

COURT OF KING'S BENCH OF MANITOBA

IN THE ESTATE OF: SHEILA HAZEL HOLT, Deceased

B E T W E E N:

ADAM EDWARD BURBANK, as Executor of)	<u>Loren Klein</u>
the Estate of SHEILA HAZEL HOLT, Deceased,)	for the applicant
)	
applicant,)	
)	
- and -)	<u>Wyman Lelyk</u>
)	on his own behalf
WYMAN LELYK,)	
)	
respondent.)	Judgment Delivered:
)	June 17, 2026

WOOLLEY J.

OVERVIEW

[1] This is an application brought by the applicant Adam Edward Burbank acting in his capacity as executor of the estate of Sheila Hazel Holt (the "Estate"). The application is with respect to the purported homestead rights of the respondent Wyman Lelyk in the property commonly known as 1671 Arlington Street, in the City of Winnipeg (the "Property"). In particular, the Estate is looking to sell the Property over the objections of Mr. Lelyk who claims that he has a homestead interest in the land as he was the common-law partner of Sheila Hazel Holt at the time of her death.

[2] For the sake of clarity, I shall refer to the parties involved in this matter using their first names: Wyman Lelyk shall be referred to as "Wyman", Sheila Hazel Holt shall be referred to as "Sheila", and Sheila's daughter, Amanda Holt, shall be referred to as "Amanda". This follows the naming convention used by the parties in their materials and at the hearing of this matter.

[3] As its primary position, the Estate asks the Court to find that Wyman's homestead rights should be terminated pursuant to s. 10(1.1) of *The Homesteads Act*, C.C.S.M. c. H80 (the "**Act**"). Alternatively, the Estate says that if Wyman maintains a homestead interest in the Property, the Court should order that his consent to the sale of the Property is not required pursuant to s. 10(1) of the **Act**. Finally, the Estate argues the existence of homestead rights does not provide Wyman with the ability to block the sale of the land pursuant to *The Law of Property Act*, C.C.S.M. c. L90 (the "**LPA**").

[4] Wyman opposes the relief requested by the Estate. He argues that as the surviving common-law partner he has a life estate in the Property by virtue of s. 21 of the **Act**.

BACKGROUND

[5] For many years, Sheila and Wyman lived together in a common-law relationship. Wyman says that the relationship began in 2002 when Sheila moved into his apartment on Mountain Avenue. According to the affidavit of Adam Edward Burbank sworn September 29, 2025, the relationship began in 2004, but for the purposes of this application the precise starting date of the relationship is not decisive.

[6] Sheila and Wyman did not register their common-law relationship with the Manitoba Vital Statistics Branch.

[7] In 2009, after several years of cohabitating at the Mountain Avenue apartment, Sheila purchased the Property and invited Wyman to move in with her. During their cohabitation, Wyman contributed to the household expenses in an amount roughly equal to half of his pay cheque, but Sheila was solely responsible for the purchase price of the Property.

[8] On or about November 25, 2022, Sheila was diagnosed with cancer.

[9] In late 2023, the advance of Sheila's illness impacted her ability to navigate the stairs at the Property and she moved in with daughter, Amanda. Wyman continued to reside at the Property.

[10] On or about January 17, 2024, Sheila made her will in which she directed her executor to divide the net proceeds of the sale of the Property equally between Wyman and Amanda. The residue of the remaining estate would be given to Amanda.

[11] Sheila died on January 29, 2024.

[12] At the time of her death, Wyman was residing at the Property and continued to reside there at the time of the hearing.

POSITION OF THE PARTIES

Position of the Estate

[13] While the Estate does not contest that Sheila and Wyman were once in a common-law relationship, it says that the common-law relationship ended in either 2017 or 2018.

[14] In her affidavit affirmed on March 11, 2026 ("Amanda's Affidavit"), Amanda provided details of her mother's relationship with Wyman. She indicates that for many

years, her mother and Wyman shared a bedroom and socialized as a couple. Amanda said that this relationship persisted through some volatile times, but that her mother and Wyman reconciled after difficulties in their relationship.

[15] Amanda says that this changed in 2017 when her mother discovered that Wyman had been involved in an affair with another woman. After the discovery of the affair, Amanda said that the relationship between her mother and Wyman was permanently altered. Although Sheila continued to live in the Property with Wyman, Amanda stated that her mother moved her possessions into a separate bedroom and in early 2018 she began dating other men.

