
CANADA / JUDGMENT

A.J.E. v. T.B.W.

2017 BCSC 1657

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Supreme Court of British Columbia

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2017 BCSC 1657 A.J.E. v. T.B.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.J.E. v. T.B.W.,

2017 BCSC 1657

Date: 20170920

Docket: E152959

Registry: Vancouver

Between:

A.J.E.

Claimant

And

T.B.W.

Respondent

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Claimant, appearing on her own behalf:

A.J.E.

Counsel for the Respondent:

A.E. Thiele

Place and Dates of Trial/Hearing:

Vancouver, B.C.

July 24-28, 31, and

August 1-4, 2017

Place and Date of Judgment:

Vancouver, B.C.

September 20, 2017

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A. Introduction

- [1] In these proceedings, the claimant, A.J.E., contends that she was living in a marriage-like relationship with the respondent, T.B.W., for a period of at least three and a half years. On that basis, she claims to be entitled to certain relief under Parts 5 and 7 of the Family Law Act, S.B.C. 2011, c. 25 (the Act), including a division of assets, an accounting and spousal support.
- [2] It is common ground that the parties had a romantic relationship for at least part of the period from the beginning of 2011 until the fall of 2014. During that time, they spent three winters sailing together in Mexico and Central America. While there is some dispute about whether and to what extent they lived together as a couple over the summer of 2012, it is not disputed that they did so over the summer of 2013.
- [3] The parties had both been married and divorced prior to meeting one another. A.J.E. was in her mid-forties and T.B.W., in his mid-fifties at the material time. They each had children with their former spouses - A.J.E. has three daughters and T.B.W., a son and a daughter. The children were, by the time the parties met, in their teens or early twenties.

- [4] For most of the relevant period, T.B.W. was retired and living primarily on rental income that he was receiving from a number of investment properties that he owned in Vancouver. While they were together, he covered approximately 90% of their shared expenses.
- [5] Although T.B.W. had originally pleaded a cohabitation agreement in answer to the claim, that defence was abandoned at trial. His main defence advanced at trial was to deny that the parties were ever living in a marriage-like relationship. He also argues that if they were living in such a relationship, an unequal division should be ordered pursuant to s. 95 of the Act. It was common ground that any items of personal property belonging to A.J.E. that are still in T.B.W.'s possession should be returned to her. It was also common ground that if an order for spousal support is appropriate, it should be paid as a lump sum.
- [6] In light of the foregoing, the following issues must be resolved:
- (a) did the parties live in a marriage-like relationship for at least two years and if so, when and for how long;
 - (b) if they did,
 - i. assuming some division of assets is appropriate, is the evidence adduced before me sufficient to determine the value of T.B.W.'s assets for that purpose;
 - ii. what interest does A.J.E. have in the assets of T.B.W.;
 - iii. over what period of time is it appropriate to measure any increase in value of those assets; and
 - iv. is A.J.E. entitled to spousal support and if so in what amount?
- [7] For the reasons that follow, I have concluded that the parties did live in a marriage-like relationship for the period from January 2011 to June 2014. I am satisfied that an unequal division of family assets is appropriate in the circumstances of this case and hereby allocate A.J.E. 20% of those assets, yielding an award of \$153,342.34. I also award A.J.E. \$19,000 as a lump sum for spousal support.

B. Did the parties live in a marriage-like relationship?

i. The Test

- [8] As a threshold matter, A.J.E. can only succeed in this action if she establishes that she was a "spouse" as that term is defined in s. 3(1) of the Act. That provision states as follows:

A person is a spouse for the purposes of this Act if the person has lived with another person in a marriage-like relationship, and (i) has done so for a continuous period of at least 2 years .

- [9] There are a number of authorities that elaborate on the test to be applied in determining whether a couple was living in a marriage-like relationship for purposes of the Act.

- [10] The relevant principles were recently canvassed by Groberman J.A. writing for the Court in *Weber v. Leclerc*, 2015 BCCA 492, an appeal from a summary trial decision holding that the parties had been living in a marriage-like relationship. The appellant had asserted that she could not have been living in a marriage-like relationship because she had never intended to live in such a relationship, citing, among other things, the fact that the couple had kept their finances separate.
- [11] Groberman J.A. found no error in the test applied by the summary trial judge. He referred to several earlier decisions considering the essential nature of a marriage-like relationship. He noted that social norms had changed over the course of the years leading to an evolution in the emphasis that has been placed on various individual factors. In particular, he expressed reluctance to follow the thirty-year old test articulated by Lambert J.A. in *Gostlin v. Kergin* (1986), 3 B.C.L.R. (2d) 264 (C.A.), according to which marriage was seen as "a relationship characterized by economic dependence or interdependence." Groberman J.A. noted that while such a factor may be present in many marriages, one would no longer characterize it as an essential characteristic of marriage (at para. 12).
- [12] Groberman J.A. referred next to *Takacs v. Gallo* (1998), 157 D.L.R. (4th) 623 (B.C.C.A.), finding support there for the proposition that the intention to live in a marriage-like relationship need not include an intention to be financially interdependent. What was found to be important in that case was not the intention "to be bound by a statutory regime of mutual support, but rather the intention to enter into a relationship similar to marriage." Under the test as refined in *Takacs*, the "key question was whether the couple saw their relationship as one of indeterminate, lengthy duration" as opposed to being "transitory."
- [13] Finally, Groberman J.A. referred with approval to the decision of Frankel J.A. in *Austin v. Goerz*, 2007 BCCA 586, and concluded his analysis by describing the test in the following terms (at paras. 23-25):
- [23] The parties' intentions - particularly the expectation that the relationship will be of lengthy, indeterminate duration - may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.
- [24] The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".
- [25] Ms. Leclerc argues that approaches like that taken in *Molodowich v. Penttinen* are nothing more than "checklists", and do not adequately analyse the nature of a relationship. While I agree that a checklist approach is not appropriate, it is my view that cases like *Molodowich* are helpful as indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship.

- [14] *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.) was said by Cory J. in *M. v. H.*, [1999] 2 S.C.R. 3, in a passage cited by Frankel J.A. in *Austin*, to have set out "the generally accepted characteristics of a conjugal relationship" including shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. After listing those factors, however, Cory J. noted that "these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal." To this, Frankel J.A. added that "the presence or absence of any particular factor cannot be determinative of whether a relationship is marriage-like. This is because equally there is no checklist of characteristics that will invariably be found in all marriages."
- [15] Frankel J.A. [*Austin* at para. 58] then cited with approval the following passage from *Yakiwchuk v. Oaks*, 2003 SKQB 124 at para. 10:
- [10] Spousal relationships are many and varied. Individuals in spousal relationships, whether they are married or not, structure their relationships differently. In some relationships there is a complete blending of finances and property - in others, spouses keep their property and finances totally separate and in still others one spouse may totally control those aspects of the relationship with the other spouse having little or no knowledge or input. For some couples, sexual relations are very important - for others, that aspect may take a back seat to companionship. Some spouses do not share the same bed. There may be a variety of reasons for this such as health or personal choice. Some people are affectionate and demonstrative. They show their feelings for their "spouse" by holding hands, touching and kissing in public. Other individuals are not demonstrative and do not engage in public displays of affection. Some "spouses" do everything together - others do nothing together. Some "spouses" vacation together and some spend their holidays apart. Some "spouses" have children - others do not. It is this variation in the way human beings structure their relationships that make the determination of when a "spousal relationship" exists difficult to determine. With married couples, the relationship is easy to establish. The marriage ceremony is a public declaration of their commitment and intent. Relationships outside marriage are much more difficult to ascertain. Rarely is there any type of "public" declaration of intent. Often people begin cohabiting with little forethought or planning. Their motivation is often nothing more than wanting to "be together". Some individuals have chosen to enter relationships outside marriage because they did not want the legal obligations imposed by that status. Some individuals have simply given no thought as to how their relationship would operate. Often the date when the cohabitation actually began is blurred because people "ease into" situations, spending more and more time together. Agreements between people verifying when their relationship began and how it will operate often do not exist.

[Emphasis in *Austin*]

- [16] In this Court, the elements of the test were recently canvassed by Dardi J. in *H.S.S. v. S.H.D.*, 2016 BCSC 1300, as follows (at paras. 47-50):

[47] I turn to consider the factors which inform the analysis of whether the parties are living as spouses.

[48] It emerges from the authorities that although the living arrangements of the parties are not determinative, this factor is frequently accorded significant weight: *Routley v. Paget*, 2006 BCSC 419.

[49] Additionally, the following factors have been accepted as informing the analysis of whether the parties are living as spouses:

- Whether the parties vacationed together;
- Presence or absence of marital relations;
- How the parties conducted their financial affairs, including any financial planning they undertook as a couple and how they filed their tax returns. Notably, the authorities establish that financial dependence is no longer considered an essential element of a marital relationship;
- Estate planning;
- Making shared plans for the future;
- Participation in joint social activities and the manner in which the spouses presented themselves to others.

[citations omitted]

[50] In summary, the authorities mandate a contextual and holistic inquiry, having regard to all aspects of the relationship. The Court in *Weber* affirmed that there is no checklist of characteristics that will invariably be found in all marriages. The presence or absence of any particular factor is not determinative of whether the parties carried on a spousal relationship: *Weber* at para. 21, citing *Austin v. Goerz*, 2007 BCCA 586 at para. 58.

