

SUPREME COURT OF YUKON

Citation: *Estate Of Salomon (Re)*, 2025 YKSC 69

Date: 20251021
S.C. No. 23-P0026
Registry: Whitehorse

BETWEEN:

ESTATE OF SYLVIE MARIE CLAIRE SALOMON, DECEASED

Before Justice K. Wenckebach

Counsel for Ilka Simoes Lasevitz

Arthur Mauro

Counsel for Izak Baril-Blouin

Kathleen Kinchen

REASONS FOR DECISION

OVERVIEW

[1] On August 30, 2022, Sylvie Marie Claire Salomon (“Ms. Salomon”) suddenly passed away. She left behind two adult sons, Izak Baril-Blouin (“Izak”) and Alex Baril-Blouin (“Alex”)¹, and her partner Ilka Simoes Lasevitz (“Ms. Lasevitz”). Ms. Lasevitz and Ms. Salomon were not married but were living together. Ms. Salomon did not have a will.

[2] Ms. Lasevitz has applied for a declaration that she was Ms. Salomon’s common law spouse under the *Estate Administration Act*, RSY 2002, c. 77 (“EAA”), and for an

¹ I will refer to all the Baril-Blouin siblings by first name, not out of disrespect, but for ease of reference and legibility of this decision.

order under s. 74(1) of the *EAA* that she receive the entirety of Ms. Salomon's estate. Izak opposes Ms. Lasevitz' application.

[3] For the reasons below, I conclude Ms. Lasevitz and Ms. Salomon were not common law spouses as defined under the *EAA*. I also conclude that, even if they were common law spouses, Ms. Lasevitz should not be awarded a portion of Ms. Salomon's estate.

INTRODUCTION

[4] Ms. Salomon had three children with her previous partner, Jean-François Blouin ("Mr. Blouin"): Izak, Alex, and Maxim Baril-Blouin ("Maxim"). Izak and Alex are twins. They are 31 years old. Maxim passed away a number of years ago.

[5] Ms. Salomon and Ms. Lasevitz began living in a common law relationship in about 2013 or 2014 and married in 2015. They separated in 2019; and a divorce was granted on November 14, 2020. Ms. Salomon began living at Ms. Lasevitz' house at the end of January 2021. At some point, as well, she and Ms. Lasevitz reconciled and renewed their romantic relationship.

[6] Ms. Lasevitz submits that she and Ms. Salomon were common law spouses as defined by the *EAA* at the time of Ms. Salomon's death in August 2022. Under the *EAA*, individuals are considered common law spouses if they have lived together "as a couple" for 12 months or more immediately before the deceased's death. She also submits she should be awarded the entirety of Ms. Salomon's estate.

[7] Izak agrees that his mother and Ms. Lasevitz lived in the same house. He also concedes that, by the summer of 2022, Ms. Lasevitz and his mother were living together as a couple but states they were not living as a couple before then. Izak therefore submits that because Ms. Lasevitz and Ms. Salomon lived as a couple for less than

twelve months, Ms. Lasevitz does not qualify as Ms. Salomon's common law spouse under the legislation.

ISSUES

- A. Did Ms. Lasevitz and Ms. Salomon live together as a couple for 12 months or more immediately preceding Ms. Salomon's death?
- B. If so, how much of Ms. Salomon's estate, if any, should be awarded to Ms. Lasevitz?

ANALYSIS

- A. Did Ms. Lasevitz and Ms. Salomon live together as a couple for 12 months or more immediately preceding Ms. Salomon's death?

[8] I conclude that Ms. Lasevitz and Ms. Salomon lived together as a couple, but not for the 12 months immediately before Ms. Salomon's death.

Law

[9] When a person dies without a will, the *EAA* sets out who is to inherit under the estate. A common law spouse is not automatically entitled to inherit from their deceased spouse's estate. They may, however, apply to court to receive a share of the estate (s. 74).

[10] In considering an application under s. 74, the court may have to decide whether the applicant was the deceased's common law spouse as defined under the legislation. The definition of common law spouse in the *EAA* includes: "a person who has cohabited with another person as a couple for at least 12 months immediately before the other person's death" (s. 1, "common law spouse").

