

CANADA / JUDGMENT

Hoy v. Wagemans

2023 BCSC 682

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 682 Hoy v. Wagemans IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hoy v. Wagemans, 2023 BCSC 682 Date: 20230426 Docket: S2796 Registry: Powell River Between: Lisa Ann Hoy also known as Lise Hoy Plaintiff And John Hubert Mathew Wagemans, Deceased and Catharina Elizabeth Diana, Administrator of the Estate of John Hubert Mathew Wagemans Defendants And Lisa Ann Hoy also known as Lise Hoy Defendant by Counterclaim Before: The Honourable Mr. Justice Milman Reasons for Judgment Counsel for the Plaintiff/Defendant by Counterclaim: S. Fletcher Counsel for the Defendants: B. Henderson Place and Dates of Trial: Powell River, B.C. March 21-24, 2023 Place and Date of Judgment: Powell River, B.C. April 26, 2023 Table of Contents I. Introduction.. 3 II. The Background Facts. 3 III. The Legal Framework.. 10 IV. Discussion.. 14 V. Disposition.. 18 I. Introduction

- [1] On June 7, 2020, the deceased, John Hubert Mathew Wagemans, died unexpectedly while at work. He did not have a will.
- [2] The plaintiff, Lisa Ann Hoy, also known as Lise Hoy, brings this action against his estate, seeking, among other things, to be recognised as his spouse at the time of his death. The estate, which is being administered by Catharina Elizabeth Diana, one of Mr. Wagemans' sisters, disputes that Ms. Hoy had that status at that time and seeks, by way of counterclaim, a variety of relief against her on the basis that she did not.
- [3] At the request of the parties, I agreed on the first day of the trial that they could confine the trial to one issue, namely, whether Mr. Wagemans and Ms. Hoy were spouses at the time of Mr. Wagemans' death.
- [4] For the reasons that follow, I have concluded that they were. II. The Background Facts
- [5] Mr. Wagemans was born in 1966. He had four older siblings, as follows:
- a) Ms. Diana;
 - b) MarryAnn Filewich;
 - c) Joanne VanHumbeck; and
 - d) Peter Wagemans.

- [6] Before he died, Mr. Wagemans had been working for many years as a falling contractor through a logging company owned by Jimmy Bennie.
- [7] Ms. Hoy was born in 1964. She has been living on disability assistance since January 2017. Prior to that, she worked as a bookkeeper.
- [8] They met in late 2010 through an online dating site. At the time, Mr. Wagemans was still living with his ex-wife but they were already estranged and she moved out permanently in January 2011. It is not disputed that Ms. Hoy and Mr. Wagemans became romantically involved soon after they met and remained together as a couple until at least the summer of 2018. During those years, they travelled together, attended concerts, hockey games, family functions and funerals as a couple.
- [9] When they first met, and at all material times thereafter, each of them owned a residential property in Powell River. Ms. Hoy's is at 7106 Hazelton Street (the "Hazelton Property") and Mr. Wagemans at 5423 Manson Avenue (the "Manson Property"). Each consistently claimed their respective property as their principal residence in their annual applications for the home owner grant. Each filed their tax returns every year using those separate addresses and declared themselves to be single.
- [10] Nevertheless, Ms. Hoy testified that she began staying for extended periods with Mr. Wagemans at the Manson Property after she became ill with pneumonia in April or May 2011. She recounted that, at Mr. Wagemans' invitation, she moved in permanently with him there, following a break-in that occurred at the Hazelton Property in July 2011 and that she has resided there exclusively since then. She brought her clothes and toiletries with her but otherwise left her personal effects at the Hazelton Property because there was not enough room at the Manson Property to keep them there. She testified that they each had keys to the other's home.
- [11] Ms. Hoy says that when they met, she owned two dogs and a cat, and Mr. Wagemans, one dog and two cats, all of which came to be shared between them. She testified that when one of her dogs died, Mr. Wagemans purchased a new puppy in its place. In all, she says, they acquired three dogs together during the relationship and shared a joint account at the vet.
- [12] There is evidence indicating that, at least until the summer of 2018, Ms. Wagemans' siblings thought of Ms. Hoy as part of their extended family. She accompanied Mr. Wagemans for Christmas dinners with the family. When Mr. Wagemans' mother died in 2014, Ms. Hoy attended the funeral with him. In her testimony, Ms. Filewich confirmed that she gave Ms. Hoy two of their mother's rings on that occasion.
- [13] When Ms. Hoy's mother died in April 2015, Mr. Wagemans attended the funeral. He also helped her financially and otherwise when the burden of supporting her father fell to her.
- [14] On Christmas Day in 2016, Mr. Wagemans asked Ms. Hoy to marry him and she accepted. He bought her an engagement ring that she understood to be worth several thousand dollars. However, she did not have it fitted and rarely wore it. They did not set a date for the

wedding. They discussed taking formal steps to merge their assets but Mr. Wagemans was, according to Ms. Hoy, reluctant to do so because of the difficulties he had experienced when his earlier marriage ended. He asked her to wait until they were married. She did not press the point.

