
CANADA / JUDGMENT

Hopson v. Hannon

2020 BCSC 794

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Supreme Court of British Columbia

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2020 BCSC 794 Hopson v. Hannon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hopson v. Hannon,

2020 BCSC 794

Date: 20200529

Docket: E153430

Registry: Vancouver

Between:

Katherine Lucy Hopson

Claimant

And

Curtis Paul Hannon

Respondent

Before: The Honourable Madam Justice Warren

Reasons for Judgment

Counsel for the Claimant:

J. Brown

Counsel for the Respondent from October 29, 2018 to November 8, 2018:

R. Huinink

The Respondent appearing in person from July 22, 2019 to November 7, 2019:

C.P. Hannon

Place and Dates of Trial:

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October 29-31, 2018

November 1, 5-8, 2018

July 22-26, 2019

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November 4-7, 2019

Place and Date of Judgment:

Vancouver, B.C.

May 29, 2020

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Introduction

- [1] This is a family law proceeding. The parties were never married. They have no children.
- [2] The claimant, Katherine Lucy Hopson, alleges that she and the respondent, Curtis Paul Hannon, lived in a marriage-like relationship continuously from 2001 to May 2015. Pursuant to the Family Law Act, S.B.C. 2011, c. 25 (the "FLA"), she seeks an equal division of family property and lump sum spousal support or, alternatively, an unequal division of family property in her favour in lieu of spousal support.
- [3] Mr. Hannon seeks the dismissal of Ms. Hopson's claims on the ground that the property division and spousal support provisions of the FLA apply only to "spouses" as defined therein and the parties were not "spouses". Although not pleaded, he submits that, pursuant to ss. 107 and 108 of the FLA, the parties' respective rights to property must be determined according to the law of the United Kingdom. Nevertheless, he has filed a counterclaim in which he seeks an unequal division of family property in his favour pursuant to s. 95 of the FLA. He also seeks a determination that certain property is his excluded property under s. 85 of the FLA, although this is not pleaded.
- [4] In her final submissions, Ms. Hopson took the position that, by advancing a counterclaim seeking relief under the FLA, Mr. Hannon conceded that the parties were spouses. I do not agree. Although the counterclaim ought to have been expressed as an alternative to Mr. Hannon's primary position, this failing did not give rise to any confusion or unfairness. Mr. Hannon's primary position that the parties were not spouses was very apparent. Ms. Hopson's opening statement identified that question as the first issue in the case. Similarly, although Mr. Hannon's claims respecting the application of UK law and excluded property were not pleaded, they did not take Ms. Hopson by surprise. I was not advised that she would have led additional evidence or articulated different submissions had she known that these matters were in issue. No pleadings-based objection was made about the nature or scope of the positions being advanced by Mr. Hannon at trial. Had such an objection been made, I would have allowed Mr. Hannon to amend his pleadings because it was apparent that Ms. Hopson was not taken by surprise. In the result, notwithstanding the deficiencies in Mr. Hannon's pleadings, I will consider the issues raised by him in order to do justice between the parties.

Background

- [5] There was considerable conflict in the parties' testimony. Some of the conflict concerns substantive matters. Other areas of conflict are material only to the assessment of the parties' credibility. Neither Ms. Hopson nor Mr. Hannon was a credible witness. I was very troubled by several aspects of their evidence. This section of these reasons for judgment contains a chronology drawn from undisputed documents and the aspects of the parties' testimony that aligned or were not contested. Where necessary for continuity of the narrative, I have referred to disputed facts and identified them as such. My credibility

assessment follows, in the next section.

- [6] Ms. Hopson was born in 1969 in London, England. She resides in Gibsons, British Columbia. She works full time as a senior service advisor at Gibsons Way Auto Repair and earns about \$37,500 per year.
- [7] Mr. Hannon was born in 1969 in London, England. He was a pilot. He says he is now unemployed.
- [8] Mr. Hannon has a long history of anxiety, depression, and panic attacks, dating back to the 1990s. He became emotional and appeared distressed when speaking about this in court. His condition manifests in periodic debilitating episodes during which he isolates himself and ruminates, irrationally, about hair loss. He has taken anti-depressant medication and medication to prevent hair loss, for years.
- [9] The parties met in 1994 in Aberdeen, Scotland. They were both working at Bond Helicopters at the time. Ms. Hopson was a receptionist and was about to embark on a five-year course of study at Aberdeen University. Mr. Hopson was a helicopter pilot. They began dating soon after they met. They did not live together in Scotland. Ms. Hopson lived in an apartment owned by her mother. Mr. Hannon lived in a series of properties that he purchased, renovated and sold, and from which he generated some profits.
- [10] In 1998, Mr. Hannon moved to Manchester, England to take up an employment position as a commercial airline pilot with Airtours Airlines. Ms. Hopson remained in Aberdeen to complete her degree in Hispanic studies and international relations.
- [11] Ms. Hopson maintains that the parties' romantic relationship continued in the years 1998 to 2001, while they lived in different cities. Mr. Hannon says their relationship ended when he moved away from Aberdeen in 1998. Whether their relationship continued between 1998 and 2001 is not material because Ms. Hopson's position is that they became spouses in 2001.
- [12] In early 2000, Mr. Hannon purchased a two-bedroom apartment in Manchester that the parties referred to as the "Grand Apartment". The purchase price was £155,000. He made a down payment of about £25,000 and financed the balance with a mortgage. He moved into the Grand Apartment in about March of 2000.
- [13] In early 2001, Ms. Hopson moved into the Grand Apartment. There is no dispute that she did so. However, the parties disagree about the nature of their relationship at the time. Mr. Hannon says Ms. Hopson was merely an ex-girlfriend who became his tenant. Ms. Hopson says that moving in together was the natural next step in their romantic relationship. She marks her move into the Grand Apartment as the beginning of their marriage-like relationship.
- [14] There is a dispute about where Mr. Hannon lived during the first year that Ms. Hopson lived at the Grand Apartment. Ms. Hopson testified he lived with her and they shared the master bedroom, although she acknowledged that his work schedule required him to be away for

days or even weeks at a time. Mr. Hannon testified that when Ms. Hopson moved into the Grand Apartment, she occupied the spare bedroom, and, about four weeks later, he moved to Bristol, where he lived in rental accommodation until the spring of 2002, at which point he moved back into the Grand Apartment.

- [15] Ms. Hopson did not have a job when she moved into the Grand Apartment. In the spring of 2001, she started working for a credit rating agency called Experian, in an administrative position. She said that she and Mr. Hannon did not discuss finances. She testified that he supported her financially and, when she got a job, she contributed by covering some of their living expenses but he typically paid the mortgage. Mr. Hannon did not take issue with this aspect of Ms. Hopson's evidence. According to him, he was always very financially generous with her.
- [16] In July 2002, Mr. Hannon had surgery on his left eye to improve his vision. The surgery was performed by Dr. Deepak Chitkara. Mr. Hannon claims that Dr. Chitkara was negligent and, as a result, the vision in his left eye gradually became impaired.
- [17] Initially, Mr. Hannon continued to work following the 2002 eye surgery. In late 2002 or early 2003, he was promoted to captain with Airtours and rebased to Glasgow. He testified that his home was in Glasgow from then until November 2005. He said that he sometimes rented a room in Glasgow, while at other times he stayed in hotels or with friends. He said he rarely returned to Manchester and Ms. Hopson never came to Glasgow to visit. However, he also admitted that he considered Ms. Hopson his girlfriend during this period and that he was faithful to her. Ms. Hopson acknowledged that Mr. Hannon was based out of Glasgow during this time but she maintained that he continued to make his home in Manchester, with her.
- [18] In 2003, a two-bedroom apartment was purchased in Ms. Hopson's name in a building in Manchester known as the Church (the "Church Apartment"). The purchase price of £240,000 was financed through a down payment of about £45,000 and a mortgage in Ms. Hopson's name. The parties gave conflicting evidence concerning the circumstances surrounding the purchase of the Church Apartment. Mr. Hannon testified that he purchased the Church Apartment as an investment for himself, but arranged for title to be held in Ms. Hopson's name in order to derive a capital gains tax exemption that would not be available if he was the registered owner. He said Ms. Hopson held the Church Apartment in trust for him. Ms. Hopson denied holding the Church Apartment in trust. She testified that she and Mr. Hannon, together, decided to purchase the Church Apartment. She agreed that it was placed in her name so that she could claim a capital gains tax exemption, but she said the decision to structure the purchase in that fashion was a joint one.

- [19] There is no dispute that Ms. Hopson moved into the Church Apartment in 2003, and the Grand Apartment was rented to tenants. Ms. Hopson says she and Mr. Hannon lived together at the Church Apartment, although he continued to travel for work, including to and from Glasgow where he was based. Again, Mr. Hannon maintains that he lived in Glasgow at this time, and that he stayed at the Church Apartment overnight just a few times. A lodger, Damian McMahon, rented the spare room at the Church Apartment.
- [20] Ms. Hopson lost her job at Experian in April 2003. She then worked in temporary administrative positions for about a year.
- [21] In late 2003, Mr. Hannon took a six-month secondment as a pilot with Skyservice out of Vancouver, British Columbia. Ms. Hopson came to Vancouver twice during that period to visit him, once in December 2003 and again in April 2004. Ms. Hopson testified that while they were in Vancouver, they discussed immigrating to Canada and purchasing property in Vancouver. She said they viewed plans for a not-yet-built condominium in Yaletown, which they subsequently purchased. Mr. Hannon agrees that they discussed moving to Canada, but he says that he alone made the decision to purchase the Yaletown condominium. He acknowledged that he viewed the show suite in April 2004, which is when Ms. Hopson was visiting him, but he insisted he never discussed it with her.
- [22] Mr. Hannon completed his work with Skyservice and returned to the UK in May 2004.
- [23] In June 2004, the parties filled out applications for permanent residence in Canada. Ms. Hopson testified that the applications were not submitted at that time and, although signed, they were only drafts. Mr. Hannon testified that he thought the applications were submitted in 2004, but he conceded that he left the paperwork to Ms. Hopson. Ms. Hopson and Mr. Hannon were each referred to as "single" in the marital status section of these applications, even though there was a "common law" option, and the Church Apartment was given as the mailing and residential address for each of them.
- [24] In July 2004, Ms. Hopson started working in an administrative position in Manchester with Rider Levett Bucknall ("RLB"), a global property management consulting firm, where she eventually became office manager.
- [25] In July 2004, Mr. Hannon signed an agreement to purchase an apartment, then under construction, on Homer Street in Vancouver (the "Yaletown Apartment"). His address is identified on the purchase agreement as that of the Church Apartment. The purchase price was \$514,900. A deposit of \$51,490 was paid immediately. There is no dispute that Mr. Hannon increased the mortgage on the Grand Apartment to obtain the funds to pay that deposit. Additional payments were made over the next couple of years and, on closing in December 2006, the balance was financed with a mortgage from Bank of Montreal.

- [26] In late 2004, Mr. Hannon was off work for several weeks because of an injury to his arm or hand. He had only been back to work with Airtours for a short time when, in March 2005, he took a medical leave due to a severe episode of anxiety. Mr. Hannon claims that he has not worked as a pilot since. Ms. Hopson says he has worked as a pilot at various times since March 2005.
- [27] In November 2005, the Church Apartment was sold for £270,000. After paying off the mortgage and other related expenses, net proceeds of £59,829.25 were deposited into Ms. Hopson's "TSB" bank account. She used this bank account for day-to-day transactions and, at the time, it was in her name alone. Mr. Hannon had a bank account at "Nationwide" which he used for day-to-day transactions.
- [28] After the sale of the Church Apartment, Ms. Hopson moved back into the Grand Apartment. Mr. Hannon acknowledged that he moved into the Grand Apartment with her at this time, and that they shared the master bedroom. A lodger, Peter Bryan, rented the second bedroom.
- [29] Mr. Hannon testified that by the spring of 2006, he considered himself fit to return to work as a pilot. However, he said the vision in his left eye had deteriorated significantly by then. In April 2006, he failed a UK Civil Aviation Authority ("CAA") medical examination on grounds of poor eyesight, and his pilot's license was revoked.
- [30] In July 2006, Mr. Hannon was dismissed from his job with Airtours for gross misconduct when it was discovered that he had failed to disclose his use of medication.
- [31] The parties' applications for permanent residence in Canada were submitted in 2006. They applied online as a common law couple. Mr. Hannon claims he did not know at the time that the applications characterized their marital status as common law.
- [32] Construction of the Yaletown Apartment completed in December 2006. Ms. Hopson and Mr. Hannon travelled to Vancouver to take possession and to buy furniture and household effects. The Yaletown Apartment was placed with a rental agency called Highstreet Corporate Rentals, and rented to tenants as a furnished suite. The rental payments were deposited into an account in Mr. Hannon's name at the Bank of Montreal, and the mortgage payments were paid out of the same account.
- [33] In September 2008, Mr. Hannon commenced a malpractice lawsuit against Dr. Chitkara in the Manchester County Court. He claimed that the vision in his left eye was impaired by Dr. Chitkara's negligence and that he was unable to work as a pilot as a result.
- [34] The parties' applications for permanent residence in Canada were approved in 2009. They came to British Columbia in November 2009 to claim their residency. They travelled throughout the province for about a month and then returned to the UK. They had until December 2012 to take up permanent residence in Canada. They continued to live together at the Grand Apartment.

- [35] In late 2010, there were negotiations in Mr. Hannon's malpractice case that led to its resolution.
- [36] Mr. Hannon's lawyers delivered a written offer to settle for about £2.5 million, comprised of general damages and interest of £41,600, past loss of earnings and interest of £446,119, and future loss of earnings and employment-related benefits of £2,054,922. It was contended on Mr. Hannon's behalf that, notwithstanding the termination of his employment by Airtours for gross misconduct, but for Dr. Chitkara's negligence he would have found work as an airline captain by November 2006 and he would have continued in that work to age 65.
- [37] Dr. Chitkara's lawyers delivered a counteroffer of £51,075. One of the positions advanced on his behalf was that, irrespective of any vision problem, it was highly unlikely that Mr. Hannon would have worked as a commercial pilot after the CAA revoked his license in April 2006. Dr. Chitkara's lawyers maintained that Mr. Hannon's psychiatric history, if properly disclosed, would have precluded him from holding a license and that his dismissal from Airtours in July 2006 for gross misconduct would have been a significant fetter on future job applications.
- [38] At a settlement meeting on December 8, 2010, Dr. Chitkara advanced what his lawyers characterized as a final offer to settle for £600,000 plus costs. Mr. Hannon and Ms. Hopson met with Mr. Hannon's lawyers the following day. The lawyers presented written advice in which they strongly recommended that he accept the final offer. They expressed pessimism with respect to the claim for damages for past loss of earnings, which stemmed from their view that a court would likely find Mr. Hannon significantly impaired in the labour market for pilots as a result of his mental illness and failure to disclose his medication use. They expressed the view that a court would likely award general damages of £30,000 and nothing for past loss of earnings, and would significantly discount the claim for future earnings to reflect a residual earning capacity and the likelihood that Mr. Hannon's psychiatric history and undeclared use of medication would affect his future earnings in any event.
- [39] Having received this advice, Mr. Hannon accepted the settlement offer of £600,000 plus costs. Ms. Hopson testified that she and Mr. Hannon decided together to accept the offer. Mr. Hannon did not dispute that characterization.
- [40] In anticipation of receiving the settlement funds, Ms. Hopson's TSB account was converted into a joint account in both parties' names. The settlement funds were subsequently deposited directly into that account and, from there, disbursed to four other joint accounts opened by the parties for the purpose of holding the settlement funds. There is no dispute that the primary motivation for using this series of joint accounts was to maximize the deposit insurance available to the parties.

