

CANADA / JUDGMENT

Armstrong v. Scholz

2022 BCSC 863

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DECIDED

25 May 2022

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2022 BCSC 863 Armstrong v. Scholz

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Armstrong v. Scholz,

2022 BCSC 863

Date: 20220525

Docket: E184168

Registry: Victoria

Between:

Barbara Ann Armstrong

Claimant

And

Heinz Peter Scholz

Respondent

Before: The Honourable Madam Justice E. McDonald

Reasons for Judgment

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Place and Date of Trial:

Victoria, B.C.

January 10-14, 17-21, 2022

Place and Date of Judgment:

Victoria, B.C.

May 25, 2022

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Introduction

- [1] The central issues in dispute in this family law litigation concern whether the parties had a marriage-like relationship and whether the respondent, Mr. Peter Scholz, loaned or gifted money to the claimant, Ms. Barbara Armstrong.
- [2] Ms. Armstrong alleges the parties were involved in a marriage-like relationship from September 15, 2012 to January 1, 2018.
- [3] Mr. Scholz agrees that the parties had an on-and-off romantic relationship, but he denies they ever had a marriage-like relationship. In the alternative, Mr. Scholz submits that if the parties ever had a marriage-like relationship, it ended earlier than two years before Ms. Armstrong filed her notice of family claim on September 25, 2018.
- [4] By way of a counterclaim, Mr. Scholz seeks to have Ms. Armstrong repay \$100,000 that he alleges he loaned her in 2015.

Issues

- [5] The notice of family claim and counterclaim raise the following issues:
 - a) Did the parties live in a marriage-like relationship?
 - b) If the parties did live in a marriage-like relationship:
 - i. When did the parties live in a marriage-like relationship?
 - ii. How should family property be divided?
 - c) Did Mr. Scholz loan Ms. Armstrong \$100,000?

Background

The Parties

- [6] Ms. Armstrong is presently 64 years old. She attended university and earned an undergraduate as well as an MBA degree.
- [7] Ms. Armstrong married Mr. Rocky Houliston in approximately 1983 and together they have a number of adult children, some of whom testified. I refer to their children Darby and James Houliston by first name in these reasons for ease of reference, meaning no disrespect.
- [8] The family lived together at a house located in Victoria, British Columbia (the "Armstrong-Houliston Property"). Ms. Armstrong told Mr. Houliston of her intention to leave their marriage in February 2012, but she continued living at the Armstrong-Houliston Property until September 2012. Currently, the two are still legally married and they did not enter into a separation agreement until shortly before the trial of the present matter.

- [9] Mr. Houlston worked as an investment advisor with Edward Jones. In 2008, Ms. Armstrong decided that she also wished to become an investment adviser. Prior to that, Ms. Armstrong worked for charitable organizations.
- [10] Ms. Armstrong undertook six months of training to become a financial adviser and by January 2009, she was eligible to work as an investment adviser. Ms. Armstrong started her first office under the Edward Jones limited partnership business model at a temporary location. By June 2011, Ms. Armstrong moved her office to a storefront location on Humboldt Street in Victoria in the same block where Mr. Scholz lived.
- [11] Mr. Scholz is presently 80 years old. He was born in Breslau, Germany. Mr. Scholz ultimately became very successful in business. He trained in the building industry before eventually becoming a property developer and master builder in Germany, who owned a significant business, including real estate, in Germany.
- [12] In the 1980s, Mr. Scholz immigrated to Canada with his wife and his teenaged son, Michael Scholz. I will refer to Mr. Scholz's relatives by first name in these reasons for ease of reference, meaning no disrespect.
- [13] The Scholz family settled in Tsawwassen, British Columbia. Mr. Scholz began to learn the English language upon his arrival in Canada.
- [14] Not long after immigrating, Mr. Scholz started a business developing high-end residential homes in the Lower Mainland of British Columbia. In addition to building luxury single-family homes, Mr. Scholz also developed a number of multi-unit residential rental buildings and his own family's home in Tsawwassen.
- [15] In 1992 or 1993, Mr. Scholz and his wife divorced. In 2010, Mr. Scholz retired and moved into a luxury condominium unit that he purchased in Victoria ("Unit 1404"). Despite retiring from the daily operation of his business, Mr. Scholz continued to own, either directly or through a holding company, real estate, including apartment buildings.
- [16] Mr. Scholz maintained an active dating and social life. One of his girlfriends was Ms. Rita Hoppe, whom he originally met in Germany. Mr. Scholz and Ms. Hoppe had a lengthy romantic relationship. Ms. Hoppe lives in Germany and she sometimes stayed with Mr. Scholz in Victoria. Ms. Hoppe and Mr. Scholz often took vacations together and when Mr. Scholz visited Germany he would spend time with her.
- [17] Ms. Armstrong testified that Ms. Hoppe kept clothing in a closet in Unit 1404; however, Ms. Armstrong and Mr. Scholz emptied Ms. Hoppe's closet at some point early in the parties' relationship.
- [18] Mr. Scholz is an enthusiastic world traveler and boater. After retiring, he spent significant amounts of time travelling and during the spring and summer months, he would go boating on a live-aboard boat that he owns. Mr. Scholz belongs to a local yacht club and he keeps his boat moored at a marina within walking distance from Unit 1404.

The Relationship

- [19] The parties met in the summer of 2011 when Mr. Scholz dropped by Ms. Armstrong's Edwards Jones office on Humboldt Street. At the time they first met, Mr. Scholz was 70 years old and Ms. Armstrong was 54 years old.
- [20] During their initial conversations, Ms. Armstrong learned that Mr. Scholz was a wealthy retired businessman. The parties spoke at length about the stock market and Mr. Scholz's investments.
- [21] Ms. Armstrong quickly identified Mr. Scholz as a potential client. She was eager to have him invest with her at Edward Jones. She described Mr. Scholz as the biggest prospective investor she had encountered.
- [22] Ms. Armstrong obtained extensive financial information from Mr. Scholz, including about his assets and investments. By working with Edward Jones head office staff, Ms. Armstrong was able to present Mr. Scholz with a detailed investment strategy. Ms. Armstrong soon succeeded in convincing Mr. Scholz to become her client.
- [23] On November 14, 2011, Mr. Scholz presented Ms. Armstrong with a cheque to open an investment account with her at Edward Jones. He invested \$1,000,000 initially. This was the largest account that Ms. Armstrong managed at that point. Ms. Armstrong described feeling gratified and affirmed by Mr. Scholz's choice to open an investment account with her.
- [24] Within approximately two months of becoming Mr. Scholz's investment adviser, Ms. Armstrong said she began to have a sexual relationship with him. The parties' sexual relationship lasted until sometime in approximately 2018.
- [25] During the relationship, Mr. Scholz gave Ms. Armstrong many expensive gifts. He also advanced her large sums of money - either as loans or gifts. The nature of these advances are at issue in this proceeding.
- [26] Ms. Armstrong continued acting as Mr. Scholz's financial adviser until early 2018.
- [27] On February 10, 2019, Mr. Scholz wrote a letter to Edward Jones complaining about Ms. Armstrong's handling of his investment portfolio.
- [28] In April 2019, a representative of Edward Jones' complaint resolution group concluded that there was no merit to Mr. Scholz's complaint. Apparently, Edward Jones did not regard Mr. Scholz's letter as a bona fide complaint about Ms. Armstrong's conduct as an Edward Jones representative.

The Law

- [29] Section 3 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides as follows regarding determining the nature of the parties' relationship:

Spouses and relationships between spouses

3(1) A person is a spouse for the purposes of this Act if the person

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
- (i) has done so for a continuous period of at least 2 years, or
- (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

[30] In *Hu v. Lee*, 2022 BCSC 56 at paras. 41-42, Justice Gomery noted that s. 3 of the FLA has two requirements, namely, a two year "cohabitation requirement", and a marriage-like "relationship requirement". The requirement for the parties to have lived together for a "continuous period of at least 2 years" is approached flexibly and may be satisfied even though parties lived for extended periods at different locations: *Thompson v. Floyd*, 2001 BCCA 78 at paras. 22-36.

[31] In *Austin v. Goerz*, 2007 BCCA 586 at para. 51 [Austin], Frankel J.A. confirmed that a "marriage-like" relationship may exist even when "one or both partners lack the capacity to marry". Therefore, the fact that Ms. Armstrong has always been legally married to Mr. Houlston does not preclude a marriage-like relationship between Ms. Armstrong and Mr. Scholz.

[32] In approving of the statement that "[s]pousal relationships are many and varied", Frankel J.A. noted that "there is no checklist of characteristics that will invariably be found in all marriages": *Austin* para. 58, citing *Yakiwchuk v. Oaks*, 2003 SKQB 124 at para. 10. In determining whether the parties were involved in a marriage-like relationship, the proper approach is a holistic one that considers all relevant aspects of the relationship: *Austin* at para. 62; *Weber v. Leclerc*, 2015 BCCA 492 at paras. 22 and 25 [Weber].

[33] As to the parties' intentions as to whether their relationship will be lengthy and of an indeterminate duration, the Court in *Weber*, at paras. 23-24, noted that this factor may be important, but not determinative, in determining whether the relationship was marriage-like:

[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".