Meaning of Cohabiting “as a Couple”

[11] The definition of common law spouse in the *EAA* has not been judicially considered in the Yukon. The definition of common law spouse is not unique to the *EAA*, however. Several other statutes use the same definition, including the *Fatal Accidents Act*, RSY 2002, c 86 (“*FAA*”) (see also, e.g., *Pioneer Utility Grant Act*, SY 2014, c 13, *Dependants Relief Act*, RSY 2002, c 56, *Wills Act*, RSY 2002, c 230). The court has analyzed the definition of common law spouse in the *FAA* (*X v 506 All Day Grill*, 2019 YKSC 46 (“*X*”). Where the same words are used in several statutes, the presumption is that they have the same meaning (*Austin v Goerz*, 2007 BCCA at para. 41). The Court’s consideration of “common law spouse” and particularly, the meaning of cohabiting “as a couple” in *X* will, therefore, be applicable to the *EAA*.

[12] In *X*, Justice Campbell conducted an extensive analysis of the case law from other jurisdictions that also addressed the definition of “common law spouse”. Justice Campbell noted that, in other jurisdictions, words such as “conjugal” and “marriage-like” are used in legislation; and, in Alberta, the phrase “adult interdependent partner” is used. No other jurisdiction uses the phrase “as a couple” (at para. 80).

[13] Ms. Lasevitz’ counsel argues that the phrase “as a couple” is broader than the terms used in other jurisdictions. Justice Campbell concluded that “cohabiting as a couple” is a broader concept than “marriage-like” or “conjugal”. She defined cohabiting “as a couple” as “two persons sharing their lives and living together as a unit” (at para. 94). It is not, however, so broad as to encompass friends who co-habit, roommates or housemates, but was limited to “those considered to be close family members” (at para. 94). Justice Campbell’s decision provides a good starting point for my analysis.

Because the facts in *X* are very different than those here, however, *X* is otherwise not applicable to the case at bar.

[14] Ms. Lasevitz' counsel also submits that, given that cohabiting "as a couple" is a broad definition, the parties' intentions are not a relevant factor. I am not persuaded by this argument. In jurisdictions using the phrases "marriage-like" and "conjugal", intention has been found to be an important factor in deciding if the individuals were common law spouses (*Weber v Leclerc*, 2015 BCCA 492 at para. 23). In Alberta, the courts have stated that a component of a "relationship of interdependence" is that the individuals were "advancing the partnership of two persons carrying on a life as one unit and committed to doing so for the long haul" (*Chatten v Fricker Estate*, 2005 ABQB 972 at para. 29, cited with approval by *Nelson v Balachandran*, 2015 ABCA 155 at para. 11). While this definition does not expressly address intention, a long-term commitment implies a level of intentionality.

[15] In my opinion, the intention to be part of a long-term, committed relationship is an important element of the definition of common law spouse under the *EAA*, even if cohabiting "as a couple" is broader than other definitions. Through legislation, common law spouses have been provided various entitlements. Principle among them is the entitlement, in the right circumstances, to a degree of financial support from their spouse. This arises not only through the *EAA*, but also, for instance, under the *Dependants Relief Act* (s. 2). The entitlement to financial support brings along with it a corresponding obligation to provide support to one's common law spouse in some instances.

[16] The Court of Appeal for British Columbia has concluded that individuals have not only a legal duty but also a moral duty to provide adequate financial support to their

spouse (*Law v Tretiak*, [1993] 80 BCLR (2d) 1 (BCCA) at paras. 28-29). This statement was made in the context of British Columbia's equivalent to the *Dependants Relief Act* (the *Wills Variation Act*) but applies equally to the *EAA* and to common law spouses.

[17] If Ms. Lasevitz' position is correct, and intention or commitment is not relevant to the definition of "common law spouse", then the definition will be too broad. It would potentially include friends who live together, and who, because they enjoy each other's company, spend much of their socializing together. It may also include roommates who have a casual sexual relationship but who do not consider themselves to be a couple. In my opinion, Ms. Lasevitz' interpretation does not correspond with the kind of relationships which the legislature contemplated should have extra responsibilities and entitlements that other relationships do not have. Intention and long-term commitment are, therefore, important factors.

