SUPREME COURT OF YUKON

Citation: *X. v. 506 All Day Grill*, 2019 YKSC 46

Date: 20190830
S.C. No. 15-A0168
Registry: Whitehorse

BETWEEN

**X, Executor of the Estate of
COLLEEN JANE DANIELS**

PLAINTIFF

AND

**WAYNE KWONG HAP YIM and FEN XEI operating as 506 All Day Grill,
46249 YUKON INC., and CITY OF WHITEHORSE**

DEFENDANTS

AND

CITY OF WHITHEHORSE

THIRD PARTIES

AND

**WAYNE KWONG HAP YIM and FEN XEI operating as 506 ALL DAY GRILL,
and 46249 YUKON INC.**

FURTHER THIRD PARTIES

Before Madam Justice E.M. Campbell

Appearances:

Debra L. Fendrick	Counsel for the plaintiff
A.D. Schmit	Counsel for the defendants Yim and Xei
Roger Watts	Counsel for the defendant City of Whitehorse

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the defendants, Wayne Kwong Hap Yim and Fen Xei operating as 506 All Day Grill and 46249 Yukon Inc., for summary judgment. The defendants are seeking the dismissal of the plaintiff's claim against them under the *Fatal Accidents Act*, S.Y. 2008 c. 86, as amended (the "*Act*"), on the basis that the plaintiff does not qualify as a spouse under the *Act*, and that, consequently, the plaintiff has no right of action against them.

BACKGROUND

[2] The plaintiff, as executor of the Estate of Colleen Jane Daniels, brought a claim pursuant to the *Act*, for her own benefit as the spouse of Colleen Jane Daniels, the deceased.

[3] The plaintiff's statement of claim contains the following allegations that form the basis of her claim:

(a) On March 19, 2015, Colleen Jane Daniels fell on the exterior deck and stair area of the 506 All Day Grill restaurant in Whitehorse, and struck her head.

(b) As a result of the fall, Ms. Daniels suffered a head injury (subdural hematoma) that required her to be medevaced to a hospital in Vancouver where she died on March 28, 2015.

(c) The fall occurred as a result of the defendants' negligence.

(d) At the time of the fall, the plaintiff and Ms. Daniels had been cohabitating for a number of years and were in an interdependent relationship where they shared expenses, vacationed together and cared for one another

during illness. They were named as each other's beneficiaries under their wills and each held power of attorney with respect to the other.

[4] The defendants, Wayne Kwong Hap Yim and Fen Xei, operate as a partnership, 506 All Day Grill, registered under the laws of the Yukon. The defendants' restaurant is located at 506 Main Street, Whitehorse, Yukon.

[5] The defendant, 46249 Yukon Inc., is a company incorporated under the laws of Yukon. It is the owner of the lands and premises located at 506 Main Street in Whitehorse.

[6] The defendants deny any liability in this matter. They request that this Court dismiss the plaintiff's claim on the basis that she and Ms. Daniels were friends not spouses as defined in the *Act*. Therefore, the plaintiff is not entitled to advance a claim against them under the *Act*.

[7] The City of Whitehorse is a defendant and a third party in this matter. It denies any liability and supports the other defendants' application.

ISSUE

[8] As mentioned, this application for summary judgement raises one issue, the scope of the term "spouse" under the *Act*. More specifically, and as per the definition of the term "spouse" under the *Act*: Did the plaintiff and Colleen Jane Daniels cohabitate as a couple throughout the 12 months preceding Ms. Daniels' death? The answer to that question will determine whether the plaintiff has a right of action against the defendants under the *Act*.

FACTS

[9] The evidence regarding the plaintiff's and Ms. Daniels' personal history, situation and relationship comes from excerpts of the plaintiff's examination for discovery, the plaintiff's Affidavit #2, the transcript of the plaintiff's cross-examination on her Affidavit #2, as well as the affidavits of Barbara Daniels, the deceased's sister, and George Green, a neighbour.

[10] The defendants did not know the plaintiff or the deceased personally. Therefore, for the purpose of this application, the facts are essentially uncontested.

[11] The plaintiff was born in 1947. She moved to Canada with her husband in 1970, shortly after they got married. They obtained an acreage on the Atlin Lake Road where they built a cabin. They also constructed a large green house where they grew vegetables, flowers and bedding plants.

[12] In the late 1970's, the plaintiff started coming to Whitehorse in the springtime to sell bedding plants. As the years went on, the greenhouse operations and the seasonal business in Whitehorse expanded. In the spring and the summer, the plaintiff was back and forth between Whitehorse and the Atlin Lake Road property. When necessary, the plaintiff would stay overnight in Whitehorse in the fifth wheel trailer she and her husband used to sell their plants.

[13] In 1983, the plaintiff and her husband decided to rent an apartment in the Alpine View Apartment building in Whitehorse to allow them to stay in town while operating their seasonal business (from May to the beginning of September). However, the plaintiff's husband rarely stayed at the apartment in the spring-summer months, as he preferred life on the farm as well as overseeing the greenhouse operations at their

property. The plaintiff and her husband also used the apartment in the off season when they came to Whitehorse, once a week or so, for supplies. They rented the Alpine View apartment for a few years.

[14] The plaintiff met Colleen Daniels, the deceased, in 1983. Ms. Daniels was the manager of the Alpine View Apartment building and also had an apartment in the building. They became friends. That year, the plaintiff hired Ms. Daniels as a sales assistant to help her sell bedding plants during the summer. After that, the plaintiff visited Ms. Daniels in Whitehorse and Ms. Daniels visited the plaintiff at the farm to see the greenhouse operation and help out.

[15] At some point in the 1980s, Ms. Daniels bought a house in Whitehorse. She was the sole owner of that house. Instead of continuing to rent the Alpine View apartment, the plaintiff stayed at Ms. Daniels' house whenever she was in town. Her husband would also stay there occasionally. The plaintiff and her husband paid rent to Ms. Daniels during that period of time.

[16] The plaintiff opened a flower shop in Whitehorse in or around the fall of 1985. Her husband made a financial contribution towards her new business, but did not have any interest in operating the flower shop. The plaintiff turned to Ms. Daniels for help in starting her new business. Ms. Daniels did not have money to invest in the business but indicated that she would help the plaintiff in any way she could. In preparation for the opening of the flower shop, both of them travelled to Florida together to take a six-week course in floral design.