- [41] In March 2011, Mr. Hannon and Ms. Hopson went to Italy where Mr. Hannon underwent corrective eye surgery performed by Dr. Massimo Busin. Ms. Hopson testified that the surgery was successful. According to Mr. Hannon, the vision in his left eye improved but not enough to meet the requirements for a commercial pilot's license. He testified that he acquired a rigid contact lens which gave him the visual acuity required, but it caused severe pain and he could not tolerate wearing it.
- [42] In August 2011, Ms. Hopson quit her job at RLB. She testified that she and Mr. Hannon agreed that she should quit and focus on preparing for their move to Canada. Mr. Hannon was not working. He may have been receiving government disability benefits. He did receive those benefits at times, but the record is not clear about when. It is reasonable to infer that, to a significant extent, they were living off the settlement funds and the interest earned thereon.
- [43] In November 2011, Mr. Hannon passed a CAA eye exam, which allowed him to regain his pilot's license. He testified that in order to pass the exam he wore the rigid contact lens that he could not tolerate. He said the doctor who performed the examination was aware that he was wearing the lens, but he did not tell the doctor he could not tolerate it.
- [44] From the evidence as a whole, it is apparent that from late 2011 Mr. Hannon made some attempt to find work as a pilot. Ms. Hopson assisted him in his job search by helping prepare a CV and filling out forms outlining his work history. Those documents contain information about Mr. Hannon's work history that both Ms. Hopson and Mr. Hannon knew was false. Mr. Hannon intended to fly without disclosing his psychiatric history and without wearing the contact lens even though, according to him, he did not have the requisite vision in his left eye.
- [45] Ms. Hopson and Mr. Hannon had until the end of 2012 to take up residence in Canada. In December 2011, Ms. Hopson travelled to Vancouver alone and stayed at the Yaletown Apartment. She testified that the purpose of this trip was to receive a shipment of the parties' belongings, to look for accommodation in British Columbia, and to set up a home here, while Mr. Hannon continued his job search. She said they hoped Mr. Hannon would secure a job with an airline that would base him in a location that would allow him to live in British Columbia, even if it meant he would have to travel to get to and from his base. Mr. Hannon characterized Ms. Hopson's trip to British Columbia in December 2011 as a separation. He said she chose Canada over him.
- [46] In January 2012, Ms. Hopson returned to the UK and the parties continued to live together at the Grand Apartment. Ms. Hopson did not look for a job. She testified that she and Mr. Hannon decided she would not work given their imminent move to Canada and the fact they had the settlement funds to live on, and because they decided to try to have a child. Ms. Hopson stopped taking her contraceptive pills but she did not become pregnant. She and Mr. Hannon consulted a gynecologist who performed tests that showed Mr. Hannon to have "suboptimal sperm parameters". She said they discussed adoption and in vitro treatment but

decided to wait until they got to Canada to further consider those options.

- [47] In December 2012, Mr. Hannon and Ms. Hopson travelled to British Columbia. They rented an apartment in Sechelt and started looking for a house to purchase on the Sunshine Coast. Ms. Hopson characterized this as their permanent move to Canada. She said their joint intention was to use the settlement funds to build or buy their dream home on the Sunshine Coast. Mr. Hannon gave inconsistent evidence about the purpose of the December 2012 trip. He said they intended to travel around Canada for two years, and he denied having any intention to move here permanently. He did not deny that they looked for property to buy, but said he intended any property purchased here to be an investment. However, he admitted in cross-examination that most of the parties' belongings had been moved to British Columbia by 2012. During his examination for discovery, he admitted that when he and Ms. Hopson came here in December 2012, he intended to live here with Ms. Hopson.
- [48] In April or May 2013, Mr. Hannon's father had a heart attack. His mother had previously been diagnosed with pancreatic cancer. In May 2013, Mr. Hannon returned to the UK to visit his parents. Ms. Hopson testified that this was a temporary visit. Mr. Hannon said this was a permanent move back to the UK.
- [49] In September 2013, Mr. Hannon returned to British Columbia. Mr. Hannon testified this was a visit. Ms. Hopson characterized it as him simply returning home. Ms. Hopson had rented a suite in Gibsons and she was working in an administrative position for some local real estate agents. She and Mr. Hannon lived together. Ms. Hopson testified that Mr. Hannon was continuing his job search and he looked into the possibility of working locally as a floatplane pilot. He did not deny that. She testified that they continued to look at houses and lots, and continued to intend to build or buy their dream home on the Sunshine Coast.
- [50] Shortly after Mr. Hannon returned to British Columbia in September 2013 (he said it was on the day he arrived in Vancouver), Ms. Hopson asked him to put his Bank of Montreal account into their joint names. He said he was reluctant to do so. He claimed this was unnecessary because Ms. Hopson had a debit card that provided her with full access to the account. He said she was aggressive about it, so he relented. According to her, it just made sense that the account, which they used for their day-to-day expenses, should be in both of their names in case of some emergency.
- [51] In February 2014, Mr. Hannon and Ms. Hopson travelled to the UK together to spend time with Mr. Hannon's mother in her final days. His mother passed away not long after they arrived. Ms. Hopson returned to Gibsons in March 2014 while Mr. Hannon stayed in the UK for a few months to console and assist his father.
- [52] In September 2014, Mr. Hannon started working in Greece, with Sky Greece Airlines. Ms. Hopson testified that he was working as a pilot. He denied that. He testified that he was merely helping on the ground with logistics.

- [53] In September 2014, Ms. Hopson made an offer to purchase a house in Gibsons. Mr. Hannon had not seen the house, as he was working overseas, but he participated in the negotiations by email. Ultimately, this house (the "Gibsons House") was purchased for \$615,000. Although the contract identified Ms. Hopson as the purchaser, title was registered in Mr. Hannon's name alone. Ms. Hopson testified that Mr. Hannon told her this was advisable for tax reasons and, although she did not understand this explanation, she accepted it at the time. Mr. Hannon said that there was no discussion at this time about the Gibsons House being registered in joint names. According to him, it was obvious that the house would be registered in his name because it was his house, purchased with his money.
- [54] In December 2014, Mr. Hannon returned to Gibsons, bringing his father with him. The parties moved into the Gibsons House at the end of December. Shortly thereafter, Mr. Hannon returned to work for Sky Greece. There is no dispute that he did so suddenly and unexpectedly. His father stayed in Gibsons with Ms. Hopson.
- [55] In April 2015, Mr. Hannon returned to Gibsons. Shortly after his return, Ms. Hopson raised the subject of transferring the Gibsons House into the parties' joint names. Mr. Hannon testified that Ms. Hopson tearfully requested the transfer as a sign of commitment. He said he reluctantly agreed. Ms. Hopson said the discussion was not emotional. She said she questioned Mr. Hannon's explanation about tax benefits flowing from title being held in his name, that he called their banker at the Bank of Montreal to inquire about the tax implications and, once assured by the banker that there were none, he readily agreed to the transfer.
- [56] There was significant disagreement about the events that unfolded a few weeks later when the Gibsons House was actually transferred by Mr. Hannon to the parties as joint tenants. The following are largely undisputed aspects. Ms. Hopson contacted a local notary named Sam Simpson and asked him to arrange the transfer. The parties met with Mr. Simpson on May 5, 2015. Mr. Hannon says that the documents were not signed until the next day. Ms. Hopson disputes that. The transfer document was received in the Land Title Office on May 6, 2015. On the evening of the same day, Ms. Hopson questioned Mr. Hannon about a text message he received that suggested he was involved with another woman. They argued and the argument escalated into a physical altercation. Ms. Hopson left that evening or the following day. Both parties mark the date of the physical altercation as the date of their separation.
- [57] Ms. Hopson testified that the altercation occurred on May 8, 2015, not May 6, 2015. However, bank records show that she withdrew \$25,000 from the Bank of Montreal joint account on May 7, 2015, and she testified she did that after the altercation. From that, I conclude the altercation and separation occurred on May 6, 2015.

- [58] Ms. Hopson acknowledged that before the Gibsons House was transferred into joint names, she discovered material on Mr. Hannon's computer that clearly indicated he was having an affair. However, she said she did not initially intend to end their relationship. She insisted that she had not formed the intention to separate until the physical altercation on the evening of May 6, 2015. There is no dispute that she did not confront Mr. Hannon about the suspected affair until after the transfer had been finalized.
- [59] After the separation, Ms. Hopson went to Thailand to visit her brother. Mr. Hannon sent her emails imploring her to come home but she did not respond.
- [60] Ms. Hopson returned to Vancouver in June 2015. She and Mr. Hannon met and he convinced her to return to the Gibsons House with him. They slept in separate bedrooms and attended counselling, but she soon moved out and stayed with a friend in Gibsons.
- [61] In November 2015, Mr. Hopson told Ms. Hannon he was leaving Canada and suggested she move back into the Gibsons House. She testified that he told her he had a new contract flying for an airline called "SAFI". Mr. Hannon did leave Gibsons in late 2015. However, he denies that he ever flew for SAFI.
- [62] Ms. Hopson moved back into the Gibsons House in about January 2016.
- [63] In September 2016, Mr. Hannon returned to the Gibsons House. The parties argued and Ms. Hopson left. Mr. Hannon has resided in the Gibsons House from time to time since then. Ms. Hopson has resided elsewhere in Gibsons.

Credibility

- [64] I have grave concerns about the credibility of both Ms. Hopson and Mr. Hannon, as well as that of some of the lay witnesses.
- [65] Mr. Hannon was often argumentative when confronted with evidence that was inconsistent with the positions he sought to advance. For example, he demanded definitions of the words "girlfriend", "unfaithful", and "mother-in-law", before he would answer questions containing those words. At times, he was unresponsive to simple questions, offering rambling explanations instead of straightforward answers.
- [66] As already noted, some of Mr. Hannon's testimony at trial was internally inconsistent or inconsistent with that given during his examination for discovery. For example, at trial, he testified that during the first year that Ms. Hopson resided in the Grand Apartment, they did not see each other at all, but during his examination for discovery, he agreed that when Ms. Hopson moved into the Grand Apartment she was his girlfriend and they had a monogamous sexual relationship. This is but one example.

- [67] Several aspects of Mr. Hannon's testimony were implausible. For example, he testified that wearing the contact lens in his left eye is so uncomfortable that it feels like there is "a toenail in his eye", it immediately causes his eye to water profusely, and he can tolerate it for only about two minutes, yet he was able to wear it throughout the 2011 examination that resulted in him regaining his pilot's license, without the examiner noticing his discomfort. Again, this is but one example.
- [68] There were aspects of Mr. Hannon's evidence that I have concluded were untrue. These include his testimony concerning the transfer of the Gibsons House into the parties' joint names, his testimony about his work with Sky Greece, and his testimony about his involvement in a plot to expose discrimination in the hiring practices of certain airlines.
- [69] Ms. Hopson and Mr. Hannon gave irreconcilable evidence about the events that preceded the transfer of the Gibsons House into their joint names. Mr. Simpson was the only person who could have provided independent testimony about what happened, but he subsequently died.
- [70] Ms. Hopson testified that she and Mr. Hannon went to Mr. Simpson's office on May 5, 2015 and signed the transfer documents that day without incident.
- [71] Mr. Hannon claimed that Ms. Hopson tried to trick him into transferring the Gibsons House into her name alone. He testified that he and Ms. Hopson went to Mr. Simpson's office on May 5, 2015 to sign the documents, and he was about to sign when Mr. Simpson casually commented, "that's a nice gift". He said he asked what Mr. Simpson meant and Mr. Simpson then told him he was gifting the house to Ms. Hopson. According to Mr. Hannon, Mr. Simpson said that Ms. Hopson had instructed him to prepare a transfer of the house into her name alone. Mr. Hannon testified that Ms. Hopson, realizing she had been caught out, falsely claimed that there had been a misunderstanding. In the result, he said Mr. Simpson had to redraft the documents which meant that he and Ms. Hopson had to return to Mr. Simpson's office the following day to sign. He testified that they signed the corrected documents on May 6, 2015 in the afternoon. He was certain it was in the afternoon because he had an MRI at St. Mary's Hospital in the morning, and then he, Ms. Hopson and his father had lunch at the Lighthouse Pub before going to Mr. Simpson's office.
- [72] There are several problems with Mr. Hannon's account, the combination of which caused me to conclude, on a balance of probabilities, that it is untrue:
- The alleged trick was very unlikely to succeed. Any reasonably intelligent person would have expected Mr. Simpson to confirm the nature of the transaction with his client before giving it effect. I have no doubt that Ms. Hopson is an intelligent woman. It is unlikely she would have pursued a scheme that carried with it such a significant risk of detection.
 - Given that Mr. Simpson almost certainly would have confirmed the nature of the transaction with Mr. Hannon, it is also unlikely that Ms. Hopson's alleged subterfuge was exposed by Mr. Simpson's casual comment, just as Mr. Hannon was about to sign.

- The Form A transfer document that was ultimately signed indicates, on its face, that Mr. Hannon signed it on May 5, 2015. It is unlikely that Mr. Simpson would have corrected the document to reflect the transfer into joint names, but not also changed the date.
- Mr. Hannon also signed a statutory declaration confirming, among other things, that he had agreed to transfer one-half of his interest in the Gibsons House to Ms. Hopson. The jurat on the face of the statutory declaration indicates it was taken by Mr. Simpson on May 5, 2015. If Mr. Hannon's account is true, that document would also have been corrected and then signed by Mr. Hannon on May 6. Mr. Simpson is not likely to have inserted the wrong date into the jurat.
- The registered Form A transfer document indicates it was digitally signed by Mr. Simpson on May 6, 2015 at 10:41 and received in the Land Title Office on May 6, 2015 at 12:02. Neither of those times is designated as a.m. or p.m. However, Mr. Simpson must have digitally signed the transfer before it was submitted to the Land Title Office. As both events occurred on May 6, 2015, the time of signature must have been 10:41 a.m. and the time of receipt must have been 12:02 p.m. It follows that, if Mr. Hannon's account is true, Mr. Simpson would have had to digitally sign and submit the Form A transfer before it was signed by Mr. Hannon. He almost certainly would not have done that. Among other things, Mr. Hannon could have changed his mind about the transfer in the meantime. This conclusion is reinforced by the statement printed on the Form A transfer next to the space on which Mr. Simpson's digital signature is applied, which reads:

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

- Mr. Hannon produced email correspondence that he said he exchanged with Mr. Simpson shortly after the transfer which appears to corroborate Mr. Hannon's account, but I have concluded that Mr. Hannon likely forged the corroborating emails. For the reasons set out above, Mr. Hannon's account is inherently improbable. Further, copies of the corroborating emails were not in Mr. Simpson's file. In addition, Mr. Hannon, apparently unwittingly, produced two versions of one of the emails he said he received from Mr. Simpson, and he was unable to explain why he had two versions in his possession.

[73] I have also concluded, on a balance of probabilities, that Mr. Hannon's testimony about his work with Sky Greece was not true.

[74] Mr. Hannon worked with Sky Greece between August and October 2014 and between January and April 2015. He secured this position through his friend, Sam Webb. Mr. Hannon testified that he was assisting with logistics and providing advice but not actually flying the planes. He characterized the position as a "Johnny on the spot". Mr. Hannon called Mr. Webb as a witness, but for reasons explained later, I do not accept Mr. Webb's testimony.

- [75] Ms. Hopson testified that Mr. Hannon was working as a pilot for Sky Greece. She said Mr. Hannon told her that he was doing so. In cross-examination, she acknowledged that the medical clearance Mr. Hannon obtained in 2011 had expired and he was working as a pilot illegally.
- [76] I prefer Ms. Hopson's evidence on this point because it is consistent with Mr. Hannon's flight log, which shows him working as a captain on 19 flights between August and October 2014, and 23 flights between January and March 2015. At one point in his evidence, Mr. Hannon conceded those entries were accurate. He did not explain why they show him working as captain if, in fact, he was merely a "Johnny on the spot". Other aspects of Mr. Hannon's evidence about his work with Sky Greece were unbelievable. He claimed, illogically, that he agreed to work with Sky Greece without pay as a way to recoup money he had loaned to Mr. Webb. However, in an email he sent to Ms. Hopson's father, he said "the Greeks" were not paying him what he was owed. The context and timing of that email make it clear that the reference to "the Greeks" was a reference to "Sky Greece".
- [77] I was also troubled by several aspects of Ms. Hopson's testimony.
- [78] She was evasive when asked to explain what she meant in an email she sent to Mr. Hopson when she said she would "work on" a document that almost certainly was a letter purportedly written by Dr. Busin. Mr. Hannon testified the letter was altered by Ms. Hopson to remove comments that suggested the corrective eye surgery performed by Dr. Busin had not been successful.
- [79] Some aspects of Ms. Hopson's testimony were implausible. For example:
- she reluctantly acknowledged that shortly before she asked Mr. Hannon to transfer the Gibsons House into their joint names, she concluded that Mr. Hannon was having an affair and on the evening of the same day on which the transfer was submitted for registration, she initiated an argument with him that led to the parties' separation, yet she insisted that she had no intention of terminating the relationship prior to the transfer; and
 - she said she opened an account at the CIBC in her name alone a couple of months before the separation because she had received \$7,000 from ICBC and wanted to give that money, or some of it, to her sister without Mr. Hannon finding out, but when presented with bank statements showing \$6,000 being transferred from the account on the same day that \$7,000 was deposited, she said she could not recall if she gave any of the money to her sister.
- [80] A Form F8 Financial Statement sworn by Ms. Hopson in September 2018 was misleading, if not false. In that document, she swore her living expenses were minimal because she was living "with friends temporarily" and that she would have increased housing costs when the litigation was resolved. At trial less than a month later, she admitted that she was actually living with a new romantic partner and had been in a romantic relationship with him for about a year. She attempted to defend the statement in her Form F8, by insisting that she does not know what the future holds. Of course, in the Form F8 she purported to set out

what the future held--specifically, that she would have increased housing costs because her current living arrangements were temporary. They clearly were not.