[18] While intention is important, it will be assessed against the objective evidence about the nature of the parties' relationship. At times, as well, the parties may not overtly recognize shifts in their intentions. Thus, "subjective or conscious intentions may be overtaken by conduct such that whilst a person living with another might not say he or she was living in a marriage-like relationship, the reality is that the relationship has become such" (*Dey v Blackett*, 2018 BCSC 244 at para. 195 citing *Takacs v. Gallo* [1998], 48 BCLR (3d) 265 (BCCA) leave to appeal to SCC ref'd, [1998] SCCA No. 238 (SCC), at para. 53).

Factors Used for Determining if the Parties Cohabited as a Couple.

[19] In addition to intention and commitment, the factors that may help to decide if the parties cohabited as a couple include:

(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?

(*Richardson Estate (Re)*, 2014 BCSC 2162 at para. 22)

[20] These factors are not a checklist. Not all factors need be present, and some factors may be more important than others. The factors are helpful, however, as they serve as indicators of the kinds of behaviours that society associates with relationships in which parties are committed to one another (*X*, at para. 82 citing *Weber v Leclerc*, 2015 BCCA 492 at para. 25).

Evidence

[21] The parties agree that, during their marriage, Ms. Lasevitz and Ms. Salomon's relationship was turbulent. Ms. Lasevitz states that Ms. Salomon was violent with her. Izak and Mr. Blouin state that Ms. Salomon told them both that it was Ms. Lasevitz who was violent with Ms. Salomon.

[22] Ms. Lasevitz and Ms. Salomon's marriage ended when they separated in 2019. Ms. Salomon moved to Quebec in the summer of 2020. In October 2020 Ms. Lasevitz applied for a divorce, which was granted and came into effect on November 14, 2020.

[23] Ms. Lasevitz states, however, that after they separated, she and Ms. Salomon realized they still loved each other. When Ms. Salomon was visiting the Yukon in September 2020, she and Ms. Lasevitz reconciled and resumed their relationship. They agreed to move back in together. Ms. Salomon returned to Quebec to wrap up her affairs and returned on January 27, 2021. They then began cohabiting together as spouses.

[24] Ms. Lasevitz filed text and Facebook messages between her and Ms. Salomon that, she submits, supports her evidence that they were living as a couple. The

messages, she states, show that the two cared for each other, shared meals together, assisted each other with medical appointments, invited friends to their property and jointly care for their dog. They also travelled together as a couple to Puerto Vallarta, Mexico in December 2021.

[25] Ms. Lasevitz also filed text messages between her and Izak and Alex to show she was interested in spending time with them.

[26] Finally, Ms. Lasevitz filed the first page of Ms. Salomon's income tax return from 2021 in which Ms. Salomon identified that her marital status was common law on December 31, 2021.

[27] Izak's evidence, to some extent, contradicts that of Ms. Lasevitz. He states that in December 2020, Ms. Salomon told him she was returning to the Yukon to continue to fight for Maxim, who had died while in police custody. He also states that in 2021, Ms. Salomon told him she was renting a room from Ms. Lasevitz. When he visited Ms. Salomon, she did not speak to him about Ms. Lasevitz. He furthermore attests that in the summer of 2021 he visited Ms. Salomon and Ms. Lasevitz at a property they jointly owned, which they had purchased when they were married, at Spirit Lake, Yukon (the "Spirit Lake Property"). He states that the two did not seem like they were officially back together in a relationship. However, by the summer of 2022, it was evident to Izak that Ms. Salomon and Ms. Lasevitz were a couple.

[28] Izak states that he and his mother had a close relationship. He believes that if Ms. Salomon were living common law with Ms. Lasevitz in 2021, she would have told him.

[29] Izak also filed an affidavit from Mr. Blouin. In it, Mr. Blouin states that he went to Ms. Lasevitz' house May 2021. While there, Ms. Salomon told him that she was living

with Ms. Lasevitz temporarily, until she completed building her cabin on the Spirit Lake Property; that she was paying rent to Ms. Lasevitz; and that she had a separate bedroom from Ms. Lasevitz.