- [15] In the end, they were never married. Instead, their relationship began showing signs of strain in late 2017 or early 2018. One of the early sources of contention was that Mr. Wagemans had, without Ms. Hoy's permission, arranged for some acquaintances of one of his co-workers, who needed accommodation, to stay at the Hazelton Property. They remained there for approximately a year, from the fall of 2017 until the fall of 2018. They proved difficult to extract and, while there, caused a great deal of damage, leaving the house in an uninhabitable state.
- [16] In April 2018, Ms. Hoy became romantically involved with another man, Paul Edmunds. She testified that she stayed with him overnight on three or four occasions. Their text exchanges, which are in evidence, show them to be effusively professing love and affection for one another over the next few months. In one such text, Ms. Hoy was musing about changing her surname to "Edmunds". However, the relationship was short-lived and appears to have ended after only a few months. Although the text exchanges between them appear to have continued until the end of August 2019, after August 2018 they become sporadic, with one in December 2018 and another in August 2019. By then there was no longer any expression of mutual affection. Ms. Hoy testified that by September 2018, she had lost interest in Mr. Edmunds and returned a gift he had sent her.
- [17] Despite the winding down of Ms. Hoy's relationship with Mr. Edmunds, her relationship with Mr. Wagemans did not improve. They did not spend Christmas together in 2018. Mr. Wagemans had been decorating the Manson Property with Christmas lights every year but he chose not to do so in 2018. Ms. Diana recalled a conversation with him in which he explained that he did not see any point in decorating that year because Ms. Hoy would not be there. According to Ms. Hoy, they had been invited to spend Christmas Eve with a friend. Mr. Wagemans decided not to go but she accepted the invitation on her own and decided to remain there overnight.
- [18] Their relationship remained in limbo into 2019. A new aggravating factor was Mr. Wagemans' financial situation, which had become dire as work grew scarce as a result of a strike in the logging industry. He became depressed and began musing about suicide. He began selling some of his personal effects in order to raise money, including, Ms. Hoy later learned, the engagement ring he had purchased for her in 2016.
- [19] In May, 2019, Ms. Hoy's father died. Her brother looked after the funeral arrangements. Mr. Wagemans was not mentioned as her partner in the tribute that was published, as he had been on the occasion of her mother's death in April 2015.