[17] In light of these authorities, it is apparent that the determination of whether the parties were living in a marriage-like relationship is a fact-specific inquiry that must be made on a comprehensive basis, having regard to all of the evidence. While I may consider the various indicia listed in authorities, they are not to be treated as a checklist and no single factor should be treated as being decisive.

[18] I turn now to the evidence that the parties rely upon in advancing their arguments as to the nature of their relationship and its duration.

ii. The Evidence

a. A.J.E.

[19] A.J.E. testified at length about her relationship with T.B.W. She summarised it as being an "intimate, sexual relationship that was considered by both partners to be monogamous and exclusive." She claimed that while they were together they were "devoted to one another."

- [20] She testified that the couple started dating in December 2007 after connecting through an online dating service. After several dates, the relationship started to become more serious in March, 2008. At that time, she was, by her account, spending more and more time at T.B.W.'s house at West 6th Avenue in Vancouver. She recalled moving more and more of her personal belongings to that home, as well as to the recreational property that T.B.W. owns on Wise Island. In both of those homes, her clothes were kept in the same dressers and closets used by T.B.W. in the master bedrooms.
- [21] She described going shopping with T.B.W. for groceries. While he usually paid for larger purchases, she occasionally paid for "smaller daily grocery shopping trips" herself.
- [22] She recalled inviting the children for the Easter long weekend on Wise Island in the spring of 2008 as "my first step towards blending our families."
- [23] A.J.E. testified that around this time, in March 2008, the couple exchanged keys and key pad codes for their homes and other properties. A.J.E. says that in 2008 she added T.B.W. as a "spouse" to her membership at her sailing club, which gave him dock keys and signing privileges for the restaurant and bar. In 2009, T.B.W. added A.J.E. as an adjunct member of his sailing club.
- [24] In the summer of 2008, A.J.E. went sailing in her sailboat around Desolation Sound with two of her daughters. At the time, T.B.W. was still working in Vancouver and came occasionally on weekends to join them. On at least one such occasion, T.B.W. paid for the third daughter, E., to accompany him when he flew from Vancouver to Powell River to join the others on the sailboat.
- [25] The couple travelled together to St. Lucia in December 2008.
- [26] The couple took another vacation together along with A.J.E.'s three daughters in Cuba for spring break in March 2009, all at T.B.W.'s expense.
- [27] The couple spent the summer of 2009 sailing around Vancouver Island on A.J.E.'s sailboat accompanied by two of A.J.E.'s daughters. T.B.W.'s two children joined them for the initial leg of that journey, sailing from Vancouver to Port MacMillan.
- [28] A.J.E. described an early Christmas dinner in December 2009 at T.B.W.'s home on West 6th Avenue, at which they and the children exchanged gifts.
- [29] T.B.W. took another trip to Cuba that month. A.J.E. and K.W. flew down to meet him there for one week.
- [30] A.J.E. joined T.B.W. and his two children on a trip to Switzerland in March 2010 to meet other members of T.B.W.'s family who lived there, including T.B.W.'s mother, his stepfather, his brother and his brother's wife and son. A.J.E. claims that T.B.W. introduced her to his family on that trip as his "partner." The couple then drove alone to Italy where they spent six days before returning to Switzerland to rejoin the rest of the family.

- [31] During the summer of 2010, the couple went sailing on A.J.E.'s boat around Haida Gwaii, accompanied for the first few weeks by T.B.W.'s father.
- [32] The following winter, the couple chartered a catamaran to sail around the islands of Antigua and Barbuda and then went to a resort. They were accompanied by A.J.E.'s three daughters. Once again, T.B.W. paid for the entire vacation himself.
- [33] It was around that time (December 2010 and January 2011) that A.J.E. says that the couple discussed buying a new sailboat in the following six months to fulfill their dream of sailing around the world together. It was while sailing in Antigua that they "both decided that we were fully committed to one another and growing our intimate partner relationship." On that occasion, she claims, T.B.W. asked her to move in with him full time upon their return to Vancouver, which she says she did. According to her, he said he wanted a commitment from her because he did not want strangers as his crew. No announcement was made to the children, his or hers, about the new living arrangement. She testified that she did tell her daughters that she planned on being away a great deal and that she would be leaving her job to go sailing with T.B.W.
- [34] When they returned, A.J.E. says she moved more of her personal effects including clothes, toiletries and other possessions to T.B.W.'s homes on West 6th Avenue and Wise Island. She says they expanded the shed at the cabin on Wise Island in the summer of 2012 so that it could accommodate A.J.E.'s sailing equipment. After A.J.E. moved out of the room she had been occupying in her mother's home in West Vancouver, her youngest daughter O. moved into that room. She described her moving in with T.B.W. as a process that took place over time, such that she was eventually spending some five or six nights per week with him. Although she had previously pleaded in related proceedings that the marriage-like relationship started in March 2008, A.J.E. explained that she started moving her personal effects to T.B.W.'s homes in March 2008 and that the process was completed by January 2011. In her examination for discovery she claimed that she was spending perhaps five nights a week with T.B.W. as of March 2008 and all seven nights by January 2011.
- [35] A.J.E. testified that she used T.B.W.'s post office post office box address on Galiano Island when she renewed her automobile insurance, although her mailing address was still listed as her mother's home in West Vancouver. This was said to be a means of lowering her insurance premium (an island address being less expensive to insure from than one in the Lower Mainland). She explained that her mother's home address was used only because her daughter had to put the decal on the vehicle while the couple was away sailing.
- [36] During the winter and spring of 2011, A.J.E. claims that she would routinely wake up at T.B.W.'s home on West 6th Avenue and drive to her mother's home in West Vancouver where she would join her children for breakfast, make their lunches and drive them to school. From there she would drive to her work at a local school. After work, she drove back to her mother's home to spend more time with her daughters and sometimes had dinner with them, but sometimes she would have dinner with T.B.W. On weekends she would often travel

to Wise Island with T.B.W.

- [37] She recalled that the couple was socialising with other couples during this time as a couple - often sending and receiving email invitations and other social communications as a couple and inviting guests to "our" home on West 6th Avenue.
- [38] T.B.W. periodically provided \$50-\$100 to support to A.J.E.'s daughter E. in the 2009-2010 school year. He employed her on a temporary basis to assist in one of the renovation projects he had underway at the West 6th Avenue property. In the spring of 2010, he offered to give A.J.E. \$30,000 as a gift from the proceeds of sale of one of his investment properties, but she refused to cash the cheque. She said she was not interested in his money.
- [39] A.J.E. testified that by early 2011 they "were very much in love with one another and merging our families together." She referred to several amorous emails that he sent to her in February 2011. I have added the emphasis in quoting from these and other of his emails to show that T.B.W. was conspicuously using the first person plural ("we" and "our") in some contexts and the first person singular ("I" or "me" in others).
- [40] While it is clear that they considered themselves to be in love at this time (both of them were saying as much to each other, for example, by ending their emails to each other with "love you" or the like) there is some suggestion in their contemporaneous email exchanges that they are not together as often as A.J.E. remembers. For example, T.B.W.'s email of February 15, 2011 concludes as follows: "I would like to spend more time together but we both have a daily live [sic]. That will come to an end soon." This suggests that the couple was planning to spend a great deal more time together in the near future, but they were not doing so yet.
- [41] The process of procuring a new boat for their sailing adventure began with an invitation to a retired boat broker whom T.B.W. knew at his sailing club. In an email to that individual dated January 9, 2011, T.B.W. stated that "our J35" (this was a reference to A.J.E.'s sailboat) has to go to the shop for repairs. The email went on to state that "we are looking to buy a boat" in the United States or the Caribbean and wished to discuss how to do so. The email concludes as follows: "We live in Kits and would like to have you over for a drink and snacks." After receiving a response, T.B.W. followed up with another email dated January 13, 2011, in which he stated as follows:

Our plan is to buy a cat (Catana, Dean or Outremer in the 44ft range). The money is in the bank, but there is a lot of packing up to do. I will be ready between April and August If we buy in the Caribbean should we wait till October to avoid the Hurricane season? Or buy it and sail North first? We would like some advice in regards to registering the boat in BC, but not bringing it to Canada.