- [34] In *Voth v. Martin*, 2019 BCSC 834, at paras. 8-14, Justice Donegan helpfully summarized the legal principles that apply when a court is determining whether parties had a marriage-like relationship:
- [8] The burden is on the claimant to prove they meet the definition of "spouse". The standard is on the balance of probabilities: *C. (R.) v. McDougall*, 2008 SCC 53 at para. 49.
- [9] The determination of whether a relationship was marriage-like requires a "holistic approach", in which all of the relevant factors are considered and weighed, but none of them are treated as being determinative of the question: *Austin v. Goerz*, 2007 BCCA 586 at paras. 58 and 62. It is a multi-factorial, case-by-case assessment, informed by the unique circumstances of the parties and objective criteria: *Rochon v. Rochon*, 2018 BCSC 1899.
- [10] Courts are not to use a "check list approach" to this determination, but it can be helpful to the analysis to consider the presence or absence of commonly accepted "indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship": *Weber v. Leclerc*, 2015 BCCA 492 at para. 25.
- [11] A frequently cited authority has identified these indicators as including "shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple": *M. v. H.*, [1999] 2 S.C.R. 3 at para. 59, citing *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 at para. 16.
- [12] In *Molodowich*, the Ontario court set out a list of factors, grouped into seven categories, that may be taken into account in determining a marriage-like relationship at para. 16:
- (1) SHELTER:
- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?
- (c) Did anyone else occupy or share the available accommodation?
- (2) SEXUAL AND PERSONAL BEHAVIOUR:
- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?
- (3) SERVICES:

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

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

(4) SOCIAL:

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

(5) SOCIETAL:

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

(6) SUPPORT (ECONOMIC):

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

(7) CHILDREN:

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

To the foregoing must be applied the following caveat of Mr. Justice Blair in the Warwick case (*supra*):

"The extent to which the different elements of the marriage relationship will be taken into account must vary with the circumstances of each case."

[13] Justice Schultes discussed the factors and principles that are to be used in this analysis recently in *Dey v. Blackett*, 2018 BCSC 244. In addition to that which I have outlined above, he added the following:

[194] While financial dependence was at one time considered an essential aspect of a marriage-like relationship, this is no longer so: *Austin* at paras. 55-56.

- [195] The intentions of the parties, particularly whether [they] saw the relationship as being "of a lengthy, indeterminate duration", will be important to the determination of whether the relationship was marriage-like. However, evidence of their intentions must be tested against objective evidence of their lifestyle and interactions, which will provide direct guidance on the nature of the relationship: Weber, at paras. 23, 24. In other words, "subjective or conscious intentions may be overtaken by conduct such that whilst a person living with another might not say he or she was living in a marriage-like relationship, the reality is that the relationship has become such": Takacs v. Gallo (1998), 48 B.C.L.R. (3d) 265 (C.A.) leave to appeal to SCC ref'd, [1998] S.C.C.A. No. 238, at para. 53.
- [196] In weighing the various factors, it is also an error to give undue emphasis to the future plans of a couple, in contrast to the current realities of their respective situations: Takacs at para. 58.
- [14] A person is a "spouse" or not. There is no middle ground. People may live together interdependently and continuously and yet fail to establish they developed "the kind of psychological and emotional union" associated with marriage: C.F.M. v. G.L.M., 2018 BCSC 815 at para. 10.
- [35] In *Mother 1 v. Solus Trust Company*, 2019 BCSC 200 at paras. 141-143, aff'd at 2021 BCCA 461, Justice Myers discussed the relevance of the parties' intentions, as well as the challenging conceptual nature of a marriage-like relationship, stating as follows:
- [141] Intention of the parties is a factor that must be considered. While intention is, of course, subjective, the courts have looked to objective factors to test the veracity of the parties' expression of intent. As Schultes J. said in *Dey v. Blackett*, 2018 BCSC 244:
- [235] While an intention to enter into a relationship similar to marriage - of an indeterminate, lengthy duration - is the essential requirement for finding a marriage-like relationship, a consideration of objective indicators are helpful as a means of testing the parties' professed intentions (or lack of intentions) in that regard, and may also form the basis of inferences as to what their intentions were. Put another way, while intention is the key, a partner who claims or disavows such an intention may not be believed if all of the surrounding circumstances strongly imply the contrary. All of that said, Takacs offers the reminder that relationships can fulfill many of the accepted indicators without the couple "intending or in fact entering the kind of psychological and emotional union that one associates with marriage."
- And in Weber, the court noted:
- [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".

[142] Significantly for this case, the courts have looked to mutual intent in order to find a marriage-like relationship. See, for example, *L.E. v. D.J.*, 2011 BCSC 671 and *Buell v. Unger*, 2011 BCSC 35; *Davey Estate v. Gruyaert*, 2005 CarswellBC 3456 at 13 and 35.

[143] Having canvassed the law relating to the nature of a marriage-like relationship, I will digress to point out the problematic nature of the concept. It may be apparent from the above that determining whether a marriage-like relationship exists sometimes seems like sand running through one's fingers. Simply put, a marriage-like relationship is akin to a marriage without the formality of a marriage. But as the cases mentioned above have noted, people treat their marriages differently and have different conceptions of what marriage entails.

[Underlining in original]

[36] The credibility and reliability of witnesses is an important issue in this case. Each party takes the position that I ought to disbelieve the other party on key matters, including because the party lacks credibility and reliability.

[37] In *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357, O'Halloran J.A. set out the well-known criteria that apply to assessing the credibility of a witness:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say "I believe him because I judge him to be telling the truth," is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

[38] The following often cited passage from *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186 is Justice Dillon's concise description of the process for assessing credibility:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (Raymond v. Bosanquet (Township) (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (Wallace v. Davis, [1926] 31 O.W.N. 202 (Ont. H.C.); Faryna v. Chorny, [1952] 2 D.L.R. 152 (B.C.C.A.) [Faryna]; R. v. S. (R.D.), [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Faryna at para. 356).

[39] I have considered these principles while assessing the credibility and reliability of the witnesses, including Ms. Armstrong and Mr. Scholz. As I explain in more detail later, in respect of some matters, I find Ms. Armstrong to be credible and reliable witness and I accept her evidence. However, overall, I find Mr. Scholz to be a more credible and reliable witness and I prefer his evidence on a number of significant matters, for reasons that I will explain.

Analysis

Issue 1: Did the parties live in a marriage-like relationship?

[40] As I begin the analysis, I remain mindful that I must take a holistic approach that considers all relevant aspects of the parties' relationship, and I must not proceed as if there is merely a checklist of factors to be satisfied. However, in undertaking the analysis, I may still consider some of the factors, for example those discussed in Molodowich, that courts have recognized as potentially associated with a marriage-like relationship.

Shelter

[41] At the start of the parties' romantic relationship, Ms. Armstrong lived with Mr. Houliston at the Armstrong-Houliston Property. Ms. Armstrong testified that she and Mr. Houliston were separated, but they continued to live under the same roof for the sake of the family. Ms. Armstrong said the plan was for her to move out once the children were grown and she could support herself financially.

[42] The parties agree that in the early stages of the romantic relationship, Ms. Armstrong never stayed overnight with Mr. Scholz. They would meet during the day at Mr. Scholz's boat or at Unit 1404.

- [43] Ms. Armstrong testified that in February 2012, she told Mr. Houliston to anticipate that she would be leaving him "over the course of the year to come" and she began looking for affordable, furnished, accommodation for herself. Ms. Armstrong did not initially reveal her involvement with Mr. Scholz to Mr. Houliston.
- [44] In August 2012, Ms. Armstrong and Mr. Houliston travelled to Switzerland together for a work-related and leisure trip. Mr. Houliston described this trip as a "good-bye toast" to their relationship. Apparently, Edward Jones provided reward trips for investment advisers and their spouses. Ms. Armstrong and Mr. Houliston had attended such reward trips together for many years.
- [45] The parties agree that while Ms. Armstrong was in Switzerland in August 2012, Mr. Scholz purchased Unit 1002. It was located in same building as Unit 1404, where Mr. Scholz lived. The parties agree that Mr. Scholz asked Ms. Sabine Somani, who at the time was Ms. Armstrong's assistant, to inform Ms. Armstrong that he had purchased Unit 1002 and that he wanted Ms. Armstrong to move into it.
- [46] On September 15, 2012, Ms. Armstrong moved out of the Armstrong-Houliston Property and into Unit 1002. Ms. Armstrong said she wanted to pay Mr. Scholz for the entire monthly cost of the mortgage, strata fees and property taxes for Unit 1002.
- [47] However, Mr. Scholz refused her offer and instead he proposed that she pay him a lower monthly amount of \$1,100 per month. Mr. Scholz testified that he lowered the cost of the rent for Unit 1002 because Ms. Armstrong told him that money was tight. Ms. Armstrong's own evidence confirmed that she needed to find affordable furnished accommodation in order to move out of the Armstrong-Houliston Property.
- [48] Ms. Armstrong said that eventually the rent she paid increased from \$1,100 to \$1,400 per month once Mr. Scholz's accountant advised him to increase the rental revenue for Unit 1002.
- [49] Ms. Armstrong and Mr. Scholz purchased the furnishings for Unit 1002 together. Mr. Scholz paid for many of the expensive furnishings, such as the bedroom suite. They also decorated Unit 1002 using items taken from Unit 1404.
- [50] Ms. Armstrong testified that once she moved into Unit 1002, the parties' marriage-like relationship began. According to Ms. Armstrong, this was the happiest time of the parties' relationship and they spent the majority of their time together in Unit 1404. Ms. Armstrong said she had her own set of keys to Unit 1404 and Mr. Scholz' mailbox. Mr. Scholz denied this.
- [51] Despite apparently having her own keys, Ms. Armstrong said Mr. Scholz would sometimes drop off his keys to her office so that others could pick them up. I find that while Ms. Armstrong had access to the keys for Unit 1404 and its mailbox, such as when Mr. Scholz was away travelling, she did not hold her own set of keys.