[16] The Estate says that a permanent change in the relationship between Sheila and Wyman can be discerned from examining Sheila's tax returns. Starting in the 2019 tax year, Sheila changed how she described her marital status on her returns. For the 2015-2018 tax years she had described her marital status as "Common-Law". In the 2019 tax year (return filed in April 2020), she described her marital status as "Separated"; she used the same description for the 2020 tax year. For the 2021 tax year, she described her marital status as "Single" and for the 2022 and 2023 tax years she described her marital status as "Divorced".

[17] The Estate further argues that Sheila made important changes to her life insurance that were consistent with a breakdown of the common-law relationship with Wyman. On November 23, 2021, Sheila submitted a form to her employer changing her life insurance to "single" coverage (Exhibit "F", Amanda's Affidavit). On the same form she

indicated that her "Date of Separation/Divorce" was "2018/01/20" and she also changed the beneficiary of her insurance policy to "Amanda Holt".

[18] The Estate argues that the foregoing evidence shows that on a balance of probabilities, the common-law relationship between Sheila and Wyman ended over three years before her death and accordingly any homestead interest that may have existed at the time of Sheila's death should be terminated under s. 10(1.1) of the **Act**.

[19] In the alternative, the Estate argues that even if Wyman has homestead rights, the Court should make an order pursuant to s. 10(1) of the **Act** to dispense with the consent of Wyman or order the sale of the Property under s. 19 of the **LPA**.

[20] The Estate argues that following the death of an owner, the surviving common-law partner is entitled to a life estate in the homestead pursuant to s. 21 of the **Act**. However, that entitlement to the life estate is to be treated as though the owner had been left a life estate in the deceased's will.

[21] The Estate says that under s. 17.3(1) of the **LPA**, the property of a deceased owner vests in their personal representative and can be administered in the same way as personal property. The personal representative can dispose of the real property if they see fit to pay the debts, costs and expenses of the estate, and s. 19(2) of the **LPA** specifically contemplates that the Court may make an order of partition and sale without obtaining the consent of a common-law spouse who has homestead rights.

[22] Counsel for the Estate has also provided the Court with Manitoba caselaw interpreting the relevant provisions of the **Act**, the **LPA** and its predecessor legislation (including **The Dower Act**, R.S.M. 1988, c. D100 and **The Devolution of Estates Act**,

R.S.M. 1987, c. D70). Counsel also provided the Manitoba Court of Appeal decision in ***Crichton v. Zelenitsky***, 1946 CanLII 254 (MB CA), [1946] 3 D.L.R. 729, which held that the recipient of a life estate is a “mere devisee”, with their rights subject to creditors of the deceased. In the circumstances, the homestead is “liable to be sold” to pay the debts of the deceased (at p. 82).

[23] The ***Crichton*** decision was cited as an authority as recently as 2019 in ***Siwak v. Siwak***, 2019 MBCA 60. The Manitoba Court of Appeal confirmed that upon the death of an owner, the surviving spouse or common-law partner has “a homestead claim that has not yet vested as a life interest in the home” (at para. 79). In these circumstances, the Court upheld a decision to allow a sale of a home to proceed under s. 19 of the ***LPA*** notwithstanding the existence of homestead rights.

[24] The Estate urges that a sale should proceed as soon as possible as the administration of the Estate has been effectively halted by the inability to sell the Property. Without selling the Property, the Estate is unable to otherwise satisfy its outstanding debts which include a debt to Visa in the approximate amount of \$10,000, an overdraft in Sheila’s Royal Bank of Canada account as well as the legal expenses associated with the administration of the Estate.

Wyman’s Position

[25] Wyman filed an affidavit sworn February 27, 2026 (“Wyman’s Affidavit”) and appeared at the hearing to make submissions. He did not file a brief in response to the applicant’s brief.

[26] Wyman insists that he and Sheila were living in a common-law relationship until she passed away in 2024. He firmly rejects the suggestion that there was a severance of the relationship in 2017, 2018 or at any other time.

[27] Wyman's Affidavit provides some details of his relationship with Sheila. Wyman says he made bi-weekly contributions of 50 per cent of his after-tax earnings to cover utilities, taxes and other expenses for the Property. Further, Wyman's Affidavit sets out that during the course of Sheila's illness, he took her to appointments and retrieved her prescriptions.