- [42] After receiving a further reply, T.B.W. sent the next email in the chain on January 24, 2011. That one was, unlike the earlier ones, copied to A.J.E. and signed "[T.] and [A.]" rather than just "[T.]" After thanking him for his reply, T.B.W. added "Looking forward to meeting you at our home at W6th Ave "

- [43] The couple was apart later in February 2011 because T.B.W. travelled alone to Florida and Mexico to shop for boats. He sent an email to A.J.E. from Miami on February 20, 2011 in which he brought her up to date on his trip to the boat show and his impression of the boats that were on display there. He told her that it appeared that the ten year old catamarans "are more appealing to me (us)." The email concludes with this observation: "I a[m] just a little worried that we end up with a boat before I am ready emptying the house. All very exciting. Love you [T]."
- [44] After receiving a reply from A.J.E. on February 21, 2011 in which she enquired about which boat is his favourite so far, T.B.W. responded on February 23 to tell her that he had already put an offer on a boat (evidently without consulting her) but that transaction did not proceed.
- [45] T.B.W. returned to Vancouver from Florida on Thursday February 24, 2011. Soon after that, the couple flew together to California to shop for boats there. In an email dated February 27, 2011, T.B.W. updated A.J.E. on the boat shopping plans and invited her input. In the end, they went for a sea trial on a Catana sailboat which T.B.W. ultimately purchased.
- [46] The couple spent the weekend of March 11-13, 2011 skiing in Whistler and then went to St. Maarten from March 21 to 29, 2011, this time joined by T.B.W.'s son K., for a vacation and to continue the search for a boat.
- [47] By that time, T.B.W. was already exchanging emails with the boat broker with a view to negotiating terms for the purchase of the Catana sailboat in San Diego, copying A.J.E. The broker responded then and throughout the negotiation to "[T.] and [A.]." A.J.E. sent an email on March 31, 2011 responding to the broker on behalf of the couple. In mid-March, T.B.W. prepared a draft letter of intent for the purchase of the Catana sailboat. Before sending it to the broker, he forwarded it first to A.J.E. by email dated March 16, 2011. The email stated, "Hi [A.], any thoughts? comments corrections? Love You, T." By email dated April 10, 2011, as the terms of the purchase were being finalised, T.B.W. sent A.J.E. a "wish list" for accessories to purchase for the new boat, and again invited her input, which she provided by email dated April 11, 2011.
- [48] Once it was purchased in April 2011, the boat was registered in both T.B.W.'s and A.J.E.'s names - a total of 64 shares were split 32 each. Both of their signatures appear on the Buyer's Final Statement. They took out insurance in both their names for three years. T.B.W. filled in the forms using both names and one address (a post office box in Vancouver). He attached a "sailing resume" to the insurance application in which he listed his experiences sailing "our own J35" (this was a reference to A.J.E.'s sailboat) in the summers of 2008, 2009 and 2010. They continued to renew and extend the insurance coverage in their joint names at least as late as March 2014.
- [49] Her only financial contribution to the purchase of the boat was the chart plotter and a few other accessories.

- [50] After purchasing the boat, the couple sailed it to Mexico and obtained a permit to keep it in Mexico for ten years. They stored the boat at a marina in Guaymas, Mexico, and returned to Vancouver to make preparations for their sailing trip. This involved significant life changes. Among other things, they both quit their jobs.
- [51] The next trip they took was to Cuba, where they enrolled in Spanish language classes in September 2011 and travelled around the country for four weeks. They then flew back to Mexico. While they were away, they jointly wrote a blog for friends and family who wished to follow their travels. At the conclusion of that trip, T.B.W. flew back down to pick up the new boat in Guaymas, Mexico, and A.J.E. flew back to Vancouver to join her daughters, to deal with litigation involving her former spouse and to procure some supplies for the new boat. She flew back to Guaymas to join T.B.W. on October 17, 2011.
- [52] T.B.W. paid for A.J.E.'s three daughters to fly to Mexico to join them sailing in December and January 2012. A.J.E. recalled that her daughters were upset because T.B.W. and A.J.E. did not correct strangers who assumed they were married. She recalled that T.B.W. referred to her during that time as his "wife."
- [53] A.J.E. flew back to Vancouver on February 8-21, 2012. There, she did more shopping for the boat. She also dealt with one of T.B.W.'s tenants at his West 2nd Avenue property. A.J.E. described extensive dealings with that tenant, who was very unhappy with the state of the premises and the repair work that was being done. A.J.E. never met the tenant in person, however. A.J.E. testified that she collected rent and distributed rent receipts for one tenant who needed them for immigration purposes. She also connected with T.B.W.'s children and acted as a conduit to convey money to them from him.
- [54] T.B.W. remained in Mexico and arranged a long-term visa for himself. This was not necessary for A.J.E. because she planned to return to Vancouver regularly to be with her daughters. One source of contention between the parties was that A.J.E.'s children wanted her to be home with them more than she was. In an email she sent to T.B.W. on December 15, 2012, she stated: "I don't think that the kids don't like you, I think they don't like the fact that [I] am with you not them. But they need to be more independent and live there [sic] own lives."
- [55] The couple entertained guests on the boat in Puerto Vallarta over spring break, including one of A.J.E.'s daughters. A.J.E. returned to Vancouver in April 2012 for a few days to join her daughters for their birthdays, which fell close together. While there she also met with T.B.W.'s children.
- [56] They returned together to Vancouver at the end of May 2012, where they lived for a time on A.J.E.'s sailboat, which was later moved from False Creek to Galiano Island, near the Wise Island property. A.J.E. claims she found new tenants for that property at that time.

- [57] In early October, 2012, they travelled separately to Guaymas to collect the boat and resume their sailing adventure. They were joined for a time on that occasion by T.B.W.'s father. A.J.E. flew home again in December to be with her daughters for Christmas.
- [58] The emails between the parties during this period continue to suggest mutual affection. In one, dated December 31, 2012, he tells her that his goal for 2013 is "to get your smile back. What should I do? Love you, [T.]."
- [59] A.J.E. flew to Mexico to rejoin T.B.W. on January 7, 2013. Once again, she brought various accessories for the boat back with her. One of her daughters flew down to join them in March and another daughter in April, both flights at T.B.W.'s expense.
- [60] A.J.E. returned to Vancouver on June 10, 2013. T.B.W. joined her a short time later. The couple spent the summer living together at his house on West 6th Avenue and the cabin on Wise Island. While at the West 6th Avenue house, they lived downstairs while renovating the basement suite and the kitchen. A.J.E. claims to have contributed a significant amount of her own labour to this renovation, including ripping up carpet, preparing the floor for concrete, installing in-floor heating, removing old drywall, installing the boarding for the new drywall, replacing the drywall, replacing the bathroom medicine cabinet and mirror, scraping the bathroom tub, caulking the tub and installing new light fixtures. In the kitchen, she claims to have removed bricks, drywall, support beams and the old kitchen cabinets. This involved numerous shopping trips and trips to the dump. A.J.E. claims to have showed the suite at the West 6th Avenue address to prospective tenants. She testified that she would often clean out suites when tenants left. She spent one full day at the Richards Street apartment cleaning the stove.
- [61] At the cabin on Wise Island, she claims to have helped T.B.W. build the back bedroom and the addition to the shed, including installing drywall in the master bedroom and living room, replacing planking on the deck, moving the outhouse numerous times, cutting down trees, chopping wood, building a log dock, burning underbrush and branches and cleaning the wood stove. There were trips to Salt Spring Island to shop and get water and fill propane tanks. She also claims to have helped clean and paint the motor boat and to have assisted with the maintenance routine on the Catana sailboat.
- [62] The couple returned to Mexico on September 31, 2013 to resume their sailing adventures. A.J.E. returned to Vancouver in December 2013.
- [63] Over the winter break, T.B.W. received notice that a tenant at one of the West 6th suites was terminating the lease prematurely. A.J.E. claims that she spent two weeks showing the suite and finding new tenants. The emails adduced by A.J.E. show that T.B.W. was surprised that she had contacted the departing tenant directly and he asked her not to do so. In an email dated December 22, 2013, T.B.W. suggested that he was unhappy with the role she had been playing. He suggested the following division of labour would be more appropriate:

- I place the [ad] and screen the tenants. You show the suite and verbally interview the people make comments on the tenant information sheet so you can remember. Make pdf of the information sheets and email them to me. [Then] we select one.
- [64] In an email to a prospective tenant dated December 24, 2013, T.B.W. stated "I am out of town, but my partner [A.] will show you the suite on Dec 28, 2013 noon unless you hear from us otherwise."
- [65] A.J.E. flew back to Mexico to join T.B.W. in January 2014. They travelled to Guatemala, Honduras, Costa Rica and Panama. They decided to leave the boat in Panama for the summer. It appears there was growing tension between the parties on that trip and the relationship began to deteriorate.
- [66] By June 2014, the relationship was clearly ending. On June 22, 2014, A.J.E. flew from Panama to Vancouver and moved back in with her mother at her mother's new apartment in West Vancouver, where she shared a room with one of her daughters. In an email dated June 23, 2014, A.J.E. asked T.B.W. if he wanted her to ask her mother for permission for T.B.W. to join her there. T.B.W. replied the following day as follows: "I don't think it is working me staying at your mothers." She responded the same day as follows: "I would like you to try staying here and see how it goes I would like to be with you and stay where ever you are." T.B.W. responded that he would be staying instead with a friend. A.J.E. responded by email on June 25, 2014 that she would stay there with him and offered to pick him up at the airport. She expresses her love for him and promised to work on improving the relationship and not repeating previous "mistakes." To this, T.B.W. responded simply that in his view it would be best if he took a taxi home himself. In answer to her further entreaties and promises to change for his sake, he was more blunt:
- I don't want you to change. You are who you are. I am who I am. I had some good time [sic] with you. However I think the relationship has fizzled out. .. It is time to move on. The kids still need you.
- [67] They appear to have spent one night together in July 2014 when A.J.E. was invited over by friends who were hosting T.B.W., but an incident occurred that led to a further quarrel. T.B.W. invited her to Wise Island later in July to join another couple for dinner. On August 22, 2014, however, T.B.W. sent her an email to say that "the love is gone" and that he intended to sail for the next season without her. By November, he was refusing even to speak with her again.
- [68] A.J.E. had difficulty with the breakdown in the relationship. She spent the next few months in a state of depression. She was seeing a psychiatrist weekly and taking anti-depressant medication. Later that summer, she was involuntarily admitted to a hospital for a short period to deal with her mental health issues.