- [81] Ms. Hopson and Mr. Hannon engaged together in a very concerning pattern of deception related to Mr. Hannon's work as a pilot. Their conduct demonstrated that neither of them has qualms about using deceit to advance their own interests. This seriously undermined my confidence in their veracity and tainted their testimony as a whole.
- [82] When Mr. Hannon was working as a pilot, he was required to submit reports on the state of his health to the CAA. Among other things, he was required to report his use of medication. He admitted that while working for Airtours, he did not disclose his history of mental illness which, as mentioned, resulted in episodes of seriously debilitating symptoms of anxiety and depression, and he withheld information about his use of medication. He admitted that he often bought his medication online to avoid creating a record that would potentially jeopardize his employment.
- [83] Ms. Hopson was aware that Mr. Hannon was required to report to the CAA on the state of his mental health and on his use of medication. She admitted that she knew he did not do so. She admitted that his episodes of anxiety and depression were severe. She knew he acquired medication online to aid in the deception. She admitted that she did not try to stop him. She attempted, quite flippantly, to justify her failure to intervene by claiming that he did not fly when in the midst of an episode or while actually on medication. However, she could not have known that he only flew when it was safe for him to do so. In any event, whether it was safe for him to fly at all was not her call to make. She admitted that there would be outrage if her failure to report Mr. Hannon to the authorities became public knowledge, but she rationalized that her priority was protecting him. The notion that she was protecting Mr. Hannon by not stepping in to stop his reckless behaviour is preposterous.
- [84] Mr. Hannon knowingly deceived Airtours and the CAA about the state of his health and Ms. Hopson went along with the deception because they knew that if he disclosed the truth it would jeopardize his career as a pilot. Of course, their conduct is particularly appalling because of the potential risk to the safety of the passengers on the aircraft he piloted.
- [85] Mr. Hannon may also have worked as a commercial pilot under forged medical certificates after he lost his pilot's license in 2006. There is a dispute about whether he actually did so. Ms. Hopson says he did. He says he did not. Ultimately, whether he did or not, the parties' testimony on this point was astonishing and, as explained below, further undermined their credibility.
- [86] Mr. Hannon testified that in late 2007 and early 2008, he went to the Middle East to work as a helicopter pilot, but ultimately turned down the work because he needed a medical clearance that included passing a vision test which he said he knew he could not pass. He claimed that a potential employer offered him a fake medical certificate. He said he initially went along with this and even travelled to Canada to get a Canadian helicopter license because this would allow him to use a fake Canadian medical certificate which would be

more difficult for the defence lawyers in the malpractice case to discover. He said he obtained the Canadian license and fake medical certificate, but then decided not to go through with the plan.

- [87] Ms. Hopson testified that Mr. Hannon did work as a helicopter pilot in the Middle East during this time. She said she went to visit him in Abu Dhabi where he was struggling to complete the contract because he was worried that if it was discovered that he was working, it would compromise the lost income aspect of his malpractice claim. She admitted that she knew he was flying on a fake medical certificate.
- [88] Mr. Hannon testified that he went to Istanbul in April 2008 to work with Atlas Jet, training pilots on a simulator. He said he was there for less than two weeks when someone from Atlas Jet gave him a fake medical certificate and proposed that he fly for them. He said he made an excuse about his mother's health and returned to the UK. He did not explain why he lied about his mother's health rather than simply telling Atlas Jet that he was not prepared to fly on a fake medical certificate.
- [89] Ms. Hopson testified that Mr. Hannon did work as a pilot for Atlas Jet for several months in 2008. She testified that she visited him in Istanbul during this time. She admitted that she knew he was flying on a fake medical certificate. She said he eventually quit the job because he was concerned about Atlas Jet's safety record and he was worried that if the work was discovered it would have a negative impact on his malpractice claim.
- [90] Mr. Hannon's flight log is consistent with Ms. Hopson's evidence about the job with Atlas Jet. It contains a series of entries showing Mr. Hannon having flown in excess of 60 flights as captain between March and November 2008. There is an Atlas stamp on the pages in the log on which those flights are recorded.
- [91] Mr. Hannon testified that these entries in his flight log are fake and that he and Ms. Hopson together falsified the log. He said he recorded the flights and Ms. Hopson participated by applying her handwriting to the stamps. He said they used the stamps to give the entries a more official look. He said they did this as part of a plot to expose discrimination in the hiring practices of certain Asian airlines. He said his pilot friends believed these Asian airlines were discriminating against Western pilots. He said that in 2009 or 2010, these friends asked him to help expose the discrimination by posing as a perfect candidate. He would apply for positions with the airlines in question, claiming an impeccable (albeit false) employment history, and his failure to secure a position would prove the discrimination. He said that in furtherance of this scheme, he and Ms. Hopson created a number of documents containing false representations about his employment history, including the fake entries in the log, which were needed to fill in the gap in his work history after 2005.
- [92] Mr. Hannon relied on the expert evidence of David Babb, a forensic document examiner, who expressed the opinion that Ms. Hopson's handwriting was in the stamps on the pages of the flight log in question.

- [93] Ms. Hopson denied being aware of or participating in any such scheme. She insisted the flight log accurately recorded Mr. Hannon's work as a pilot.
- [94] I do not accept Mr. Hannon's evidence about the scheme to expose discrimination by Asian airlines. That story is highly improbable. The failure of one pilot to secure a job would not go far towards establishing discrimination. Given the implausibility of the story, it cries out for corroboration. Mr. Hannon named the friends who he said recruited him to participate in this scheme but he did not call any of them as witnesses and he provided no explanation for failing to do so. In the circumstances, I infer that they would not have corroborated his story. He said he applied to four airlines and got no response but he produced no corroborating documents such as cover letters or other correspondence. Finally, the failure of the Asian airlines to respond to his applications supposedly "proved" the discrimination yet he said nothing about his friends putting this incriminating evidence to any use.
- [95] As mentioned, in November 2011, Mr. Hannon obtained medical clearance to fly after undergoing a vision test during which he wore a contact lens that he says he could not tolerate. He testified that he did not tell the examiner that he could not tolerate the lens. He admitted that he also did not disclose his continued use of anti-depression medication. Clearly, he withheld this information because he intended to seek work as a pilot even though, according to him, he did not meet the visual acuity requirements and he continued to suffer from debilitating episodes of anxiety and depression.
- [96] Ms. Hopson testified that when Mr. Hopson passed the vision test in 2011, she was not aware that he could not tolerate the contact lens. However, she did know that he continued to suffer from serious episodes of mental illness and that he continued to take medication for anxiety and depression. Ms. Hopson admitted that she and Mr. Hannon discussed strategies for him to apply for work as a pilot after the malpractice case settled, notwithstanding his psychiatric history. She admitted that the plan was for him to move forward in his career by withholding information about his medication use from potential employers. She admitted he would be "flying on a lie".
- [97] Ms. Hopson admitted that she participated in creating a false CV for Mr. Hannon. That CV purports to be current as of 2012, which means it was created in or after 2012. It states that Mr. Hannon worked as a captain for Strategic Airlines between March and September 2012, flying an Airbus A320. Ms. Hopson admitted this was false - Mr. Hannon worked for Strategic but he did not fly any aircraft. The CV also stated that Mr. Hannon worked as a flight instructor from 2010 to present. Ms. Hopson admitted this was an exaggeration if not an outright lie. The CV represented that Mr. Hannon had a degree in Aeronautical Engineering and Aerodynamics from London University. Ms. Hopson admitted that was not true.

- [98] Ms. Hopson admitted that she filled out an application for employment with Orient Thai Airlines for Mr. Hannon. That document bears his signature and is dated September 16, 2013. Some of the entries are clearly false. For example, the application states that Mr. Hannon worked for Airtours until 2007 and his reason for leaving that job was a "career move". In fact, his employment was terminated for gross misconduct in July 2006. There are other false statements in the application.
- [99] Mr. Hannon admitted that much of the information in the CV and the Orient Thai application was false. He testified that these documents were created as part of the plot to expose discrimination by the Asian airlines but, for the reasons I have already expressed, I do not believe there was any such plot. In any event, he said that scheme was conceived in 2009/10, years before the CV and the Orient Thai application were created. It is far more likely that these documents were created to mislead potential employers about Mr. Hannon's work history to improve his employment prospects after the malpractice case settled. If the flight log was also falsified, it is likely that was part of the same scheme.
- [100] In order to determine the substantive issues in this case, I do not have to decide whether Mr. Hannon actually worked as a helicopter pilot in the Middle East in 2007 and 2008, or as a pilot for Atlas Jet in 2008. It is not necessary for me to decide whether the 2008 entries in his flight log are false. Either way, the credibility of both parties was seriously undermined by their evidence in relation to these matters.
- [101] If, as Ms. Hopson said, Mr. Hannon worked as a helicopter pilot in the Middle East or as a pilot for Atlas Jet, he did so under a fake medical clearance and she knew he was "flying on a lie". If, as he maintained, he did not work as a pilot during this period, then he falsified his flight log as part of a broader scheme to misrepresent his employment history and even if Ms. Hopson did not participate in falsifying the flight log, she lied when testifying that he flew for Atlas Jet. In any event, they both admittedly created other false documents for the purpose of misrepresenting his employment history in order to enhance his prospects for securing work as a pilot after he settled the malpractice claim.
- [102] There is evidence that suggests the parties may have fabricated even more documents as part of their attempt to secure work for Mr. Hannon under false pretenses. These include letters about Mr. Hannon's vision, purportedly written by Dr. Busin, and reference letters from Skyservice and Airtours, the latter of which was manifestly false. Is not necessary for me to say any more about these documents. Nor is it necessary for me to make specific findings about roles played by each of the parties in creating them. They are not relevant to the substantive issues I have to decide and the credibility of both parties was completely and irreparably undermined by the aspects of their evidence I have already discussed.
- [103] Mr. Hannon called three friends as witnesses: Peter Bryan, Sam Webb, and Jonathon Curd. Their testimony did not assist in advancing Mr. Hannon's case.

- [104] Mr. Bryan lives in the Grand Apartment. He has rented the second bedroom since 2006. He testified that he first met Ms. Hopson in 2002 and she introduced herself as Mr. Hannon's ex-girlfriend who was looking for work. He testified that he has always paid his monthly rent to Ms. Hopson. He testified that Mr. Hannon was against marriage and he heard Mr. Hannon say he would never marry; that he spoke to Mr. Hannon about putting the settlement funds from his malpractice claim into joint accounts to double the deposit insurance protection; that he knows Mr. Hannon opened such accounts with Ms. Hopson; that Ms. Hopson did not have the passwords to the accounts; that he witnessed Mr. Hannon having episodes of anxiety over the years; that it was his impression when Ms. Hopson went to Canada in late 2011 she was planning to stay for two years, but she returned in early 2012 because she was lonely; that when Mr. Hannon and Ms. Hopson went to Canada in late 2012, it was intended to be a holiday; and that Mr. Hannon never expressed an interest in living in Canada or buying a home here.
- [105] I did not find Mr. Bryan to be a credible or reliable witness. Much of his evidence in chief amounted to vague recollections of conversations that he said he had with Mr. Hannon and/or Ms. Hopson over the years and, to a significant extent, consisted of things he said Mr. Hannon told him. The vagueness of this evidence rendered it unhelpful. Further, as a general rule, Mr. Hannon's prior consistent statements are inadmissible.
- [106] Mr. Bryan displayed a clear bias in favour of Mr. Hannon. Instead of striving to answer questions in a straightforward manner, he often diverted into explanations and rationalizations that aligned with the positions Mr. Hannon was advancing. He made emphatic claims that favoured Mr. Hannon for which he was unable to offer a reasonable foundation. For example, when asked if Ms. Hopson had the passwords for the joint accounts, he answered with an emphatic, "No". When asked how he knew that she did not have the passwords, he said that on one occasion he heard her make a joke about running off to Brazil with the money and Mr. Hannon said something like, "That is why you are not getting the passwords". The fact that he was willing to answer the question so emphatically on such a thin foundation was a clear demonstration of bias in favour of Mr. Hannon. He also admitted that he stopped communicating with Ms. Hopson when Ms. Hopson's lawyer contacted him about this case even though he knew Mr. Hannon had listed him as a witness. He rationalized that he told Ms. Hopson he did not want to get involved in the dispute but admitted that he was content to be involved on Mr. Hannon's behalf.
- [107] In the circumstances, the only portion of Mr. Bryan's evidence that I accept as reliable is that favouring Ms. Hopson's position: specifically, that he paid his rent to Ms. Hopson because she and Mr. Hannon "operated as unit".
- [108] Mr. Webb operates a pilot training business. He testified that in August or September 2014, he offered Mr. Hannon a job helping Sky Greece train its crew. He said this was a non-flying job that required Mr. Hannon to prepare paperwork. Mr. Webb said that Mr. Hannon worked with Sky Greece for several months without pay. He also said that Airtours had a policy that required pilots to be able to report to their base within 45 minutes when they

were on standby, but he could not say what, if any, policy Airtours had with respect to where pilots had to live when they were not on standby.

- [109] Mr. Webb's testimony about the nature of the work Mr. Hannon performed for Sky Greece was not credible. It is inconsistent with Mr. Hannon's flight log. It is not plausible that Mr. Hannon agreed to work for months without pay. It is unlikely that Mr. Hannon was hired to do paperwork given his repeated insistence throughout this trial that he is terrible at paperwork, has dyslexia, and has very poor reading and writing skills.
- [110] Mr. Webb's testimony about Airtours' policies was elicited by Mr. Hannon to corroborate Mr. Hannon's claim that he lived alone in Glasgow while he was based in Glasgow for Airtours between about early 2003 and late 2005. However, Mr. Webb's testimony on this point was ultimately unhelpful to Mr. Hannon because it was not inconsistent with Mr. Hannon living in Manchester and staying in Glasgow on the occasions when he was on standby.
- [111] I turn now to Mr. Curd's evidence. I did not have concerns about Mr. Curd's credibility, but his evidence was not helpful because it focussed largely on Mr. Hannon's failed attempt to take up employment as a pilot with Strategic Airlines in 2012, none of which is in dispute. In brief, Mr. Curd testified that Mr. Hannon underwent training on the Airbus in early 2012, and he then helped Mr. Hannon secure an offer from Strategic to fly the Airbus. He testified that the offer was for a three-year contract and it would have paid Mr. Hannon about £100,000 but Mr. Hannon ultimately turned it down because of his anxiety. Ms. Hopson acknowledged all of that. Mr. Curd also testified that he heard Mr. Hannon joke, in Ms. Hopson's presence, about being the guy who would never get married. Even if true, this would not affect my assessment of the issues in any material way.
- [112] Ms. Hopson called her sister, Elise Staley, and her father, John Hopson, as witnesses. I will discuss the substance of some of their evidence later. For now, I note that I found both of them to be credible. Neither of them was evasive or vague. They both confined their testimony to information within their personal knowledge. Their testimony was reasonable and was not shown to be inconsistent.
- [113] It has been unusually challenging to make findings of fact in this case because of my very significant concerns about the credibility of both parties. Documents created by one or both of the parties are not reliable because each of them has demonstrated a willingness to falsify documents if they believe it is in their interest to do so. I have had to rely on the combined effect of the undisputed facts, the absence of contradictory evidence, independent evidence where it exists, common sense, and my assessment of the probabilities affecting the case as a whole. The words of Madam Justice Southin in *Le v. Milburn*, [1987] B.C.J. No. 2690 (S.C.) at para. 2 are applicable in the circumstances:

When a litigant practises to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame. ...

Issues

[114] The following issues were raised:

1. Were the parties "spouses" as defined in the FLA?
2. What is the "proper law of the relationship" for purposes of property division under the FLA?
3. What is family property and what is excluded property?
4. Would it be significantly unfair to divide the family property equally?
5. Has Ms. Hopson established an entitlement to spousal support and, if so, how should it be paid and in what amount?

Discussion

Were the parties "spouses" as defined in the FLA?

