

CANADA / JUDGMENT

Kovacevic v. Hickey

2025 BCSC 2255

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Supreme Court of British Columbia

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2025 BCSC 2255 Kovacevic v. Hickey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kovacevic v. Hickey,

2025 BCSC 2255

Date: 20251117

Docket: E134215

Registry: Kelowna

Between:

Katie Kovacevic

Claimant

And

Robin Allen Hickey

Respondent

Corrected Judgment: The front page and the text of the judgment was corrected at paragraphs 11, 84, 96, 102, 103 and 104 on December 4, 2025.

Before: The Honourable Justice E. Sigurdson

Reasons for Judgment

The Claimant, appearing in person:

K. Kovacevic

Counsel for the Respondent:

M.M. Sinclair

D. Tataryn

Place and Dates of Trial:

Kelowna, B.C.

April 28–30, 2025

May 1–2, 5–9, 2025

June 13, 2025

Place and Date of Judgment:

Kelowna, B.C.

November 17, 2025

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- [1] Katie Kovacevic and Robin Hickey were in a relationship for a number of years between 2017 and 2024. This union had different facets at different times. The two were romantic partners and they were business partners. They lived together and apart. They did not have children together, but both had children from former relationships. Mr. Hickey had one ("L."); Ms. Kovacevic had two ("K." and "R."). They had relationships with one another's children. Ms. Kovacevic adopted a dog during the relationship.
- [2] The question in this case is not whether Ms. Kovacevic and Mr. Hickey were involved romantically with one another and their lives intertwined, which they certainly were in various ways. What I must decide is whether they were spouses within the meaning of the Family Law Act, S.B.C. 2011, c. 25 [FLA] because of having lived together in a marriage-like relationship for at least two years.
- [3] The relationship was tumultuous from early on, and there is considerable disagreement about what periods of time they were together as a couple, what periods they lived together, and what the status of the relationship was during those periods. Ms. Kovacevic says that she and Mr. Hickey were in a marriage-like relationship continuously from 2017 to 2023 or 2024, although she agrees there were periods when they did not live together and has pleaded that they separated in April 2022. With the conclusion of the relationship, Ms. Kovacevic claims equal division of assets under the FLA and seeks guideline child support and spousal support.
- [4] Mr. Hickey says he and Ms. Kovacevic were in a romantic relationship intermittently throughout 2017-2023, and they cohabited for periods of time, the longest of which was about 20 months. He says they were on-again and off-again in their relationship. He does not agree that at all times the relationship was marriage-like and says the period of time they were in fact in a marriage-like relationship was less than the required two years. Mr. Hickey opposes all of the claims made by Ms. Kovacevic. He further seeks damages in counterclaim related to a payment made to Ms. Kovacevic and for a vehicle which was purchased in his name, which Ms. Kovacevic currently possesses.

- [5] I conclude that Ms. Kovacevic has not demonstrated that the parties lived together in a marriage-like relationship for a period of at least two years. Her claims to spousal and child support and division of assets are accordingly dismissed.
- [6] I further conclude that Mr. Hickey has not proven that Ms. Kovacevic agreed to settle aspects of the dispute between them and received a payment in consideration but then resiled from the agreement. I conclude that Mr. Hickey has shown that he is entitled to return of the vehicle currently in the possession of Ms. Kovacevic.

Legal Framework

- [7] The central issue in this case is whether Ms. Kovacevic and Mr. Hickey were in a marriage-like relationship within the meaning of the FLA. If the parties are found to be in a marriage-like relationship, they are entitled to pursue relief following the breakdown of that relationship, including the division of property, and child and spousal support.

Marriage-Like Relationship

- [8] The burden is on the spouse alleging the marriage-like relationship to prove that the parties were spouses within the meaning of the FLA: *L.T.F. v. R.B.F.*, 2023 BCSC 834 at para. 79. The standard of proof is on a balance of probabilities: *Bellerose v. Reda*, 2023 BCSC 748 at para. 48.

- [9] Section 3 of the FLA defines a "spouse":

Spouses and relationships between spouses

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

- (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

- [10] In *Lister v. Bal*, 2025 BCSC 1261, Justice Layton helpfully set out the applicable legal principles. I rely on his concise summary and take into consideration each of these concerns:

- [15] Spousal relationships are varied, and usually reflect the needs and desires of the couple. Whether persons are spouses by virtue of a marriage-like relationship is thus determined on a holistic view of the relationship, considering and weighing all relevant factors, and not by rotely deciding whether specific elements exist. No one factor or element, whether present or absent, will be determinative. See *Skawski* at para. 43; *McDowell v. Andrews*, 2018 BCSC 2216 at para. 22; *Coad v. Lariviere*, 2022 BCCA 222 at para. 127.