[17] The plaintiff was the sole owner of the flower shop from its opening in 1985 until its sale in 2007. After helping the plaintiff start her business, Ms. Daniels became a part-

time employee. At some point, the flower shop's business grew enough to allow the plaintiff to hire Ms. Daniels full-time. Ms. Daniels ran the flower shop and took care of all the customers and financial matters when the plaintiff was not in town. She also put in extra hours that would not have been expected of a regular employee. The plaintiff stated that she would not have been able to operate the flower shop without Ms. Daniels.

[18] After the opening of her flower shop, the plaintiff drove between her property on the Atlin Lake Road and Whitehorse several times per week. She always stayed at Ms. Daniels' house when she was in town.

[19] By 1988, there were problems in the plaintiff's marriage. Around the same time, Ms. Daniels received an offer to sell her house. Ms. Daniels found a house on Tay Street in Whitehorse and suggested to the plaintiff that they buy it together. Ms. Daniels thought it was a good investment for both of them and that it would give the plaintiff a chance to establish her own credit rating. The plaintiff agreed. They bought the house as joint tenants, with both their names on the mortgage.

[20] The plaintiff and Ms. Daniels lived in that house together for five years. In 1993, they sold it and bought a property, as joint tenants, on Cook Street. They used the profit they made from the sale of their Tay Street house to buy the Cook Street property. Again, the mortgage was in both their names.

[21] It is unclear when exactly the plaintiff separated from her husband. In her Affidavit #2, the plaintiff states that she decided she would no longer live with him around the time she bought the Tay Street property with Ms. Daniels. However, in her examination for discovery, the plaintiff indicated that she completely stopped living with

her husband and considered herself separated around the time she bought the Cook Street property with Ms. Daniels. Throughout her examination for discovery, the plaintiff appeared uncertain about the dates of a number of events, including the purchase dates of her two houses with Ms. Daniels. The plaintiff's Affidavit #2 clarifies the timeframe of those events and of her relationship with Ms. Daniels. However, considering how the events unfolded, it seems logical to conclude that the plaintiff bought the Tay Street property with Ms. Daniels because she was having problems in her marriage and that her separation from her husband solidified some time before she bought the Cook Street property. Although the plaintiff never divorced her husband, she never lived with him after her separation. The plaintiff considered her house in Whitehorse with Ms. Daniels to be her home.

[22] The plaintiff and Ms. Daniels lived in their house on Cook Street until 2004. The plaintiff had an office and operated her flower shop out of a building also located on the Cook Street property.

[23] In 2004, the plaintiff bought a house on Klondike Road, in Whitehorse. She is and has always been the sole owner of that house. The plaintiff indicates that Ms. Daniels decided not to buy the house with her as she felt she was getting older - she was born in 1940 - and did not want the responsibility of another mortgage. Ms. Daniels talked about moving into a retirement home but decided to stay at the Klondike Road house with the plaintiff. The plaintiff states that the decision as to where to reside was solely Ms. Daniels' and not hers. Ms. Daniels paid the plaintiff an agreed upon amount of money every month to cover her share of the housing expenses.

[24] The plaintiff explained that she bought the Klondike Road house because the City of Whitehorse refused to approve her plan to add a second floor to the Cook Street house. The plan called for the plaintiff and Ms. Daniels to have two separate apartments on the second floor of the house in order to expand the plaintiff's flower shop into the first floor of the Cook Street house.

[25] In 2007, the plaintiff decided, for health reasons, to sell her flower shop, which she was still operating at the Cook Street property. She sold the assets of the flower shop for $5,000. She did not share the profit of the sale with Ms. Daniels. She used the money to pay business bills. She then used what was left towards the mortgage of her Klondike Road house.

[26] The plaintiff and Ms. Daniels sold the Cook Street property in 2007. The proceeds of the sale of the property were shared equally, even though the plaintiff had paid a larger share of the mortgage because her flower shop and office occupied a portion of the property.

[27] The plaintiff and Ms. Daniels lived in the Klondike Road house together until Ms. Daniels died in 2015. In each residence, the plaintiff and Ms. Daniels maintained separate bedrooms but shared all the other spaces.

[28] The plaintiff and Ms. Daniels were not in a romantic relationship, even though other people, such as their neighbour, thought they were. They knew what other people thought but decided not to clarify the situation. The plaintiff does not recall ever introducing themselves as a couple. Either person was free to move out at any time, or to enter into a romantic relationship with someone. However, they continued to live together until Ms. Daniels' death.

[29] In 2008, the plaintiff and the deceased had their respective wills and powers of attorney drawn up (they both added a codicil to their will in 2014). The plaintiff wished to ensure that Ms. Daniels could stay in the Klondike Road house as long as she wanted to or could afford to even though she was not on title. The wills and codicils filed with the Court demonstrate that the plaintiff and Ms. Daniels named each other as executor and beneficiary of their respective estate. They also gave each other enduring power of attorney over their respective affairs. Their personal bank accounts were in both their names for succession planning purposes. They were both described as "a friend" in their respective wills.

[30] Ms. Daniels was never married and did not have children. At the time of her death, she had four living siblings. Ms. Daniels did not enter into another relationship while living with the plaintiff. The plaintiff got along well with Ms. Daniels' family. Ms. Daniels' sister, Barbara Daniels, stated in her affidavit that she considered the plaintiff family.

[31] The plaintiff has a sister but no children. After her separation from her husband, the evidence is to the effect that she did not engage in any other relationship while living with Ms. Daniels. The plaintiff's husband passed away in 2003.

[32] The plaintiff described her relationship with Ms. Daniels as a mutually respectful, loving relationship. She thought they were a team. The plaintiff considered Ms. Daniels to be closer to her than her family members were.

[33] The plaintiff and the deceased had different interests and activities. Ms. Daniels did not share the plaintiff's interest in camping, kayaking and photography. She was

more of a social person. She frequented a local restaurant for coffee on a regular basis to socialize with other people. She enjoyed reading and shopping.

[34] However, for a period of ten years, Ms. Daniels was the support person for the plaintiff in a yearly sporting event. The plaintiff joined the Lions Club because Ms. Daniels was a member there. The plaintiff and Ms. Daniels enjoyed a number of activities together: gardening, day trips as well as playing cards and board games, usually on Saturday nights. They also attended art performances together.

