate to Mr. Chambers, a will that simply has not been found. Certainly, I find as a fact that such was her intent, and it was an intent based on Mr. Chambers' status as her romantic and life partner.

[52] The evidence is clear that the relationship between Mr. Chambers and Ms. Connor was of lengthy duration and was of great importance to both of them. They both intended for it to continue following her retirement, at which time they intended to spend their time together, and provide ongoing mutual emotional and intimate support, albeit maintaining separate residences should Ms. Connor not have been able to overcome her hoarding challenges.

[53] Like human beings themselves, marriage-like relationships can come in many and various shapes. In this particular case, I have no doubt that such a relationship existed between Mr. Chambers and Ms. Connor for many years and that it continued to exist right up to the date of her untimely death in January 2015. I therefore declare that at the time of her death, Mr. Chambers was the "spouse" of Ms. Connor within the meaning of s. 2 of *WESA*.

[54] If the parties are unable to agree on costs they may make submissions to the Court on the matter within 30 days.

"KENT J."