- [69] She testified that T.B.W. was both physically and verbally abusive towards her during the relationship and she felt compelled to do what he told her, which is why it took her so long to commence proceedings, and why she discontinued proceedings and started them again.
- [70] The litigation between the parties began when T.B.W. filed a claim on March 18, 2015 seeking to have her name removed from title to the boat following her refusal to sign a bill of sale doing so. She responded with a claim of her own under the Act, filed on April 9, 2015, in conjunction with which she filed certificates of pending litigation on title to T.B.W.'s properties on West 6th Avenue, West 2nd Avenue, and Wise Island (she had also tried to file on Richards Street but by then the property had already been sold). At the request of T.B.W., she discontinued that claim on September 3, 2015 and removed the associated certificates from title.
- [71] During this period, A.J.E. urged T.B.W. to join her in getting counselling from a relationship therapist. Although he agreed for a time to attend, there is some dispute about the purpose of that exercise. She thought they were trying to renew their relationship, but his view was that they were working on an orderly parting of the ways. During this time, it appears that they were both trying to manipulate each other: T.B.W. was promising her, with questionable sincerity, that he would try to work on improving their relationship provided she signed the cohabitation agreement he had drafted, the revised bill of sale on the Catana sailboat removing her from title or later the discharges for the certificates of pending litigation that she had filed on title to his properties when she commenced her first action in April 2015. A.J.E., on the other hand, told T.B.W. that she would sign those things if he resumed the counselling sessions with a view to trying to rekindle the relationship, something he no longer wanted.
- b. E.E.
- [72] E.E. is now 26 years old. Her impression of the couple's relationship when they were together was that of a "committed couple." They shared a bedroom wherever they went. They introduced each other as "partner" and later as "spouse." While travelling with them in Mexico, she overheard T.B.W. introduce A.J.E. several times as his "wife." When asked at a restaurant whether A.J.E.'s children were his, T.B.W. responded "good enough." A.J.E.'s daughters discussed these events and became concerned that perhaps the couple had already eloped. They asked A.J.E. if she had indeed eloped with T.B.W. and she assured them that she had not and that she would tell them if she did.
- [73] She testified that she thought of T.B.W. at the material time as if he were her stepfather. He was supportive and paid for their holidays, gave her presents for her birthday and at Christmas. He provided her with some financial support while she was in university.

- [74] She occasionally visited the houses on West 6th Avenue and Wise Island between 2008 and 2013 and recalls seeing her mother's effects there (clothing, purse, toiletries in the washroom, etc.). There were also a few occasions when she saw T.B.W. in the morning at A.J.E.'s mother's home in West Vancouver.
- [75] She recalled A.J.E. spending five nights a week in Kitsilano. She thought their cohabitation seemed "official" after they returned from Antigua, particularly after O. moved into A.J.E.'s bedroom in West Vancouver. At that time, however, she was already in school at the University of Victoria and would not have been present at the West Vancouver home on an ongoing basis.
- [76] She first met K. and A.W. during an Easter weekend at Wise Island when the children were invited there. She recalled that they woke up one morning to find the parents had disappeared to Salt Spring Island and left them behind. She recalled that K. and A.W. were dividing their time between their two parents, and she therefore saw K. only occasionally during this period.
- c. O.E.
- [77] O.E. remembered meeting T.B.W. for the first time when he accompanied them on a walk with their dog in West Vancouver. She recalled her first visit to Wise Island in March 2008 when she went with just A.J.E. Her next trip was over the Easter weekend in 2008 when A.J.E., her three daughters and T.B.W.'s two children all spent the weekend together. She too remembered the parents having disappeared to go to Salt Spring to get groceries, leaving the children alone.
- [78] She recalled seeing K. and A.W. next over Christmas 2008, when they came to A.J.E.'s home for Christmas dinner.
- [79] She described the sailing trips that the family took with T.B.W. to Desolation Sound and around Vancouver Island and the vacations to Cuba, Antigua, and Mexico.
- [80] She too thought that A.J.E. and T.B.W. appeared to be a married couple. They always shared a bedroom. She recalled an incident at a restaurant in Mexico when someone asked T.B.W. if they were his wife's kids, and he answered "something like that." This upset her as she had not heard it before. She recalled confronting A.J.E. about whether they had eloped, and being assured that they had not.
- [81] She recalled that when A.J.E. returned from Antigua in January 2011, A.J.E. had moved all of her clothes, shoes and jackets and 90% of her effects to T.B.W.'s house in Kitsilano. She recalled that she was not getting along with her grandmother at the time and decided to move into A.J.E. vacant room in the house for a period of approximately two years.

- [82] She recalled T.B.W. attending one of her birthday parties and exchanging gifts with him. She recalled seeing him "a few times a month" in the morning at the West Vancouver home, but she thought A.J.E. was at the Kitsilano home more often than he was at the West Vancouver home.
- [83] She realised A.J.E. had moved out after the couple returned from Antigua. From then on, she saw her at home less and less often, so eventually, she just took over her mother's old bedroom. She recalled having to eat dinner alone most nights.
- [84] In February when T.B.W. was in Miami, A.J.E. stayed with O. in her bed and did not sleep in her old bedroom.
- [85] O.E. recalled seeing her family's old bed linens in a cupboard at Wise Island. She observed that A.J.E. knew how to run the propane heater, the water system, the toilets and gas stove.
- [86] She thought T.B.W. and A.J.E. seemed like a married couple. They held hands and kissed hello and goodbye. They said "I love you" when parting. She thought of T.B.W. as her stepfather.
- [87] She recalled watching the tenant's cats while A.J.E. showed the main floor suite of the West 6th Avenue house. She recalled sometimes using the pool at the Richards Street apartment.
- d. T.B.W.
- [88] T.B.W. came to Canada in 1980 from Switzerland. He had been an architect in Switzerland but was unable to obtain the equivalent professional designation in Canada.
- [89] At the time he met A.J.E., he was working with an architectural firm doing project management. His salary was approximately \$60,000 per year. He received most of his income from rentals from the investment properties he owned.
- [90] He recalled being impressed by A.J.E.'s sailboat when he saw her profile on the online dating service through which they met.
- [91] As they began dating more seriously, he recalls that A.J.E. stated that she wanted to maintain "parallel families", which he thought was appropriate. In that period, A.J.E. lived in West Vancouver and he lived in Kitsilano. He had an arrangement with his former spouse splitting parenting time with the children, one week on one week off. His impression was that A.J.E. had her children and her dog and when neither wanted to see her, she would call him.
- [92] He testified that he was not aware of the legal implications of entering into a marriage-like relationship or the promulgation of the Act. He recalled A.J.E. assuring him that she was not after his money and that in their relationship, "what is mine is mine and what is your is yours." He never disclosed his financial situation to her until after their relationship had already ended.

- [93] He denied ever referring to A.J.E. as his spouse or wife. On the contrary, he recalled correcting people when they wrongly assumed they were married. He recalls the couple only calling themselves boyfriend and girlfriend. Occasionally they might have used the term "partner" because that is more age-appropriate.
- [94] He denied asking A.J.E. to move in with him when they returned from Antigua. He asserted that would have been unlike him and he would have insisted on having sufficient time to plan for it. As he recalled it, she would come and go occasionally during that period. She was at his home perhaps two or three times per week, and then usually arriving only late at night, after he had already watched the 10:00 p.m. news.
- [95] He explained the email to the boat broker inviting him to come to "our" house as the product of English being his second language.
- [96] He recalled that A.J.E.'s daughters were very needy which led to conflict between them very early on in their relationship. He thought they might get together twice a week when his own children were with their mother.
- [97] He offered to take A.J.E.'s children on vacation because he felt they were underprivileged and wanted to expand their horizons. This was possible for him because he had unexpectedly inherited a significant amount of money in 2000 from a friend of the family in Switzerland.
- [98] He had been planning to quit his job and go sailing for some time before he did so after turning 55. As with many of their travels together, he developed the plan for a trip himself and A.J.E. asked to come along, so he agreed.
- [99] He was not aware that she would be leaving her job permanently when they made their sailing plans. He thought she could return to her job when they came back. He was also uneasy about how she was leaving her daughters alone and did not encourage her in that regard. As soon as they left, he recalled that A.J.E. began receiving emails from her daughters asking when she would be returning, so he felt badly and offered to fly them down to join them. When they were there, he felt left out.
- [100] At first, their arrangement was that he would pay all expenses on his boat and she paid expenses on hers, with some exceptions. They would split groceries 50/50. He agreed to pay for A.J.E.'s flight home because she was going to bring back supplies for the boat.
- [101] He put title to the Catana sailboat in both their names because someone had recommended to him so that it would be easier, if he did so, to move the boat later in the event that something untoward happened to him. The split of 32 shares each was recommended by a broker. T.B.W. simply nodded when that proposal was made and he says he did not think about it.