[35] The plaintiff and Ms. Daniels ate most of their meals together and shared cooking responsibilities. The plaintiff was responsible for Sunday dinners and fancier meals. Ms. Daniels was responsible for grocery and other shopping for them. They celebrated holidays and birthdays together. The plaintiff filed cards Ms. Daniels gave to her on special occasions such as Christmas and Valentine's Day. The cards demonstrate the affection they had for one another.

[36] The plaintiff and Ms. Daniels shared housekeeping duties. The plaintiff did most of the work outside of the house. Ms. Daniels did more work inside the house, even though she was unable to do as much after her knee replacement. Ms. Daniels talked about moving to a retirement home after her knee replacement because she felt she was not doing enough in the house. The plaintiff told her not to worry about it.

[37] The plaintiff was aware of Ms. Daniels' medical condition but did not know the names of her medication except for one they had talked about. Although they did not attend each other's regular medical appointments, they were there for each other in case of medical emergency, surgery, hospitalization and took care of each other at home after such events.

[38] The plaintiff and the deceased kept their finances separate and were each responsible for their own expenses while living together. The plaintiff kept track of all the household expenses. They split the housing expenses more or less equally. Ms. Daniels did not have much extra money for travel or for other expenses. They maintained separate vehicles and did not lend their vehicles to each other. They paid their car insurance individually.

[39] They discussed and came to agreement regarding major expenses for the house, except the plaintiff had the final say, as the owner of the Klondike Road house. The plaintiff paid for the major renovations as she saw them as increasing the value of the Klondike Road house. Ms. Daniels sourced out the best contractor(s) for repairs and renovations, negotiated the best prices and oversaw the projects. Ms. Daniels kept on top of things that needed to be done in the house.

[40] They both felt safer living together in the house.

[41] The plaintiff got along well with Ms. Daniels' family, some of whom visited them at their homes in Whitehorse on a few occasions. The plaintiff travelled with Ms. Daniels' sister to the United States on one occasion. The plaintiff and Ms. Daniels became friends with a number of each other's friends.

[42] The plaintiff did not envision her living arrangement with Ms. Daniels changing unless one of them became so ill or disabled that the other could not supply adequate care. The plaintiff states that in the event that one of them reached the stage where they could not care for themselves, neither of them wished for the other to become responsible for the bathing or toileting duties, as that type of care would have been too much for them and would have resulted in an undignified situation for the person in

need. The plaintiff further states that up to such a stage, she would have taken care of Ms. Daniels to the best of her ability and would have expected the same from Ms. Daniels. For example, the plaintiff and Ms. Daniels agreed to remove the bathtub in the Klondike Road house and replaced it with a shower when it became difficult for Ms. Daniels to get in and out of the bathtub.

[43] The plaintiff and Ms. Daniels appointed each other as substitute decision-maker under their advance medical directive.

[44] The plaintiff was away on a trip when Ms. Daniels was medevaced to Vancouver. When the plaintiff found out about the accident, she went to the hospital where Ms. Daniels was already in a coma. The plaintiff was not able to speak with her. For approximately nine days, the doctors tried to bring down the swelling of Ms. Daniels' brain through medication and surgery. Sadly, on the advice of the doctors and after consulting with Ms. Daniels' sister, Barbara, who was also at the hospital, the plaintiff had to exercise her decision-making authority and agreed to have Ms. Daniels' life support terminated. Ms. Daniels died shortly thereafter.

[45] The plaintiff reports that her life has totally changed since Ms. Daniels passed away. Adding to grief and emotional toll, she reports suffering from bouts of depression, lack of sleep and appetite, sadness, loneliness and hopelessness. She is also in a difficult position financially as a result of the loss of Ms. Daniels' contribution to the household expenses. She has started to work more regularly to supplement her income.

THE DEFINITION AT ISSUE

[46] The term "spouse" is defined in s. 1 of the *Act* as follows:

> "spouse" of a deceased means an individual who, when the deceased died:

> (a) Was married to the deceased (including in a marriage that was voidable but had not been voided by order of a court); or
>
> (b) Cohabited with the deceased as a couple and had done so throughout the immediately preceding twelve months; (my emphasis)

[47] The issue between the parties arises with respect to the interpretation of ss. 1(b) of the definition, as the terms "couple", "cohabit" and "cohabitation" are not defined in the *Act*.

POSITION OF THE PARTIES

The defendants' position

[48] The defendants, Wayne Kwong Hap Yim and Fen Xei, operating as 506 All Day Grill and 46249 Yukon Inc., submit that the purpose of the *Act*, as amended in 2014, is to allow a class of close family members (spouse, parents and children only) of a deceased person, whose death was caused by the tortious act or conduct of a third party, the right to claim compensation from the wrongdoer for pecuniary damages, as well as for grief and loss of companionship.

[49] The defendants acknowledge that the definition of "spouse" encompasses married couples as well as same and opposite sex common-law couples. The defendants further submit that those relationships all involve similar "marriage-like" qualities or circumstances. The defendants submit that the Legislature intended to compensate those who were in a marriage-like relationship, not friends, even though that specific terminology is not used in the *Act*. The defendants submit that this interpretation is consistent with the definition of "spouse" read as a whole, the ordinary meaning of the words "spouse" and "couple", and the intent of the *Act*. The defendants

submit that the term “couple” is a term equivalent to living in a “marriage-like” relationship. The defendants further submit that this Court should turn to the factors that courts in other Canadian jurisdictions have considered in order to determine whether someone is in a marriage-like or conjugal relationship. In addition, as the Alberta legislation has been a guide to the *Act*, it may also be of some limited assistance, considering the fact that the terminology and concepts (Adult Interdependent Relationships) employed in the Alberta legislation differ from the Yukon legislation.

[50] The defendants contend that the plaintiff is trying to expand the definition of “spouse” beyond what was intended by the Legislature and to establish a new category of undefined relationships to be protected under the *Act*. The defendants submit that the plaintiff and Ms. Daniels were not spouses in any traditional or modern sense of the word. Further, the defendants submit that, contrary to what the plaintiff argues, there is no mischief or inequity that needs to be corrected. The defendants submit that expanding the scope of the definition of “spouse” to those who are not in a marriage-like relationship would create uncertainty, open the door to too many variables and result in claims not captured within the intent of the Legislature of compensating close family members. The defendants submit that it is for the Legislature, not the courts, to expand the definition if it sees fit to do so.