- [20] In the summer of 2019, Mr. Wagemans became intimately involved with another woman, Cinthia Nassichuk, who lives in Victoria. Ms. Nassichuk testified that she travelled to Powell River twice in August 2019 to visit family and while there, spent two nights with Mr. Wagemans. They were together again over the following Labour Day weekend, when he travelled to Victoria specifically to see her. Two hand-written love letters from Ms. Nassichuk to Mr. Wagemans were adduced in evidence. Both are undated. In what appears to be the earlier of the two, bearing the salutation "To my Baby", Ms. Nassichuk tells Mr. Wagemans about herself, professes her love for him, and expresses the hope that he feels the same way about her. The second, which bears the salutation "To My Sweetie", and which she described as a "dirty letter" that Mr. Wagemans had asked her to write for him, contains a sexually graphic description of a real or imagined encounter between them.
- [21] Kelli Catcher, a friend of Ms. Hoy, was given to understand that Ms. Hoy and Mr. Wagemans had separated as a result of Mr. Wagemans' affair with Ms. Nassichuk, although she believed that they were still trying "to work it out."
- [22] Ms. Diana testified that Mr. Wagemans expressly told her in 2019 that he and Ms. Hoy had separated, that he was now in a relationship with a different woman and that he was unsure if he and Ms. Hoy would even continue to be friends. Ms. Nassichuk testified that as far as she is concerned, she and Mr. Wagemans remained together as a couple until the day he died. It appears, however, that Mr. Wagemans did not see Ms. Nassichuk again after the Labour Day weekend in 2019. Indeed, there was no evidence of any communication between them thereafter.
- [23] In any event, there is reason to believe that Mr. Wagemans' relationship with Ms. Hoy began to recover as 2019 drew to a close. Ms. Hoy testified that, by then, she and Mr. Wagemans had resumed being intimate with one another, such as by hugging and holding hands.
- [24] Ms. Hoy also testified that, between the fall of 2019 and the date of Mr. Wagemans' death, she wrote a series of cheques to help see him through his financial difficulties during the strike. Several of those cheques are in evidence, as follows:
- | Date | Amount | Notation |
|-------------------|---------|----------------------|
| November 30, 2019 | \$1,000 | Labour - bathroom |
| December 30, 2019 | \$1,000 | Labour |
| January 30, 2020 | \$1,000 | Labour |
| February 4, 2020 | \$500 | Labour/Supplies |
| February 5, 2020 | \$1,000 | Labour |
| February 5, 2020 | \$200 | Sundries, Supplies |
| February 8, 2020 | \$1,500 | Labour, Supplies |
| February 12, 2020 | \$400 | Labour, sundries |
| March 11, 2020 | \$150 | firewood |
| March 12, 2020 | \$200 | groceries |
| March 24, 2020 | \$200 | Groceries & supplies |
| March 30, 2020 | \$1,500 | Labour, supplies |
| May 19, 2020 | \$500 | Labour |
- [25] Ms. Hoy testified that the notations on the cheques did not reflect their true purpose. She says she added them to convey the false impression that she had received value in exchange for the payments so that Mr. Wagemans would not feel embarrassed when he attended at the bank to cash them. Although the estate disputes this and asserts that the notations really do reflect the true purpose of the payments, the fact that the cheques are made out in even amounts lends some support to Ms. Hoy's version of events.

- [26] More compelling still is the evidence of Mr. Bennie, Mr. Wagemans' employer, who recounted a conversation with Mr. Wagemans shortly before his death in which Mr. Wagemans expressed his eagerness to obtain more shift work so he could repay Ms. Hoy for all the money she had advanced to him during the strike.
- [27] Another sign of the ongoing recovery in their relationship is to be found in a text message exchange between Mr. Wagemans and Ms. Filewich that took place on December 22, 2019. On that occasion, Ms. Filewich invited Mr. Wagemans for Christmas dinner at her home. Mr. Wagemans declined the invitation, advising that he was "[h]aving dinner with Lisa.. Thanks." Mr. Wagemans decorated the Manson Property with Christmas lights once again in 2019.
- [28] Mr. Wagemans died unexpectedly on June 7, 2020 while working in a remote area on a contract for Mr. Bennie's logging company. Later that day, the police attended at the Manson Property to notify Ms. Hoy, as Mr. Wagemans' emergency contact at work, of his death. Ms. Hoy then called Ms. Catcher, who immediately drove over to the Manson Property to be with her.
- [29] The police report describing the investigation into Mr. Wagemans' death refers to Ms. Hoy as Mr. Wagemans' next of kin ("common law"). When the police retrieved Mr. Wagemans' cell phone, it had received numerous text messages from Ms. Hoy, inquiring about where he was.
- [30] When a police officer arrived at the Manson Property, Ms. Hoy is reported to have told him that she and Mr. Wagemans "have separate residences and that they have been in an off and on relationship for some time." In her testimony at trial, Ms. Hoy denied having used those words, although she acknowledged having stated that they each owned their own homes. She testified that when she went to the morgue on the following day to identify the body, she took a clipping of his hair.
- [31] On the evening of June 7, 2020, having heard from the police about Mr. Wagemans' death, Ms. Diana called the land line at the Manson Property and spoke to Ms. Hoy. There is some dispute about what was said on that occasion. It appears that Ms. Diana asked about whether Mr. Wagemans had prepared a will and whether there was a safety deposit box. According to Ms. Diana, Ms. Hoy responded that "an ex is entitled to the estate" and that she "could do a lot without a will."
- [32] Ms. Diana applied for a Grant of Administration in June 2020, which she received on November 20, 2020. Ms. Hoy was not served with the application but was named in it as Mr. Wagemans' "former spouse". III. The Legal Framework
- [33] Section 20 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA], states as follows: If a person dies without a will leaving a spouse but no surviving descendant, the intestate estate must be distributed to the spouse.

[34] Pursuant to s. 1, the meaning of the term "spouse" is to be found in s. 2, which states as follows: 2 (1) Unless subsection (2) applies, 2 persons are spouses of each other for the purposes of this Act if they were both alive immediately before a relevant time and

(a) they were married to each other, or

(b) they had lived with each other in a marriage-like relationship for at least 2 years.