[28] In order to demonstrate that he and Sheila remained in a common-law relationship until her death, Wyman provided a letter from Manitoba Health dated May 2, 2022 jointly addressed to Sheila and Wyman (attached as Exhibit "E" to Wyman's Affidavit). The letter is in reference to the 2022-2023 Manitoba pharmacare deductible. Wyman says the fact that it is addressed to the parties jointly is evidence that they remained common-law partners at that time.

[29] A series of letters were also attached as exhibits to Wyman's Affidavit from individuals who knew both Sheila and Wyman and could attest to their observations of them as common-law partners (Exhibits "A" to "D").

[30] At the hearing of this matter, Wyman took issue with his responsibility for the Visa card debt, indicating that most of the debt would have been incurred by Amanda and Sheila on a trip to Florida for a family wedding.

[31] Wyman stressed that there was no truth to the notion that he and Sheila had "split up". He explained that Sheila's decision to change her marital status on her tax

returns was done in order to minimize their tax liability. Wyman says that when Sheila filed her tax return with him as common-law partners it would result in him having to pay, whereas when they each filed as being single, he would receive more favourable results.

ISSUES

[32] Based upon the evidence provided and the submissions of the parties, the following issues arise:

1. Can the Court make a determination that Sheila and Wyman were living separate and apart for the purposes of s. 10(1) or s. 10(1.1) of the **Act**?
2. Is the Estate entitled to an order for partition and sale under the **LPA** regardless of whether homestead rights exist?

Issue 1: Can the Court make a determination that Sheila and Wyman were living separate and apart for the purposes of s. 10(1) or s. 10(1.1) of the Act?

[33] The Estate's primary and secondary positions are contained within s. 10(1) and s. 10(1.1) of the **Act**, which allows the Court to make one of two orders, either dispensing with the consent of a common-law partner, or terminating a common-law partner's homestead rights:

Court may dispense with consent

10(1) If an owner wishes to dispose of the homestead and the owner's spouse or common-law partner

(a) has been living separate and apart from the owner for six months or more; or

(b) is mentally incapable of giving consent;

Dispense de consentement

10(1) Si le propriétaire désire aliéner la propriété familiale et si son conjoint ou conjoint de fait vit séparé de lui depuis au moins six mois ou est mentalement incapable de donner son consentement, le tribunal peut, à la requête d'une personne ayant un intérêt dans l'aliénation, rendre une ordonnance de dispense relativement au consentement du conjoint ou du

the court may, on application by any person interested in the disposition, make an order dispensing with the consent of the owner's spouse or common-law partner if it appears fair and reasonable under the circumstances to do so.

Court may terminate certain homestead rights

10(1.1) If

(a) an owner and his or her common-law partner did not register their common-law relationship under section 13.1 of *The Vital Statistics Act*;

(b) the common-law partner referred to in clause (a) has homestead rights; and

(c) the owner has been living separate and apart from the common-law partner for three years or more;

the court may, on application by the owner, make an order terminating the homestead rights of that common-law partner if it appears fair and reasonable under the circumstances to do so.

conjoint de fait, s'il lui semble juste de le faire dans les circonstances.

Extinction par le tribunal des droits sur la propriété familiale

10(1.1) Le tribunal peut, à la requête du propriétaire, rendre une ordonnance portant extinction des droits du conjoint de fait sur la propriété familiale, s'il lui semble juste de le faire dans les circonstances et lorsque les conditions suivantes sont réunies :

a) le propriétaire et son conjoint de fait n'ont pas fait enregistrer leur union de fait sous le régime de l'article 13.1 de la *Loi sur les statistiques de l'état civil*;

b) le conjoint de fait du propriétaire a des droits sur la propriété familiale;

c) le propriétaire vit séparé de son conjoint de fait depuis au moins trois ans.

[34] In order to consider both of these positions, the Court must determine whether Sheila and Wyman were "living separate and apart" and if so, for what period of time.

[35] It is not contested by the parties that Sheila and Wyman both lived in the Property until the progression of Sheila's illness resulted in her moving in with Amanda. Cohabitation is not determinative of the issue as Manitoba courts have recognized that it is possible for two parties to be living separate and apart while sharing the same residence. (See *Cai v. Liu*, 2025 MBKB 118.)