[115] The FLA received royal assent on November 24, 2011 and came into force on March 18, 2013 (B.C. Reg. 131/2012), the date of the repeal of most provisions of its predecessor, the Family Relations Act (the "FRA").

[116] One of the main differences between the FRA and the FLA are the expanded rights of common law spouses under the FLA. Under the FRA, non-married spouses who lived together in a marriage-like relationship for a period of at least two years could claim spousal support but could not claim property division. Under the FLA, the right to an interest in family property was extended to non-married spouses who had lived together in a marriage-like relationship for at least two years.

[117] Under s. 81 of the FLA, only "spouses" are entitled to family property, and under s. 160, only a "spouse" may be entitled to spousal support. Section 3 defines "spouse" in the following terms:

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.

- (2) A spouse includes a former spouse.
- (3) A relationship between spouses begins on the earlier of the following:
 - (a) the date on which they began to live together in a marriage-like relationship;
 - (b) the date of their marriage.
- (4) For the purposes of this Act,
 - (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[118] Thus, the question of whether Mr. Hannon and Ms. Hopson were "spouses" depends on whether they lived with each other in a marriage-like relationship for a continuous period of at least two years.

[119] The determination of whether a relationship was marriage-like is complicated by the variety of reasons people choose to live together, the variety of ways they structure their relationships, the variety of views as to what relationship attributes are important, and the evolution of social norms concerning marriage and marriage-like relationships: see *Takacs v. Gallo* (1998), 48 B.C.L.R. (3d) 265 (C.A.), leave to appeal ref'd, [1998] S.C.C.A. No. 238., *Austin v. Goerz*, 2007 BCCA 586 at para. 58; and *Weber v. Leclerc*, 2015 BCCA 492 at para. 7.

[120] Fundamentally, the question is whether the parties saw their relationship as one of "indeterminate, lengthy duration" or the "kind of psychological and emotional union that one associates with marriage": *Weber* at para. 17; *Takacs* at para. 55. The focus is on the parties' own intentions to form this kind of committed union, recognizing that such an intention may develop over time and may be evident from the parties' conduct. Evidence of the parties' subjective intentions given after the relationship has broken down must be tested against objective evidence of their lifestyle and interactions, which provides direct guidance on the nature of the relationship: *Weber* at paras. 23-24; *Takacs* at para. 53, referring to *Gostlin v. Kergin* (1986), 3 B.C.L.R. (2d) 264 at 276-78.

[121] Such objective evidence includes 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* at para. 25. These include "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 (Ont. Dist. Ct.). These elements may be present in varying degrees and not all are necessary for the relationship to be marriage-like.

In particular, while economic dependence is a factor that weighs in favour of finding the relationship to be marriage-like, it is not an essential aspect: Austin at paras. 55-57; Weber at para. 12.

- [122] Ms. Hopson argues that the parties were spouses from early 2001 to May 6, 2015. She testified that they were a committed, loving couple and, when they moved in together in 2001, their relationship became marriage-like, which was the natural next step. She testified that she and Mr. Hannon expressed their love for each other and discussed getting married, but she said neither of them wanted to spend money on a big ceremony. She said they agreed not to marry but they expected to have children together. She denied that Mr. Hannon ever told her he had an aversion to marriage and she never heard him say that he chose not to get married for financial reasons or to avoid the legal obligations associated with marriage.
- [123] Mr. Hannon argues that the parties were never spouses. He characterizes their relationship up to January 2006 as a good friendship and thereafter as a loving, caring boyfriend/girlfriend relationship in which he was generous financially.
- [124] Mr. Hannon depends heavily on his assertion that neither he nor Ms. Hopson intended their relationship to attract the kind of legal rights and obligations that are imposed on spouses by the FLA. He says this is obvious from the fact that during the majority of the relationship they resided in the UK where such rights and obligations are not imposed upon non-married, cohabiting couples. He relied on the expert evidence of Nick Wiseman, a family law specialist with a group of solicitors practicing in Norfolk, England, who authored an expert report on English law. According to Mr. Wiseman, under English law, only couples who are married or who have entered into a "legal civil partnership" acquire legal rights and responsibilities in relation to each other. Mr. Hannon contrasts his and Ms. Hopson's intentions with those of a couple "born in British Columbia" who know the legal consequences of entering into a common law relationship and have "two years living together to decide whether they wish to continue living together and therefore commit" to the associated legal obligations under British Columbia law. He maintains that he made a conscious choice not to get married because he did not want to expose himself to the legal obligations associated with marriage breakdown and argues that Ms. Hopson made the same choice by remaining in an unmarried relationship with him.
- [125] Given Mr. Hannon's position, it is important to emphasize that it is not the parties' intentions about assuming the legal obligations of marriage or being "bound by a statutory regime of mutual support" that is relevant to the determination of whether they are spouses under the FLA; what matters are their intentions concerning the nature and quality of their relationship: Weber at paras. 13, 17 and 28. In other words, the fact that Ms. Hopson and Mr. Hannon lived in the UK for much of their relationship is not material to the determination of whether they are spouses as defined in the FLA.

- [126] This is consistent with the Court of Appeal's decision in *Matteucci v. Greenberg*, 2016 BCCA 116 where it was held that the spousal support and property division provisions of the FLA apply to parties in marriage-like relationships that ended prior to the FLA coming into force. In other words, the fact that a couple had no reason to expect that their relationship would bind them to a statutory regime of particular rights and obligations does not affect the determination of whether they are spouses (although it may be a factor when considering whether an equal division of family property would be significantly unfair).
- [127] In any event, Ms. Hopson and Mr. Hannon chose to move to British Columbia. As such, from the perspective of fairness, their position is no different from the hypothetical British Columbian couple who, according to Mr. Hannon, would have the opportunity to choose whether to subject themselves to the legal obligations imposed by British Columbia law.
- [128] Further, because of my concerns about the credibility of both parties, I do not give weight to their testimony about their subjective intentions. Rather, the nature of their relationship must be determined on the objective evidence of their lifestyle and interactions. As demonstrated below, that objective evidence clearly establishes that the parties lived with each other in a marriage-like relationship between 2001 and May 2015. The indicators present in this case include shared shelter, monogamous sexual intimacy, other personal behaviours typical of committed life partners, a relatively traditional division of labour, the societal perception of the parties as a couple, the integration of the parties' finances and some measure of economic dependence, and Mr. Hannon's post-separation declarations.
- [129] I am satisfied that Ms. Hopson and Mr. Hannon lived together continuously from the time Ms. Hopson first moved into the Grand Apartment in 2001 until the separation in May 2015 even though there were periods when Mr. Hannon was away for work or family commitments. I am satisfied that his primary residence (in other words, the place he considered to be his home) from early 2001 to May 2015 was with Ms. Hopson. They lived together at the Grand Apartment between early 2001 and early 2003, at the Church Apartment between early 2003 and late 2005, at the Grand Apartment between late 2005 and December 2012, and in British Columbia from December 2012 to May 2015. This conclusion is based on the following:
- I do not accept Mr. Hannon's testimony that he lived in Bristol for much of the first year that Ms. Hopson lived in the Grand Apartment, that he returned to live at the Grand Apartment only briefly in the spring of 2002, and that he moved to Glasgow in about late 2002 where he lived until late 2005. My concerns about his credibility are such that I do not accept his testimony on disputed points unless it is corroborated by independent evidence I do accept. He tendered no documents showing him having an address in Bristol or Glasgow. In contrast, there are several documents indicating his address at either the Grand Apartment or the Church Apartment during this period. Mr. McMahon was a lodger during this period, so he could have corroborated Mr. Hannon's testimony on this point, if it was true. Mr. Hannon said he was going to call Mr. McMahon as a witness but he did not do so and he provided no reasonable explanation for not doing so. In the circumstances, I infer that Mr. McMahon would not have corroborated Mr.

Hannon's testimony. While there is no dispute that Mr. Hannon was based in Glasgow from 2003 to 2005, the evidence does not establish that it was not possible for him to continue to make his home in Manchester and travel to Glasgow as needed. Finally, the testimony of Ms. Hopson's sister, Ms. Staley, and her father, Mr. Hopson, corroborates Ms. Hopson's testimony that she and Mr. Hannon lived together as a couple continuously throughout this period.

- Mr. Hannon does not dispute that the parties lived together in the Grand Apartment from about late 2005 or early 2006.
- In late 2011, Ms. Hopson travelled to Vancouver where she stayed in the Yaletown Apartment for several weeks. She returned to the Grand Apartment in late January 2012. She testified that the purpose of the trip was to receive a shipment of the parties' belongings, to look for accommodation in British Columbia, and to start setting up a home here in anticipation of the parties' permanent move. At trial, Mr. Hannon characterized this as a separation, saying she chose Canada over him, but got lonely and returned to Manchester. I do not accept his characterization. The independent evidence, including emails between the parties at the time, is more consistent with Ms. Hopson's version. In emails exchanged between the parties while Ms. Hopson was in Vancouver, they refer to each other as "babe", Mr. Hannon tells Ms. Hopson he loves her, and Ms. Hopson ends her emails with "xxx". Ms. Hopson reports to Mr. Hannon on her discussions with Bill Chatson, an employee at the Bank of Montreal in Vancouver with whom they had become acquainted, about construction financing options, and she refers to the prospect of building a home in terms that clearly indicate this was contemplated as a joint project. For example, in one email to Mr. Hannon she wrote "To purchase land/build, we would have to get a Construction Mortgage , so we would have to pay off existing mortgage [clearly a reference to the Yaletown mortgage]".
- The parties moved to British Columbia together in December 2012. I do not accept Mr. Hannon's testimony to the effect that they did not intend to make British Columbia their home but rather intended to travel around Canada for a couple of years. They did not travel around Canada. They quickly made their way to the Sunshine Coast where they remained.
- Mr. Hannon was away from Gibsons for three lengthy periods between April 2013 and April 2015, working or supporting his elderly parents in the UK. However, there is no evidence of any communication by one of the parties to the other of any intention to separate, and the objective evidence supports the conclusion that Mr. Hannon continued to consider his relationship with Ms. Hopson to be ongoing and British Columbia to be his home. In October 2013, the parties, together, made an offer to purchase real estate in Gibsons. The offer was not accepted, but the fact it was made is consistent with the parties intending to continue to reside in British Columbia, together. While Mr. Hannon was away from Gibsons in 2014, he and Ms. Hopson exchanged emails in which they discussed the possibility of purchasing property in locations other than Gibsons. She made it clear that she strongly preferred Gibsons, while he expressed a preference for buying elsewhere, but the emails do not suggest that this was a point of such contention that it threatened the relationship. To the contrary, in emails exchanged between the parties during this period, Mr. Hannon told Ms. Hopson he loved her and he referred to her as "baby". In September

2014, during a period that Mr. Hannon was away from Gibsons, he agreed to the purchase of the Gibsons House which Ms. Hopson had located even though he had some misgivings. He left his father with Ms. Hopson in Gibsons when he went back to work with Sky Greece in January 2015. The statutory declaration Mr. Hannon signed in May 2015 when he transferred the Gibsons House into the parties' joint names included the statements that he had "continuously resided in Canada for a period of 3 years", he was "presently residing in Canada", and he had "no intention of leaving Canada".

[130] I am satisfied that from early 2001 to May 2015, Ms. Hopson and Mr. Hannon had a sexual relationship, and each of them expected the other to be monogamous. This conclusion is based on the following:

- Ms. Hopson testified that during this period she was faithful to Mr. Hannon and she expected him to be faithful to her. There is no contrary evidence.
- At trial, Mr. Hannon testified that during the first year that Ms. Hopson resided in the Grand Apartment they did not see each other at all. However, during his examination for discovery he agreed that when Ms. Hopson moved into the Grand Apartment she was his girlfriend and they had a monogamous sexual relationship. I prefer the version he gave during his examination for discovery because it is against his interest.
- At one point in his testimony, Mr. Hannon said that while based in Glasgow between late 2002 and late 2005, he rarely returned to Manchester and Ms. Hopson never came to Glasgow to visit, but at another point, he admitted that he considered Ms. Hopson his girlfriend during this period and that he was faithful to her. Again, I prefer the latter version because it is against his interest.
- Ms. Hopson decided to end the relationship after she discovered evidence on Mr. Hannon's computer that indicated he was having an affair with another woman. Her reaction supports the conclusion that she expected the relationship to be monogamous. In an email Mr. Hannon sent to her after the separation, he admitted he had been unfaithful, although he claimed it was a "one-night stand" and not an affair and said he felt terrible about it. His claim of remorse supports the conclusion that the expectation of monogamy was mutual.

[131] The parties exhibited personal behaviours that are typical of committed life partners. For example:

- Mr. Hannon admitted that Ms. Hopson was emotionally supportive during his episodes of anxiety.
- Mr. Hannon admitted that Ms. Hopson often travelled to see him when he had to be away from home for work. This included two trips to Vancouver within a six-month period between late 2003 and early 2004, a trip to Abu Dhabi in late 2007 or early 2008, and a trip to Istanbul in 2008.
- There is no dispute that the parties took many vacations together. This included trips to the United States, Thailand, Vietnam, Bali, Spain, France and Italy.

- Mr. Hannon admitted that Ms. Hopson attended the settlement meetings that resulted in the resolution of his malpractice case in late 2010.
- There is no dispute that Ms. Hopson accompanied Mr. Hannon to Italy in 2011 for his corrective eye surgery.
- There is no dispute that the parties formed the intention to apply for permanent residence in Canada together, initially in 2004, and they ultimately submitted applications together in 2006. They travelled here together in 2009 and 2012 to complete the process and secure their right to residency.
- There is no dispute that, in 2012, the parties discussed having a child together and they underwent fertility testing.
- There is no dispute that after the separation in May 2015, the parties attempted couples counselling, albeit unsuccessfully.

[132] The parties' lifestyle during their relationship reflected a relatively traditional division of labour. In the initial years, Mr. Hannon was the primary breadwinner. He earned more income than she did in the years before the termination of his employment with Airtours, and his contributions to the family finances were greater than were hers. Nevertheless, Ms. Hopson contributed financially to some extent. She also assumed primary responsibility for housework, cooking and maintaining their home. Mr. Hannon admitted that throughout the relationship she assumed responsibility for paperwork and forms. In an email he wrote to her after the separation, he acknowledged that she "put everything in, the housework, the cleaning, the cooking, the washing, the organizing the paper work, the making of local friends".

[133] The parties held themselves out as a committed couple. For example:

- Each of them formed close relationships with members of the other's extended family. Mr. Hannon admitted that throughout the relationship they attended each other's family celebrations. I accept Ms. Staley's evidence that her children referred to Mr. Hannon as "Uncle Curtis". In a 2012 email, Mr. Hannon referred to Ms. Hopson's mother as his mother-in-law. In a text message Mr. Hannon sent to Ms. Hopson's father after the separation, he said that his grandmother and Ms. Hopson "are very fond of each other", and he said that Ms. Hopson's father was "basically like a second parent so [Mr. Hannon had] lost a family also". In another text message Mr. Hannon sent to Ms. Hopson's father after the separation, he said that his own father loves Ms. Hopson.

· The parties presented themselves as partners to the outside world. Mr. Hannon's lawyers for the malpractice claim referred to Ms. Hopson as Mr. Hannon's "partner" and his "long-standing partner" in documents they prepared in 2010. In emails exchanged between Mr. Hannon and Mr. Chatson (the banker the parties dealt with at the Bank of Montreal in Vancouver), Mr. Chatson referred to Ms. Hopson as Mr. Hannon's "partner". Mr. Hannon referred to Ms. Hopson as his "partner" in an email he sent to a real estate agent in 2014.

[134] I am satisfied that from 2001, when Ms. Hopson and Mr. Hannon first lived together, they operated as an integrated economic unit. In the early years, Ms. Hopson was, to some extent, economically dependent on Mr. Hannon. In the middle years, he was, to some extent, economically dependent on her. This is so, even though they did not have joint bank accounts until 2011 and they did not hold title to real property in joint names until the day they separated. This conclusion is based on the combination of the following:

· Mr. Hannon supported Ms. Hopson financially when she first moved into the Grand Apartment in 2001. She did not have a job initially. He did not charge her rent. He paid the mortgage. When she started working, she contributed by paying some bills and buying groceries, but her financial contributions to their living expenses were smaller than his.

· Similarly, when the parties lived in the Church Apartment between 2003 and 2005, Mr. Hannon paid the lion's share of the mortgage payments. He did not charge Ms. Hopson rent. The monthly mortgage payments came out of her bank account and it was his practice to transfer funds to her to cover the payments. However, there were times when the mortgage payments were greater than the amount he transferred and she made up the difference.