- [52] Ms. Armstrong said that her routine was to return to Unit 1002 each day after work to change her clothes before going to "his place", as she called Unit 1404. She said she and Mr. Scholz ate and slept together each day in Unit 1404.
- [53] Each weekday morning, Ms. Armstrong said she left Unit 1404 and went down to Unit 1002 to get ready for work. She said Unit 1002 functioned mainly as her closet and dressing area. In her cross-examination Ms. Armstrong agreed that when Mr. Scholz went away, she would stay in Unit 1002 not Unit 1404.
- [54] Ms. Armstrong also testified that on Fridays to Sundays during boating season, she and Mr. Scholz would spend most weekends together out on his boat. Mr. Scholz testified that Ms. Armstrong would come on the boat occasionally, for example for a long weekend, but because Ms. Armstrong worked, he often went boating without her.
- [55] Ms. Armstrong was under the impression that Mr. Scholz's relationship with Ms. Hoppe ended shortly after the parties began their sexual relationship. In September 2014, while Mr. Scholz was preparing to leave for an extended cruise, Ms. Armstrong became suspicious of him. By making inquiries with his travel agent, Ms. Armstrong learned that Mr. Scholz would be travelling with Ms. Hoppe.
- [56] Ms. Armstrong described being devastated by discovering that Mr. Scholz was travelling with Ms. Hoppe. On the night she learned of Mr. Scholz's travel plans, Ms. Armstrong cancelled her dinner date with him and she stayed at a friend's house. Ms. Armstrong also tried without success to return the Rolex and jewelry that Mr. Scholz had given her by leaving those items in Mr. Scholz' mailbox.
- [57] In October 2014, while Mr. Scholz was away, Ms. Armstrong moved out of Unit 1002 and into a friend's basement suite on Cowper Avenue (the "Cowper Suite"). Ms. Armstrong lived in the Cowper Suite until March 2015. Mr. Scholz visited Ms. Armstrong at the Cowper Suite once during the period when she lived there. Mr. Scholz did not like the Cowper Suite.
- [58] Despite the surrounding events, Ms. Armstrong adamantly denies that she and Mr. Scholz broke up when she learned about his travel plans with Ms. Hoppe. Rather, her evidence was that she and Mr. Scholz had already agreed she would move out so he could earn more revenue by converting Unit 1002 into a vacation or executive rental property. Ms. Armstrong said they also came up with this plan because she wanted to buy her own place.
- [59] Mr. Scholz denied knowing anything about a plan to convert Unit 1002 into a vacation rental property. He said short term rentals were prohibited in his building. Mr. Scholz also testified that he had no idea that Ms. Armstrong was moving out of Unit 1002 until after it had happened. However, he did acknowledge that a rental company began to deposit rental income for Unit 1002 into his bank account around the time that he was away travelling with Ms. Hoppe.

- [60] Ms. Armstrong stated in cross-examination that it was merely a coincidence that shortly before she moved out of Unit 1002 she had learned of Mr. Scholz' travel plans with Ms. Hoppe.
- [61] According to Ms. Armstrong, Mr. Scholz returned from his travels with Ms. Hoppe in November 2014. They reconnected and realized that they had a lot of relationship work to do. She described Mr. Scholz's "indiscretion" as a good test of their relationship and her plan was to set aside the intimate part of their relationship until they got their "commitment worked out". After they discussed the health ramifications of having other intimate partners, Ms. Armstrong said that "we started life together again".
- [62] In February 2015, Ms. Armstrong said Mr. Scholz arrived at her office and unexpectedly announced that he had just deposited \$50,000 into her personal bank account. He told her he would deposit another \$50,000 in a month. Mr. Scholz told her that he wanted to start looking for a home for her to buy. Ms. Armstrong said that at this point, she believed Mr. Scholz was representing his commitment to her "financially" and she was representing her commitment to him "emotionally".
- [63] On March 30, 2015, Ms. Armstrong moved into a townhouse that she purchased for \$387,000 on Craigflower Road (the "Craigflower Property"). She used the \$100,000 advanced by Mr. Scholz as a down payment and she financed the balance of the purchase price through a commercial lender. There is no mention of Mr. Scholz in any of the purchase or finance-related documents for the Craigflower Property.
- [64] Ms. Armstrong's daughter, Darby, testified that she lived with Ms. Armstrong at the Craigflower Property from approximately January to October 2016. After she moved in, Darby testified that she saw Mr. Scholz at the Craigflower Property "multiple times" a week and sometimes he stayed overnight. Darby moved away in 2016 and upon returning to Victoria in 2018, she could not recall seeing Mr. Scholz.
- [65] Mr. Dean Gray, a former tenant of Ms. Armstrong's, testified about renting the basement bedroom at the Craigflower Property from Ms. Armstrong between August 2017 and February 2018. Mr. Gray shared the living and kitchen areas with Ms. Armstrong and her other tenants. Mr. Gray met Mr. Scholz while living at the Craigflower Property. They remained friends after Mr. Gray moved out.
- [66] Mr. Gray said that Ms. Armstrong introduced Mr. Scholz to him as her "friend". He formed the impression that Ms. Armstrong and Mr. Scholz were "friends with benefits" because Mr. Scholz sometimes stayed overnight. He said Mr. Scholz would come to the Craigflower Property "from time to time", but he did not live there. For example, Mr. Gray said that sometimes he would see Mr. Scholz at the Craigflower Property at dinner a few times per week and then not see him for extended periods.

- [67] Mr. Gray said that unless Ms. Armstrong was away on a trip, it was quite rare for her not to be home in the evenings. Ms. Armstrong cooked some of the evening meals for tenants, including homestay students. Mr. Gray said that he saw Ms. Armstrong host family gatherings but he did not see Mr. Scholz there.
- [68] I believed Mr. Gray's testimony about how often he observed Ms. Armstrong and Mr. Scholz at the Craigflower Property. Mr. Gray testified in a forthright manner and he did not appear to be trying to assist one party over another as he described what he saw while living there.
- [69] On whether the parties had "break ups" during their relationship, I found Ms. Armstrong to be evasive and overall, I found her evidence about breakups, including the one in the fall of 2014, to lack credibility. In my view the evidence, taken as a whole, indicates that Ms. Armstrong broke up with Mr. Scholz more than once, including in September 2014 when she moved out of Unit 1002.
- [70] According to Ms. Armstrong's own testimony, she did not regard Mr. Scholz as having signalled his recommitment to their relationship until he advanced her \$100,000 in two instalments in February and March of 2015.
- [71] I find the parties' ceased their romantic relationship from late September 2014, when Ms. Armstrong learned that Mr. Scholz was still seeing Ms. Hoppe, to February 19, 2015, when Mr. Scholz deposited \$50,000 into Ms. Armstrong's bank account. This pause was more than a brief "cooling-off" period following a disagreement and I find the parties were clearly experiencing a relationship break up during this period: *Javaheri v. Heidari*, 2020 BCSC 816 at paras. 32 and 55.
- [72] There were also other disputes between the parties that caused them to break up and avoid seeing each other for periods of time. For example, in late 2016, Ms. Armstrong discovered that Mr. Scholz had a sexual encounter with another woman. Ms. Armstrong described this as a further indiscretion the parties managed to work through. She regarded this indiscretion and its effect on their relationship resolved once Mr. Scholz agreed to loan her \$100,000 in December 2016.
- [73] When I consider all of the evidence, I find that during the parties' relationship, they never actually cohabited together for any continuous period of two years or more, whether in Unit 1404, Unit 1002 or the Craigflower Property. The parties stayed over at each other's homes and sometimes they stayed together at other locations, such as on Mr. Scholz's boat. However, at all material times, I find each party maintained their own residence during the relationship.
- [74] Having so found, I am aware that it remains possible for the parties to have a marriage-like relationship despite living all, or part of the time, in separate homes.

Sexual and Personal Behaviour

- [75] Mr. Scholz agreed that he pursued Ms. Armstrong in the hopes of entering into a romance with her. He showered Ms. Armstrong with attention, flattery and expensive gifts including jewelry and a Rolex watch.
- [76] Ms. Armstrong testified that the sexual relationship with Mr. Scholz began in January 2012. Mr. Scholz testified that the sexual relationship began earlier in the summer of 2011.
- [77] I find that the sexual relationship began sometime after Mr. Scholz invested with Edward Jones through Ms. Armstrong's office. Given that this initial investment took place in mid November 2011, I find it more likely than not that the beginning of the parties' sexual relationship happened in January 2012, because that corresponds to the period shortly after his investment transaction. This timing is also consistent with Mr. Scholz telling Edward Jones in his 2019 complaint letter about Ms. Armstrong that the parties commenced an intimate relationship " pretty much immediately after I met her and began in [sic] investing with her."
- [78] Ms. Armstrong testified that upon starting their sexual relationship, she quickly realized that she wanted to spend the rest of her life with Mr. Scholz and he made similar passionate declarations to her. There was ample evidence to show that during some periods of the parties' relationship, especially in the early days, they were affectionate and loving towards each other.
- [79] Mr. Scholz was effusive about his admiration for Ms. Armstrong. He told Ms. Kal Nelson (a friend of Ms. Armstrong's), Ms. Somani and others that he adored her. Many witnesses confirmed observing Mr. Scholz and Ms. Armstrong to be an affectionate and demonstrative couple. Witnesses noted Mr. Scholz's habit of using pet names, such as "dove", for addressing Ms. Armstrong and speaking openly about his affection for her.
- [80] Ms. Armstrong recounted conversations with Mr. Scholz, again, especially in the early days of their romance, that included dramatic declarations of wanting to die in each other's arms or to spend the rest of their lives together. Mr. Scholz testified that he greatly enjoyed romance and the process of romancing a woman.
- [81] I have no doubt that Mr. Scholz and Ms. Armstrong were involved in a romance. However, passionate statements made in the early days of a romance do not necessarily lead to a marriage-like relationship.
- [82] I observed that in some respects, Mr. Scholz tried through his testimony to minimize his feelings for, and his relationship with, Ms. Armstrong. He maintained that he and Ms. Armstrong had a relationship where each of them could do their own thing. He liked to take long vacations, either by himself, or with a female companion. He enjoyed romantic and sexual relationships with other women including while he had a relationship with Ms. Armstrong.