[51] The defendants submit that the particular circumstances of the relationship are central to determining whether there was an intention to enter into a marriage-like relationship. The defendants further submit that the Court must consider all of the evidence to gain an overall picture of the relationship to determine if a spousal relationship has been established.

[52] The defendants assert that the plaintiff and Ms. Daniels did not cohabit as a couple, that they were not in a marriage-like relationship. According to the defendants, the evidence demonstrates that the plaintiff and Ms. Daniels were not in a romantic or intimate relationship, there was no long-term commitment to each other. The plaintiff and Ms. Daniels were free to enter into a romantic relationship with someone or to move out at any time. Their true motivation was not to be together as a couple, but rather to enjoy a comfortable living arrangement with a close friend with whom they shared expenses. They kept their finances separate; each was responsible for her own personal expenses. The plaintiff meticulously kept track of the household expenses to ensure that one was paying the other back, and the household expenses were equally split between the two. They had separate interests and did not vacation together. They were not prepared to care for one another if either became disabled. Although they were beneficiaries of each other's will, this was a gift to one another as they had no direct close relatives who were in need.

[53] Therefore, the defendants assert that the plaintiff and Ms. Daniels were not spouses as defined in the *Act*. They were close long-time friends who formed a relationship of convenience and benefited financially from living together. Friends are not spouses. Consequently, the plaintiff's claim should be dismissed as she does not have a statutory right of action under the *Act*.

[54] The City of Whitehorse supports the other defendants' submissions. It also submits that the issue of *Charter* values is a red herring in this case as the plaintiff and Ms. Daniels are not treated differently because of their gender or sexual orientation, their situation simply does not meet the definition of spouse under the *Act.*

The plaintiff's position

[55] The plaintiff submits that, contrary to what the defendants assert, the term "spouse" is not defined in the *Act* as two people in a "marriage-like relationship" but as two people "cohabiting as a couple". The plaintiff says that the notion of family and the diversity of couples' relationships have evolved in our society over the years. The plaintiff submits that the definition of spouse in the *Act* recognizes that evolution and is broad enough to include individuals who live together in long-term relationships of emotional and financial interdependence, but do not have a romantic or sexual relationship. The plaintiff contends that this interpretation of the term spouse is not only in keeping with the purpose and intent of the *Act*, but also with the *Interpretation Act*, R.S.Y. 2002, c. 125, as amended, which requires a "fair, large and liberal interpretation that best insures the attainment of the objects" of the *Act*, and with *Charter* values. The plaintiff further submits that the term "spouse" as defined in the *Act* is genuinely ambiguous in this case and the Court should consider the *Charter* value of equality in making its decision. According to the plaintiff, concluding that the definition of spouse only encompasses people whose relationship includes a romantic or sexual aspect would lead to an absurd result that is not in keeping with the remedial nature of the *Act*, which is to prevent hardship for the dependant(s) and close family of a deceased, whose death was caused by a tortious third party.

[56] The plaintiff agrees that the Court must consider all of the evidence in order to determine the nature of the relationship. She also submits that the Court must weigh all the factors to come to a determination. She further submits that the Court should not

give more weight to factors such as whether there was a romantic or sexual relationship between her and Ms. Daniels.

[57] With respect to the evidence, the plaintiff acknowledges that she was not in a romantic or sexually intimate relationship with Ms. Daniels. However, she submits that this is not determinative and that she and Ms. Daniels were a couple in all the ways that mattered. The plaintiff submits that she lived with Ms. Daniels for 27 years. During that period of time, they shared all the necessary and important aspects of domestic life. They shared not only day-to-day matters such as household expenses, chores and meals, but also confidences, celebrations and their everyday home life. The plaintiff submits that they looked out for each other, took care of one another in sickness and cared for each other as they aged. They differed in their physical activities and some of their interests but enjoyed gardening and playing games together. They supported each other in their individual endeavours. They named each other as their emergency contact and substitute medical decision-maker. They both gave each other power of attorney in the event of incapacity. They also named each other as executor and beneficiary of the other's estate. Further, the plaintiff contends that they subjectively had no expectation that their relationship would end. Objectively, they acted toward each other as a couple and were seen by others as a couple. The plaintiff submits that the manner in which third parties saw them is evidence that can be taken into consideration, and is useful and relevant to the Court's determination.

[58] The plaintiff submits that she was the type of dependant the *Act* was designed to protect. She was the spouse of Colleen Daniels as defined under the *Act* and is therefore entitled to pursue a claim against the defendants under the *Act*.

ANALYSIS

[59] As stated previously, the question at the centre of this application involves the interpretation of the term "spouse" under the *Act,* and more specifically of the expression "cohabited as a couple".

[60] The guiding rule of statutory interpretation was reiterated recently by the Supreme Court of Canada in *Bessette v. British Columbia (Attorney General)*, 2019 SCC 31, at para. 54

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. (citations omitted)

[61] In determining the proper interpretation and scope of the term "spouse" under the *Act*, the Court must also be guided by the provisions of the *Interpretation Act*, cited above, which states at ss.1(1) and 10, that Yukon legislation and regulation are deemed remedial and "shall be given the fair, large and liberal interpretation that best insures the attainment of its object".

[62] In order to determine the scope of the term "spouse" under the *Act,* I first turn to the scheme and object of the *Act*, as well as the intention of the Legislature.

The *Fatal Accidents Act*

[63] At common law, family and/or dependants of a deceased, whose death was caused by the tortious act, neglect or conduct of a third party, have no private right of action for loss against the wrongdoer. The right to claim only arises by statute. The Yukon as well as other provinces and territories have enacted legislation to remedy to a certain degree, for a limited class of family members and/or dependants, what has been

described as a harsh and unfair situation (*Ferraiuolo v. Olson*, 2004 ABCA 281, at paras. 68 and 69). The class of individuals who benefit from a right of action as well as the type and extent of damages they can claim vary from one jurisdiction to another.