· Mr. Hannon paid off some of Ms. Hopson's student and credit card debt. In addition, he testified that he told the lodger, Mr. McMahon, to pay his rent to Ms. Hopson so she could use those funds to pay down her debt. At trial, he characterized this a loan to her, which she never repaid, but there is no contemporaneous evidence suggesting this was a loan and no evidence that he ever demanded repayment.

· In about 2003, Mr. Hannon contributed £8,000 towards the purchase of a car by Ms. Hopson. Again, at trial, he characterized this as a loan to her, but there is no contemporaneous evidence suggesting this was a loan and no evidence that he ever demanded repayment.

· When the parties moved back into the Grand Apartment in late 2005, Mr. Hannon continued to pay the mortgage while Ms. Hopson paid the monthly maintenance fee and the utilities. She tendered copies of utility bills for the Grand Apartment, which were in her name. Mr. Bryan, who rented the second bedroom in the Grand Apartment, testified that he paid his rent to Ms. Hopson because she and Mr. Hannon "operated as unit".

- The mortgage on the Yaletown Apartment was in Mr. Hannon's name and the monthly mortgage payments came out of his Bank of Montreal account, but Ms. Hopson's bank statements show that she transferred funds into that account from her TSB account from time to time in the years after Mr. Hannon lost his job with Airtours. These bank statements corroborated her testimony to the effect that she and Mr. Hannon worked together to make sure all the bills got paid.
- Ms. Hopson's bank statements also corroborated her testimony that she made other payments on Mr. Hannon's behalf, including to the lawyers who represented him in the malpractice claim.
- Some income from Mr. Hannon's sporadic employment in 2007 and 2008 was paid directly into Ms. Hopson's TSB account. Mr. Hannon testified that he instructed Ms. Hopson to use those funds to make payments on his behalf. Even if that is true, the fact that his employment income flowed through her bank account shows a degree of financial integration.
- Emails between the parties show them transferring funds back and forth to cover off expenses. For example, in an email exchange between Ms. Hopson and Mr. Hannon in September 2007, Ms. Hopson told Mr. Hannon that she would try to "sort out" his bank and that she had recently deposited "300 quid". She told him she would pay some bills. He responded by acknowledging that money "is incredibly short but there is light at the end of the tunnel". She then confirmed that she had paid his phone bill, said she intended to pay "500 quid" towards the mortgage, told him she was dealing with a Swiss Bank on his behalf, and questioned whether they could afford a trip.
- Car insurance documents show that in 2008 and 2009 Ms. Hopson was registered as a second driver of a vehicle insured by Mr. Hannon.
- Title to the Church Apartment was held in Ms. Hopson's name. As discussed in more detail later, this was intended to maximize capital gains tax exemptions. The fact that the parties placed the property in her name to maximize capital gains tax exemptions is further evidence that they were operating as an economic unit.
- In about January 2011, in anticipation of receiving the settlement funds from the malpractice claim, Ms. Hopson's TSB account was converted into a joint account in both parties' names. The settlement funds were subsequently deposited directly into that account and from there disbursed to four other joint accounts opened by the parties for holding the settlement funds. There is no dispute that the primary motivation for using a series of joint accounts was to maximize the deposit insurance available to the parties, which is further evidence that they were operating as an economic unit. Mr. Hannon claimed that Ms. Hopson did not have access to the new joint accounts but I do not accept that. To the contrary, in cross-examination he admitted that he sent an email to Ms. Hopson in January 2012 in which he asked her to transfer money from one of the new joint accounts to the joint TSB account. She would have had to have the password to do that.

· The parties clearly lived on the settlement funds in the years between 2011 and 2014. Ms. Hopson quit her job in August 2011 and did not work again until 2013. Mr. Hannon apparently did not work until 2014. The rental income from the Yaletown Apartment was applied to the mortgage on it. There is no evidence that either party had any other source of income. Emails between the parties indicate that funds from the UK joint accounts were transferred to the Bank of Montreal account, which the parties used for living expenses in British Columbia.

· In 2013, Mr. Hannon converted the Bank of Montreal account into a joint account even though, on his own evidence, Ms. Hopson had a debit card that she had been using to access the funds in the account when it was in his name alone.

[135] Mr. Hannon's post-separation declarations to Ms. Hopson support the conclusion that he viewed the parties' relationship as akin to marriage. Emails he wrote to her in the days, weeks, and months following the separation include the following statements:

· "Please forgive me and just come back, we will have a beautiful life here." He admitted in cross-examination that he was referring to Gibsons.

· "We've a beautiful house, we've survived when so many haven't, let's grow gracefully old together." He admitted in cross-examination that the house he was referring to was the Gibsons House.

· "Let's be the young reckless totally in love couple we were and now enjoy our life here."

· "I've given up work, you are, have and always will be my top priority so bollocks to work, I'm not going anywhere until you're back with me. If you don't want me to go back to flying in the future I won't."

· "We've been through so much together and been through hell so we can now just relax, enjoy this beautiful place, our beautiful house ."

· "I can promise you now I want a more conventional lifestyle not going away flying but remaining doing local work."

· "You're my lover, life partner, advisor and best friend, please please just consider coming home."

· "I love you so very much, your [sic] everything, my best mate, my loyal friend, my lover, my soul mate, my pal, my rudder, we've done so much together been through tough times and come out smiling, you're just my complete world and why I live."

· "You don't have to work, I'll send you money 'if I get paid this time' so you can just completely relax and think and I hope reflect occasionally on all the good times we've had."

· "Now just relax and enjoy where we live kid, we've worked hard up until the last moment to deserve this."

[136] I have not overlooked the fact that both Ms. Hopson and Mr. Hannon were referred to as "single" in the marital status section of the draft applications for permanent residence in Canada that they filled out in 2004, even though there was a "common law" option they could have selected. However, in other documents they referred to themselves as "common-law". This includes the permanent residence applications they actually submitted in 2006, and the car insurance documents from 2008 and 2009. I have also not overlooked the fact that in her income tax returns for 2013 and 2014, Ms. Hopson referred to herself as single. She testified she filed these tax returns after the separation. This is corroborated by the corresponding notices of assessment which were issued in November 2015. These few indicators potentially suggesting the parties' relationship was not marriage-like are far outweighed by the extensive contrary evidence outlined above.

[137] In summary, the parties' testimony about their subjective intentions is unreliable, but the objective evidence of their lifestyle and interactions overwhelmingly establishes that between 2001 and May 2015 they both viewed their relationship as one of "indeterminate, lengthy duration" and the "kind of psychological and emotional union that one associates with marriage". They lived together in a marriage-like relationship for a continuous period of more than two years and, as such, they were spouses as defined in the FLA.

What is the "proper law of the relationship" for purposes of property division under the FLA?

[138] Mr. Hannon was self-represented during most of the trial and in final argument, and at times his submissions lacked coherence. Although he did not challenge the jurisdiction of this Court, it appeared that he sought to advance the position that the rights of the parties should be determined under English law. As mentioned, he relied on expert evidence of English law from Mr. Wiseman to the effect that in England and Wales, there is no regime of community of property applicable to couples who are not married and have not entered into a "legal civil partnership".

[139] I do not agree that English law has any application here.

[140] Pursuant to s. 108 of the FLA, subject to agreements reached between the parties, if the spouses' first common habitual residence during their relationship was in a jurisdiction in which a "regime of community of property" applies, the property and debt to which that regime applies must be divided at the end of the relationship according to that regime. Otherwise, under s. 108(6), "the substantive rights of spouses must be determined according to the proper law of the relationship".

[141] There is no doubt that the parties' first common habitual residence was in England. However, there is no evidence that a "regime of community of property" would apply there. Mr. Wiseman's evidence is to the contrary. In these circumstances, the substantive rights of the parties must be determined according to the proper law of the relationship (s. 108(6)).

[142] Section 107 of the FLA sets out rules for identifying the proper law of the relationship:

The proper law of the relationship between the spouses for the purposes of section 108 [choice of law rules] is

- (a) the internal law of the jurisdiction in which the spouses had their most recent common habitual residence,
- (b) if the jurisdiction under paragraph (a) is outside Canada and is not the jurisdiction most closely associated with the relationship between the spouses, the internal law of the jurisdiction that is most closely associated with the relationship between the spouses, or
- (c) if the spouses did not have a common habitual residence, the internal law of the jurisdiction in which the spouse making an application for an order under this Part was most recently habitually resident.

[143] The "most recent common habitual residence" is the place the spouses most recently lived together, in a marriage-like relationship, and participated together in everyday family life: *Jiang v. Shi*, 2017 BCCA 276 at para. 54. In other words, it is the place the spouses most recently made their home together as spouses.

[144] For reasons expressed in detail above, I have found that Mr. Hannon and Ms. Hopson moved to British Columbia together in late 2012. They intended to make their home here, and they continued to live in this jurisdiction together in a marriage-like relationship until their separation in May 2015. They had their "most recent common habitual residence" in British Columbia. The application of s.107 makes clear that, in these circumstances, the proper law of the relationship is British Columbia law.

What is family property and what is excluded property?

[145] Pursuant to s. 81 of the FLA, there is a presumption that each spouse is entitled to a one-half interest in "family property". The presumption can be displaced and an unequal division ordered if an equal division would be "significantly unfair" having regard for the factors listed in ss. 95(2) and (3). I address that issue later. First, it is necessary to identify the "family property" that is subject to division.

[146] The term "family property" is defined in s. 84 of the FLA. The definition includes all real and personal property "owned by at least one spouse" on the date the spouses separate except for "excluded property". The amount by which the value of excluded property has increased since the relationship began or the excluded property was acquired is included within the definition of family property (s. 84(2)(g)).

[147] Section 85 lists the categories of excluded property. There are three categories that have potential relevance in this case: property acquired by a spouse before the relationship began, compensation received in settlement of a claim for injury or loss that does not represent lost income, and property derived from such excluded property:

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

- (a) property acquired by a spouse before the relationship between the spouses began;
- (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
- (ii) lost income of a spouse;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

[148] To ascertain the "family property", it is necessary to identify the property that was "owned by at least one spouse" on the date of separation and then determine whether any of that property falls within one of the categories of "excluded property". Pursuant to s. 85(2), a spouse claiming that property is excluded is responsible for demonstrating that the property is excluded. If that onus is met and certain property is determined to be excluded, it is necessary to nevertheless include any increase in the value of that excluded property since the relationship began or the excluded property was acquired in the final determination of the family property that is subject to division.

[149] There is no dispute about what property was "owned by at least one spouse" on the date of separation, or about the value of that property. The parties have agreed that some of the property, such as the Grand Apartment, has negligible value. They have relied on jointly obtained, current appraisals of the Yaletown Apartment and the Gibsons House.

[150] It is agreed that the following property was owned by one or both parties at separation, with values expressed as at the time of the trial:

- (a) The Grand Apartment (title held in Mr. Hannon's name). It is heavily encumbered by a mortgage. There is negligible, if any, equity.
- (b) The Yaletown Apartment (title held in Mr. Hannon's name). It has a value of \$1,200,000 and is encumbered by a mortgage of \$256,171, leaving equity of \$943,829.
- (c) The Gibsons House (title held jointly by the parties). It has a value of \$915,000 and is unencumbered.
- (d) A Toyota truck in Mr. Hannon's name with a value of \$20,000.
- (e) Bank accounts in each party's own names, with negligible balances.
- (f) The parties' joint TSB account, which is overdrawn by about \$5,500.
- (g) The parties' joint Bank of Montreal account, which has a balance of about \$1,100.
- (h) Each party's pension.
- (i) Mr. Hannon's account receivable from Sam Webb in the amount of £15,000 (roughly CDN \$27,000).

(j) Shares in Oxifree, which Mr. Hannon sold, after the separation, for £60,000 (roughly CDN \$109,000). There is an associated but unquantified capital gains tax liability.

(k) Household effects and furnishings.

[151] The parties reached the following agreements concerning the division of some of the above-noted property:

(a) Mr. Hannon will retain the Grand Apartment, without further accounting.

(b) Each party will retain their own pensions, without further accounting.

(c) Each party will retain the bank accounts held in their own names, without further accounting.

(d) Mr. Hannon will deposit sufficient funds into the parties' joint TSB account to eliminate the overdraft and he will co-operate in having his name removed from that account so that Ms. Hopson can retain it in her name alone.

(e) Ms. Hopson will co-operate in having her name removed from the parties' joint Bank of Montreal account so that it can be retained by Mr. Hannon in his name alone, and he will retain the balance in it without further accounting.

(f) The Toyota truck, which is in Gibsons, shall be transferred to Ms. Hopson and its value (\$20,000) shall be allocated to her and accounted for in the ultimate property division.

(g) The parties will divide all household effects and furnishings with liberty to apply to me to resolve any disagreements that may arise.

[152] The assets in issue are the Yaletown Apartment, the Gibsons House, the Sam Webb receivable, and the proceeds from the sale of the Oxifree shares. Mr. Hannon's position is that the Yaletown Apartment and the Gibsons House are his excluded property. He made no submissions with respect to the Sam Webb receivable or the proceeds from the sale of the Oxifree shares. Ms. Hopson's position is that all of these assets are family property and that Mr. Hannon has failed to establish that any portion of their value is excluded property.

[153] Mr. Hannon did not clearly articulate the basis of his claim that the Yaletown Apartment is excluded property. However, two potential bases arise from the evidence he led: the Yaletown Apartment is excluded under s. 85(1)(a) because it was acquired by Mr. Hannon before the relationship began or it is excluded under s. 85(1)(g) because it was derived from excluded property, specifically equity in the Grand Apartment and the Church Apartment, which Mr. Hannon says he acquired before the relationship began. The first can be rejected summarily because I have found that the parties' relationship began in 2001, prior to the acquisition of the Yaletown Apartment.

[154] Mr. Hannon's position with respect to the Gibsons House was clear. He says it is excluded under s. 85(1)(g) because it was derived from excluded property, specifically the settlement funds from his malpractice claim (which he says were themselves excluded under s. 85(1)

(c)). Although he made no submissions with respect to the Sam Webb receivable or the proceeds from the sale of the Oxifree shares, there appears to be no dispute that they were derived from the settlement funds which raises the question of whether they too might be excluded under s. 85(1)(g).

[155] Mr. Hannon's positions give rise to the thorny question of whether excluded property that is transferred from one spouse's name to the other spouse's name, solely or jointly, thereby becomes family property, or whether it continues to be excluded property pursuant to s. 85(1)(g) of the FLA. This question arises because:

- the Yaletown Apartment was derived, in part, from proceeds from the sale of the Church Apartment which was held in Ms. Hopson's name even though it was derived, in part, from equity in the Grand Apartment which Mr. Hannon purchased before the relationship began; and
- the Gibsons House, the Sam Webb receivable and the Oxifree shares were derived, at least in large part, from the settlement funds from Mr. Hannon's malpractice claim, but only after those settlement funds had been placed in accounts held in the parties' joint names.

[156] The question of whether excluded property that is transferred during the relationship from one spouse's name to the other spouse's name, solely or jointly, becomes family property has been the subject of recent appellate consideration: V.J.F. v. S.K.W., 2016 BCCA 186, leave to appeal ref'd [2016] S.C.C.A. No. 295; Pisarski v. Piesik, 2019 BCCA 129; Namdarpour v. Vahman, 2019 BCCA 153; and Venables v. Venables, 2019 BCCA 281. In Venables at para. 95, Justice Griffin helpfully distilled the applicable principle:

What emerges from these authorities [V.J.F, Pisarski, and Namdarpour], of relevance to the current appeal, is that the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property. If it is found that the spouse who transferred the property intended that the property be a gift to the other spouse, and there is no agreement that it is to remain excluded property, then it will become family property: V.J.F. at paras. 74-79; Namdarpour at para. 46.

[157] In Namdarpour at para. 40, Justice Savage explained that the presumption of advancement (the evidentiary presumption that a gratuitous transfer to a spouse is presumed to be a gift) continues to apply to the determination of whether the spouse who transferred property intended that the property be a gift, but its role should not be over-emphasized:

These decisions emphasize that evidentiary presumptions operate only where the trial judge is unable to reach a conclusion about the transferor's actual intention at the time of transfer. In my view, the following principles can be discerned from the case law: (1) a conclusion about intention is only to be determined after consideration of "all the circumstances" of the case; (2) those circumstances include both direct evidence and, importantly, circumstantial evidence; (3) those considerations include evidence that arose subsequent to a transfer if relevant to the transferor's intent at the time of transfer, although such evidence will be reviewed critically; and

(4) only where a judge is unable to reach a conclusion about the transferor's actual intention will the evidentiary presumption operate.