- [83] In cross-examination, Mr. Scholz agreed that he never told Ms. Armstrong that he was having other romantic relationships during the parties' relationship. He said there was no need to tell her since they were both free to live their own lives. In fact, when Ms. Armstrong learned that Mr. Scholz was having other relationships, it led to conflicts and break ups.
- [84] Regarding Mr. Scholz's evidence that he and Ms. Armstrong had an arrangement whereby each of them could do whatever they wanted, I find that Mr. Scholz subscribed to this attitude mostly as it related to himself. He expressed significant suspicion and jealousy about whether Ms. Armstrong had other romantic partners. He accused Ms. Armstrong of having a romantic relationship with others, including Ms. Nelson, something both women denied. Mr. Scholz's behaviour and accusations caused Ms. Armstrong, Ms. Nelson and others embarrassment and stress.
- [85] Mr. Scholz flatly denied ever telling Ms. Armstrong or anyone else that he wanted to marry to her. He said he made it clear that he never wanted to marry again. Despite his denial, there were text messages exchanged between them indicating that Mr. Scholz was unhappy about Ms. Armstrong not divorcing and freeing herself to re-marry. Ms. Armstrong also expressed disappointment that Mr. Scholz never asked her to marry him. This is despite her evidence that she regarded herself as his "fiancé". In other words, both of the parties expressed disappointment and frustration during the relationship about the fact that they could not, and did not, legally marry each other.
- [86] I find that the parties regarded being legally married as the potential apex of their relationship. However, that does not mean that they had a mutual intention to form a marriage-like relationship prior to reaching that potential apex.
- [87] I find that the parties had a sexual relationship which, at times, was not exclusive. I recognize that having an exclusive sexual relationship is not required to find there was a marriage-like relationship. However, these parties did not share the same intentions and expectations about whether their sexual relationship would be exclusive.

Services

- [88] Ms. Armstrong testified that after she moved into Unit 1002 in September 2012, she and Mr. Scholz ate most of their meals together. She described doing the cooking for the two of them in Unit 1404. Ms. Armstrong testified that sometimes Mr. Scholz would drop by her office in the morning to bring her breakfast.
- [89] Ms. Armstrong also described preparing meals for Mr. Scholz and their friends or family in Unit 1404. The parties referred to a variety of photographs showing them entertaining together in Unit 1404 and on Mr. Scholz's boat from 2013 to 2016. Many witnesses described visiting and socializing with the parties in Unit 1404, at restaurants and on Mr. Scholz's boat.

- [90] Ms. Armstrong said that she assisted with decorating and maintaining Units 1002 and 1404. During their relationship, Mr. Scholz continued his longstanding arrangement of having a housecleaner for Unit 1404. Ms. Armstrong said that she assisted Mr. Scholz by supervising repairs and renovations made to Unit 1404, something which Mr. Scholz denied.
- [91] Throughout their relationship, Ms. Armstrong acted as Mr. Scholz's paid financial adviser. Ms. Armstrong agreed that she was remunerated for her work providing Mr. Scholz and his family with investment advice and services.
- [92] There is evidence to support that the parties spent considerable time together, especially in 2013 and 2014, performing routine domestic services for each other, such as cooking, decorating and shopping.

Social

- [93] Numerous witnesses testified that when they saw Mr. Scholz, for example at Ms. Armstrong's office, business events or social gatherings, he would explain to them how he loved Ms. Armstrong. For example, Ms. Somani and Ms. Wood, Ms. Armstrong's assistants, testified that Mr. Scholz regularly visited the Edward Jones office and while he was there, he would tell them that about his admiration for Ms. Armstrong. Ms. Somani stated that Mr. Scholz told her that he wanted to make Ms. Armstrong his wife.
- [94] When the parties began their romantic relationship, they eventually introduced each other to their children. Ms. Armstrong became acquainted with Michael, as well as Michael's wife, Ms. Linda Scholz. Ms. Armstrong described prepared meals for Mr. Scholz's relatives during their visits to Unit 1404. She also assisted with babysitting Mr. Scholz's elementary-school aged grandson. The evidence indicated that Ms. Armstrong and the grandson got along well. On at least a couple of occasions, Mr. Scholz brought Ms. Armstrong to events at Michael and Linda's house in the Lower Mainland, such as a birthday party.
- [95] Ms. Armstrong testified that when she began the relationship with Mr. Scholz, she was highly conscious of not wanting to appear as though she was, as she put it, a "gold digger". Ms. Armstrong said she was concerned by the fact that Mr. Scholz was a wealthy retired individual who was 16 years older than her. She described how she went out of her way to tell Mr. Scholz and his son, who also became her client, that Mr. Scholz's assets were not at risk due to his romance with her.
- [96] Michael agreed that Ms. Armstrong played a role in assisting them to repair their father-son relationship. It was clear from his testimony that Michael liked Ms. Armstrong and he had no objection to his father's relationship with her.
- [97] However, Michael also testified that he knows and likes a number of other women that his father had romantic relationships with. For example, he is still friendly with Ms. Hoppe, whom he described as his father's girlfriend.

- [98] Michael was impressed by Ms. Armstrong's professional advice. In 2012, Michael and Linda transferred their investments to Ms. Armstrong's management at Edward Jones. Ms. Armstrong also managed an additional investment account at Edward Jones that Mr. Scholz established for the benefit of his grandson.
- [99] In May 2018, Michael and Linda decided to transfer their investments from Ms. Armstrong's management at Edward Jones. Michael emailed Ms. Armstrong to inform her that they were leaving. In his email, Michael thanked Ms. Armstrong for all that she had done, especially for getting him "back together" with his father.
- [100] In cross-examination, Michael stated that he was just trying to be polite to ensure that the portfolio transfer went smoothly. However, I find that Ms. Armstrong did play a role in encouraging Mr. Scholz and Michael to reconcile and Michael was grateful for Ms. Armstrong's efforts.
- [101] Ms. Armstrong's children, for example, Darby, confirmed that they met Mr. Scholz, Michael and the grandson at Unit 1404. They also confirmed that Ms. Armstrong would sometimes bring Mr. Scholz to special occasion dinners, as long as they did not involve Mr. Houliston.
- [102] Darby estimated that when she lived in Victoria, she saw Mr. Scholz at a family dinner with her mother during the winter holiday season perhaps two or three times. Darby understood that the parties broke up in 2017.
- [103] Ms. Armstrong testified that her youngest son, James, and Mr. Scholz were very close and that he regarded Mr. Scholz as a father-figure. James testified about meeting and getting to know Mr. Scholz during the parties' relationship. According to James, he and Mr. Scholz spent a lot of time together out on Mr. Scholz's boat.
- [104] James recalled Mr. Scholz giving him gifts, financial advice and teaching him how to fish and operate the boat. Mr. Scholz did not deny that he took James boating or that that he gave him advice and gifts, for example, a used kayak. James said that Mr. Scholz offered to assist him with buying a property, something that Mr. Scholz denied.
- [105] Ms. Armstrong included Mr. Scholz in some of her promotional activities. For example, she invited Mr. Scholz to investment presentations. Ms. Nelson and Ms. Somani confirmed seeing and talking with Mr. Scholz at such events. However, Ms. Armstrong agreed in cross-examination that she never brought Mr. Scholz on an Edward Jones reward trip, even though she was entitled to bring her spouse.
- [106] Mr. Scholz was a member of a local yacht club. Ms. Armstrong stated that Mr. Scholz added her as member of the yacht club. In early October 2013, the parties received club prepared name tags associating them both with Mr. Scholz's boat.
- [107] Ms. Armstrong described attending dinners and special events with Mr. Scholz at the yacht club. Mr. Scholz said they attended the yacht club annual dinner together and on occasion, they attended a weekly dinner at the yacht club. Mr. Scholz said that Ms. Armstrong was

keen to participate in yacht club activities because she hoped it would generate business. For that reason, he said he added Ms. Armstrong's name to the yacht club register as his guest. However, on December 11, 2017, Mr. Scholz ask the club to omit his former "partner", Ms. Armstrong, from the annual membership register.

- [108] Ms. Armstrong testified that Mr. Scholz arranged for the parties to receive joint business cards. The business cards included a picture of Mr. Scholz's boat along with the address for Unit 1404, the parties' names and each of their individual telephone numbers. Ms. Armstrong said they handed these cards out to other boaters. She said this was to allow them to keep in touch with people they met. On occasion, Ms. Armstrong and Mr. Scholz invited boaters they met to visit in Unit 1404.
- [109] The parties introduced each other to some of their friends. For example, Ms. Armstrong accompanied Mr. Scholz to visit his hospitalized friend. Ms. Armstrong introduced Mr. Scholz to her friend, Ms. Nelson and Ms. Nelson's boyfriend and they spent time going on excursions together.
- [110] In January 2018, Ms. Armstrong took Mr. Scholz to the hospital when he complained to her that he was feeling unwell. While they were at the hospital, Ms. Armstrong described asking the doctors to assess Mr. Scholz for dementia. She said she was concerned by his confused and disoriented behaviour. Ms. Armstrong said that she often told Michael about her concerns regarding Mr. Scholz's mental state.
- [111] The parties arranged appointments or introductions with each other's health care and dental providers. They would sometimes see the same hairdresser. On occasion the parties named each other as their emergency contact on various forms.
- [112] In 2015 or 2016, Mr. Scholz began to participate in "meet-up" groups involving people who were over 50 or retired. Through these events, Mr. Scholz got to know a number of people that he socialized with regularly, including by hosting them in Unit 1404.
- [113] A number of Mr. Scholz's female friends from the meet-up group testified at trial. They described their friendly, but non-romantic, relationships with Mr. Scholz. They described relationships with Mr. Scholz that shared some similarities with the relationship that Ms. Armstrong described herself as having with Mr. Scholz. For example, these friends described preparing food with Mr. Scholz in Unit 1404, receiving gifts of flowers from him and attending outings on Mr. Scholz's boat.
- [114] In 2017, Ms. Armstrong registered on a website called "Boomer Singles Victoria". In cross-examination, Ms. Armstrong denied that this was a dating website despite indicating affirmatively that she was possible looking for a new love interested. Ms. Armstrong also joined some of the same meet-up groups that Mr. Scholz was involved in. It appeared Ms. Armstrong did not know that Mr. Scholz would be attending meet-up group events and it was unexpected when they saw each other at events.