[64] In the Yukon, the *Act* confers upon close family members of the deceased (spouse, parents and children only) the right to claim pecuniary damages as well as a set amount of non-pecuniary damages for grief and the loss of guidance, care and companionship (also referred to as bereavement damages) against the wrongdoer. The set amount of non-pecuniary damages is automatically awarded once liability is proven.

[65] The *Act* was last amended in 2014. After public consultation, amendments were proposed based on the Alberta compensation scheme, which, according to what was stated by the Justice Minister in the Legislature at the time, provided more substantial damages to a narrower class of close family members, as opposed to other jurisdictions where the class of claimants was wider but provided for lower damages.

[66] One of the important amendments adopted in 2014 gave close family members the right to benefit from a set amount of bereavement damages without the necessity of proving damages. Once liability is established, the set compensation automatically flows from it. For a spouse, for example, the *Act* sets the amount at $75,000. The right to benefit from the action is restricted to the spouse, parents and children, as defined in the *Act*, of the deceased. Other family members and/or beneficiaries of the deceased's estate do not benefit from this statutory right of action under the *Act.* Furthermore, under the *Survival of Actions Act*, the estate of the deceased is precluded from claiming non-pecuniary damages for pain and suffering or loss of expectation of life against the

wrongdoer, on behalf of the deceased. The estate is limited to claiming pecuniary loss only (s. 5 of the *Survival of Actions Act*, R.S.Y. 2002, c. 212).

[67] Another important amendment adopted by the Legislature in 2014 clarified and expanded the type of expenses close family members, as well as the executor or administrator of the estate, may claim. They include expenses such as care for the deceased person between the injury and death, as well as travel and accommodation expenses for visiting fees.

[68] When the amendments were introduced in the Legislative Assembly, the Justice Minister stated: “the law should acknowledge the grief and loss of guidance, of care and compassion, and allow the family members to deal with the tragedy without the intrusion of litigation” (Yukon, Legislative Assembly, *Hansard*, 33rd Leg, 1st Sess, No. 145 (22 April 2014, at p. 4329).

[69] Considering the previous state of the law pursuant to the common law, the *Act* is clearly remedial in nature. Its object is to remedy, to a certain extent, the harshness of the common law, which denies the victim’s family, any private right of action against a wrongdoer whose tortious act or conduct caused the death of the victim. The *Act* provides, to a designated class of close surviving family members only, a statutory right to claim compensation for pecuniary and non-pecuniary damages against the wrongdoer (*Ferraiuolo v. Olson*, 2004 ABCA 281, at paras. 20 - 24, 50 - 54 and 68 - 73; *Watson v. Warrington*, [1972] 5 N.B.R. (2d) 624 (N.B.S.C.)).

The scope of the definition of spouse under the *Act*

[70] There was no definition of the term “spouse” in the *Act* until it was amended in 2014. The definition was added at the same time the Legislature adopted amendments,

purportedly based on the Alberta compensation scheme. As indicated previously, the Legislature's intent is of assistance in determining the scope of the term "spouse" under the *Act*. The debates in the Legislative Assembly reveal that the Legislature intended to limit the statutory right of action to a narrow class of close family members. They also reflect an intent to keep the legislation in line with modern practice.

[71] During the debates, the Leader of the Opposition specifically referred to the addition of a definition of spouse in the *Act*. She stated that:

> The new definition of spouse recognizes what we generally refer to as common-law spouses – a person who has cohabited with the deceased as a couple throughout the preceding 12 months is recognized as a spouse. This ensures that same-sex couples will be recognized as spouses and is consistent with the Yukon *Human Rights Act*. I am pleased to see this amended definition and expect there will shortly be legislative amendments brought forward to this chamber to update the definition of spouse to include same-sex relationships in order to bring other statues [sic] in compliance with the *Human Rights Act*.

[72] The defendants rely on this passage to support their position that the Legislature intended the word spouse in the *Act* to be comprised only of same and opposite sex married and common-law couples. Therefore, according to the defendants, the expression "cohabited as a couple" used in the definition of spouse must be interpreted to mean cohabited in a "marriage-like" or "conjugal" relationship.

[73] This passage is instructive with respect to the Legislature's intent to adopt a definition of spouse that recognizes sexual orientation as well as marital or family status equality. However, I do not find that the statement of the Leader of the Opposition purported to fully circumscribe the scope of the newly added definition of spouse in the *Act* or to capture the Legislature's view on what the definition encompasses. As such,

while informative, this statement is not, in and of itself, determinative of the Legislature's intent with respect to the scope of the definition of spouse in the *Act*.

[74] I note that there is no uniform definition of the term "spouse" in Yukon legislation. The various definitions of the word "spouse" found in other Yukon statutes are therefore of little assistance in interpreting the word "spouse" under the *Act.* There is also no definition of the term "couple" in Yukon Legislation.

[75] Furthermore, there is no Yukon case law with respect to the interpretation of the term spouse as defined in the *Act*, or of the term "couple".

[76] However, the defendants brought to the attention of the Court the decision of the Court of Appeal of Yukon in *Fitton v. Hewton Estate*, [1998] 2 W.W.R. 301 (Y.K.C.A.). In that case, the common-law partner of the deceased brought an application for her proper maintenance and support out of the estate of the deceased pursuant to the *Dependant's Relief Act*, R.S.Y. 1986, c. 44. The deceased had left his entire estate to his son. In that context, the Court of Appeal of Yukon was called upon to determine whether Ms. Fitton, the appellant, was a dependant of the deceased, as defined by the act. The word dependant was defined as:

> s. 1 dependant
>
> > (f) a person of the opposite sex to the deceased not legally married to the deceased who, for a period of at least three years immediately prior to the date of the death of the deceased, lived and cohabited with the deceased as the spouse of the deceased and was dependant upon the deceased for maintenance and support.