- [102] He recalled feeling some frustration with A.J.E.'s efforts on the boat, but on the whole, the first season was a positive experience for them. When they returned to Vancouver for the summer of 2011, A.J.E. went back to live with her mother and daughters in West Vancouver. At first, he tried sleeping on A.J.E.'s sailboat but found it too cold and uncomfortable so he went to stay with a friend. By his account, he saw A.J.E. during this period primarily when they went to Wise Island, which they did for two weeks. He had to stay in town for most of the summer to deal with his investment properties. He recalls receiving no help from A.J.E. in this regard during that time.
- [103] He was hesitant in inviting her for a second sailing season, due to what he thought were her shortcomings as a sailing companion. He thought she needed to become more proficient in tying knots. He was also unhappy with her level of untidiness. He recalled doing most of the sailing while she was lying in the sun and socializing, leaving him feeling isolated and without company. He says he complained to her about this often.
- [104] He denied that A.J.E. did any significant work on the rental properties. He had done the work himself historically but in this period was relying on a handyman whom he employed for the purpose, who did good work for a reasonable price.
- [105] During the renovations at the West 6th Avenue property in the summer of 2013, A.J.E. spent perhaps half an hour moving a beam, by his estimate. He got up early to work with the trades, while she slept in past 9:00 a.m. and would walk through the work site only to disappear to West Vancouver. He conceded that she may have helped lifting things or with other minor tasks, but he insisted that she never put in a full day of work.
- [106] At the cabin on Wise Island, A.J.E.'s main contribution was to help trim a tree. The shed extension was done by K. and him over a weekend with little or no assistance from A.J.E. The addition to the shed was not for her sailing equipment, as she had testified, but rather for the books in his suite when it was rented out.
- [107] The first summer they spent together did not go well by his account. A.J.E. had different expectations for the relationship. She showed up at his home only occasionally when it suited her. He considered looking for someone else to sail with him for the forthcoming winter sailing season, but he did not have enough time. He raised this with her and she promised to improve, but her behaviour did not change.
- [108] He denied asking her to make a permanent commitment to their relationship. The commitment he had in mind was rather about sailing. One cannot abandon a sailing partner mid-cruise at a port, hence the need for a certain level of commitment. He told her he did not want to marry again and according to him, she agreed with that.
- [109] While he denied being abusive in the relationship, he admitted that he struck her once. He could not recall the provocation. He was shocked when she raised her allegations of abuse in the context of the litigation, after the relationship was over.

[110] In the summer of 2014, T.B.W. had to update his will because it still made provision for his ex-wife. He asked A.J.E. to pick a number for him to insert into his new will as a gift to her. He was shocked when she replied that she thought "one third" would be fair. On another occasion he asked her to tally the expenses of her daughters who were attending university. She took that to mean that he would undertake to pay some of those. By his account, he was merely looking to compare what his own children were costing him and what contribution he could reasonably expect from them and his ex-wife.

e. K.W.

[111] K.W. is T.B.W.'s son. He is now 23 years old. He recalled first meeting A.J.E. during the Easter weekend on Wise Island in 2008. At that time, T.B.W. introduced her as his girlfriend. He recalled seeing her next at T.B.W.'s home. He recalls her travelling with him on several family vacations over the next few years.

[112] Until 2010, both of his parents shared equally in their parenting time with him. In 2010, he stayed exclusively with his mother but then moved in with his father over the Christmas holidays of 2010 and resided exclusively with him until the end of his grade 12 year in the spring of 2011. At that time, T.B.W. left the country and K.W. moved to the interior.

[113] While staying with his father, he lived on the top floor of the house at West 6th Avenue property. He recalled there being three bedrooms on that floor. One was his, another was occupied by his father, and occasionally, A.J.E. He recalled A.J.E. staying at their house in that room perhaps once or twice a week on weekdays, and on weekends occasionally. On weekdays he would generally wake up between 7:45 a.m. and 8:15 am.

f. C.K.

[114] C.K. was a former colleague of T.B.W. She has known him since 2001. She invited T.B.W. to stay at her home after T.B.W. and A.J.E. returned for the summer from their sailing trip in the spring of 2012. She had first met A.J.E. some time before that. She recalled that T.B.W. referred to A.J.E. as his "girlfriend." At that time, they were not living together and were living separate lives.

[115] When T.B.W. was staying as C.K.'s house guest between June and September 2012, A.J.E. came over for dinner and to stay overnight occasionally.

[116] She joined T.B.W. and A.J.E. on their boat in Mexico in November and December 2012. She noticed that the couple was arguing frequently about sailing tasks.

[117] It was forcefully put to C.K. in cross-examination that she was mistaken about the year that T.B.W. stayed with her. She maintained that it was 2012.

[118] She also recalled speaking with a very distraught A.J.E. after the breakup with T.B.W., and suggesting counselling to her.

g. D.S.

- [119] D.S. was T.B.W.'s accountant during the material time. T.B.W. has been a client of D.S.'s firm since 2007 and of D.S.'s personally since 2008.
- [120] D.S. explained the process that he would go through in preparing and filing T.B.W.'s tax returns each year. The returns were filed electronically and on time (i.e., by April 30) every year. In the time he has worked for him, T.B.W. has always filed his returns as "divorced."
- [121] D.S. described the process he went through to gather the documents from his files that were produced to A.J.E. in this litigation. The 2011-2013 assessments that showed T.B.W.'s status as "common law" were downloaded from the CRA website.
- [122] D.S. did not recall having a discussion with T.B.W. about changing his personal status on his tax return from "divorced" to "common law" and his records would have shown such a change. He was therefore unable to explain why the assessment notices that were obtained online from CRA showed that change. D.S. explained that the online records showing the change were not the originals that were mailed to T.B.W. D.S. retrieved his copies of T.B.W.'s tax returns as filed for the years 2008-2013 and they all showed that he had filed as "divorced." He was not able to retrieve the original notices of assessment as mailed by CRA for any years prior to 2015 and 2016 before his testimony, because they were in off-site storage.

iii. Conclusions on marriage-like relationship

- [123] In some cases, it can be obvious that the parties are living in a marriage-like relationship. In others, it can be very difficult to discern whether a couple's relationship is truly "marriage-like" or something less than that, and if so, when that elusive line was crossed. This case falls in the latter category.
- [124] The application of the traditional test is complicated here by the nature of the lifestyle that the parties had chosen for themselves during the material time and for the foreseeable future. They had left their jobs to spend more than half the year sailing. Both of them had children who were becoming or already adults. When T.B.W. spoke about needing a commitment from A.J.E. in such circumstances, it is possible that he was referring only to the kind of commitment that seasonal sailing partners would make to one another for the duration of the season. It is also possible that he would have told her after coming out of a divorce that he was not interested in getting married again and that A.J.E. was sufficiently content in the relationship as it was that she would not want to force the issue. It is likely that she signalled to him that she was not materialistic and not interested in his money. Complicating matters further is the fact that the parties started this relationship before the Act came into force and changed the legal consequences of being in such a relationship.
- [125] A.J.E. says it is easy to find a marriage-like relationship here because of his admissions - both in contemporaneous discussions and emails and his conduct, such as the declarations he made on his tax returns.

[126] A.J.E. points to admissions that they were living "common law" both in their counselling sessions and in his emails to her. First, she refers to an email dated August 12, 2015 in which T.B.W. stated as follows:

until we went sailing we were not common law. You lived with your daughters in West Vancouver. Your principal residence was in West Van and on and on. So what changed when we sailed together. Your principal residence was still in West Van, mine in Kits. I think a common law relationship is when you live together as a couple in a residence and help each other increase the family assets. You did not of that. You and your daughter just profited from my generosity....
[emphasis added.]

[127] Despite the first sentence, when the entire email is read in context, it is clear that there is no clear admission that the parties were ever living common law in T.B.W.'s view, at least at that stage. Of course at that stage, he would already have had his litigation antenna up.

[128] In addition, A.J.E. points to an email he sent her on August 19, 2015 in which he said, "you have to prove that we had a common law relationship that will not be impossible under our circumstances." Looking at the email in context, however, I am satisfied that this was a typographical error and not an admission, as T.B.W. testified.

[129] Nor am I able to discern any admission in how T.B.W. filed his tax returns. It appears most likely, in light especially of D.S.'s evidence, that it was A.J.E. who declared herself on her returns as living in a common law relationship, that the entry on T.B.W.'s assessment was a mechanical reaction by CRA to that filing and that T.B.W. himself never knew about, let alone condoned it. If that is so, however, it does say something about A.J.E.'s state of mind at the time. I find that she at least believed they were living in a marriage-like relationship throughout the relevant period. I am not prepared to find, as was suggested in argument, that A.J.E. contrived to file her returns in this way with a view to manufacturing evidence for an action she was then planning to bring against him later.

[130] Although there was clearly discussion about a long-term sailing partnership, it is not entirely clear what, if anything, was contemplated for the couple after that. A.J.E. argued that the only reason they had not got married was because neither of them was religious. But this ignores the possibility of a civil ceremony, and A.J.E. did not have a good explanation for why that prospect was ruled out if their intention really was to marry.