[158] In *V.J.F.*, a \$2 million inheritance received by the husband (which was excluded property when received) was used to fund the purchase of real property that was ultimately registered in the wife's name "for creditor protection". The Court of Appeal upheld the trial judge's conclusion that the husband had gifted the funds to his wife and, as a result, the excluded property became family property. Justice Newbury explained, at para. 52, that as long as the effect of the transfer to the wife was not to fraudulently defeat or prejudice creditors with existing claims, the transfer was not objectionable, but by the same token, it could not be a sham. In other words, the husband could not claim that the transfer to the wife was revocable. He could not say the property was his own, but also say it was his wife's. As Newbury J.A. observed, the same reasoning has been applied where one spouse places property in the joint names of both spouses. The husband's evidence to the effect that he wished to place the property in his wife's name in order to protect it from creditors was "more than enough" to support the conclusion that he intended to gift of the property to his wife: *V.J.F.* at para. 53.

[159] In *Pisarski*, shortly after the parties married, they purchased a house in their joint names. They each contributed funds towards the purchase. The source of the wife's contribution was the proceeds from the sale of a condominium she owned prior to the marriage. Those proceeds were excluded when she received them. The trial judge concluded that the wife's excluded property became family property when it was applied to purchase the jointly held house. He found that each party intended to gift their respective contributions to the acquisition of the house for the purposes of the marriage, noting that there had been a pooling of funds for this purpose without steps being taken to document that the wife's contribution would be treated as separate. The Court of Appeal upheld this conclusion at paras. 27-32. Justice MacKenzie observed that "the 'gift' was to the marriage as an entity to which both parties belonged": *Pisarski* at para. 45.

[160] In *Namdarpour*, the husband received a personal injury settlement which he deposited into a bank account held jointly with his wife. Later, funds were withdrawn from that account for a down payment on a property that was registered in the names of both parties. The Court of Appeal upheld the trial judge's conclusion that the settlement funds became family property. The joint account into which the funds were placed was used for family purposes and both parties declared rental income from the property derived from the settlement funds. At para. 46, Savage J.A. stated that the mere depositing of funds into a joint account is not, by itself, persuasive evidence of donative intent. However, the pattern of activity in the joint account, together with the splitting of rental income from the derived asset was sufficient to support the conclusion that the husband intended to gift the funds. At para. 45, Savage J.A. cited *Pecore v. Pecore*, 2007 SCC 7 at para. 63 for the proposition that "[c]ontrol and use of funds in a joint account may be evidence of intention".

- [161] In *Venables*, the husband brought an existing home into the relationship and he inherited money during the relationship. Both the home and the inheritance were placed into the joint names of the parties. The trial judge found that the assets transferred into the parties' joint names were gifts and became family property. With respect to the home, the trial judge found that the husband transferred it into the parties' joint names to simplify estate administration and to derive a tax benefit. Similarly, with respect to the inheritance, the trial judge found that the husband placed it in joint term deposits to derive tax benefits. The trial judge ultimately divided the family property unequally in favour of the husband, in part because he concluded that an equal division would be significantly unfair in light of the origin of the property as formerly-excluded property. The trial judge's conclusion that the home and the inheritance became family property was not challenged on appeal. The focus of the appeal was whether the origin of the formerly-excluded property was an appropriate consideration when determining whether it would be significantly unfair to divide family property equally. The Court of Appeal concluded that the origin was an appropriate consideration and dismissed the appeal.
- [162] In summary, Mr. Hannon's intention in transferring ownership is key in determining whether any excluded property he transferred to Ms. Hopson, solely or jointly, became family property. If he intended the transferred property be a gift, then it is family property. A conclusion about his intention is only to be determined after consideration of all the circumstances, including both direct and circumstantial evidence. It is only if I am unable to determine his actual intention that the presumption of advancement will apply. An intention to derive a benefit that flows from Ms. Hopson acquiring an ownership interest is strongly suggestive of donative intent. Again, in *V.J.F.*, evidence that one spouse transferred excluded property into the other's name in order to protect it from creditors was more than enough to support the conclusion that a gift was intended. In *Namdarpour*, the realization of a benefit in the form of income-splitting indicated that a gift was intended. In *Venables*, evidence that excluded property was transferred by one spouse into the parties' joint names to derive tax benefits supported the same conclusion. Finally, a pattern of joint control and use of funds, including the pooling of resources, is also suggestive of donative intent: *Namdarpour*; *Pisarski*.
- [163] With these principles in mind, I turn to consider the assets in issue in this case: the Yaletown Apartment, the Gibsons House, the Sam Webb receivable, and the Oxifree shares.
- [164] I wish to state at the outset that I place no weight on the May 2015 transfer of the Gibsons House to the parties jointly. By that time, Ms. Hopson believed Mr. Hannon was having an affair. It is more likely than not that she formed the intention to end the relationship before the May 2015 transfer. Mr. Hannon almost certainly would not have effected the transfer had he been aware of these developments.
- [165] I do not accept Mr. Hannon's evidence to the effect that he always intended to retain his property to the exclusion of Ms. Hopson. My concerns about his credibility preclude me from relying on his uncorroborated, after the fact statements of his intention. In any event,

his conduct in placing the Church Apartment in Ms. Hopson's name, in depositing the settlement funds into joint accounts, in converting his Bank of Montreal account into a joint account and otherwise facilitating Ms. Hopson's use of it for living expenses, and in generally operating, economically, as a unit with Ms. Hopson, is inconsistent with his claim that he always intended to maintain his separate property.

The Yaletown Apartment

[166] Again, the question with respect to the Yaletown Apartment is whether it is excluded under s. 85(1)(g) because it was derived from excluded property, specifically equity in the Grand Apartment and equity in the Church Apartment, which Mr. Hannon says was acquired before the relationship began.

[167] The contract to purchase the Yaletown Apartment was signed in July 2004. The purchase price was \$514,900. Construction completed in December 2006 and the condominium was then registered in Mr. Hannon's name. The statement of adjustments indicates that by that time deposit funds of \$151,792.52 had been paid, mortgage proceeds of \$365,000 from the Bank of Montreal were to be applied, and a balance of \$43,162.99 was required to complete.

[168] There is no dispute that prior to closing, four payments had been made towards the purchase price:

- In July 2004, when the contract was signed, Mr. Hannon increased the mortgage on the Grand Apartment by £21,000 to make the first payment of \$51,490.
- In March 2005, the second payment was made from Mr. Hannon's Nationwide bank account. The statements for that account show a payment from that account of £22,357 in March 2005. I was not directed to any documents showing the exchange rate at the time.
- In December 2005, the third payment of \$25,745 (£12,774.14) was made from Ms. Hopson's TSB account using a portion of the proceeds from the sale of the Church Apartment.
- In February 2006, the fourth payment was made from Ms. Hopson's TSB account in the amount of £20,544, again using a portion of the proceeds from the sale of the Church Apartment. I was not directed to any documents showing the exchange rate at the time.

[169] There is no dispute that at closing, Mr. Hannon increased the mortgage on the Grand Apartment by £30,000 to obtain the funds to pay the \$43,162.99 that was required to complete. There is no dispute that money was spent to furnish the Yaletown Apartment so it could be rented out as a furnished suite. It is likely that some of that £30,000 was spent on furniture.

- [170] The question then is whether Mr. Hannon has established that any of these contributions to the acquisition of the Yaletown Apartment are excluded, as property acquired by him before the relationship began, to ground the conclusion that they are traceable into the Yaletown Apartment under s. 85(1)(g). For the following reasons, I have concluded he has not.
- [171] Again, pursuant to s. 85(2) of the FLA, Mr. Hannon has the burden of demonstrating that property is excluded. He must do so on a balance of probabilities, with clear and cogent evidence, although precision or mathematical certainty is not required and I may draw reasonable inferences from evidence that is less than precise in order to do justice between the parties: *Pisarski* at para. 24; *Shih v. Shih*, 2017 BCCA 37 at paras. 40-44.
- [172] The funds used towards the purchase of the Yaletown Apartment from Mr. Hannon's Nationwide account were applied in March 2005, approximately four years after the relationship between the parties began. The statements for the Nationwide account indicate that in the period leading up to March 2005, Mr. Hannon's paycheques were deposited into that account and he used that account for regular living expenses. The balance in the account in early March, 2005 was about £6,000 pounds. A deposit of £17,551 was made on March 8, shortly before the funds in question were withdrawn and applied towards the Yaletown Apartment. Mr. Hannon had counsel during the cross-examination of Ms. Hopson. His counsel suggested that these funds represented proceeds from the sale of Mr. Hannon's Porsche but Ms. Hopson did not confirm that to be the case. The source of the £17,551 pounds is not otherwise apparent on the record.
- [173] In the circumstances, the evidence does not permit any inference to be drawn about the source of the roughly £22,000 from Mr. Hannon's Nationwide account that was applied to the purchase of the Yaletown Apartment in March 2005. Mr. Hannon has not established that those funds are traceable to property that he acquired prior to the commencement of the parties' relationship in 2001. In other words, he has not established that those funds were excluded property.
- [174] I turn now to the funds used towards the purchase of the Yaletown Apartment from equity in the Church Apartment. There is no dispute that when the Church Apartment was sold in late 2005, the net sale proceeds of £59,829.25 were paid into Ms. Hopson's TSB account and, as discussed, a portion (roughly £33,000) was ultimately applied towards the Yaletown Apartment.
- [175] The Church Apartment was purchased in early 2003. The purchase price was £240,000. Mr. Hannon testified that he made a down payment of £45,000, which he obtained by increasing the mortgage on the Grand Apartment. Ms. Hopson initially testified that the down payment for the Church Apartment came from the parties' savings but, in cross-examination, she agreed it was possible that the equity in the Grand Apartment was the source. Mr. Hannon's testimony on this point was corroborated by the mortgage statements, which show a further advance of £45,000 on the Grand Apartment mortgage in October

2002. On this evidence, I find that it is more likely than not that the source of the down payment on the Church Apartment was equity in the Grand Apartment. There is no dispute that mortgage financing provided the balance of the funds required to complete the purchase of the Church Apartment.

- [176] If it is assumed that the £45,000 Mr. Hannon extracted from the equity in the Grand Apartment in October 2002 is properly characterized as his excluded property (about which more is said below), the question is whether he lost that exclusion when he applied those funds to the acquisition of the Church Apartment, which was placed in Ms. Hopson's name. As discussed above, if Mr. Hannon intended a gift of the funds to Ms. Hopson then the down payment, assuming it was his excluded property, became family property.
- [177] Mr. Hannon testified that he arranged for the Church Apartment to be held in Ms. Hopson's name in order to derive a tax benefit that flowed from her ownership. He testified that a capital gains tax exemption was available but only for a primary residence, and he already owned the Grand Apartment (and presumably intended to claim it as his primary residence for purposes of claiming the exemption). He explained that he arranged to put the Church Apartment in Ms. Hopson's name to preserve the ability to claim a capital gains tax exemption on both properties. During his testimony at trial, Mr. Hannon said he had recently been reminded by his friend, Steve Edwards, that Ms. Hopson signed a deed of trust acknowledging that she held the Church Apartment in trust for Mr. Hannon. However, no such document was produced, and Mr. Edwards did not testify despite Mr. Hannon advising me during the earlier part of the trial that he intended to call Mr. Edwards as a witness. Further, during his examination for discovery, Mr. Hannon testified that the arrangement between him and Ms. Hopson with respect to the Church Apartment was oral. Ms. Hopson denied holding the Church Apartment in trust for Mr. Hannon. She testified that she and Mr. Hannon together decided to purchase the Church Apartment as a joint investment. She agreed that it was put in her name to derive the benefit of her capital gains tax exemption, but she said the decision to structure the purchase in this fashion was a joint one.
- [178] Mr. Hannon argued that the arrangement between him and Ms. Hopson with respect to the Church Apartment was, in effect, a business deal. Mr. Hannon got the benefit of Ms. Hopson's capital gains tax exemption in exchange for him providing her with low-cost accommodation at the Church Apartment. I do not accept that characterization. The parties had been in a marriage-like relationship for about two years by the time the Church Apartment was purchased. It would be unusual for a couple like them to engage in a business deal like that. Further, the financial pattern established between the parties at the Grand Apartment simply carried over to the Church Apartment. Ms. Hopson did not pay rent at the Grand Apartment. Mr. Hannon paid the mortgage and she contributed, to a lesser extent, to some expenses. The same arrangement continued when the parties moved to the Church Apartment. In other words, she got no additional consideration in exchange for "giving up" her capital gains tax exemption to Mr. Hannon.

- [179] As discussed above, Mr. Hannon paid the lion's share of the mortgage payments on the Church Apartment, even though the mortgage was in Ms. Hopson's name. In addition, according to Mr. Hannon, Mr. McMahon, who rented the second bedroom in the Church Apartment, paid his rent to Ms. Hannon and she used it to pay down her debt. By this time, the parties were clearly operating as an economic unit.
- [180] As against the tax authorities, Mr. Hannon wants to say the Church Apartment belonged to Ms. Hopson. As against Ms. Hopson, he wants to say it belonged to him. V.J.F. makes it clear he cannot do that. Mr. Hannon's intention to derive a tax benefit from putting the Church Apartment in Ms. Hopson's name is strongly suggestive of donative intent. The parties, in effect, pooled their capital gains tax exemptions.
- [181] In addition, by the time the Church Apartment was acquired, the parties had established a pattern of operating as a joint economic unit, with Ms. Hopson receiving the benefit of income earned from the Church Apartment in the form of Mr. McMahon's rent. I do not accept Mr. Hannon's late-made claim that Ms. Hopson signed a trust declaration. There is no other evidence of any agreement that the Church Apartment would be kept as Mr. Hannon's separate property.
- [182] All of this satisfies me that to the extent the down payment on the Church Apartment was Mr. Hannon's excluded property, he intended to gift it to Ms. Hopson. It thereby became family property. In other words, Mr. Hannon has not established that any portion of the equity in the Church Apartment was, at any time, his excluded property. Therefore, he has not established that any money applied to the purchase of the Yaletown Apartment that had its source in the equity in the Church Apartment was his excluded property.
- [183] Next, I consider the funds used towards the purchase of the Yaletown Apartment from equity in the Grand Apartment. For ease of reference, equity in the Grand Apartment was the source of the initial payment on the Yaletown Apartment of \$51,490 in July 2004 and the final payment of \$43,163 in December 2006.
- [184] There is no dispute that Mr. Hannon acquired the Grand Apartment about a year before the relationship between the parties began. Accordingly, the equity in that asset in early 2001, when the relationship began, was his excluded property. However, any increase in the value since then is family property (s. 84(2)(g)). The difficulty for Mr. Hannon is establishing the value of the equity in the Grand Apartment at any given time. While the size of the mortgage can be ascertained from the mortgage statements, I have no evidence of the value of the Grand Apartment at any time after Mr. Hannon purchased it.
- [185] What is known is that Mr. Hopson made a down payment of £25,000 on the Grand Apartment in or about March 2000; the parties' relationship began about a year later in early 2001; and, in October 2002, Mr. Hannon extracted £45,000 in equity from the Grand Apartment by drawing down on the mortgage, which he used to acquire the Church Apartment. It might be reasonable to infer, in general terms, that the value of Mr. Hopson's equity in the Grand Apartment increased between March 2000 and early 2001 when the

relationship began (although I cannot take judicial notice of trends in the real estate market in Manchester). However, it would be entirely speculative to attempt to quantify any increase without a historical appraisal. In other words, in the absence of evidence about the value of the Grand Apartment when the relationship began and when the £45,000 was extracted, it would be reasonable to infer that Mr. Hopson largely exhausted the equity he had in the Grand Apartment when the relationship began to come up with the down payment on the Church Apartment. It follows that it would be reasonable to infer that the equity in the Grand Apartment that was applied to the acquisition of the Yaletown Apartment in July 2004 and December 2006 represented an increase in the value of the Grand Apartment since the parties' relationship began (that is, family property).

[186] Again, Mr. Hannon need not prove the exclusion he asserts with precision or certainty, but there must be cogent evidence from which I may draw reasonable inferences. He has failed to establish that any of the equity in the Grand Apartment that was applied towards the purchase of the Yaletown Apartment was his excluded property. It is far more likely that all the equity in the Grand Apartment that existed at the time the relationship began was applied to the purchase of the Church Apartment. As discussed, it then became family property.