- [115] Ms. Lois McCabe, who met Mr. Scholz through meet-up group activities in approximately 2017, testified about attending events where Mr. Scholz was present and visiting him in his home. Ms. McCabe met Ms. Armstrong one time at a meet-up event, but she did not ever meet Ms. Armstrong in Unit 1404. Ms. McCabe stated that she never saw pictures of Ms. Armstrong in Mr. Scholz's house nor any other indication that a woman was living there.
- [116] Ms. Lorraine Markin testified about getting to know Mr. Scholz in 2015 or 2016 at "meet-up" group social events. Ms. Markin described socializing with Mr. Scholz and others in Unit 1404 and on his boat. Ms. Markin did not know Ms. Armstrong but she was introduced to her at a meet-up event. Ms. Markin stated she never saw Ms. Armstrong during her visits to Unit 1404. However, she did meet Mr. Scholz's next-door neighbours and his son during visits to Unit 1404.
- [117] Ms. Markin testified that Mr. Scholz's home was an untidy "man cave". Ms. Markin went into Mr. Scholz's bedroom once and she saw nothing in the bedroom or elsewhere to indicate that a woman lived there. Ms. Markin was aware that Ms. Armstrong and Mr. Scholz were romantically involved but he never spoke about it.
- [118] Ms. Loretta Fischer, who is Mr. Scholz's neighbour, testified about knowing and interacting with Mr. Scholz from approximately 2017 onwards. Ms. Fischer said that she and Mr. Scholz have lots in common and they are good friends. For example, they have similar backgrounds and they speak German. Ms. Fischer sees Mr. Scholz on a regular basis, sometimes more than once a day. Ms. Fischer has visited with Mr. Scholz in their respective homes, at restaurants and on his boat.
- [119] Ms. Fischer and Mr. Scholz often have meals together. They also help each other out, for example, by providing transport to appointments or running errands. Ms. Fischer holds a key to Mr. Scholz's mailbox so that she can check it when he is away.
- [120] Ms. Fischer described Mr. Scholz as a very kind and generous person. Ms. Fischer noted that Mr. Scholz is always trying to give her something, for example, by sending her home with food or buying her flowers. Ms. Fischer met Michael and Mr. Scholz's grandson while they were visiting. Ms. Fischer never met Ms. Armstrong but Mr. Scholz did tell Ms. Fischer that he felt sad about breaking up with Ms. Armstrong.
- [121] I find that Ms. Armstrong sometimes invited Mr. Scholz to family events, such as birthday celebrations or holiday dinners. In years following 2016, I find that Mr. Scholz's involvement in Ms. Armstrong's family life tapered off significantly.
- [122] Mr. Gray, whose evidence I accept, testified that Ms. Armstrong hosted family events in the Craigflower Property but he had no recollection of seeing Mr. Scholz in attendance. Darby and James said that Mr. Scholz attended some, but not all, their family events.

- [123] Ms. Armstrong attended some of Mr. Scholz's visits with Michael, Linda and the grandson while they were at Unit 1404. On a few occasions, Ms. Armstrong accompanied some or all of them on boating trips or she attended events at Mike and Linda's home in the Lower Mainland. Ms. Armstrong and Mr. Scholz babysat for Mike and Linda. Ms. Armstrong did not accompany Mr. Scholz during any of his frequent trips to visit his extended family in Germany.
- [124] In considering social activities, I find that the parties participated in social activities just as often separately as they did jointly. They had some friendships in common but they also maintained a number of separate friendships and social activities. The parties introduced each other to their respective families and they did some socializing together, but they did not fully integrate each into their family and social lives.

Support (economic)

- [125] The parties never shared a bank account or credit card. They kept their finances completely separate. Neither party reported that they were living in a common-law relationship with the other party in any of their tax filings for the relevant periods. Mr. Armstrong testified that she knew Mr. Scholz's "PIN" code for accessing his bank account, but she never used it.
- [126] Ms. Armstrong described that Mr. Scholz gave her many valuable gifts during their relationship. In addition to items such as jewelry and furniture, he also gave her his BMW vehicle when he decided to buy himself a new vehicle.
- [127] Ms. Armstrong points out that when they attended the auto insurance agent to complete the transfer of the BMW into her name, Mr. Scholz signed a form describing her as his spouse and listing both of their addresses as Unit 1404. However, Ms. Armstrong agreed that her driver's licence did not list her address as Unit 1404. Rather, at the time, her driver's licence recorded Unit 1002 as her address.
- [128] Mr. Scholz did not deny that he signed the transfer form. However, he said the agent or Ms. Armstrong filled it out for him to sign. He was aware the form was filled out so that he could transfer his vehicle to Ms. Armstrong without incurring tax. In other words, he understood that to avoid paying tax, the parties had to state they were spouses. I accept Mr. Scholz's evidence that he did not fill out the form and he signed it to avoid the application of the transfer tax.
- [129] After their romance began, Ms. Armstrong continued to receive a great deal of information about Mr. Scholz's finances, for example, when they discussed his portfolio on a daily basis. However, Ms. Armstrong could not access information about Mr. Scholz's non-Edward Jones' investments unless he showed her the statement. In general, they kept their banking information private from each other.

- [130] Ms. Armstrong testified that she was always very clear with Mr. Scholz and Michael from the outset of their relationship that she was not after Mr. Scholz's assets. Michael confirmed that he and Ms. Armstrong did have discussions about Mr. Scholz's health.
- [131] After Ms. Armstrong moved out of Unit 1002, she wrote to the rental company who managed Unit 1002 to address management charges that Mr. Scholz apparently regarded as unauthorized. There is no suggestion in the letter that she is Ms. Scholz's spouse or that she is also an owner of Unit 1002. In fact, her letter is clear that she had no ability to authorize anything on behalf of Mr. Scholz, whom she identifies as the owner of Unit 1002.
- [132] Ms. Armstrong said she and Mr. Scholz discussed purchasing a home together. However, the Craigflower Property was the only property acquired after Ms. Armstrong and Mr. Scholz became involved in a relationship. Ms. Armstrong also said Mr. Scholz wanted her to acquire a revenue property to supplement her retirement income and to ensure that she owned property if he died.
- [133] When Ms. Armstrong purchased the Craigflower Property, Mr. Scholz's name was not included on the title nor was he listed as a borrower or guarantor on the financing documents. After purchasing the Craigflower Property in March 2015, Ms. Armstrong moved into it directly from the Cowper Suite. She said she and Mr. Scholz shopped for furnishings together and Mr. Scholz could access the Craigflower Property at any time using a front door key or a door passcode.
- [134] Ms. Armstrong eventually began to rent out bedrooms in the Craigflower Property to various tenants, including homestay students. Ms. Armstrong said that Mr. Scholz offered to match her mortgage payments for the Craigflower Property, but he never actually did so. She said she was not concerned about this because he gave her the down payment.
- [135] In 2016, Ms. Armstrong decided she wanted to invest in the stock market but she needed money to use as investment capital. Ms. Armstrong asked Mr. Scholz to loan her \$100,000 (the "2016 Loan"). Mr. Scholz agreed to the 2016 Loan and they negotiated repayment terms, including the interest rate. There was no suggestion that this \$100,000 investment was intended by the parties to be a joint venture or that they would share in the growth of the investment. According to Mr. Scholz, Ms. Armstrong told him she wanted to invest in the market and generate returns so that she could more quickly repay him for the down payment on the Craigflower Property.
- [136] Ms. Armstrong's counsel prepared a mortgage to secure the 2016 Loan against the Craigflower Property. The mortgage was registered on title on January 2, 2017. Ms. Armstrong invested the \$100,000 and eventually repaid Mr. Scholz the 2016 Loan with interest.

- [137] In closing submissions, Ms. Armstrong's counsel described family property as consisting of Unit 1404, Unit 1002, the Craigflower Property and the growth achieved in Mr. Scholz's various investment and bank accounts. Conspicuously absent from Ms. Armstrong's description of family property subject to division was any mention of the growth in any of her own investment, retirement or bank accounts.
- [138] Ms. Armstrong's plan to use capital borrowed from Mr. Scholz to invest in the stock market is, in my view, another indication that the parties did not have an arrangement to acquire property together or to share the growth of property during their relationship. I find it unlikely that Mr. Scholz would agree to secure the 2016 Loan against a property that he already purportedly co-owned. In my view, the use of the Craigflower Property as security for the 2016 Loan is consistent with a conclusion that the Craigflower Property was not a jointly owned property.
- [139] There were numerous examples in the evidence of Mr. Scholz consistently referring to the Craigflower Property as Ms. Armstrong's home or her property. In addition, there were examples of Ms. Armstrong referring to the Craigflower Property as her home. What I found notably absent were instances of the parties, during their relationship, referring to the Craigflower Property as their home or property.
- [140] In considering the evidence as a whole, I do not find that these parties maintained a financial arrangement that involved pooling or sharing their resources. On the contrary, the parties assiduously kept their financial lives separate. In making this observation, I am aware that economic dependent or interdependence is not a necessary or essential part of a spousal relationship: Weber, at para. 12.
- [141] Mr. Scholz did agree that sometimes he provided Ms. Armstrong with economic assistance, for example, by reducing the rent that she paid for Unit 1002. He said he did so because she complained about money being tight. However, there is insufficient evidence to establish that Mr. Scholz covered the parties' joint living costs or that they pooled their resources to cover their expenses. Ms. Armstrong was clear that her intention was to be self-supporting.
- [142] I am unable to find that these parties entered into joint arrangements to acquire or maintain property with respect to the Craigflower Property or any other property. The evidence makes it clear that neither party intended to, nor behaved as if, they owned the Craigflower Property or any other property jointly. While I acknowledge that the parties exchanged gifts, I do not find that they fully integrated their economic lives nor did they provide regular or ongoing economic support for each other during their relationship.
- [143] In addition to the various factors discussed above that courts have recognized as potentially indicating the existence of a marriage-like relationship, there are some additional factors particular to the parties' unique relationship and circumstances that I will also consider below.