[77] In order to make a determination, the Court of Appeal had to decide whether, prior to the deceased's death, the appellant and the deceased had lived and cohabited

together as spouses for the period prescribed by the act. The word spouse was not defined in the act. The evidence was to the effect that, for a number of years prior to the deceased's death, the plaintiff and the deceased had not lived year-round in the same dwelling or even the same province. The Court of Appeal of Yukon adopted the factors identified by the British Columbia Court of Appeal in *Gostlin v. Kergin*, [1986] 3 B.C.L.R. (2d) 264 (B.C.C.A.), to determine whether the parties had lived and cohabited together as spouses for the prescribed period of time. Of note, in *Gostlin*, the British Columbia Court of Appeal had to consider whether two people were spouses or "living together as husband and wife" as defined in the British Columbia legislation at the time. In adopting the reasoning in *Gostlin*, the Court of Appeal of Yukon, in *Fitton,* equated the undefined term "spouse" in the Yukon legislation to "living as husband and wife". It did so in the following way, at para. 30:

> In all of the circumstances, I am of the opinion that they intended throughout the relevant period to live together as husband and wife, were known to others to be living as spouses and to a large extent they shared their living accommodation, their lifestyle, and in the result their lives.

[78] The Court of Appeal of Yukon went on to state that the circumstances enunciated in *Gostlin* are not exclusive, nor do they all have to be present to conclude that two persons are living together as spouses. The Court of Appeal also found that, depending on the circumstances, greater emphasis may be placed on some indicia as compared to others.

[79] When the Yukon Legislature added a definition for the word "spouse" to the *Act* in 2014, it could have simply adopted the Court of Appeal of Yukon's finding. However, it did not. Instead, the Legislature chose, for individuals who are not married, to do away

with terminology that specifically refers to the concept of marriage. It chose to define the term “spouse” as “cohabitating as a couple”.

[80] No other province or territory defines the term spouse as “cohabiting as a couple” in their respective fatal accidents statutes or their equivalent. A number of provinces and the other two territories have chosen to use the expressions “conjugal” or “marriage-like” relationships. However, even in jurisdictions where the expressions “conjugal” or “marriage-like” relationships are used, the courts have recognized that our perception of concepts such as marriage is not set in stone. Instead, it follows society’s evolution. Courts have therefore preferred to rely on a holistic approach based on an analysis of all the circumstances of the relationship instead of relying on a prescribed and restrictive definition.

[81] The British Columbia Court of Appeal recognized this natural evolution in *Weber v. Leclerc*, 2015 BCCA 492, at para. 7, when it stated that:

> … Social norms surrounding marriage have changed considerably over the years, and it should not be surprising that, along with those changes, evaluations of what relationships are “marriage-like” have also evolved.

[82] The British Columbia Court of Appeal further stated that all the circumstances of the relationship must be taken into account in determining whether a relationship is “marriage-like”. The Court went on to state, at para. 25, that:

> 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.

[83] In *M. v. H*., [1999] 2 S.C.R. 3, the Supreme Court of Canada adopted the factors identified in *Molodowich v. Penttinen,* [1980] 17 R.F.L. (2d) 376 (O.N.D.C.), to determine whether two persons are in a conjugal or marriage-like relationship. Writing for the majority, Cory J. stated, at para. 59, that those factors may be present in varying degrees and need not all be present to lead to the conclusion that a conjugal relationship exits:

> *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), sets out generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, it was recognized that these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal. …

[84] The following statement of Ryan-Froslie J. in *Yakiwchuk v. Oaks*, 2003 SKQB 124, which has been cited with approval by the British Columbia Court of Appeal, articulates how spousal relationships take many and varied forms in our society; how people differ and, as a result, structure their relationships differently. Therefore, no particular factor or characteristic is determinative in finding whether a marriage-like relationship exists.

> [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.

[85] This passage also acknowledges that the concept of "marriage-like" relationship is broad enough to recognize couples who are not in a sexually intimate relationship, but who seek companionship.

[86] The Alberta *Fatal Accidents Act*, R.S.A. 2000, C. F-6, employs different terminology. It refers to the expression: "adult interdependent partner". In Alberta legislation, the term "spouse" is reserved for married couples. Married couples and adult interdependent partners do have a right to benefit from an action under the Alberta *Fatal Accidents Act*.

[87] The expression "adult interdependent partner" is defined in the *Adult Interdependent Relationships Act*, S.A. 2002, C. A-4.5, at s. 3, as two individuals who:

1) have entered into an Adult Interdependent Partner Agreement;
2) have lived together in a relationship of interdependence of some permanence and have a child together, by birth or adoption; or
3) have lived together in a relationship of interdependence for three years or more.

Of note, persons who are related to each other by blood or adoption may only become adult interdependent partners of each other by entering into an adult interdependent partner agreement (s. 3(2)).

[88] The expression “relationship of interdependence” is defined in the *Adult Interdependent Relationships Act* as: “a relationship outside marriage in which any two persons share one another’s lives, are emotionally committed to one another, and function as an economic and domestic unit” (s.1(1)(f)). All three criteria must be met for a relationship of interdependence to be found.

[89] Courts in Alberta have acknowledged that there is no prescribed manner in which people must act or conduct themselves for a finding that they share their lives together. Consequently, to determine if two persons are “sharing one another’s lives”, the courts have relied on factors such as: observations that the individuals enjoyed each other’s company; attended together at family events and community functions; planned trips and travelled together; lived together; prepared tax returns for the other; shared in the other’s economic planning; made wills; and planned for the future together (see *Umbach v. Lang Estate*, 2016 ABQB 16, at paras. 18 and 19 (citing *F(EV) v. M(W)*,

2010 ABQB 451, at para. 8, and *Nelson v Balachandran*, 2014 ABQB 413, at paras. 22, 28 and 46).

[90] The expression “emotionally committed” to each other has been interpreted to mean: “advancing the partnership of two persons carrying on life as one unit, and committed to doing so for the long haul” (*Umbach v. Lang Estate*, at para 35, citing *Chatten v. Fricker Estate*, 2005 ABQB 972, at para. 29, cited with approval by *Nelson v. Balachandran*, 2015 ABCA 155, at para. 11)

[91] Section 1(2) of the *Adult Interdependent Relationships Act* further provides that all the circumstances of the relationship must be taken into account in order to determine whether two persons function as an economic and domestic unit, including the following characteristics, as may be relevant:

> (a) whether or not the persons have a conjugal relationship;
>
> (b) the degree of exclusivity of the relationship;
>
> (c) the conduct and habits of the persons in respect of household activities and living arrangements;
>
> (d) the degree to which the persons hold themselves out to others as an economic and domestic unit;
>
> (e) the degree to which the persons formalize their legal obligations, intentions and responsibilities toward one another;
>
> (f) the extent to which direct and indirect contributions have been made by either person to the other or to their mutual well-being;
>
> (g) the degree of financial dependence or interdependence and any arrangements for financial support between the persons;
>
> (h) the care and support of children;

(i) the ownership, use and acquisition of property.