[131] Nevertheless, even couples who do get married do not necessarily map out their plans in the long term. There are abundant indicia in the evidence to suggest that the parties were living in a marriage-like relationship, apart from their "formal" living arrangements. I accept A.J.E.'s evidence about the conversation she described in late 2010 while sailing in Antigua, which changed the nature of their relationship from then on, to render it more marriage-like. That is also consistent with the perspective of A.J.E.'s two daughters, whose evidence I generally accept on this point, although I must allow for the fact that they have an obvious inclination to adopt A.J.E.'s view of events.

- [132] In any event, there is abundant evidence to show that the couple was, after that point, more committed to one another than would be the case in a conventional "dating" relationship. For example, it would have been highly unusual for one partner in a conventional dating relationship to fly the other partner's family to the tropics for "family" vacations, not just once but multiple times. Also, it would be difficult to explain why T.B.W. engaged A.J.E. so intimately in the process of buying the Catana sailboat, a USD\$225,000 investment, if he were not making a commitment to her of indefinite duration in that regard.
- [133] I am unable to accept T.B.W.'s dismissive description of their relationship in its heyday. The contemporaneous emails make clear that the couple was in love and that their love was deeply felt and mutual. His post facto reconstruction of the relationship even during this period has her doing nothing right and constantly irritating him. That cannot have been the whole story. If it were, the relationship would not have lasted as long as it did. I find that the relationship must have been much deeper and he more committed to it at the time than how he described it at trial.
- [134] Counsel for T.B.W. argues that "[t]his is not a case which can be proven on emails." A.J.E.'s case does not rest on emails alone, however. The case is also made out on the objective facts. For example, the undisputed evidence was that T.B.W. put the Catana sailboat in both names and solicited her advice and input at every stage, including the terms of sale. This was a project that the couple were obviously engaged in together. Such behaviour tends to give the relationship the appearance of a marriage, rather just a more casual dating relationship. I also accept the evidence of A.J.E. and her daughters that the couple was acting and presenting themselves to the world as if they were husband and wife, even if they were not willing to get married formally.
- [135] Another factor that I have considered in concluding that the parties were living in a marriage-like relationship is the degree of A.J.E.'s involvement in the maintenance and renovation of his properties and in procuring and managing the tenants. Here too, I find that T.B.W. has unfairly understated her involvement and the extent of the work she performed. I also accept, however, that A.J.E.'s account of her own contributions is at least partly exaggerated and that the truth probably lies somewhere in the middle.
- [136] Although they were acting in many respects as husband and wife, I am not convinced that A.J.E. had actually moved into T.B.W.'s home on West 6th Avenue permanently in January 2011. I make that finding despite T.B.W.'s email to the boat broker in that month referring to that house as "our home". I find that was indicative of his and their marriage-like state of mind rather than the physical reality of their actual living arrangements at the time. I generally accept the evidence of C.K. and K.W. on this point.
- [137] But the authorities are clear that the parties can be living together in a marriage-like relationship without necessarily living under the same roof: *Coupar v. Roh*, 2014 BCSC 1392; *Kirkthanasatit v. Lount*, 2016 BCSC 599 at para. 39. I find that is what was occurring during this period.

[138] In summary, I find the parties were living in a marriage-like relationship from January 2011 to June 2014.

C. Property Division

i. Legal Framework

[139] Having succeeded in establishing that she and T.B.W. were living in a marriage-like relationship from January 2011 to June 2014, A.J.E. is entitled to division of the "family property." That term is defined in s. 84 of the Act as follows:

Family property

84 (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
 - (i) property that is owned by at least one spouse, or
 - (ii) a beneficial interest of at least one spouse in property;
- (b) after separation,
 - (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either, or
 - (ii) a beneficial interest acquired by at least one spouse in property if the beneficial interest is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either.
- (2) Without limiting subsection (1), family property includes the following:
 - (a) a share or an interest in a corporation;
 - (b) an interest in a partnership, an association, an organization, a business or a venture;
 - (c) property owing to a spouse
 - (i) as a refund, including an income tax refund, or
 - (ii) in return for the provision of a good or service;
 - (d) money of a spouse in an account with a financial institution;
 - (e) a spouse's entitlement under an annuity, a pension plan, a retirement savings plan or an income plan;

- (f) property, other than property to which subsection (3) applies, that a spouse disposes of after the relationship between the spouses began, but over which the spouse retains authority, to be exercised alone or with another person, to require its return or to direct its use or further disposition in any way;
- (g) the amount by which the value of excluded property has increased since the later of the date
- (i) the relationship between the spouses began, or
- (ii) the excluded property was acquired.

(2.1) For the purposes of subsection (2) (g), any increase in value of a beneficial interest in property held in a discretionary trust does not include the value of any property received from the trust.

- (3) Despite subsection (1) of this section and subject to section 85 (1) (e), family property includes that part of trust property contributed by a spouse to a trust in which
 - (a) the spouse is a beneficiary, and has a vested interest in that part of the trust property that is not subject to divestment,
 - (b) the spouse has a power to transfer to himself or herself that part of the trust property, or
 - (c) the spouse has a power to terminate the trust and, on termination, that part of the trust property reverts to the spouse.

[140] Not included within "family property" is "excluded property" which is defined in s. 85 as follows:

Excluded property

85 (1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
- (b) inheritances to a spouse;
- (b.1) gifts to a spouse from a third party;
- (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
- (d) money paid or payable under an insurance policy, other than a policy respecting property, except any portion that represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;

- (e) property referred to in any of paragraphs (a) to (d) that is held in trust for the benefit of a spouse;
- (f) a spouse's beneficial interest in property held in a discretionary trust
- (i) to which the spouse did not contribute, and
- (ii) that is settled by a person other than the spouse;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

[141] In the circumstances of this case, all of the assets of T.B.W. were either acquired prior to the relationship or were acquired using such assets, and are therefore excluded property. It follows that A.J.E. is entitled under s. 84(2)(g) of the Act to the increase in value of those assets from the date that the relationship began or the excluded property was acquired, whichever was later.

[142] For purposes of assessing values of the real property assets, I have relied on the evidence I have before me, which for the investment accounts consists of accounts statements and, with respect to the real property, consists, for the most part, of property assessments. While such assessments are not optimal evidence of market value, our courts have found them to be admissible and of some use in determining the value of property in family cases, either where the parties agree on the value or where there is no other evidence available: see *Chung v. La*, 2011 BCSC 1547 at paras. 77-83; *Dosanjh v. Liang*, 2015 BCCA 18 at paras. 60-61; *C.H.T. v. P.V.L.*, 2015 BCSC 419 at para. 126; *Lawrence v. Mulder*, 2015 BCSC 2223 at para. 95. In *Dosanjh*, the Court noted that:

[60] While trial courts have, with some frequency, admitted property assessments as evidence of property value in family law cases, they have generally done so either with the agreement of the parties, or, alternatively, where no other evidence of value has been tendered (e.g. *Chung v. La*, 2011 BCSC 1547). Where proper expert evidence of value has been tendered, the courts have been reluctant to consider property assessments as evidence (see, for example, *Hall v. Mougan*, 2009 BCSC 645).

[61] In family law cases, a court is often faced with having to assess the value of real property in a situation where neither side is clearly subject to any burden of proof. Rather, the court is simply required to estimate the value of property for the purpose of dividing a family asset. It is not surprising, in such situations, that a court may "grasp at straws" in an attempt to reach a just result. It is simply a matter of doing the best job possible with limited evidence.

ii. Valuation date

[143] T.B.W. urges me to use the separation date rather than the trial date as the date for valuation of the family assets, relying on s. 87 of the Act. That provision states as follows:

Valuing family property and family debt

87 Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,

- (a) the value of family property must be based on its fair market value, and
- (b) the value of family property and family debt must be determined as of the date
 - (i) an agreement dividing the family property and family debt is made, or
 - (ii) of the hearing before the court respecting the division of property and family debt.

[144] I agree that there is a proper basis here to use the separation date rather than the trial date for this purpose. This matter took much longer than it should have to get to trial, for a variety of reasons. One of those reasons is that A.J.E. initially started an action against T.B.W. and then discontinued it. Admittedly, this was at least partly due to T.B.W.'s manipulative behaviour in leading her to believe that he might be willing to work with her on reconciling. But I do not find that this or his violent behaviour towards her during the relationship played a significant role in the timing of the litigation, however.

[145] Another reason to use the separation date of June 2014 as the valuation date is the lack of any contribution by A.J.E. to the increase in the value of the assets after that date. In *Slavenova v. Rangelov*, 2015 BCSC 79, the following grounds were cited as the basis for using the separation date as the valuation date in that case (at paras. 51-54):

D. The Appropriate Valuation Date

[51] As previously mentioned, s. 87 of the FLA provides that, unless an agreement or order provides otherwise, the value of family property or family debt must be determined according to fair market value as of the date of an agreement dividing family property and debt or as of the date of hearing before the court.