The Gibsons House

[187] I turn now to the Gibsons House. The question is whether it or any portion of its value is excluded under s. 85(1)(g) because it was derived from excluded property; specifically, the settlement funds from Mr. Hannon's malpractice claim, which he says were themselves excluded under s. 85(1)(c).

[188] In September 2014, Ms. Hopson made an offer to purchase the Gibsons House. Mr. Hannon participated in the negotiations by email, as he was overseas. Ultimately, the Gibsons House was purchased in Mr. Hannon's name for \$615,000. The funds to complete the purchase were transferred from the parties' joint TSB account to their joint account at the Bank of Montreal. Ms. Hopson characterized the TSB account as containing the settlement funds, interest, and joint savings. However, she also testified that she and Mr. Hannon discussed and agreed that the settlement funds from the malpractice claim would be used to buy their dream home in Canada, and more than once, she referred to the Gibsons House as having been purchased with the settlement funds.

[189] On the whole of the evidence, I am satisfied that at least the vast majority of the funds used to purchase the Gibsons House can be traced to the settlement funds. While interest was earned on the settlement funds between early 2011, when they were received, and late 2014, when the Gibsons House was purchased, the parties did not earn much employment income during that period. They were living on the settlement funds and the interest earned on them. There is no evidence that either of the parties was saving money or that either of them received any additional, material, injection of funds that could have been used towards the purchase of the Gibsons House.

- [190] Although I am satisfied that at least the vast majority of the funds used to purchase the Gibsons House can be traced to the settlement funds, it does not follow that the Gibsons House is Mr. Hannon's excluded property. Questions arise about the extent to which the settlement funds were themselves excluded property under s. 85(1)(c) and, assuming the settlement funds were to some extent excluded property, whether the exclusion was lost when the settlement funds were placed into the parties' joint accounts nearly four years before the Gibsons House was purchased.
- [191] Section 85(1)(c) provides that a settlement or award of damages as compensation for injury or loss is excluded property but not if it represents compensation "for lost income" (s. 85(1)(c)(ii)). The "lost income" referred to in s. 85(1)(c)(ii) is, in my view, a past loss. The words are expressed in the past tense and, in their plain meaning, do not encompass compensation for future loss of income earning capacity: *Boyd v. Foster*, 2019 BCSC 901 at paras. 62-71.
- [192] Ms. Hopson submits that Mr. Hannon failed to demonstrate what portion of the £600,000 settlement represented compensation for lost income and, accordingly, she says none of the settlement funds should be found to be excluded.
- [193] In the absence of evidence from which it could be determined whether and to what extent a settlement or award of damages represented lost income, it would be difficult, if not impossible, to characterize any portion of the settlement or award as excluded property: *A.A.P. v. G.T.F.*, 2015 BCSC 662; *Jackson v. Jackson*, 2015 BCSC 2114. However, in this case there is ample evidence from which it is reasonable to infer that none of the settlement funds represented lost income.
- [194] As discussed above, from the settlement proposals exchanged between the parties to the malpractice case and the written advice provided to Mr. Hannon by his lawyers at the time he accepted the £600,000 offer, it is apparent that Mr. Hannon's claim for compensation for past income loss was considered by both sides to be very weak. Mr. Hannon's lawyers strongly recommended he accept the final offer and, in doing so, they expressed a high degree of pessimism with respect to the prospect of obtaining any award for past loss of earnings if the matter went to trial. In fact, it was their view that a court would likely award nothing for past loss of earnings. On this evidence, it is highly probable that none of the settlement funds represented compensation for Mr. Hannon's lost income. Accordingly, the entire £600,000 was Mr. Hannon's excluded property when he received it.
- [195] The next question is whether the exclusion was lost when the settlement funds were placed into the parties' joint accounts nearly four years before the Gibsons House was purchased. As discussed, Mr. Hannon's intention in placing the funds into joint accounts is key. If he intended a gift to Ms. Hopson, then the funds became family property. A consideration of all the direct and circumstantial evidence leads to the conclusion that Mr. Hannon did intend a gift.

- [196] Mr. Hannon testified that he arranged for the settlement funds to be placed in joint accounts to derive an insurance benefit that flowed from Ms. Hopson having an interest in the accounts; specifically, joint accounts attracted twice the deposit insurance coverage than accounts held in the name of one party. While Ms. Hopson emphasized that she and Mr. Hannon spoke about the settlement funds being "their money", to be used for "their future", she agreed that the joint account structure was suggested by Mr. Hannon in order to derive the insurance benefit.
- [197] As mentioned, the settlement funds were distributed amongst four newly opened joint accounts, through Ms. Hopson's TSB account which was first converted into a joint account. According to Mr. Hannon, the TSB account was used as a "feeder" account. Interest earned on the settlement funds in the other joint accounts was transferred from time to time to the TSB account and ultimately used by the parties for family living expenses. Mr. Hannon claimed that Ms. Hopson did not have access to the new joint accounts but, as already discussed, I do not accept that. She did have access to at least one of the new joint accounts as she initiated at least one transfer from one of those accounts into the TSB account. There is no dispute that she maintained her access to the TSB account.
- [198] As against the deposit insurer, Mr. Hannon wants to say the joint accounts into which the settlement funds were deposited belonged to him and Ms. Hopson jointly, but as against Ms. Hopson he wants to say they belonged only to him. He cannot do that. The parties, in effect, pooled the deposit insurance available to each of them. Mr. Hannon's intention to derive an insurance benefit from placing the settlement funds into joint accounts is strongly suggestive of donative intent. In addition, both parties had access to the accounts, and both parties lived on the settlement funds and the interest earned on them in the years between 2011 and 2014. Interest earned on the new joint accounts was fed into the TSB account and into the joint Bank of Montreal account, which both parties accessed for daily expenses. By the time the settlement funds were received, the parties had a significant history of operating as an economic unit. This pattern of activity, with both parties having control over the funds and their use, is also suggestive of donative intent. There is no credible evidence of any agreement that any portion of the settlement funds would be retained as Mr. Hannon's separate property, after they were deposited into the joint accounts. All of this satisfies me that when Mr. Hannon placed the settlement funds into the joint accounts he intended a gift. The settlement funds thereby became family property.
- [199] It follows that by the time the settlement funds were used to purchase the Gibsons House, they were no longer excluded. Mr. Hannon has not established that the Gibsons House was derived, to any extent, from his excluded property.
- [200] I have not overlooked the fact that the Gibsons House was initially registered in Mr. Hannon's sole name. The only evidence about why the purchase was structured in that manner came from the parties and they gave different accounts. Mr. Hannon testified the Gibsons House was initially registered in his sole name because it was his house, bought with his money. Ms. Hopson said he told her there were tax benefits associated with

putting it in his name and she initially accepted that explanation. I cannot rely on either party's testimony because of my concerns about their credibility. I am left unable to make any finding about why the Gibsons House was initially registered in Mr. Hannon's sole name.

The Sam Webb receivable and the Oxifree shares

[201] I turn now to the Sam Webb receivable and the Oxifree shares.

[202] After Mr. Hannon received the settlement funds, he loaned Mr. Webb £50,000 for a property development. Mr. Webb repaid a portion of the loan, but £15,000 remains outstanding. As discussed above, the settlement funds were initially deposited into the parties' joint accounts and they thereby lost their excluded character and became family property. Therefore, the source of the loan was family property. It follows that the outstanding receivable is family property.

[203] Similarly, although there was some dispute about the circumstances leading up to the acquisition of the Oxifree shares, there appeared to be no dispute that the shares were acquired with the settlement funds after the settlement funds had been deposited into the parties' joint accounts. Therefore, the shares were acquired with family property. There is no dispute that the shares were sold by Mr. Hannon after the separation and that the sale generated proceeds of £60,000. Mr. Hannon says there is a tax liability associated with that sale but he led no evidence about its quantum. In the circumstances, the £60,000 in sale proceeds is family property.

[204] For the foregoing reasons, Mr. Hannon has not demonstrated that any of the property in issue is his excluded property.

Would it be significantly unfair to divide the family property equally?

[205] The presumption in favour of an equal division of family property can be displaced, and an unequal division ordered, if an equal division would be "significantly unfair" having regard for the factors listed in ss. 95(2) and (3) of the FLA.

[206] In *Singh v. Singh*, 2020 BCCA 21 at paras. 128-140, the Court of Appeal recently reviewed the jurisprudence on the scope of s. 95, the meaning of significant unfairness in this context, and the interpretation of s. 95(2)(i), which allows for the consideration of "any other factor that may lead to significant unfairness." The following principles emerge from that discussion:

- In enacting s. 95 of the FLA, the Legislature intended the general rule of equal division to prevail unless persuasive reasons are established for a different result.

- The test of "significant unfairness" under the FLA imposes a higher threshold than the unfairness test under the predecessor FRA. This is due at least in part to the legislative objective of increasing certainty, fairness, and predictability in property division matters by reducing the discretion of the courts to depart from equal division.
- Departing from the presumption of equal division on grounds of "significant unfairness" under s. 95 requires "something objectively unjust, unreasonable or unfair in some important or substantial sense". There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.
- Section 95(2)(i) is a general term allowing consideration of "any other factor that may lead to significant unfairness." As a general term preceded by a list of specific items, the rule of statutory interpretation known as ejusdem generis ("of the same kind"), or the limited class rule, applies. The specific factors enumerated in s. 95(2) are broad but they all relate to the economic characteristics of a spousal relationship. As such, on application of the limited class rule, s. 95(2)(i) is properly construed as encompassing other factors related to the economic characteristics of the spousal relationship.

[207] The significant unfairness contemplated by s. 95 requires much more than differing financial contributions: *Khan v. Gilbert*, 2019 BCCA 80 at para. 31. In most marriages and marriage-like relationships, one spouse will earn more than the other and therefore contribute more to the family finances. Accordingly, cases where unequal contributions have been found to make an equal division of family property significantly unfair involve "marked, prolonged, and intentional or unexplained disparities in contributions to family burdens": *Khan* at para. 32.

[208] In this case, if the family property in issue is divided equally, after accounting for the value of the Toyota truck (\$20,000) on Ms. Hopson's side of the ledger, each party would receive property valued at \$1,007,414.50. This is based on the agreed values of the assets in issue: the Yaletown Apartment (\$943,829), the Gibsons House (\$915,000), the Sam Webb receivable (\$27,000), and the proceeds from the sale of the Oxifree shares (\$109,000).

[209] Ms. Hopson brought no property into the relationship. I was not provided with much evidence about the state of Mr. Hannon's finances at the time the relationship began. He testified that he made some money flipping properties in Scotland in the 1990s and at least some of those profits were the source of the £25,000 down payment on the Grand Apartment. There is no evidence of him having any other assets. In the circumstances, while I accept that Mr. Hannon brought some property into the relationship in the form of equity in the Grand Apartment, this is not a case where I could find a marked disparity in the parties' respective financial positions when the relationship began.

[210] Mr. Hannon earned more employment income than did Ms. Hopson during the first few years of the relationship. There is no dispute that during those years he contributed more than she did to the family finances. However, that is not unusual and cannot be said to give rise to unfairness. Between 2006 and 2011, Ms. Hopson worked and, with limited

exceptions, Mr. Hannon did not. He testified he received incapacity benefits during this time which were substantially less than the amount Ms. Hopson was earning from her employment. They pooled their income to ensure the bills were paid, with Ms. Hopson often transferring funds from her TSB account to Mr. Hannon's Nationwide account from which he covered his personal expenses, and to his Bank of Montreal account to ensure the mortgage on the Yaletown Apartment was paid. Ms. Hopson stopped working in August 2011. During the next couple of years, they lived largely off the settlement funds Mr. Hannon received in early 2011 which became family property when they were deposited into the parties' joint accounts. This is not a case of markedly different financial contributions during the relationship.

- [211] As mentioned, Mr. Hannon says he has a tax liability associated with the Oxifree shares. In broad terms, this appears to fall within s. 95(2)(h). However, I have no evidence upon which to make findings about the potential size of that liability. Further, the value of the asset relative to the family property as a whole is small. In the circumstances, this tax liability, assuming it exists, does not render an equal division of family property significantly unfair.
- [212] None of the other specific factors listed in s. 95(2) weighs in favour of an unequal division of family property. To the contrary, the duration of the relationship (about 14 years) and the fact that a significant portion of the value of the Yaletown Apartment and the Gibsons House is attributable to the real estate market in British Columbia during the relationship, weighs in favour of an equal division.
- [213] This leaves the general provision in s. 95(2)(i) which allows for the "consideration of "any other factor that may lead to significant unfairness." As discussed, this provision encompasses factors that relate to the economic characteristics of the spousal relationship.
- [214] The final written submission Mr. Hannon presented identified several factors weighing against an equal division of family property but many of those depended on facts that I have not found. By way of example, his written submission cites the "terms of the agreements between the parties to the effect that each would retain at all material times their respective property ", but I have not found that any such agreements were made.
- [215] Based on the whole of the evidence led by Mr. Hannon, the positions he vocalized throughout the trial, and aspects of his written submission, I distill his central points as follows:
- It would be unfair to divide the family property equally because Ms. Hopson became aware of the expanded rights of common law spouses under the FLA and lured him to British Columbia as part of a premeditated scheme to secure rights to his property which she did not have under English law.
 - It would be unfair to apply the FLA's property sharing regime because he and Ms. Hopson commenced their relationship in the UK under a regime applicable to unmarried couples that gave rise to no expectation that they would share property.

· It would be unfair to divide the family property equally because a significant portion of it has its origins in the settlement funds which were formerly his excluded property.

[216] I will deal with each in turn.

[217] The evidentiary record falls far short of establishing or giving rise to any inference that Ms. Hopson became aware of the expanded rights of common law spouses under the FLA and lured Mr. Hannon to British Columbia as part of a premeditated scheme to secure rights to his property. She denied doing so and there is no contrary evidence. In any event, there is no dispute that the parties began planning their move to British Columbia in 2004 and took concrete steps to implement that plan in 2006, years before the FLA even received royal assent in November 2011.

[218] I am not persuaded that it would be unfair to apply the FLA's presumption of equal property division because Mr. Hannon and Ms. Hopson commenced their relationship in the UK. I do not accept Mr. Hannon's evidence about his actual expectations concerning the rights and obligations that might arise on the breakdown of his relationship with Ms. Hopson. Nevertheless, I understood him to argue that even in the absence of reliable evidence of the parties' actual expectations, I should infer that their expectations aligned with English law. I am not prepared to draw that inference. There is no reliable evidence that either of them had any real understanding of the applicable English law.

[219] There are cases in which the spouses' expectations of their obligations at the time their relationship began weighed in favour of an unequal division of family property under the FLA: for example, *A.J.E. v. T.B.W.*, 2017 BCSC 1657 and *Dennis v. Gill*, 2018 BCSC 1533. However, in those cases, the parties began their relationships in British Columbia under the FRA, and their obligations to each other were significantly altered without either of them taking any step to subject themselves to the new FLA regime. In contrast, Ms. Hopson and Mr. Hannon did not move to British Columbia until late 2012, more than a year after the FLA received royal assent. If keeping their property separate was a priority, before making such a move they would have made inquiries about how the law of British Columbia might affect their rights and obligations to each other. Had they done so, they could have entered into an agreement with respect to how their property would be divided in the event their relationship ended, or they could have chosen not to move here. There is no evidence that either of them made any such inquiries which indicates that they did not view the matter as one of significance. In the circumstances, the parties' expectations with respect to their obligations to each other in the event of the termination of their relationship is not a factor that, in this case, meets the high threshold of significant unfairness.

[220] The crux of this aspect of the case is Mr. Hannon's third point. A significant portion of the family property in issue has its origins in the settlement funds, which were formerly Mr. Hannon's excluded property. As noted, the origin of family property as formerly-excluded property is a factor that may cause an equal division of family property to be significantly unfair. This is a matter that relates to the economic characteristics of the spousal

relationship and, as such, may properly be considered under s. 95(2)(i). However, the degree of attention paid to this factor depends on all relevant circumstances: Venables at para. 112.

[221] In Venables, those circumstances included the following:

- one spouse brought far more property into the relationship than did the other (who brought nothing);
- the relationship was of medium length (about eight years);
- there was a relatively short period between when the excluded property became family property and the time the couple separated; and
- an equal division would have resulted in the non-contributing spouse benefiting from the relationship to a far greater degree than would the other spouse who would be only marginally better off financially than he was when the relationship began.