[92] The list of factors is not exhaustive and each factor may not be relevant in all cases (*Umbach v Lang Estate*, at para 45). Also, the presence or absence of a conjugal relationship is not determinative, nor is the presence or absence of a sexual component to the relationship.

[93] While the types of relationships covered by the Alberta definition appear on their face to be broader than those encompassed by the concept of "marriage-like" or "conjugal" relationships, the factors and approach to consider in determining whether an interdependent relationship exists are similar to those adopted to determine whether a "marriage-like" relationship exists. In both cases, all the circumstances of the relationship must be taken into consideration, and no factor or characteristic is in itself determinative (*Kiernan v. Stach Estate*, 2009 ABQB 150, at paras. 42 and 44).

[94] This summary review leads me to the following conclusion regarding the scope of the definition of spouse under the *Act*. As stated previously, the terms "cohabit", "cohabitation" and "couple" are not defined in the *Act*. Furthermore, the terms "conjugal" and "marriage-like" are absent from the definition of "spouse" in the *Act*. Without these clear indicators, and in the absence of any clearly stated intent from the Legislature to that effect, it cannot be said that the expression "cohabited as a couple" is restricted to "marriage-like relationships". Instead, I find that the ordinary and grammatical meaning of the expression "cohabiting as a couple" taken in the context of the *Act*, refers to a broader concept, one that involves "two persons sharing their lives and living together as a unit". In that sense, "cohabiting as a couple" certainly encompasses "conjugal" and "marriage-like" relationships but is not restricted to them. It also means that cohabitation

alone is not sufficient. As such, friends who solely live together as landlord-tenant, roommates or housemates do not qualify as spouses under the *Act*. This finding is in line with the remedial nature of the *Act* as well as the stated intent of the Legislature to restrict the right of action to those considered to be close family members, while keeping the definition in line with modern society. It is also in line with the Yukon *Interpretation Act*, which provides that Yukon legislation is deemed remedial and "shall be given the fair, large and liberal interpretation that best insures the attainment of its objects" (ss.1(1) and 10).

[95] Also, I see no reason to depart from the contextual approach adopted by courts across the country in determining whether a "conjugal", "marriage-like" or an interdependent relationship exists. All the circumstances of the specific relationship must therefore be taken into consideration to determine whether individuals qualify as spouses under the *Act.* As such, the factors identified in the caselaw regarding the terms "marriage-like" or "conjugal" and those set out in the Alberta legislation are relevant to the analysis under the *Act*. However, this list is not exhaustive, other factors may also be relevant depending on the circumstances of each case. Not all factors need to be present for a spousal relationship to be found. No characteristic or factor is determinative, and those factors may be present at varying degree. As such, the presence of a romantic and/or sexual component to the relationship is not essential for two individuals to be found to be in a spousal relationship under the *Act.*

Were the plaintiff and Ms. Daniels spouses as defined in the *Act*?

[96] The onus is on the plaintiff to prove, on a balance of probabilities, that she was the spouse of Ms. Daniels pursuant to the *Act*.

[97] As stated, the question is whether the plaintiff and Ms. Daniels cohabitated as a couple throughout the 12 months preceding Ms. Daniels' death. In other words, did they share their lives and live together as a unit during the prescribed period of time under the *Act*?

[98] As this is an action filed by the representative of a deceased person, s. 15 of the *Evidence Act*, R.S.Y. 2002, c. 78, provides that the plaintiff's evidence, regarding the nature of her relationship with Ms. Daniels, must be corroborated by some other material evidence. Section 15 provides that:

> In an action by or against the heirs, next of kin, executors, administrators, or assigns of a deceased person, an opposite or interested party shall not on their own evidence obtain a verdict, judgment, or decision in respect of any matter occurring before the death of the deceased person, unless that evidence is corroborated by some other material evidence.

[99] There is no Yukon precedent with respect to the test to apply in assessing whether there is sufficient corroborating evidence to meet the threshold provided by s.15 of the *Evidence Act*.

[100] However, s. 15 of the Yukon *Evidence Act* is almost identical to s. 11 of the Alberta *Evidence Act*, R.S.A. 2000, C. A-18. In *Stochinsky v. Chetner Estate*, 2003 ABCA 226, at para. 29, the Alberta Court of Appeal enumerated the factors to consider in determining whether there is sufficient corroboration:

1. The statute does not require independent proof of the plaintiff's evidence and so the evidence relied on as corroboration need not completely prove an agreement or go so far as the plaintiff's evidence.

2. The statutory prohibition differs from the common law and should not be extended any further than its precise words require.

> 3. The test for corroboration is whether the evidence in question makes the plaintiff's evidence more probable or "strengthened by some evidence, which appreciably helps the judicial mind to believe one or more of the material statements".
>
> 4. It is enough that the testimony produces inferences or probabilities tending to support the truth of the plaintiff's statement.
>
> 5. Corroboration may be circumstantial evidence and fair inference.

[101] Considering the similarities between the Yukon and the Alberta provisions, I find it appropriate to apply the reasoning and factors enumerated in *Stochinsky v. Chetner Estate* to the assessment of the evidence under s. 15 of the Yukon *Evidence Act.*

[102] In this case, the plaintiff's evidence, which is essentially uncontested for the purpose of this application, is corroborated in many aspects by documentary evidence (cards, photos, certificates of title, wills and power of attorney documents) attached to the plaintiff's Affidavit #2, as well as the affidavits of Barbara Daniels and George Green. I find there is sufficient corroboration.

[103] The plaintiff and Ms. Daniels lived together under the same roof for 27 years. Between 1988 and 2007, they owned two houses together as joint tenants, as confirmed by the documents filed by the plaintiff. As stated previously, the plaintiff's separation from her husband materialized at some point between 1988 (purchase of the Tay Street house) and 1993 (purchase of the Cook Street house). While, around 2004, there was a plan in place to renovate their house on Cook Street to make two separate apartments, that plan did not materialize and the two decided to continue to live together. They had both been living in the plaintiff's Klondike Road house for

approximately 11 years when Ms. Daniels died. Nobody else lived with them during that time.