[52] It is generally agreed that the various real property assets at issue in this proceeding have gone up in value since separation. It is also the case that the claimant has been solely responsible for the preservation and maintenance of those properties, and has paid down debt. In this case, immediately after separation the respondent left for Bulgaria. As all of the family property was either in Canada or the United States, the claimant has managed all of the family property since separation, paid the mortgages, paid taxes, arranged rentals, and collected the rents. These efforts of the claimant were of value.

[53] In *K.M.J. v. J.H.D.N.*, 2014 BCSC 1895 at paras. 155-156, and *Bilawchuk v. Bilawchuk*, 2014 BCSC 2067 at paras. 59-63, the issue of how to account for a party's contributions post-separation was addressed in the context of family debt. In short, the FLA provides two

alternate routes to address potential unfairness that may arise from a party's post-separation contributions, namely s. 87 and s. 95. Under s. 95 a court can order reapportionment to address any "significant unfairness" that may arise from an equal division of property and debt in light of the spouse's post-separation contribution. Alternatively, under s. 87 the Court may depart from the date of hearing or agreement as the valuation date.

- [154] I have already determined that the parties do not have an existing agreement with respect to family property and debt. Similarly, I find that there is no agreement providing for an alternate valuation date than that contemplated by s. 87, which in the circumstances is the date of the hearing before the court. However, I find that in the circumstances it is appropriate for me to order under s. 87 that the parties' real property should be valued at the date of separation, rather than at the date of trial.
- [146] A similar approach was followed in *Davie v. De Mark*, 2017 BCSC 872 at paras. 168-169:
- [168] The claimant made no contributions to Beatty Street post-separation, financial or in-kind. It is the respondent who has borne the whole of the debt since then. On the evidence, the rise in value between separation and trial is predominantly due to market trends. And, the increase has been rapid: reaching \$145,000 in just 16 months.
- [169] I hold that the appraised value for use in assessing the claimant's interest in Beatty Street should be \$775,000, as at December 20, 2015. For the reasons provided, to rule otherwise would result in significant unfairness to the respondent. The difference in Beatty Street value from the start of the parties' marriage-like relationship and separation is therefore \$120,000.
- [147] As in those cases, the increases in value here between the separation date in June 2014 and the trial date are attributable entirely to passive, market-based forces or to T.B.W.'s paying down the mortgages. It was T.B.W. who maintained these assets and paid all of the debts associated with them following the separation.
- [148] I therefore set the valuation date as the date of separation, i.e., June 2014.

iii. Assets subject to division

a. The Catana sailboat

- [149] Although the Catana sailboat was purchased in the names of both parties, it is not appropriate to apply the common law presumption of advancement, whereby a husband who has paid for an entire asset alone may be presumed, where title is shared, to have given a gift of the other half to his wife. First, it is doubtful that the presumption applies as between common law, as opposed to married spouses: *H.C.F. v. D.T.F.*, 2017 BCSC 1226 at paras. 126-129. In any event, where, as here, a jointly-owned asset was acquired using excluded property, the statutory exception applies and the asset is to be treated as excluded property: see *K.R. v. J.D.*, 2017 BCSC 182 at para. 38 and *Kuhberg v. Hall*, 2015 BCSC 2230 at paras. 101-109. A.J.E. is therefore entitled only to the boat's increase in value, if any, during

the relationship pursuant to s. 84(2)(g) of the Act.

[150] The boat was purchased in April 2011 for USD\$225,000. I accept that its value has decreased since then, which means that there is no increase in value between its purchase in April 2011 and June 2014 to be divided and awarded to A.J.E.

b. Property on Richards Street

[151] T.B.W. purchased this property in 2008 for \$519,000 and sold it in March 2015 for \$525,500. When it was sold in 2015, T.B.W. declared a loss on the property in the amount of \$20,144.37. The only evidence to reflect the property values at the relevant times in question, January 2011 and June 2014, are the property assessments.

[152] Because property assessments reflect an estimated market value as of July 1 in the year the assessment was conducted, it is difficult to say what the value of the property was precisely in January 2011. The 2011 assessment set the value as of July 1, 2010 at \$513,000 while the 2012 assessment set the value as of July 1, 2011 at \$541,000. The June 2014 value is essentially the assessed value from the 2015 assessment, which shows a value of \$528,000 as of July 1, 2014. This clearly reflects an increase from the July 1, 2010 value but a decrease from the July 1, 2011 value. Given the fact that this property was eventually sold for a loss and that the mean value between the 2011 and 2012 assessments ($541,000 - 513,000 = 28,000 / 2 = 14,000 + 513,000 = 527,000$) is roughly equal to the June 2014 value, I find that there is no increase in value between January 2011 and June 2014 to be divided and awarded to A.J.E.

c. Property on West 2nd Avenue

[153] T.B.W. purchased this property in 2009. The only evidence available with respect to the value of the property in January 2011 and June 2014 is found in the property assessments.

[154] In this case, it is unnecessary for me to find the precise value of this property as of January 2011. The 2011 assessment provides a value for July 1, 2010 of \$395,900. The 2012 assessment provides a value for July 1, 2011 of \$399,200. The approximate value of the property in June 2014 would be essentially the same as the 2015 assessed value (\$371,900), which corresponds to the assessed value as of July 1, 2014. It is clear that the property has declined in value between the relevant dates and therefore there is no increase in value to divide and award to A.J.E. with respect to this property.

d. Property on Wise Island

[155] T.B.W. purchased this property in or prior to 2000. Its assessed value in 2011 was \$367,300, in 2012 it was \$347,200 and in 2015 it was \$338,600. On that basis, I find that this property too declined in value during the relevant period. Therefore, there is no increase in value between January 2011 and June 2014 to be divided and awarded to A.J.E.

e. Property on West 6th Avenue

- [156] T.B.W. purchased this property in or prior to 2000. A historical appraisal was provided for this property that estimated its value as of January 2011 at \$1,325,000. I accept this as the best evidence of the value of this property at that time. No historical appraisal was provided to assess the value as of June 2014; but its approximate value as of June 2014 would be similar to the 2015 assessed value (\$1,351,700).
- [157] This means that there was an increase in value between January 2011 and June 2014 of approximately \$26,700. There were two mortgages placed on the property between January 2011 and June 2014. The first mortgage had a balance of \$293,161.60 on January 5, 2011 which was reduced to \$248,139.30 by June 5, 2014, which results in an additional increase in value in the amount of \$45,022.30. The second mortgage had a balance of \$367,100.32 on January 24, 2011 which was reduced to \$336,166.42 by June 23, 2014, which results in an additional increase in value in the amount of \$30,933.90. The total increase in value between January 2011 and June 2014, taking into account the value of the property and the decrease in the mortgages, is \$102,656.20.
- [158] The second mortgage on this property was paid out on October 7, 2014, but a mortgage of corresponding value was registered against the Richards Street property. T.B.W. sold this property in September 2015 and put the net proceeds of \$1,519,659.84 into his investment accounts.

f. Investment Accounts

National Bank Account #1

- [159] The value of this investment account was \$184,828 on December 31, 2010 which I accept as the value of the account in January 2011. This account was changed in August 2013 to an RRSP account, the value of which \$233,394 as of June 30, 2014. The total increase in value between January 2011 and the end of June 2014 is therefore \$48,566.

National Bank Account #2

- [160] The value of this account was \$358,735 on December 31, 2010, which I accept as the value of the account in January 2011. In April 2011, USD\$225,000 (\$274,376 CAD) was withdrawn from this account to purchase the Catana sailboat referred to above. The last statement provided is dated June 30, 2013, which shows a total value of \$2,159. I accept that because there were no further transactions in the account after July 31, 2013, the value of the account is now zero. Therefore, I find that there was no increase in the value of this account between January 2011 and June 2014 to be divided and awarded to A.J.E.

National Bank Account #3

[161] The value of this account was \$449,176 on December 31, 2010, which I accept as the value of the account in January 2011. In April 2011, \$112,000 was withdrawn by the respondent to pay his personal, pre-relationship income taxes. The value of this account in June 2014 was \$827,840 as of May 31, 2014 or \$834,203 as of June 30, 2014. Therefore, after accounting for the \$112,000 used to pay the respondent's personal income taxes, the increase in value between January 2011 and June 30, 2014 is \$497,027.

Odlum Brown Canadian Account

[162] The value of this investment account was \$732,784.36 on December 31, 2010, which I accept as the value of the account in January 2011. The value of this account was \$304,177.18 on June 30, 2014. Therefore, there is no increase in value in this account to divide and award to A.J.E.

Odlum Brown TFSA

[163] This tax-free savings account was opened in February 2011 and therefore there was a zero balance in January 2011. It had a value of \$41,459.51 on June 30, 2014. Therefore, there was an increase in value of \$41,459.51 in this account between January 2011 and June 2014.

Odlum Brown USD Account

[164] The value of this investment account was USD\$200,101.69 as of December 31, 2010. It had a value of USD\$277,104.67 on June 30, 2014. Therefore, there was an increase in value of USD\$77,002.98 in this account. At the material time (June 30, 2014), the US and Canadian dollars were trading approximately at par, so I will treat that sum as a Canadian dollar figure without the need for conversion.