(2) Two persons cease being spouses of each other for the purposes of this Act if,

(a) in the case of a marriage, an event occurs that causes an interest in family property, as defined in Part 5 [Property Division] of the Family Law Act, to arise, or

(b) in the case of a marriage-like relationship, one or both persons terminate the relationship. (2.1) For the purposes of this Act, spouses are not considered to have separated if, within one year after separation,

(a) they begin to live together again and the primary purpose for doing so is to reconcile, and

(b) they continue to live together for one or more periods, totalling at least 90 days.

(3) A relevant time for the purposes of subsection (1) is the date of death of one of the persons unless this Act specifies another time as the relevant time.

[35] The meaning of the term "marriage-like relationship" is not defined in the legislation, but has been the subject of copious judicial comment. That jurisprudence was most recently summarised by the Court of Appeal in *Coad v. Lariviere*, 2022 BCCA 222, where Bennett J.A., writing for the Court, stated as follows:

[127] This Court recently considered the question of whether persons were in a marriage-like relationship in *Jones v. Davidson*, 2022 BCCA 31. The decision highlights the fact that there is no specific definition of whether a marriage-like relationship exists. The precise definitions of the past are no longer valid in our changing world. Such relationships are no longer defined by financial dependence, sexual relationships or the mingling of property and finances. The Court, at para. 21, affirmed the lack of a "checklist" approach, as succinctly set out in *Austin v. Goerz*, 2007 BCCA 586. In *Austin*, this Court said at para. 58:

[58] It is understandable that the presence or absence of any particular factor cannot be determinative of whether a relationship is marriage-like. This is because equally there is no checklist of characteristics that will invariably be found in all marriages. In this regard I respectfully agree with the following from the judgment of Ryan-Froslic J. in *Yakiwchuk v. Oaks*, 2003 SKQB 124:

[10] Spousal relationships are many and varied. Individuals in spousal relationships, whether they are married or not, structure their relationships differently. In some relationships there is a complete blending of finances and property- in others, spouses keep their property and finances totally separate and in still others one spouse may totally control those aspects of the relationship with the other spouse having little or no knowledge or input. For some

couples, sexual relations are very important - for others, that aspect may take a back seat to companionship. Some spouses do not share the same bed. There may be a variety of reasons for this such as health or personal choice. Some people are affectionate and demonstrative. They show their feelings for their "spouse" by holding hands, touching and kissing in public. Other individuals are not demonstrative and do not engage in public displays of affection. Some "spouses" do everything together - others do nothing together. Some "spouses" vacation together and some spend their holidays apart. Some "spouses" have children - others do not. It is this variation in the way human beings structure their relationships that make the determination of when a "spousal relationship" exists difficult to determine. With married couples, the relationship is easy to establish. The marriage ceremony is a public declaration of their commitment and intent. Relationships outside marriage are much more difficult to ascertain. Rarely is there any type of "public" declaration of intent. Often people begin cohabiting with little forethought or planning. Their motivation is often nothing more than wanting to "be together". Some individuals have chosen to enter relationships outside marriage because they did not want the legal obligations imposed by that status. Some individuals have simply given no thought as to how their relationship would operate. Often the date when the cohabitation actually began is blurred because people "ease into" situations, spending more and more time together. Agreements between people verifying when their relationship began and how it will operate often do not exist. [Emphasis added by Frankel J.A.]

- [128] As affirmed at para. 22 of Jones, this Court's decision in *Weber v. LeClerc*, 2015 BCCA 492 at paras. 23-24, leave to appeal to SCC refused, 36812 (21 April 2016), is also instructive:
- [23] The parties' intentions - particularly the expectation that the relationship will be of lengthy, indeterminate duration - may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.
- [24] The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".
- [129] In Jones at para. 23, this Court also considered the decision of *M. v. H.*, [1999] 2 S.C.R. 3, in the context of what was referred to then as a "conjugal relationship". It is important to note--particularly in light of the trial judge's reasons, as discussed below--that the term "conjugal" has essentially the same meaning as "marriage-like", and does not solely refer to sexual relations. As set out in *M. v. H.*:
- [59] *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), sets out the generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, it was recognized that these elements may be

present in varying degrees and not all are necessary for the relationship to be found to be conjugal. While it is true that there may not be any consensus as to the societal perception of same-sex couples, there is agreement that same-sex couples share many other "conjugal" characteristics. In order to come within the definition, neither opposite-sex couples nor same-sex couples are required to fit precisely the traditional marital model to demonstrate that the relationship is "conjugal". [Emphasis added.]