[104] The plaintiff and Ms. Daniels were not in a romantic or sexually intimate relationship. They had separate bedrooms during the time they lived together. While the evidence demonstrate that they attended family, social and artistic events together, they did not tell others that they were a couple. They were free to enter into a romantic relationship with someone while living together. However, this is not determinative. I note that during the time they were together, neither the plaintiff nor Ms. Daniels entered into a romantic relationship with another person. Furthermore, the plaintiff stated that she could not have seen herself enter into a relationship, like the one she had with Ms. Daniels with someone else. Nor did Ms. Daniels give her any indication that she would want to enter into another similar relationship with someone else.

[105] The plaintiff described her relationship with Ms. Daniels as a mutually respectful loving relationship. The evidence demonstrates that they had a deep affection for one another and shared a strong bond. They saw themselves as a team. A number of cards, including Christmas and Valentine's Day cards, Ms. Daniels gave to the plaintiff, were filed in this matter. They show the affection and love Ms. Daniels had for the plaintiff.

[106] The evidence is also to the effect that their bond and affection was visible to others. Their neighbour of many years states that he observed them to be caring and supporting of each other. He viewed them as a couple, and so did others according to the plaintiff, even though they did not introduce themselves or tell others that they were a couple.

[107] Barbara Daniels, Ms. Daniels' sister, who visited them on a number of occasions at their house in Whitehorse and who was in regular contact with them, considers that the plaintiff and Ms. Daniels shared their lives with each other and that their relationship was long-term. She never inquired as to the nature of their relationship. However, she observed that they worked well together, were patient towards each other and good to one another. She considered the plaintiff family.

[108] There are certain aspects of the plaintiff and Ms. Daniels' relationship that do not support a finding that they were a couple. As stated, they were not in a romantic or sexually intimate relationship. Also, they kept their finances separate. They were each responsible for their own personal expenses. For example, the plaintiff meticulously kept track of their mutual household expenses, which were shared equally. They each had their own car and did not share it with the other. They had a joint account for succession planning purpose but no common pool of money. The plaintiff did not share the small profit she made out of the sale of her flower shop with Ms. Daniels.

[109] On the other hand, they both named each other executor and beneficiary of their respective estates. The plaintiff wanted to ensure that Ms. Daniels could stay in the Klondike Road house as long as she wanted to or was able, even though she was not on title. They both gave the other enduring power of attorney over their respective affairs and appointed each other as substitute decision-maker under their advance medical directive, even though they both had living siblings. They entrusted each other with the ultimate responsibility over all matters of the other's life in case of incapacity or death. These conscious decisions demonstrate the trust they had in one another and

the importance of their relationship. Ultimately, it is the plaintiff who had to make the difficult decision to have Ms. Daniels' life support terminated.

[110] The plaintiff and Ms. Daniels had different interests. However, they supported each other in their respective endeavour, as couples would. They also shared activities such as gardening and playing cards and board games together. They celebrated birthdays and holidays together. They introduced each other to their respective friends and socialized together with them. They attended arts events together. On the other hand, it appears that they went on very few long trips together. However, they took day trips together. Family members visited them at their house in Whitehorse. The plaintiff even travelled with Ms. Daniels' sister, Barbara, on one occasion. The plaintiff and Barbara Daniels have remained in contact since Ms. Daniels' death.

[111] The plaintiff and Ms. Daniels shared their home life together. They prepared meals for each other and ate their meals together. They were responsible for different chores in the house, Ms. Daniels doing more inside and the plaintiff doing more outside. Ms. Daniels participated in the decisions regarding renovations or repairs of the plaintiff's house on Klondike Road. The plaintiff paid for all the renovations and repairs but Ms. Daniels was the one ensuring that they were undertaken and completed. At least one house renovation project was to accommodate Ms. Daniels' aging health.

[112] Ms. Daniels helped the plaintiff build her flower shop business. The plaintiff and Ms. Daniels worked together at the plaintiff's flower shop for many years. Ms. Daniels worked many hours that would not have been expected of a regular employee. She was in charge of the store when the plaintiff was away.

[113] The evidence is to the effect that they cared for one another as they aged. The plaintiff stated that she did not envision her living arrangement with Ms. Daniels changing unless one of them became so ill or disabled that the other could not supply adequate care. On the other hand, the plaintiff also stated she did not feel comfortable providing or receiving intimate care, such as bathing. The plaintiff also indicated that she would not have been in a position to stop Ms. Daniels had she wanted to move to a retirement home. It would have been her decision to make. However, the evidence also reveals that they had discussions about Ms. Daniels or both of them moving together to a retirement home. The plaintiff stated that she told Ms. Daniels that she was not ready to move. Ms. Daniels stayed at the Klondike Road house with the plaintiff. While there appears to have been a limit to the physical and medical care the plaintiff and Ms. Daniels were prepared to provide personally to one another, that limit was set at a high level of physical dependency. I also note that the stated limit was never reached in this case and that the parties continued to live together until Ms. Daniels' death.

CONCLUSION

[114] In light of all the evidence, I find that, initially, in 1988, the plaintiff and Ms. Daniels were simply two friends who decided to buy a house together to better their financial and living situation. However, I also find that the evidence demonstrates that their relationship gradually evolved over the years from one of simply good friends to one of a true life partnership.

[115] For approximately two decades, the plaintiff and the deceased formed a unit. They were not merely close friends living under the same roof for reasons of financial convenience and safety concerns; they had a deep affection for one another, they cared

for one another, they relied on one another, they shared their home, work, social and family life together. They did so until Ms. Daniels passed away. They were each other's life partner and companion. They were close family.

[116] On balance, having regard to all the circumstances of their relationship, I find that the plaintiff and Ms. Daniels did share their lives and lived together as a unit for many years prior to Ms. Daniels' death. Consequently, I find that they cohabited as a couple for the period prescribed by the *Act* up until Ms. Daniels' death. I therefore conclude that the plaintiff was Ms. Daniels' spouse pursuant to the *Act* and dismiss the defendants' application for summary judgment.

[117] Counsel may speak to costs, if necessary.

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CAMPBELL J.