Professional Relationship

- [144] As mentioned above, Ms. Armstrong was, at all relevant times, a paid financial adviser to Mr. Scholz and some of his closest family members. Ms. Armstrong agreed that she owed him a fiduciary duty.
- [145] There was evidence that Ms. Armstrong would identify herself as Mr. Scholz's financial adviser, rather than his spouse, in her dealings with third parties during the parties' relationship. For example, in September 2014, Ms. Armstrong inquired about Mr. Scholz's cruise travel plans with his travel agent. Ms. Armstrong told the travel agent that she was Mr. Scholz's financial adviser and that she needed information about his itinerary for business purposes. This inquiry is how she learned that Mr. Scholz was travelling with Ms. Hoppe.
- [146] On November 24, 2017, Ms. Armstrong sent Mr. Scholz's birth certificate to his accountant. She noted on the fax cover sheet addressed to the accountant that it was sent in respect of their "mutual client, Peter Scholz".
- [147] Throughout her evidence, Ms. Armstrong seemed to lack a clear understanding of when she was acting in her capacity as Mr. Scholz's financial adviser or as his romantic partner and how those roles could lead to a conflict of interest.
- [148] Ms. Armstrong described independently recommending an alter ego trust to Mr. Scholz as part of his estate and financial planning. Ms. Armstrong said that she saw this as a good financial move for Mr. Scholz which would also benefit Michael and Mr. Scholz's grandson.
- [149] Two of Mr. Scholz's professional advisers gave evidence regarding their involvement in Mr. Scholz's estate planning and the establishment of an alter ego trust. Ms. Shelley Bentley acted as Mr. Scholz's wills and estates lawyer. She described the work she did over the course of a decade advising Mr. Scholz about estate matters, preparing numerous wills, and assisting with the preparation of the alter ego trust in 2017.
- [150] Mr. Alan Stronach, who was Mr. Scholz's long-time accountant, testified about his involvement providing accounting services to Mr. Scholz and his holding company. Mr. Stronach was also involved in the preparation and advice given related to the alter ego trust.
- [151] Mr. Stronach knew that Ms. Armstrong was Mr. Scholz's girlfriend and he said that he spoke to her a few times over the years in her professional capacity as Mr. Scholz's financial adviser. They discussed matters related to Mr. Scholz's securities portfolio. He also recalled that Ms. Armstrong contacted him before the alter ego trust was settled to suggest an insurance product for Mr. Scholz. Mr. Stronach researched the insurance product, but Mr. Scholz did not end up buying that product.

- [152] Mr. Scholz employed Ms. Bentley to prepare numerous wills over the years, including during the parties' relationship. Sometimes, he would execute a new will more than once a year. Mr. Scholz would often change details in his will, such as the executors and the residual beneficiaries.
- [153] From 2014 to 2016, Ms. Armstrong's name began to appear in Mr. Scholz's wills as an alternate trustee and alternate residual beneficiary in the event the trust failed. In addition, at various times from 2014 to 2016, Mr. Scholz included a gift of his boat to Ms. Armstrong. Ms. Bentley said that Mr. Scholz once instructed her to eliminate the gift of his boat to Ms. Armstrong because the parties had a disagreement.
- [154] On December 12, 2017, Mr. Scholz executed documents to establish an alter ego trust. Michael signed the alter ego trust in his capacity as the trustee and Ms. Armstrong witnessed his signature. Ms. Armstrong said that she was happy to witness the document and she looked at it to see what assets were contributed to the trust.
- [155] Mr. Scholz transferred a one-ounce silver coin to settle the alter ego trust; however, the terms contemplated that other assets, beyond the coin, could be added to the trust. Ms. Bentley testified that it was her practice to settle an alter ego trust using a silver coin because it could take time to transfer property, such as shares, into the trust.
- [156] On December 12, 2017, coinciding with the creation of the alter ego trust, Mr. Scholz also executed a will. The will did not mention Ms. Armstrong's name in any capacity.
- [157] Ms. Bentley testified that prior to the alter ego trust, she knew Mr. Scholz and Ms. Armstrong had a romantic relationship that involved dating but not living together. Ms. Bentley also knew that Ms. Armstrong was Mr. Scholz's financial adviser because once Ms. Armstrong had telephoned her to discuss Mr. Scholz's investments.
- [158] In the preparations for the creation of an alter ego trust and will, Ms. Bentley told Mr. Scholz that she needed written confirmation that Ms. Armstrong had received independent legal advice. Ms. Bentley said that her standard practice was to require a certificate of independent legal advice if a client was involved in a romantic relationship regardless of how the relationship was portrayed. Mr. Scholz asked Ms. Bentley to suggest some wording that he could show Ms. Armstrong.
- [159] Ms. Bentley suggested the following wording for Mr. Scholz to provide to Ms. Armstrong:
- "I, Barbara Armstrong, have knowledge that Peter Scholz owns XYZ assets value at about 16 million and is placing some or all of them in an Alter Ego Trust and leaving them to his son and grandson when he dies. I have obtained independent legal advice from a lawyer, _____, with respect to his plans and I confirm that he does so with my full knowledge and consent."
- [160] Ms. Bentley said the purpose of the request was for Ms. Armstrong to confirm that: she consented to the alter ego trust; she knew what Mr. Scholz owned, and; she knew he was setting up the alter ego trust with her full knowledge and consent.

[161] Ms. Armstrong acknowledged that she received that suggested wording. She described herself as feeling "conflicted" when Mr. Scholz raised the issue of the wording and her need to get independent legal advice. Ms. Armstrong said the request triggered a fearful response in her and he became worried that Mr. Scholz regarded her as a threat. Ms. Armstrong also stated that she believed Mr. Scholz could be ruthless and that he could "bring problems to the security of her employment".

[162] Ms. Armstrong decided to prepare her own letter. On November 2, 2017, Ms. Armstrong wrote and signed the following letter to Ms. Bentley:

Re: Peter Scholz - Alter Ego Trust requirements

I have known Peter Scholz since 2011 and have enjoyed a professional and personal relationship with him since that time. We do not have a common law relationship, neither by strict definition nor by common consent, as:

I have not co-habited with Peter Scholz at any time in this relationship;

I am completely financially independent of him;

I continue to be legally bound by a marriage of 34 year duration, and while my spouse and I live separately, we share financial commitments and assets, and there are no immediate plans to formalize our separation of the division of assets;

I own my own home, and have a professional career with a goal of supporting myself and my children in my retirement.

I understand that Peter Scholz is proceeding with establishing an Alter Ego Trust, and commend him for the same. I confirm that he does so with my full knowledge, agreement and consent. I also confirm that in doing so, I am not in any way acknowledging the existence of a common law relationship with Peter Scholz, and as a result there is a mutual understanding that there is no tie whatsoever to each others assets, neither currently nor retroactively."

[163] Ms. Bentley received Ms. Armstrong's November 2, 2017 letter and she concluded that it went far beyond what Ms. Armstrong had been asked to confirm. Ms. Bentley found the letter reassuring. Ms. Bentley agreed that she never spoke directly with Ms. Armstrong about the letter nor did they discuss whether the parties were spouses. Ms. Bentley did recall speaking with Ms. Armstrong some years earlier about Mr. Scholz's investments.

[164] Mr. Scholz told Ms. Bentley that Ms. Armstrong had discussed the November 2, 2017 letter with a lawyer friend of hers. In fact, Ms. Armstrong submits that she received no independent legal advice prior to the establishment of the alter ego trust and she had no knowledge of what assets Mr. Scholz intended to contribute to the trust property.

- [165] During her cross-examination, Ms. Armstrong was questioned about her reasons for preparing the November 2, 2017 letter. Ms. Armstrong testified that she always wanted the alter ego trust to proceed. She said understood the ramifications of the letter and it was intended to signal to Mr. Scholz and his advisers that she was severing or distancing herself from him personally and professionally. Ms. Armstrong did not get independent legal advice because she did not believe she required it.
- [166] Ms. Armstrong also testified that she prepared the letter as a way to protect the Armstrong-Houliston property from a claim by Mr. Scholz. However, she also stated that at the time, she did not understand that her marriage to Mr. Houliston was not a bar to having a "common law" relationship with Mr. Scholz.
- [167] In cross examination, Ms. Armstrong also agreed that following Mr. Scholz's demand for repayment of the \$100,000 advance, she initially agreed to repay him and she asked for time to sell the Craigflower Property. However, she later changed her mind, in part due to receiving legal advice about her potential claim against Mr. Scholz's spouse.
- [168] Eventually, as I already mentioned, Mr. Scholz made a complaint about Ms. Armstrong to Edward Jones. During her cross examination, Ms. Armstrong appeared to reluctantly agree that it was wrong from a professional standpoint to enter into a relationship with someone who is a client.
- [169] She testified that once the parties' relationship began, she told an Edward Jones' compliance officer that she had formed a romantic relationship with her client, Mr. Scholz. Ms. Armstrong could not recall the name of the compliance officer that she allegedly made this disclosure to.
- [170] Ms. Armstrong's husband, Mr. Houliston, testified that Edward Jones has a sophisticated compliance system. He said investment advisers are assigned a "field compliance officer" who has the ability to look over anything and everything that an investment adviser does.
- [171] I did not find Ms. Armstrong's testimony about her initial disclosure regarding her relationship with Mr. Scholz to be credible. She could not remember when, or to whom, she made this disclosure. I also find it significant that Ms. Armstrong never mentioned this potentially exculpatory fact to Edward Jones in her written communications responding to Mr. Scholz's complaint.
- [172] During her direct-examination about the investigation of Mr. Scholz's complaint, Ms. Armstrong testified that the complaint was completely dismissed without any adverse findings being made against her by Edward Jones or the Investment Industry Regulatory Organization of Canada (IIROC). That evidence was untrue, or at best, incomplete.

- [173] During Ms. Armstrong's cross-examination about the investigation of Mr. Scholz's complaint, I find that she testified in an evasive and less than truthful manner. For example, later in her cross-examination, Ms. Armstrong eventually revealed the existence of a letter from IIROC. She appeared reluctant to produce that letter despite being asked by Mr. Scholz's counsel to do so.
- [174] When Ms. Armstrong produced the letter, she was cross-examined about its contents. She agreed, contrary to her earlier evidence, that IIROC's conclusion was that she had failed to comply with multiple rules which raised significant regulatory concerns. Ms. Armstrong conceded that IIROC might initiate proceedings against her in the future and if that occurred, it would be better for her position if a court determined that she was involved in a marriage-like relationship.
- [175] Ms. Armstrong's evasive and untruthful testimony concerning the outcome of the investigation of Mr. Scholz's complaint, causes me to question her overall credibility and reliability. Therefore, except where I have stated otherwise, I prefer the evidence of Mr. Scholz where it conflicts with the evidence of Ms. Armstrong.