[130] In *Jones*, this Court concluded at para. 24:

[24] The upshot of these cases, as explained in *Austin* and *Weber*, is that the characterization of a relationship as marriage-like is contextual. It involves the subjective intentions of the parties and objective evidence, and the subjective intentions, where there is evidence of such, may be tested by reference to the objective evidence. In turn, that objective evidence may address a wide assortment of characteristics or indicia for which there is no definitive classification system to determine the ultimate characterization of the relationship. That answer must be given by the judge, understanding the concept and fully considering the evidence.

[36] In *Mother 1 v. Solus Trust Company Limited*, 2021 BCCA 461, DeWitt-Van Oosten J.A., writing for the Court, summarised the jurisprudence canvassed by the trial judge as to the meaning of the term, stating as follows:

[19] The judge instructed himself on the definition of a marriage-like relationship. He described it as an "elastic" concept and one that engages a multi-faceted analysis (at para. 133). He enumerated various factors for consideration, citing the often-referred to case of *Molodowich v. Penttinen*, [1980] O.J. No. 1904, 1980 CanLII 1537 (Dist. Ct.). He noted that the list of factors delineated in *Molodowich* "cover virtually every aspect of life a couple could engage in together" (at para. 134). However, relying on this Court's decision in *Weber v. Leclerc*, 2015 BCCA 492, he cautioned himself against taking a "checklist approach" to the issue before him. Instead, it was his obligation to consider the matter "holistically" and to examine all relevant factors in deciding whether there was a marriage-like relationship of at least two years between *Mother 1* and *Yuan* (at para. 137).

[20] The judge specifically noted that a legal capacity to marry is not a prerequisite to finding a marriage-like relationship (at para. 138). Nor is financial dependence (at para. 139). The parties do not have to co-reside (at para. 140). Their subjective intentions are considered; however, one party's denial of an intention to enter into or remain in a marriage-like relationship is not fatal to the analysis. Instead, the credibility of that denial will be tested against objective indicators and may not be believed if "all of the surrounding circumstances strongly imply the contrary" (at paras. 140-42, citing *Dey v. Blackett*, 2018 BCSC 244 at para. 235 and other cases).

[37] Justice DeWitt-Van Oosten took no issue with that summary, although she noted that the trial judge had erred in assuming that the two-year period referred to in s. 2(1)(b) of WESA had to occur during the two years preceding the intestate's death, an interpretation that had since

been rejected in *Robledano v. Queano*, 2019 BCCA 150. The Court of Appeal held in that case that the requisite two years of marriage-like relationship need not immediately precede the intestate's death. What is required is that claimant and the intestate remain spouses at the time of death: *Robledano*, at para. 43; *Mother 1* at para. 30.

- [38] In order to decide whether a marriage-like relationship has been "terminated" by one or both spouses for the purpose of ss. 2(2)(b), the court must "consider the expressed and implicit intentions of each spouse, as well as the objective evidence concerning the subsistence of the relationship": *Robledano* at para. 55; *Mother 1* at para. 31. IV. Discussion
- [39] The evidence strongly supports Ms. Hoy's contention that she and Mr. Wagemans were in a marriage-like relationship lasting more than two years, and that the relationship persisted until at least 2018. They resided together at the Manson Property for an extended period of time. They were considered spouses by their respective families and friends, and even became engaged to be married. The estate has all but acknowledged her status as a spouse, at least until 2018, by referring to her as a "former spouse" in its application for a Grant of Administration.
- [40] The real controversy in this case centres on whether:
- a) one or both of them terminated the relationship in 2018 or 2019; and, if so,
 - b) they reconciled prior to his death.
- [41] Although Ms. Hoy denied that she and Mr. Wagemans had separated at any time, I have treated her account of the relevant events with caution. That account was inconsistent in some respects with the evidence of Ms. Diana and Ms. Catcher, both whom attested to the fact of a separation. Ms. Hoy was unable to explain why the police report has her describing the relationship as "off and on".
- [42] There is also reason to be skeptical about Ms. Hoy's evidence generally, apart from its self-serving nature. Although she testified that she had been residing exclusively with Mr. Wagemans at the Manson Property since 2011, in an earlier affidavit sworn in connection with a previous application in this action, she deposed that she had moved in with Mr. Wagemans in 2017. She was also inconsistent in her account as to whether Mr. Wagemans had taken the engagement ring from her in order to sell it without her knowledge.
- [43] In light of these issues, I am reluctant to accept Ms. Hoy's testimony at face value unless it is confirmed by independent evidence.
- [44] On the other hand, the estate argues that:
- a) Mr. Wagemans and Ms. Hoy separated in 2018 and remained apart until Mr. Wagemans' death;
 - b) To the extent they remained in contact, it was as friends rather than spouses;