[36] In the decision of **Melnyk v. Melnyk**, 2010 MBQB 121, the Court held that cases involving an allegation that parties were living separate and apart under the same roof should focus not only on physical living arrangements, but also whether one or the other formed the intention of living separate and apart “thereby destroying the consortium of the married relationship” (at para. 23). The Court in **Melnyk** also indicated that the evidence to support a claim of separation must be “clear and convincing” (at para. 25).

[37] The intention to separate can be held by only one of the two partners, so long as it can objectively be shown that “an intention to separate was not only held, but was communicated to the other party and acted upon”. (See **Field v. McLaren**, 2009 MBQB 118, 239 Man. R. (2d) 156, at para. 10.)

[38] In determining whether the “consortium” of a relationship has been destroyed, Canadian courts have often cited the list of factors contained in the decision of **Molodowich v. Penttinen**, 1980 CanLII 1537 (ON HCJ), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.).

[39] The **Molodowich** factors are grouped within seven general categories: shelter; sexual and personal behaviour; services; social; societal; support (economic); and children. Under these general categories there are 22 specific factors which are intended to provide a picture of a common-law couple’s life together for the purpose of determining whether they are living separate and apart (at para. 16).

[40] The evidence put before me to determine whether the parties were living separate and apart is problematic.

[41] The letters appended as Exhibits "A" to "D" to Wyman's Affidavit are hearsay evidence. Although they provide some observations about Wyman's relationship with Sheila, without the context of when and how these observations were made, and without the evidence being subject to challenge on cross-examination, they cannot be accorded much weight.

[42] There are similar hearsay issues with Amanda's Affidavit, as it relies heavily on descriptions of conversations between Amanda and Sheila as well as out-of-court conversations between Amanda and others on the issue of the affair.

[43] There is also difficulty with the evidence as to the date the common-law relationship is alleged to have come to an end. Amanda indicated that the relationship between Sheila and Wyman broke down after an affair was discovered in January of 2017 (paras. 37-43 of Amanda's Affidavit). However, Sheila continued to submit tax filings as late as March 5, 2019 (Sheila's filing for the 2018 tax year) indicating her marital status as "Common-law". It was only in her tax filing dated April 7, 2020 (for the tax year 2019) that she changed her marital status from "Common-law" to "Separated". This evidence also contradicts the insurance policy change form attached as Exhibit "F" to Amanda's Affidavit, which suggests that there was a separation that occurred on January 20, 2018.

[44] As noted in in the *Field* decision, a separation can be effected by one partner, but the intention to separate must be both acted upon and communicated to the other partner. In his submission at the hearing, Wyman said that he was aware of Sheila making a change to her marital status in her tax filings, but that such change was only for the purposes of securing more beneficial tax treatment. It is not clear from the

evidence what Sheila communicated to Wyman and when such communication took place.

Decision on Issue 1

[45] As this proceeding was commenced by an application rather than an action and the evidence adduced has been through affidavits with no cross-examinations, it is very difficult to make any assessment of credibility.

[46] This is a serious impediment as many of the ***Molodowich*** factors are either contested or have not been addressed and there can be no clear determination as to whether the parties were living separate and apart. In the circumstances, I will direct a reference on this issue to an Associate Judge of this Court to make a finding as to whether Wyman's homestead rights are to be terminated pursuant to s. 10(1.1) of the ***Act***. Given my determination under Issue 2, it will not be necessary for the Associate Judge to consider s. 10(1) of the ***Act***.

Issue 2: Is the Estate entitled to an order for partition and sale under the *LPA* regardless of whether homestead rights exist?

[47] As noted by the Manitoba Court of Appeal in ***Siwak***, even where homestead rights may be in issue, it is open for a court under s. 19 of the ***LPA*** to make application for the partition and sale of land. Section 19(2) specifically contemplates that an order for sale may be issued without the consent of the affected common-law partner.

[48] While Wyman correctly asserts that s. 21 of the ***Act*** provides a surviving common-law partner an "entitlement to a life estate", that estate does not provide a vested interest during the lifetime of the owner. Upon the owner's death, the surviving common-law partner receives the life estate under the same conditions as if it had been

left to them in the deceased's will. In other words, any interest in the land derived through the life estate is still subject to the claims of the estate's creditors. If the estate has no other source of funds, the land can be sold to satisfy those claims. (See ***Siwak***, at paras. 74-78.)