Allegations of Violence and Harassment

- [176] As I already mentioned, the parties had divergent ideas about sexual fidelity during their relationship. Early in the parties' relationship, Ms. Armstrong engaged in some sexual activity with Mr. Scholz and another female, but she testified that this was not her preferred sexual lifestyle. Although she knew Mr. Scholz enjoyed a sexual lifestyle that included having multiple partners, it was her expectation that the parties' sexual relationship would be an exclusive one.
- [177] In 2014, and again in 2016, Ms. Armstrong discovered that Mr. Scholz was having sexual relationships with other women. As already discussed, this led to conflicts between the parties and breakups.
- [178] Ms. Armstrong testified that Mr. Scholz began falsely accusing her of having relationships with women who were Ms. Armstrong's friends. Although she denied these accusations, it appeared to Ms. Armstrong that as time went by, Mr. Scholz became increasingly fixated on what she viewed as his irrational suspicions.
- [179] In August 2015, the parties travelled to Quebec City for a vacation. At the end of the trip, Ms. Armstrong testified that Mr. Scholz confronted her about having a same-sex affair and threw her on the hotel bed. Although Ms. Armstrong appears to have told other people that Mr. Scholz acted violently towards her during this incident, she stated in cross-examination that no physical violence occurred.

- [180] Ms. Armstrong said that in 2016 and 2017, she was so emotionally distraught by Mr. Scholz's ongoing accusations that she was having an affair, she became ill. Ms. Armstrong registered herself for counselling through a shelter that offered services to women involved in abusive relationships.
- [181] Ms. Armstrong testified that Mr. Scholz's angry and accusatory episodes often took place while they were travelling together. For example, during trips to Tofino and Salt Spring Island, Ms. Armstrong said she became so frightened by Mr. Scholz's behaviour that she left the trip abruptly without him.
- [182] In 2018, Mr. Scholz went on a vacation to Iceland around the time of his first demand to Ms. Armstrong for repayment of the \$100,000 he advanced to her in 2015. Prior to his return, Ms. Armstrong and Mr. Scholz exchanged numerous text messages concerning their views about the decline of their romantic relationship.
- [183] It is a matter of dispute as to exactly how Mr. Scholz came to be at the Craigflower Property on April 29, 2018 immediately after his return from Iceland. However, as events unfolded, they ended up together in Ms. Armstrong's bedroom. Ms. Armstrong said that while they were in bed, Mr. Scholz threatened to take a nude picture of her using his cell phone.
- [184] Ms. Armstrong said she wanted to avoid this. She proceeded to bite Mr. Scholz, take his cell phone away and lock herself into the bathroom. While inside the bathroom, Ms. Armstrong threw Mr. Scholz's cell phone into the toilet and the cell phone was destroyed.
- [185] The police attended and they spoke with Ms. Armstrong and Mr. Scholz in separate areas of the home. The parties were cross-examined at length about the events of that evening and the statements they each made to the police that were recorded in the police occurrence report.
- [186] The police apparently ultimately concluded that Ms. Armstrong was intoxicated and that she was the source of the immediate problem. No charges were laid against either party. The police escorted Mr. Scholz from the Craigflower Property and they reminded him not to contact Ms. Armstrong.
- [187] Mr. Scholz adamantly denies threatening or physically harming Ms. Armstrong that night or at any other time. He said Ms. Armstrong injured him when she bit him on his face and thigh, which resulted in swelling and bruising. As a result of Ms. Armstrong destroying his cell phone, Mr. Scholz stated that he lost access to important information, such as stored text messages, which could have assisted him in this proceeding.
- [188] I find that Mr. Scholz was jealous and he did accuse Ms. Armstrong of being involved in other relationships. He confronted her on various occasions and the parties had arguments about his suspicions. He also raised his suspicions with other people, such as Ms. Nelson, and his accusations caused embarrassment and distress. However, there was evidence that Ms. Armstrong was also jealous and suspicious about Mr. Scholz having other relationships.

- [189] In October 2020, Ms. Armstrong arranged for a formal psychological assessment of herself. Dr. Peter Meuser, a registered psychologist, interviewed and assessed Ms. Armstrong. He also conducted collateral interviews with her husband, Mr. Houliston, and her children, James and Darby. Dr. Meuser did not interview Mr. Scholz and he was not provided with a copy of Ms. Armstrong's counselling records.
- [190] Dr. Meuser provided a report related to his assessment of Ms. Armstrong dated February 4, 2021. The main purpose of Dr. Meuser's report was to provide an explanation of Ms. Armstrong's state of mind on November 2, 2017 when she wrote to Ms. Bentley.
- [191] Counsel for Mr. Scholz objected to the admissibility of Dr. Meuser's report on a number of grounds. After certain parts of the report were redacted, I ruled that the report was admissible.
- [192] Dr. Meuser was instructed by counsel to provide an opinion as to whether Ms. Armstrong suffers from any medical or psychiatric conditions arising from her relationship with Mr. Scholz. Dr. Meuser's opinion on this issue was stated as follows:

It is the Assessor's respectful opinion that at the time of Assessment (several years post-breakup), Ms. Armstrong does not meet the stringent criteria required to warrant consideration of formal psychological/psychiatric Diagnosis. In contrast, at the apex of their relationship breakdown in late 2017/2018, it is more likely than not, Ms. Armstrong meets the criteria for a diagnosis of "Acute Stress Disorder" (ASD; DSM 308.30) and PTSD.

- [193] In his direct examination, Dr. Meuser clarified that he did not make a formal diagnosis of Ms. Armstrong. Rather, he was asked to consider a retrospective diagnosis or perspective on her behaviour in November 2017. He stated that it is difficult to ensure the accuracy of a retrospective diagnosis or perspective on her past behaviour.
- [194] Dr. Meuser said that Ms. Armstrong and the other witnesses gave him information to cause him to conclude that Ms. Armstrong probably met the criteria for a formal diagnosis of PTSD and ASD back in November 2017. He concluded in his report that her "relationship trauma" with Mr. Scholz was the root cause of the disorders.
- [195] Dr. Meuser stated that he accepted at face value all information that he received from Ms. Armstrong and her family members during the interviews. The information they supplied caused him to conclude that Ms. Armstrong and Mr. Scholz were involved in a "typical" abusive relationship. Mr. Scholz would verbally harass Ms. Armstrong about having affairs and afterwards, he would shower her with gifts and flowers. He called this a classic pattern of oscillation leading to systemic relationship trauma which caused Ms. Armstrong to experience feelings of guilt, ambivalence, anxiety and unclear thinking.

- [196] Dr. Meuser was also asked by counsel to provide an opinion as to "the contradiction" between the November 2, 2017 letter that Ms. Armstrong wrote to Ms. Bentley denying the common-law relationship and "the presumption of a marriage-like relationship that appears to have existed". In response to this question, Dr. Meuser stated that Ms. Armstrong wrote the letter while in a state of ASD and likely PTSD consistent with being a victim of systemic abuse at the hands of Mr. Scholz.
- [197] In his cross-examination, Dr. Meuser agreed that making a historical assessment of past behaviour is more difficult and that it can erode accuracy. He described purposefully not making a retrospective diagnosis of Ms. Armstrong because it would be problematic to prove she had these orders when she wrote the letter. However, he said based on what Ms. Armstrong and others described to him about the circumstances and her behaviour at the time, he was "close" to diagnosing a disorder. Even though he could not provide an opinion about why Ms. Armstrong wrote the November 2, 2017 letter, he did opine that she was in a traumatized state when she wrote it.
- [198] In his June 11, 2021 report responding to the opinion of Dr. Meuser, Dr. Soma Ganesan, a medical doctor and psychiatrist, set out numerous criticisms of the methodology employed Dr. Meuser in assessing Ms. Armstrong. For example, Dr. Ganesan was concerned by Dr. Meuser's failure to gather clinical evidence-based information by asking Ms. Armstrong direct questions about her behaviour using appropriate clinical tools and assessments. He said there was a lack of several key criteria for diagnosing PTSD and a lack of criteria to diagnose ASD.
- [199] Dr. Ganesan described Dr. Meuser's conclusion that Ms. Armstrong wrote the November 2, 2017 letter while in a state of "acute stress disorder and likely post-traumatic stress disorder [as] probably a projection based on psychodynamic formulation of Dr. Meuser, instead of relying on the clinical evidence-based information." In Dr. Ganesan's view, Dr. Meuser's report lacked "direct and relevant signs and symptoms of psychiatric disorders".
- [200] Dr. Meuser's report contains a detailed account (as provided by Ms. Armstrong and her family members) of the history leading up to the letter including statements that Mr. Scholz had been physically violent with Ms. Armstrong. Some of Dr. Meuser's factual assumptions, for example, that Mr. Scholz slapped or was violent with Ms. Armstrong, have not been established at trial and this negatively impacts the weight that I give to his report.
- [201] I note that neither Dr. Meuser, nor Dr. Ganesan, expressed an opinion that Ms. Armstrong lacked capacity to write the letter or that she suffered from a psychiatric disorder at the time she wrote it.
- [202] Ms. Armstrong testified that when she wrote the letter, she wanted Mr. Scholz's advisers to know that she was retreating professionally and personally from Mr. Scholz. She was concerned to protect the Armstrong-Houliston Property from a claim by Mr. Scholz.