- c) Ms. Hoy stayed at the Manson Property after 2018 only temporarily, and then only for the purpose of caring for Mr. Wagemans' dogs while he was away;
- d) Mr. Wagemans was unwilling to remarry and that is why they kept their households and finances separate; and
- e) Mr. Wagemans had already moved on and was in a new relationship with Ms. Nassichuk when he died.

[45] Those conclusions are said to be supported by various factors, such as the following:

- a) Their independent tax filings;
- b) Their romantic involvement with others;
- c) The fact that Mr. Wagemans was no longer mentioned as Ms. Hoy's partner on the occasion of her father's death; and
- d) The long gaps and change in tone in their text message exchanges.

[46] I do not find those arguments persuasive. The conduct upon which the estate relies can be explained in other ways and is not necessarily inconsistent with the existence of a marriage-like relationship.

[47] The tax filings were the same even prior to 2018, when Mr. Wagemans and Ms. Hoy were undoubtedly in a marriage-like relationship.

[48] The mere fact that spouses have affairs is not necessarily inconsistent with the existence of a marriage-like relationship: *Re Connor Estate*, 2017 BCSC 978.

[49] Mr. Wagemans had previously spent a night with another woman in 2012 and yet their relationship clearly survived that infidelity. Although Ms. Hoy's subsequent relationship with Mr. Edmunds, and Mr. Wagemans' with Ms. Nassichuk, were deeper and more enduring, there is strong reason to believe that they had each put those other relationships behind them long before Mr. Wagemans' death. Ms. Nassichuk appears to acknowledge that Mr. Wagemans continued to be in a relationship with someone else when she wrote the first of the two love letters described above. In it, she alluded to his ongoing relationship with Ms. Hoy in the following manner: I don't want our relationship to be like the one you are in now where you are just holding everything in and putting up with her [Emphasis added.]

[50] It is also telling that Mr. Wagemans never mentioned Ms. Nassichuk to Mr. Bennie, with whom he appears to have shared many other private details of his life.

[51] Ms. Hoy explained that the text massaging between them stopped because they were at home together during the months of the pandemic quarantine and the logging strike, so it was no longer necessary for them to communicate in writing. The reason Mr. Wagemans was not mentioned as Ms. Hoy's partner in the funerary tribute to her father was that her brother had drafted the tribute without her involvement.

- [52] Whatever reservations may arise with respect to Ms. Hoy's explanations in that regard, the evidence highlighted by the estate is, in my view, outweighed by other evidence suggesting that the relationship continued to be, or perhaps had reverted to being, marriage-like from late 2019 through to the end of Mr. Wagemans' life.
- [53] I have already referred to the financial assistance that Ms. Hoy provided to Mr. Wagemans in late 2019 and early 2020. Similarly, it is unlikely that Mr. Wagemans would have chosen to turn down the offer to have Christmas dinner with his sister at her home, so that he could spend the holiday instead with his ex-spouse and part-time dog-sitter. That evidence strongly suggests that they remained a couple, or, if they had separated, that they had reconciled by the end of 2019.
- [54] That conclusion also finds strong support in the evidence of Mr. Bennie. During the conversation described above, when Mr. Wagemans told Mr. Bennie of his desire to repay Ms. Hoy for the money she had advanced to him during the strike, Mr. Bennie admonished Mr. Wagemans to have a will prepared in order to protect her. The estate argues that it can be inferred from Mr. Wagemans failure to do so that he did not consider Ms. Hoy to be his spouse. I disagree.
- [55] The conversation appears to have occurred only weeks before Mr. Wagemans' death. While it may suggest that Mr. Wagemans was dilatory or inconsiderate, or both, the conversation makes sense only if it was understood between them that Ms. Hoy was effectively Mr. Wagemans' life partner and deserved to be formally recognised as such.
- [56] On balance, I have concluded that Ms. Hoy has met her evidentiary burden. V. Disposition
- [57] Ms. Hoy is entitled to a declaration that she and Mr. Wagemans were, at the time of his death, "spouses" as that term is defined in the WESA. "Milman J."

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