ScotiaMcLeod Wealth Accounts

[165] T.B.W. closed several of the above accounts in September or October 2014 and opened several new ScotiaMcLeod Wealth accounts. Because I have set the valuation date as of June 2014 rather than the date of trial, it is unnecessary to address any accounts opened after that date.

iv. Unequal division of assets

[166] The total of the family property to be apportioned is \$766,711.69.

[167] T.B.W. applies under s. 95 of the Act for an unequal division of family property. That provision states as follows:

Unequal division by order

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[168] I am satisfied that an unequal division is appropriate here. I base my ruling on several grounds.

- [169] First, I accept Ms. Thiele's submission that it would be significantly unfair to divide the family property equally in circumstances where the relationship began before the Act came into force. At that time, the parties had no reason to expect that by entering into a marriage-like relationship without getting married, they would later be deemed to have taken on the same obligations as if they had formally married. I have found that T.B.W. did not want to marry again in part because he was wary of taking on those kinds of obligations and that A.J.E. understood that.
- [170] That factor has been held to justify an unequal division - see *Bressette v. Henderson*, 2013 BCSC 1661 (a case decided primarily under the common law of unjust enrichment, but also holding the law in this regard to be similar under the Act) and *Walburger v. Lindsay*, 2015 BCSC 341. This case is arguably different, in that although the relationship likewise began before the Act came into force, it ended afterward. In my view, however, that distinction should not change the result. What ought to matter is what the parties understood about their obligations when they took them on, which is at the outset of the relationship rather than its end.
- [171] Second, I find that the relatively short duration of this relationship is another factor militating in favour of an unequal division. I have found that the relationship was marriage-like from January 2011 to June 2014, a period of three and a half years. A relationship of that same duration was found to be grounds for a finding of sufficient unfairness to justify a split of 85/15%: see *Williams v. Killey*, 2014 BCSC 1846. A relationship lasting four years and three months was found to be short enough to constitute a strong factor in favour of a 60/40% division in *A.M.D. v. K.R.J.*, 2015 BCSC 1539.
- [172] Third, it has been held that an unequal division may be appropriate when one spouse has made all or nearly all of the contributions to the increase in value of the assets that are to be divided: *Walburger; Jaszczewska v. Kostanski*, 2015 BCSC 727. In the latter case, the claimant was found (at para. 172) to have "made only minor direct and indirect contributions to the acquisition, maintenance and enhancement of the family property. [The parties] did not have children of their own, so this is not a case where one parent has taken primary responsibility for child-rearing thereby freeing up the other parent to earn income and acquire assets."
- [173] I have accepted that A.J.E. made some contributions in labour to various of T.B.W.'s properties during the relationship. I also accept, however, that her efforts were relatively minor when compared with his. I find that she made almost no financial contribution to the growth in value of the real property assets and certainly no contribution of any kind to the investment accounts.

- [174] Finally, I also accept Ms. Thiele's submission that, overall, A.J.E. received more from this relationship while it was underway than she lost, which would give rise to significant unfairness if she were also to receive an equal share of the increase in value of T.B.W.'s assets during that time. As stated by Chiasson J.A. in *Wilson v. Fotsch*, 2010 BCCA 226 (at para. 163):
- [163] As a general observation, whether one focuses on the juristic reason or quantum stages of the analysis, it is difficult to see how a claimant who is found to have gained more from a relationship than he contributed to it is entitled to an equitable remedy based on unjust enrichment. In this case, I see no findings of fact that would support such a result.
- [175] A.J.E.'s situation is not unlike that of Ms. Walburger's in *Walburger*, which Fitzpatrick J. described as follows (at para. 103):
- [103] I would reiterate, however, that even without this relationship, it was extremely unlikely that Ms. Walburger would have seen herself in any materially different circumstances. She has shown no appreciable inclination or ability over the years since her first divorce to seek out more remunerative employment. Nor did there ever seem to be any ability or desire to accumulate savings or assets. Her low income no doubt foreclosed much ability to do so, however, the dissipation of her inheritance evidences a general disregard for planning for her financial future.
- [176] For these reasons, I set the appropriate division at 20% to A.J.E.

D. Spousal Support

[177] The objectives of spousal support are set out in s. 161 of the Act, which states as follows:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[178] Spousal support can be justified on a compensatory or needs basis. The compensatory aspect was summarised by Weatherill J. in *Kneller v. Greenwood*, 2015 BCSC 1410 at para. 118 as follows:

- [118] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the spousal relationship or the conferring of an economic advantage upon the other spouse. The recipient spouse is entitled to receive compensation for losses caused by the breakup of the spousal relationship which would not have been suffered otherwise. The award recognizes that sacrifices made by a recipient spouse in assuming primary household responsibilities often result in a lower earning potential and fewer future prospects for financial success. It may also address economic advantages enjoyed by the other spouse as a result of the recipient spouse's efforts: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50 - 51, leave to appeal ref'd [2009] S.C.C.A. No. 41.
- [179] Although A.J.E. left her work to go sailing with T.B.W., I do not find that her current lack of employment prospects can fairly be attributed to the marriage or its breakdown. There was evidence suggesting that A.J.E.'s underemployment and the mental health issues that have led to her current disability predated her relationship with T.B.W.
- [180] I find the need-based element to be more pertinent in this case than the compensatory element.
- [181] The concept of "need" for this purpose is to be assessed having regard to, among other things, the marital standard of living. In this case, A.J.E. was living at a higher standard during the relationship than she had experienced before or evidently has experienced since then: see *Kneller* at para. 122. In addition, A.J.E.'s earning capacity has diminished by virtue of her election to leave her job permanently to go sailing with T.B.W. during the relationship, and then by her disability associated with her mental illness. In assessing the appropriate figure for spousal support, I have also taken into account the apportionment of the family property in her favour in the previous section.
- i. A.J.E.'s income
- [182] As her relationship with T.B.W. was beginning in 2008 and 2009, A.J.E. was dealing with protracted litigation flowing from the breakup of her previous marriage. In that litigation, she was found to have received \$121,893.93 as her share from the sale of the matrimonial home and to have used approximately \$75,000 of that sum to purchase a sailboat and associated "start-up expenses" (including her membership in a yacht club, moorage and insurance). Her intention was said to be to use the sailboat as a means to earn income, but that plan never came to fruition.
- [183] In varying her spousal support order on December 14, 2009, Pitfield J. found that "she has not attempted to maximize her employment prospects since the separation and divorce" and that she "has the skills, education and comparative youth that should have combined to allow her to earn substantially more income than she now earns." He found that "Ms. [E.] earns income of approximately \$20,000 which is substantially less than the amount she should be capable of earning having regard for her age, her education, and her demonstrated work accomplishments." On that basis, he adjusted her spousal support entitlement downward and ordered that the obligation to pay the reduced amounts would

terminate altogether on June 30, 2010 (see 2009 BCSC 1712 at paras. 20-27).

[184] By the time she began dating T.B.W., she was working at a local school and receiving unemployment benefits over the summers.

[185] She received small amounts from her mother from time to time. Her highest annual income was \$37,000-\$38,000. Her annual income before she decided to leave her work to go sailing was in \$30,000 per annum range.

[186] When asked about her precarious financial situation, she professed not to be worried. She thought if something were to happen to her mother, her brother would look after her and her daughters.

[187] She accepted that but for T.B.W.'s generosity, neither she nor her daughters would have been able to enjoy the kind of holidays they took with him.

[188] Following the breakup with T.B.W., she has had difficulties with mental illness, and as result, she is now collecting CPP disability benefits. This indicates that her ability to earn additional income is limited.

[189] I accept A.J.E.'s evidence that her current income is \$11,172, and that in light of her disability she is unable to earn any greater amount, so it would not be appropriate to impute any greater income to her.

ii. T.B.W.'s income

[190] As noted above, T.B.W.'s income derived from his investments which yielded dividend, interest and investment income, capital gains and other income.

[191] His incomes in the previous four years were reported as follows:

2016: \$146,871 (using the 2017 tax tables)

2016: \$146,999 (using the 2016 tax tables)

2015: \$157,122 (using the 2015 tax tables)

2014: \$69,396 (using the 2014 tax tables)

[192] Given the irregularity of his income and the fact that the capital gains realised in 2016 are unlikely to be repeated, I have calculated T.B.W.'s Guidelines income on the basis of a three year average, or \$124,506.

iii. Lump sum award calculation

[193] In calculating the appropriate spousal support award, I have had recourse to the Spousal Support Advisory Guidelines which have been recognised as a "useful tool" in calculating support entitlement.

[194] I have determined a figure between the middle and the high end of the range is appropriate having regard to the diminution in A.J.E. standard of living, her current disability and the apportionment of the family property to which I have determined she is entitled.

[195] The calculation yields a lump sum payment in a range lying between \$17,941 at the middle and \$20,418 at the high end of the range. On that basis, I hereby award spousal support to A.J.E. as a lump sum in the amount of \$19,000.

E. Summary and Conclusions

[196] Having found that the parties were living in a marriage-like relationship from January 2011 to June 2014, I hereby award A.J.E. \$153,342.34 representing her 20% share of the family property and \$19,000 as a lump sum for spousal support, for a total of \$172,342.34.

[197] The parties have liberty to speak to costs.

"Milman J."

The Honourable Mr. Justice Milman

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