Analysis

[30] Because Ms. Lasevitz must show that she and Ms. Salomon were common law spouses in the 12 months immediately preceding Ms. Salomon's death and the parties all agree that they were living as a couple in the summer of 2022, the task for Ms. Lasevitz is to show that, at the latest, she and Ms. Salomon were cohabiting as a couple by August 30, 2021.

[31] I find, contrary to Ms. Lasevitz' submission, that the parties did not start living as a couple when Ms. Salomon moved in with Ms. Lasevitz on January 27, 2021. On Ms. Lasevitz' own evidence, at the beginning, Ms. Lasevitz was tentative about their relationship and whether it would succeed. Ms. Lasevitz filed text messages written between her and two friends in which she discusses her relationship with Ms. Salomon. In the first, dated February 4, 2021, she states that she and Ms. Salomon were "trying to rekindle" their relationship. She then states that she is not sure how long the relationship would last, but they love each other very much. In the second, written on February 22, 2021, she similarly states that she and Ms. Salomon were "trying to work things out". She adds that although they are divorced, they have feelings for each other, and states "It's complicated." These messages show that Ms. Lasevitz and Ms. Salomon's relationship was in its early stages. It had not yet reached the point where they were sharing their lives as one unit and committed to staying together for the long term.

[32] I also, however, reject Izak's position that Ms. Salomon and Ms. Lasevitz were cohabiting as a couple only as of the summer of 2022. In her income tax return of 2021, Ms. Salomon stated that her marital status on December 31, 2021, was common law with Ms. Lasevitz. Izak points out that, according to Canada Revenue Agency's rules, a taxpayer will qualify as common law only after having lived a full tax year with the other person. Here, Ms. Salomon had not been living common law with Ms. Lasevitz for the full tax year. Izak submits that Ms. Salomon was therefore incorrect in stating she was living common law on her tax forms.

[33] The importance of this evidence is not whether Ms. Salomon was in a common law relationship for tax purposes, however. What is important is that by December 31, 2021, Ms. Salomon considered herself to be living in a common law relationship with Ms. Lasevitz. Combined with the other evidence, I conclude Ms. Salomon and Ms. Lasevitz were common law spouses by December 31, 2021.

[34] There is insufficient evidence, however, to conclude that Ms. Salomon and Ms. Lasevitz were common law spouses by August 30, 2021. Ms. Lasevitz' evidence is problematic in two ways. First, Ms. Lasevitz attests that she and Ms. Salomon reconciled in September 2020. On October 9, 2020, however, she filed an affidavit for a divorce order in which she affirms that there was no possibility of reconciliation between her and Ms. Salomon. This contradictory evidence suggests that, at the very least, Ms. Lasevitz is unreliable about dates and when she reconciled with Ms. Salomon. As accurate recall of dates is essential in this matter, this is a significant issue.

[35] Second, the evidence Ms. Lasevitz provides about their relationship to corroborate her statements is thin. The text and Facebook messages she filed between her and Ms. Salomon were generally brief, and dealt with routine, day-to-day matters.

[36] Ms. Lasevitz also filed a message a friend of hers wrote to Ms. Lasevitz after Ms. Salomon passed away. In it, the friend described Ms. Lasevitz and Ms. Salomon's relationship as one of love and profound respect.

[37] The evidence establishes that Ms. Lasevitz and Ms. Salomon had a mutually loving relationship, in which they did things together and did things for each other. In this case, however, Ms. Lasevitz must show something more. She and Ms. Salomon had a difficult marriage that resulted in divorce. They then very quickly resumed their relationship. Although they loved each other they were both, I conclude, unsure about the strength and resiliency of their relationship. Ms. Lasevitz' task is to show when both she and Ms. Salomon decided that their relationship was strong enough and healthy enough to commit to each other for the long term. The evidence she has filed does not show that it occurred before December 31, 2021. Ms. Lasevitz has not been able to demonstrate, therefore, that, at the time of Ms. Salomon's death, she and Ms. Lasevitz were common law spouses as contemplated by the *EAA*.