- [203] It appears that Ms. Armstrong was relying, in part, on a mistake of law to disavow that she was in a common law relationship. Specifically, in the November 2, 2017 letter she refers to the fact that she is legally married to Mr. Houliston as a one ground for her explanation of why she and Mr. Scholz were not involved in a common-law marriage.
- [204] However, Ms. Armstrong's mistake of law that her marriage to Mr. Houliston was an impediment was not the only reason she raised for disavowing the existence of a marriage-like relationship. Importantly, she pointed out that many of the indicia of a marriage-like relationship were absent. She also noted that the parties never consented to be common-law and she said she was not "in any way acknowledging the existence of a common law relationship with Peter Scholz" [Emphasis added].
- [205] The conflicts the parties had about fidelity issues led to arguments and break ups. In my view, this provides some context for the way the parties behaved at various times in their relationship. I do not find based on the evidence presented that during the relationship Mr. Scholz acted violently towards Ms. Armstrong or that his jealous accusations amounted to psychological or emotional abuse of Ms. Armstrong.
- [206] After considering the evidence, including the expert evidence discussing Ms. Armstrong's potential state of mind when she wrote the November 2, 2017 letter, I find that Ms. Armstrong freely made a decision to write and sign the letter knowing that it had important legal implications. I accept that the letter was written at a time when the parties' relationship was not going well and Ms. Armstrong was upset and disappointed by the state of their relationship. However, I do not find that Ms. Armstrong was suffering from a psychological disorder when she wrote the November 2, 2017 letter.
- [207] Ms. Armstrong testified to feeling disappointed that Mr. Scholz viewed her as a threat when he asked her to provide a response to Ms. Bentley. However, she also testified to feeling as though Mr. Scholz was a potential threat to the Armstrong-Houliston Property. After considering all of the evidence, I am satisfied and I find that Ms. Armstrong made a deliberate, carefully reasoned, decision to draft and sign the November 2, 2017 letter. I find that Ms. Armstrong understood the ramifications when she wrote it and she did not want, nor believe that she needed, independent legal advice.
- [208] Ms. Armstrong is a mature, well-educated person with qualifications to provide financial advice to clients, including high net-worth individuals like Mr. Scholz. She admits that she independently recommended the alter ego trust to him long before it was officially created. I find Ms. Armstrong's evidence that she did not know how the trust would be settled and that she did not know the identity of assets that were to be contributed to the trust to be self-serving and lacking in credibility. Ms. Armstrong was at all times well-aware of Mr. Scholz's assets and how the alter-ego trust stood to benefit Michael Scholz and the grandson.

[209] I find that the November 2, 2017 letter supports a conclusion that the parties had no intention to, nor did they actually, enter into a marriage-like relationship at any point during their romantic relationship.

Conclusion

[210] The November 2, 2017 letter and my assessment of the many factors discussed above, when considered together, leads me to conclude that Ms. Armstrong and Mr. Scholz never had a marriage-like relationship. Rather, they were involved in a romantic relationship that was on-again, off-again.

[211] In my view, the overall nature of the parties' relationship, when considered in light of the evidence of their particular circumstances, falls well short of the requirements for a marriage-like relationship.

[212] In reaching this conclusion, I have considered, for example, that Ms. Armstrong and Mr. Scholz never cohabitated, they did not share finances, and while they shared some aspects of their social life, they did not entirely integrate with one another's family and friends. The parties did share a sexual relationship; however, the evidence shows that their expectations regarding exclusivity were different, which led to significant conflicts and even break ups.

[213] After considering all of the circumstances, and reminding myself of the need to take a holistic approach that considers all relevant aspects of the relationship, I do not find, for the reasons that I have explained, that Ms. Armstrong and Mr. Scholz had a marriage-like relationship or were spouses within the meaning of s. 3 of the FLA at any point during their relationship.

Issue 2: Did Mr. Scholz loan or gift Ms. Armstrong \$100,000?

[214] Mr. Scholz seeks judgment against Ms. Armstrong for \$100,000 that he advanced to her in 2015 for the purchase of the Craigflower Property.

[215] Mr. Scholz testified the \$100,000 he advanced to Ms. Armstrong in 2015 was not a gift but rather a loan.

[216] According to Ms. Armstrong, Mr. Scholz never indicated to her that she had to repay the \$100,000. She said the money was a kind of apology gift because he had been untruthful about his relationship with Ms. Hoppe. Ms. Armstrong also said it was a gift to assist her with purchasing a revenue property for her retirement years.

[217] On February 22, 2018, Mr. Scholz demanded repayment of the \$100,000 down payment advance from Ms. Armstrong. His counsel issued a formal demand on March 28, 2018.

The Law

[218] In *Pecore v. Pecore*, 2007 SCC 17 at para. 24, the Court stated that "where a transfer is made for no consideration, the onus is place on the transferee to demonstrate that a gift was intended" and that "[t]his is so because equity presumes bargains, not gifts".

[219] In *Beaverstock v. Beaverstock*, 2011 BCCA 413 at para. 9, our Court of Appeal explained the proper approach in cases involving a gratuitous advance:

The correct approach to the resolution of this dispute is not in dispute. It is set out in *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795. Whether the transfer was a loan or a gift depends on the actual intention of the appellant when she made the advance, which is a question of fact. As the advance was gratuitous, the onus was on the respondent to demonstrate that the appellant intended a gift, since equity presumes bargains, not gifts (para. 24). This equitable principle gives rise to a presumption the son received the money on a resulting trust, which is a rebuttable presumption of law. The trial judge was therefore required to presume the advance was not a gift and to determine whether the respondent had satisfied the burden of rebutting the presumption of resulting trust on a balance of probabilities (para. 44).

[220] The law is clear that I am required to presume that Mr. Scholz's 2015 advance of \$100,000 to Ms. Armstrong was not a gift. I must then consider whether Ms. Armstrong has rebutted, on a balance of probabilities, the presumption of a resulting trust.

Analysis

[221] The parties agree that Mr. Scholz deposited \$50,000 into Ms. Armstrong's bank account on February 19, 2015 and that on March 2, 2015 he gave her a bank draft for an additional \$50,000.

[222] Ms. Armstrong said Mr. Scholz told her these were "gifts from his heart". She testified that she regarded this cash as symbolizing that they were ready to move forward in their relationship.

[223] Ms. Armstrong used the \$100,000 as the down payment on the purchase of the Craigflower Property. Ms. Armstrong agreed that without these funds, she could not have purchased the property.

[224] According to Mr. Scholz, in 2015 Ms. Armstrong told him that she wanted to purchase property but she did not have the money for a down payment. Mr. Scholz was concerned that the Cowper Suite was not a suitable place for Ms. Armstrong to be living. Mr. Scholz said he wanted to help Ms. Armstrong purchase a place to live so he agreed to loan her funds for a down payment. He said they discussed that the loan would be interest free and it would be repaid within five years.

- [225] Counsel for Mr. Scholz pointed out that Mr. Scholz was a shrewd business person who routinely documented and secured loans made to family and business associates using promissory notes or mortgages. For example, Mr. Scholz secured monies he advanced to Michael to assist with the purchase of a house by registering a mortgage.
- [226] Mr. Scholz testified that it was impossible to register a mortgage against the Craigflower Property to secure the down payment advance because there was insufficient equity. Mr. Scholz said that he trusted Ms. Armstrong that she would repay the advance to him as they agreed.
- [227] Ms. Armstrong stated that her mortgage broker managed to work around the usual timing requirements for how long the down payment funds had to be held in her bank account. She also said there was no requirement to present the bank with a "gift" letter regarding the source of the down payment.
- [228] Ms. Armstrong was cross-examined about the Craigflower Property mortgage commitment letter that she signed on March 30, 2015. She acknowledged the commitment precluded secondary financing. In other words, at the time of the purchase of the Craigflower Property, assuming the \$100,000 advance was secondary financing from Mr. Scholz, Ms. Armstrong was precluded from granting him a mortgage.
- [229] In cross-examination, Ms. Armstrong agreed that she assured Mr. Scholz and his son, as well as others, such as Ms. Nelson, that she would repay the \$100,000. At one point she stated she would repay the advance by July 2018 by selling the Craigflower Property. When she did not do so, Mr. Scholz continued to insist on repayment.
- [230] After Ms. Armstrong sought legal advice, she described realizing that the parties had lived in a marriage-like relationship and that she was entitled to claim against family property. At this point, she changed her mind about repaying the advance.
- [231] During cross-examination, counsel for Ms. Armstrong made much of the fact that Mr. Scholz described himself as "giving" Ms. Armstrong \$100,000. For example, he told Ms. Bentley that he "gave" Ms. Armstrong \$100,000 to purchase "her" condo. However, by using the words "giving" or "gave", I do not find that Mr. Scholz was intending to describe the legal character of the advance. Further, I do not find that Mr. Scholz admitted that the advance was a gift instead of a loan.
- [232] During his testimony, Mr. Scholz also stated that he "gave" money to his friend, Mr. Tolzmann, but he also testified that Mr. Tolzmann repaid the amounts because they were loans. There was no suggestion that Mr. Scholz was in fact gifting money to Mr. Tolzmann.

- [233] In my view, Mr. Scholz's use of the word "give" to essentially describe his action causing Ms. Armstrong to receive or have the \$100,000, does not establish that he intended the advance as a gift. In reaching this conclusion, I am mindful that English is not Mr. Scholz's first language and therefore, I find it more likely than not that Mr. Scholz failed to appreciate all of the potential implications of the word when he used it.
- [234] I find that Mr. Scholz did not follow his usual practice of securing the loan with a mortgage because that was not permitted and because he trusted Ms. Armstrong to repay him. Ms. Armstrong repeatedly assured Mr. Scholz and others that she would repay the advance and I find this is inconsistent with her evidence that Mr. Scholz told her the monies were "gifts from his heart".
- [235] When I consider the evidence in its entirety, I do not find that Ms. Armstrong has rebutted, on a balance of probabilities, the presumption that Mr. Scholz's advance of \$100,000 was a loan. In reaching this conclusion, I have accepted Mr. Scholz's evidence that he intended to loan Ms. Armstrong money to assist her with buying a property but he always expected to be repaid. Therefore, I find that the repayment of the \$100,000 loan is due and owing by Ms. Armstrong.

Disposition

- [236] The respondent's request in the amended counterclaim seeking judgment against Ms. Armstrong in the amount of \$100,000 is granted.
- [237] The parties requested the opportunity to make submissions regarding costs. Therefore, once the parties agree on the time estimate for their submissions, I grant the parties leave to contact SC Scheduling to request a time to appear before me to make submissions on the matter of costs.

"E. McDonald J."

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Prepared on 28 October 2026 · Esheria