[222] To recap, Mr. Hannon received the settlement funds of £600,000 in early 2011. The funds were immediately placed into the TSB account in the parties' joint names which had to that point been Ms. Hopson's sole account. Mr. Hannon referred to this as the "feeder account". From there, the funds were disbursed into four separate joint accounts. The interest was paid into the TSB feeder account from time to time and both parties accessed that account for personal expenses. The Gibsons House was purchased nearly four years later for \$615,000. I have found that the Gibsons House was derived largely, if not entirely, from the settlement funds but by that time the settlement funds had become family property. There is little evidence of what happened to the balance of the settlement funds. About £50,000 was loaned to Mr. Webb. Some portion was used to acquire the Oxifree shares. It is reasonable to infer that the settlement funds were also used to furnish the Gibsons House and purchase the Toyota truck. The parties appear to have spent the balance as neither had other material assets or bank balances by the time this case got to trial.

[223] It is reasonable to characterize 95% of the settlement funds as representing compensation for Mr. Hannon's lost future earning capacity, and the remaining 5% as representing non-pecuniary damages. As discussed, the documents generated by the lawyers during the settlement negotiations suggest that the vast majority was attributed to lost future earnings. Mr. Hannon's lawyers expressed the view that a court would likely award general damages of £30,000 and nothing for past loss of earnings. They also expressed the view that an award of about £596,000 for loss of future earnings was realistic. From this, I conclude that about £30,000 of the settlement funds represent non-pecuniary damages, with the balance, £570,000 or 95%, representing lost future earning capacity.

[224] That the settlement funds largely reflect lost future earning capacity is a factor that could indicate that an equal division of the Gibsons House might be unfair to Mr. Hannon. This is because a significant portion of the lost future earning capacity pertains to the post-separation period, a period during which Ms. Hopson could have no claim aside from

spousal support. However, the argument is not persuasive in this case because, on the record before me, it is more likely than not that Mr. Hannon's future income earning capacity was not actually impaired by the alleged negligence that gave rise to the settlement funds.

- [225] Mr. Hannon had corrective eye surgery in Italy mere months after receiving the settlement funds. Leaving aside the authenticity of the letters from Dr. Busin that indicate the surgery was a success, but which Mr. Hannon says are forgeries, Mr. Hannon subsequently passed a CAA vision test and his pilot's license was reinstated. He testified that he passed the test only because he wore the contact lens he cannot tolerate but, for reasons already expressed, I reject that evidence. Further, I am satisfied that he worked as a commercial pilot for Sky Greece for several months in late 2014 and early 2015. On the record before me, it is more likely than not that his vision is not a fetter on his ability to work.
- [226] I have not overlooked the evidence of Dr. Kam Mohaseb, an ophthalmologist practicing in British Columbia. Dr. Mohaseb conducted an ophthalmic examination of Mr. Hannon on May 23, 2019. He testified that Mr. Hannon has 20/20 vision in his right eye but that the vision in his left eye is significantly reduced. While I accept that Dr. Mohaseb is a well-qualified ophthalmologist and that his testimony was truthful, I have concluded it is unreliable. This is because Dr. Mohaseb acknowledged that his conclusions about Mr. Hannon's vision depend on Mr. Hannon's self-report about what he can see. For the reasons I have already expressed, Mr. Hannon is not credible. He has admitted to participating in several acts of deception intended to advance his own interests. In the circumstances, his self-report to Dr. Mohaseb is not reliable.
- [227] Both Mr. Hannon and Ms. Hopson testified about the significantly debilitating episodes of anxiety and depression that Mr. Hannon has experienced for many years. Their evidence on that point did not materially conflict. From that evidence, I find that Mr. Hannon's psychiatric history does impair his ability to work but the settlement funds do not reflect compensation for that impairment. The settlement funds were intended to compensate for an impairment to his future earning capacity caused by a significant reduction in his vision. On the record before me, any reduction in his vision was corrected soon after he received the settlement funds. In these unusual circumstances, the vast majority of the settlement funds are properly characterized as a windfall. This significantly weakens the argument that it would be unfair to equally divide family property derived from them.
- [228] In summary, this was a relatively long relationship of about 14 years; Mr. Hannon brought more property into the relationship than did Ms. Hopson but only marginally so; both parties contributed financially and while their contributions were not equal they were not markedly different; a significant portion of the current value of the family property is attributable to the rising real estate market in British Columbia during the relationship; there is no evidence that I accept to the effect that the parties had any actual expectation of keeping their property separate--to the contrary they operated as an economic unit throughout their relationship; and while the Gibsons House was derived from Mr. Hannon's

formerly excluded property, namely the settlement funds, the vast majority of the settlement funds is properly characterized as a windfall. These circumstances do not meet the high threshold of significant unfairness that is required to depart from the presumption of equal division of family property and, instead, award an unequal division in favour of Mr. Hannon. Mr. Hannon's claim to an unequal division of family property is dismissed.

- [229] In the alternative to her claim for spousal support, Ms. Hopson sought an unequal division of family property in her favour pursuant to s. 95(3) of the FLA. That section allows the court to consider the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship if, on making a determination respecting spousal support, the objectives of spousal support have not been met. For the reasons expressed in the next section, I have concluded that Ms. Hopson has not established an entitlement to spousal support. Accordingly, her claim to an unequal division of family property is dismissed.
- [230] The family property in dispute shall be divided equally. The Gibsons House (valued at \$915,000) shall be transferred to Ms. Hopson. Ms. Hopson will retain the Toyota truck (valued at \$20,000). Mr. Hannon will retain the Yaletown Apartment (valued at \$943,829), the Sam Webb receivable (valued at \$27,000), and the proceeds from the sale of the Oxifree shares (valued at \$109,000). In addition, he shall make a compensation payment to Ms. Hopson of \$72,414.50 to equalize the property division.

Spousal support

- [231] Ms. Hopson seeks lump sum spousal support based on compensatory and non-compensatory grounds. She submits that Mr. Hannon has not been truthful about his ability to work or about whether he has been working and that income should be imputed to him as a result.
- [232] The FLA and the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) direct the same approach to the determination of a claim for spousal support. Both Acts require the court to consider the same factors and underlying objectives. As an unmarried spouse, Ms. Hopson advances her claim under the FLA but the jurisprudence arising out of both statutes applies.
- [233] Consideration of a claim for spousal support takes place in two stages: first, the court must determine whether there is an entitlement to spousal support; if so, the inquiry turns to the appropriate quantum and duration of the award: *Bracklow v. Bracklow*, [1991] 1 S.C.R. 420 at para. 50; FLA, s. 160.
- [234] Section 161 of the FLA provides that in determining entitlement to spousal support, the court must consider the following objectives:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;

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

[235] No single objective is paramount; all must be borne in mind: Bracklow at para. 35.

[236] Section 162 of the FLA provides that the amount and duration of spousal support must be determined on consideration of the condition, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses live together;
- (b) the functions performed by each spouse during the period they lived together; and
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[237] There are three grounds for entitlement to spousal support: contractual, compensatory and non-compensatory. Contractual spousal support is not an issue here.

[238] Compensatory support is intended to provide redress to the recipient spouse for his or her efforts during the relationship which conferred an economic benefit or advantage on the other spouse and for his or her economic disadvantage arising from the relationship or its breakdown: Chutter v. Chutter, 2008 BCCA 507 at paras. 50-51, leave to appeal ref'd [2009] S.C.C.A. No. 41. The courts recognize that assuming primary child care and household responsibilities, in particular, often results in lower earning potential and fewer prospects for financial success in the future: Chutter at para. 50.

[239] Non-compensatory support is needs-based. It aims to narrow the gap between the needs and means of the spouses. The concept of need, however, goes beyond the basic necessities of life and varies according to the circumstances of the parties. In longer relationships, the courts have measured need against the parties' standards of living during and after the relationship: Chutter at paras. 59-60; Hodgkinson v. Hodgkinson, 2006 BCCA 158 at paras. 68-69. In Moge v. Moge, [1992] 3 S.C.R. 813, the court said at 870:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement. As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution.

- [240] In *Lee v. Lee*, 2014 BCCA 383 at para. 66, Newbury J.A. noted that a spouse who experienced a marked decline in standard of living should receive some financial assistance upon relationship breakdown, but a mere disparity in the spouse's incomes was not sufficient to create entitlement. (See also the discussion in *Madruga v. Madruga*, 2015 BCSC 1605 at paras. 27-41, with which I agree.)
- [241] Ms. Hopson's claim for compensatory support is based on her submission that she was economically disadvantaged by the relationship and its breakdown. She submits that she gave up her employment in the UK to move to Canada and, on breakdown of the relationship, she had to move out of the Gibsons House and no longer had Mr. Hannon's financial support.
- [242] I am not persuaded by those submissions. While Ms. Hopson gave up her employment in the UK to move to Canada, doing so advanced her interests. Though Mr. Hannon agreed to the move, on the whole of the evidence it is clear that Ms. Hopson was the primary instigator of the move. It cannot be said that the move conferred an economic benefit or advantage on Mr. Hannon. When the relationship ended, Ms. Hopson was working. Mr. Hannon was not. Both parties had access to the funds in their joint accounts. She withdrew \$25,000 from a joint account the day after the separation. She resided in the Gibsons House for most of 2016. I am not persuaded that she was disadvantaged by the breakdown of the relationship.
- [243] This is a case where both parties realized economic advantages from the relationship and neither was disadvantaged. The parties had no children. Accordingly, child-rearing responsibilities did not influence the career choices of either party. Ms. Hopson was advantaged by the financial support she received from Mr. Hannon in the early years of the relationship and by her access to the settlement funds in the later years. Mr. Hannon was advantaged by the emotional support he received from Ms. Hopson throughout the relationship and by her financial support in the middle years, after his employment with Airtours was terminated and before he received the settlement funds. I conclude, therefore, that Ms. Hopson is not entitled to spousal support on compensatory grounds.
- [244] Ms. Hopson made few submissions in support of her entitlement to non-compensatory support, focussing instead on the amount of support that ought to be awarded. She submitted that Mr. Hannon has not been forthright about his ability to work or about whether he has been working. She submitted there is no evidence that he cannot work. She noted Mr. Curd's testimony that the job offer from Strategic in 2012, which he facilitated for Mr. Hannon, would have paid Mr. Hannon £100,000. She also testified that Mr. Hannon told her in November 2015 he was starting a contract flying for "SAFI" for \$15,000 per month. Mr. Hannon acknowledges that he receives about \$54,000 per year of passive rental income. In these circumstances, Ms. Hopson submits that an income of \$100,000 a year should be imputed to Mr. Hannon. It was not made clear why she settled on \$100,000 as the appropriate amount.

- [245] Ms. Hopson earns about \$37,500 a year. She produced DivorceMate calculations indicating that with an income of \$100,000 imputed to Mr. Hannon, the Spousal Support Advisory Guidelines generate a range of lump-sum spousal support between about \$108,000 and \$143,000. She produced DivorceMate calculations indicating that with an income of \$54,000 for Mr. Hannon (that is without any income being imputed to him), the Spousal Support Advisory Guidelines generate a range of lump-sum spousal support between about \$30,000 and \$40,000.
- [246] The parties are the same age--about 50 years old. Their standard of living varied somewhat during the roughly 15 years of their relationship. During the early years both of them worked and Mr. Hannon, in particular, had a good income. They travelled extensively. In the later years, after the settlement funds were received, they lived very comfortably even though for a considerable period neither of them worked. The middle years were lean. After Mr. Hannon's employment with Airtours was terminated, funds were tight but they managed. Their overall financial position improved significantly over the course of the relationship.
- [247] Since moving to British Columbia, Ms. Hopson has re-established her career. She is now working full time in an administrative position earning about \$37,500 a year. She has a new romantic partner and, as a result, her living expenses have been minimal, at least since the commencement of her new relationship.
- [248] Mr. Hannon acknowledged that in about November 2015, he was offered work with SAFI. He said no details of the nature of the work were provided to him but he flew to Kabul anyway to take up the job. He said when he got there, he was told no one was getting paid. He said he was ultimately arrested and escorted out of the country. He testified that he has not been working or looking for work since November 2015. He said he was caring for his father until his father died on July 26, 2019, and that he was paid a small allowance for doing so. He testified that his income is currently limited to rental income from the Yaletown Apartment and the Grand Apartment, totalling \$54,000 per year.
- [249] I am not persuaded that it would be appropriate to impute income to Mr. Hannon. Although I have serious concerns about his credibility, the evidence does not permit the drawing of an inference that, since 2008, he has had any employment except for his work with Sky Greece during the last few months of 2014 and the first few months of 2015.
- [250] For several years since 2011, Mr. Hannon had the settlement funds to live on. Although the settlement funds appear to have been exhausted, he has continued to have access to about \$54,000 per year in rental income. He has had no financial need to work. Accordingly, it is not implausible that he did not work but for the stint with Sky Greece in late 2014 and early 2015.
- [251] Further, Mr. Hannon's admittedly serious psychological condition is consistent with him not working. Ms. Hopson acknowledged that his episodes of anxiety and depression could be very severe, some lasting as long as a couple of months. She characterized Mr. Hannon

as mentally fragile. Ms. Hopson acknowledged that he turned down the Strategic contract in 2012 because of his anxiety. Even in the absence of any medical evidence related to Mr. Hannon's psychological or psychiatric condition, I have no doubt that the condition interferes with his ability to work. In the circumstances, it is my view that the evidentiary record does not support imputing income to him.

- [252] As a result of my conclusions on the division of family property, both parties will have property valued at in excess of \$1 million. Ms. Hopson has an income of about \$37,500 a year and minimal living expenses. She is economically self-sufficient. Mr. Hannon has an income of about \$54,000 a year. There is no material disparity in their respective, current standards of living and no material difference between their post-separation standard of living and the standard of living they enjoyed during the last few years of the relationship.
- [253] Even if I was persuaded that income of \$100,000 a year should be imputed to Mr. Hannon, that would not be enough in this case to conclude that Ms. Hopson had established a non-compensatory entitlement to spousal support. Notwithstanding an income disparity of about \$60,000 a year, the record does not support a conclusion that there would be a marked disparity in the parties' standards of living.
- [254] For the foregoing reasons, Ms. Hopson has not established an entitlement to spousal support.

Conclusion

- [255] Ms. Hopson and Mr. Hannon lived together in a marriage-like relationship continuously from early 2001 to May 6, 2015. They were spouses as defined in the FLA.
- [256] The proper law of the relationship for purposes of property division under the FLA is British Columbia law.
- [257] The Yaletown Apartment, the Gibsons House, the Sam Webb receivable, and the proceeds from the sale of the Oxifree shares, are all family property. Mr. Hannon has not established that any asset or any portion of the value of any asset is his excluded property.
- [258] The Yaletown Apartment, the Gibsons House, the Sam Webb receivable, and the proceeds from the sale of the Oxifree shares shall be divided equally. Mr. Hannon's claim to an unequal division of family property in his favour is dismissed. Ms. Hopson's claim to an unequal division of family property in her favour is dismissed.
- [259] By consent:
- (a) Mr. Hannon will retain the Grand Apartment without further accounting.
 - (b) Each party will retain their own pensions without further accounting.
 - (c) Each party will retain the bank accounts held in their own names without further accounting.

- (d) Mr. Hannon will deposit sufficient funds into the parties' joint TSB account to eliminate the overdraft and he will co-operate in having his name removed from that account so that Ms. Hopson can retain it in her name alone.
- (e) Ms. Hopson will co-operate in having her name removed from the parties' joint Bank of Montreal account so that it can be retained by Mr. Hannon in his name alone, and he will retain the balance in it without further accounting.
- (f) The Toyota truck will be transferred to Ms. Hopson and its value (\$20,000) allocated to her and accounted for in the ultimate property division.
- (g) The parties will divide all household effects and furnishings with liberty to apply to resolve any disagreements that may arise.
- [260] The Gibsons House (valued at \$915,000) shall be transferred to Ms. Hopson. Ms. Hopson will retain the Toyota truck (valued at \$20,000). Mr. Hannon will retain the Yaletown Apartment (valued at \$943,829), the Sam Webb receivable (valued at \$27,000), and the proceeds from the sale of the Oxifree shares (valued at \$109,000). Mr. Hannon shall make a compensation payment to Ms. Hopson of \$72,414.50 to equalize the property division.
- [261] Ms. Hopson's claim for spousal support is dismissed.
- [262] If the parties wish to speak to costs they may do so if, within 60 days of the release of these reasons for judgment, they contact Supreme Court Scheduling to secure a date for a judicial telephone conference to discuss the process for making submissions on costs in light of the current suspension of regular court operations due to the COVID-19 pandemic.

"Warren J."

The Honourable Madam Justice Warren

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