B. If so, how much of Ms. Salomon's estate, if any, should be awarded to Ms. Lasevitz?

[38] Even if I am wrong, and Ms. Lasevitz and Ms. Salomon were common law spouses under the *EAA*, I also conclude that Ms. Lasevitz should not be awarded a portion of Ms. Salomon's estate.

Law

[39] Under s. 74 of the *EAA*, the court may order that a deceased's common law spouse receive a portion, or all, of the deceased's estate for their "support, maintenance and benefit".

[40] There seems to be no case law interpreting s. 74 of the *EAA*. There is case law considering the equivalent provision from British Columbia's *Estate Administration Act*, RSBC 1996 c 122, however. As the wording of the two provisions is the same, the British Columbia case law is instructive.

[41] British Columbia case law has established that the court has discretion in determining whether and how much of an estate to assign to a common law spouse (*Renko v Stevens Estate*, [1996] 19 BCLR (3d) 349 (SC), at para. 22 ("*Renko*")); var'd *Renko v Stevens (Estate)*, [1998] 47 BCLR (3d) 349 (CA).

[42] The factors the court may use in considering whether to exercise its discretion include:

- the nature and value of the estate;
- the competing claims of others entitled to a share of the estate on an intestacy;
- the circumstances of the applicant and any competing claimants;
- the nature and duration of the deceased and the applicant's relationship ((*Renko*, at para. 31; *Naiker v. Naiker Estate* (1995), 6 ETR (2d) 98 (BCSC) at p 103)); and
- The level of support and maintenance the deceased would have wished for their common law spouse (*Renko*, at para. 33 (citing *Sudar v McKay Estate* (1990), 36 ETR 83 (BCSC))

Regard must be had to the whole of the circumstances.

Analysis

[43] The estate is small. There is approximately \$47,000 gross in Registered Retirement Savings Plans (“RRSPs”). The amount payable, after debt, taxes and administration costs are paid, will be less.

[44] Ms. Lasevitz’ means are modest. Her income is her Canada Pension Plan survivor’s benefit. She has about \$85,500 in RRSPs and \$50,000 in a Brazilian bank account. She also has a line of credit with money owing on it. Ms. Lasevitz also owns the Spirit Lake Property and lives there.

[45] Ms. Lasevitz does not explain how she and Ms. Salomon divided their assets and liabilities when they divorced or if any spousal support was paid. This could be a factor, given how recent the divorce was. Ms. Lasevitz has the burden of proving whether she should receive a portion of the estate. As Ms. Lasevitz has not provided evidence on this factor, I conclude that there was a division of assets which was beneficial to Ms. Lasevitz.

[46] Izak and Alex each received \$200,000 from Ms. Salomon’s life insurance policy. Izak is an independent adult. However, Alex has significant health problems that have an impact on his ability to get and maintain good employment. Mr. Blouin provided an affidavit which describes Alex’s current situation. Alex has resided in basement accommodations with roommates. He is working but does not have very good employability. He also pays for medication and other treatment. Mr. Blouin states Ms. Salomon’s life insurance provided Alex essential financial support, but the resources are almost exhausted.

[47] Turning to the length and nature of the relationship, the evidence shows that, by the end of Ms. Salomon’s life, Ms. Lasevitz and Ms. Salomon had created the kind of

relationship each wanted. However, if there was a common-law relationship, it lasted for barely more than a year.

[48] Finally, and importantly, I will consider what Ms. Salomon would have intended. Both Izak and Mr. Blouin describe how committed Ms. Salomon was to her children. Ms. Salomon was highly engaged with all her children. As Alex and Maxim had health issues, Ms. Salomon worked to ensure they had the help and support they needed; often, she was the one that provided it. After Maxim passed away, Ms. Salomon fought persistently to get justice for him. For Alex, even as an adult, Ms. Salomon continued to support him, both financially and in other ways. It is evident that for Ms. Salomon, her children's needs were extremely important.

[49] Given that the estate is small, and given the other factors, I conclude that Ms. Lasevitz should not receive a portion of the estate.

CONCLUSION

[50] I dismiss Ms. Lasevitz' application.

WENCKEBACH J.