[49] Unlike the requirements of s. 10(1) or s. 10(1.1) of the ***Act***, an order for partition and sale under s. 19 of the ***LPA*** does not require me to make a finding as to whether Sheila and Wyman were living separate and apart.

[50] The Manitoba Court of Appeal in ***Siwak*** provided the following summary of the applicable principles governing partition or sale of land under the ***LPA*** at para. 95 of its decision:

[95] ...

- the applicant has a prima facie right to an order for partition or sale;
- this right may be denied by the exercise of the court's discretion, although this discretion is a judicial one that is to be exercised according to certain rules;
- the application may be denied by the court if the application itself is vexatious or if the effect of the order would be oppressive to the party resisting; mere hardship or inconvenience to the resisting party is insufficient;
- as the relief sought is equitable in nature, the application may also be denied by the court in its discretion if the applicant does not come to court with clean hands;
- vexatious proceedings are generally those which are pursued without reasonable or probable cause or excuse;
- the conduct required to refuse an order for partition or sale must be fairly egregious for an application to be rejected;
- most cases tend to favour the prima facie right of the applicant to partition and sale unless unusual circumstances exist—those usually involve

hardship to a spouse with dependent children who will be displaced or financially affected by a move to a new residence.

[51] In applying the above principles to the facts of this case, there is no evidence to demonstrate that the Estate is moving forward with this application for any vexatious or improper purpose. While Wyman has raised concerns with how the Visa debt in question was incurred, there is no evidence to suggest any malfeasance by the Estate or Amanda in the creation of that debt, and the Estate's intent to sell the Property to pay off its debts is a valid purpose for pursuing the sale. Although there has been some mention of frustration between the parties, I am satisfied that the Estate has come to the court with "clean hands" in seeking the order for sale.

[52] I acknowledge that issuing an order for sale will create hardship for Wyman who will need to find a new place to live, but to overcome the Estate's *prima facie* right to a sale Wyman must demonstrate that unusual circumstances exist to override that right. I simply have no evidence of such circumstances.

[53] To the extent that Wyman has homestead rights in the Property, those rights must be accounted for in the sale of the Property. Section 24 of the **LPA** requires the Court to make a determination of the value of any rights accruing to a common-law partner under the **Act** and to arrange for the payment of that amount from the proceeds of sale.

Decision on Issue 2

[54] The application for an order to sell the Property pursuant to s. 19 of the **LPA** is granted.

FORM OF ORDER

[55] For the above reasons, I order as follows:

(a) The Property in Certificate of Title No. 2389783/1, legally described as:

LOT 59 BLOCK 3 PLAN 192 WLTO (W DIV)
IN RL 43 AND 44 PARISH OF ST JOHN,

shall be sold;

(b) the Estate be provided with vacant possession of the Property;

(c) Wyman shall forthwith, and in any event within 14 days from the date of the Order, make arrangements to remove any chattels owned by him from the Property;

(d) There shall be a reference to an Associate Judge of this Court for directions for the conduct of the sale;

(e) The Estate shall have carriage of the reference;

(f) The Associate Judge shall make such inquiries, hear such evidence and assess such costs as may be appropriate and shall make a Report on Order and Sale when the Property is sold;

(g) Title of the Property shall vest in the name of the purchaser named in the Associate Judge's Report and Order on Sale;

(h) The proceeds of sale shall be paid into Court and, with exception of costs incurred in direct relation to the sale, shall not be distributed until a final order has been made with respect to the existence of Wyman's homestead rights;

(i) There shall be a reference to an Associate Judge of this Court to determine:

(i) Whether Wyman's homestead rights in the Property should be terminated pursuant to s. 10.1 of the **Act**; and

- (ii) If the Court determines that Wyman's homestead rights should not be terminated, the value of such rights in accordance with s. 24 of the **Act**.

COSTS

[56] The Estate has asked for an award of solicitor-client costs. I will not grant costs on a solicitor-client basis as I see no basis for doing so on the facts of this matter. If the parties cannot agree on costs, they may be spoken to, provided they file briefs in advance.

Woolley J.