- [16] The parties' intentions may be important in determining whether and for how long they lived in a marriage-like relationship. A key is whether they intended their relationship to be similar to marriage, and particularly whether they saw it as being of indeterminate, lengthy duration. But the parties' professed intentions must be tested against objective evidence of

lifestyle and interactions, which provides direct guidance as to the circumstances of the relationship and thus may better reflect its true nature. See *Weber v. Leclerc*, 2015 BCCA 492 at paras. 17, 23-24; *Jones v. Davidson*, 2022 BCCA 31 at para. 24; *Dey v. Blackett*, 2018 BCSC 244 at paras. 195, 235.

- [17] While a checklist approach is to be avoided, objective evidence of lifestyle and interactions often includes whether and how the parties lived together, sexual and personal behaviour, domestic services, social activities, economic support, children, and societal perception of them as a couple: *Dey* at para. 193; *McDowell* at paras. 23-24; *Bellerose v. Reda*, 2023 BCSC 748 at para. 48.
- [18] Consistent with the principles guiding the s. 3(1)(b) analysis, cohabitation is not conclusive in determining when a marriage-like relationship began. It is frequently afforded significant weight, but people may live together interdependently and yet fail to establish the kind of psychological and emotional union associated with marriage. See *M.P. v. P.P.*, 2024 BCSC 2138 at para. 34; *C.F.M. v. G.L.M.*, 2018 BCSC 815 at para. 11.
- [19] By the same token, the "lived with" requirement in s. 3(1)(b) is approached flexibly and may be satisfied even where the parties maintained separate residences as opposed to living under the same roof: *Matossian Estate v. Clark Estate*, 2024 BCSC 2214 at para. 65; *Blake v. Marining*, 2022 BCSC 1529 at para. 64.
- [20] A relationship that exhibits dysfunction or conflict may still be marriage-like: *L.T.F. v. R.B.F.*, 2023 BCSC 834 at para. 97. Whether a couple achieves some objective level of success in their relationship is therefore not the benchmark against which the standard in s. 3(1)(b) is assessed.
- [21] A break in the continuity of a marriage-like relationship requires a separation: *L.T.F.* at paras. 80-84. Determining whether a separation has occurred involves considering a range of factors, including whether the characteristics of marriage continued following a physical separation: *Gupta v. Kumar*, 2023 BCCA 106 at para. 13; *O.M. v. V.G.*, 2025 BCSC 209 at para. 250; *C.L.D. v. J.J.P.D.*, 2024 BCSC 1123 at para. 47.
- [22] Section 3(4) of the FLA provides that, as evidence of separation, the court may consider a communication by one spouse to the other of an intention to separate permanently, and action by a spouse that demonstrates the spouse's intention to separate permanently.
- [23] The wording in s. 3(4) reflects that it only takes one spouse to end a marriage-like relationship by declaration or conduct. Mutuality of intention is not necessary, nor is an unequivocal communication to the other spouse of an intention to separate. Generally, if the parties have physically separated and at least one of them has evinced a settled intention of living separate and apart, and taken steps consistent with that intention, separation under the FLA will have occurred. See *Gupta* at para. 13; *Nearing v. Sauer*, 2015 BCSC 58 at paras. 54-56; *H.S.S. v. S.H.D.*, 2016 BCSC 1300 at paras. 40-44, rev'd on other grounds, 2018 BCCA 199, leave to appeal to SCC ref'd, 2019 CanLII 7962 (S.C.C.); *O.M.* at paras. 245-248; *C.L.D.* at

para. 45.

- [24] Some degree of physical separation after an argument does not, without more, automatically bring a relationship to an end. A break of this sort may constitute a mere "cooling off" period falling short of demonstrating a settled intention to terminate the relationship. In such cases, the marriage-like relationship will have continued despite the temporary physical separation. Determining whether the separation is only physical in nature, as opposed to being a separation at law, involves viewing the evidence holistically in light of the particular relationship in issue. See L.T.F. at paras. 82-88; M.P. at para. 54.
- [25] There is, however, a nuance to the application of s. 3(4) of the FLA, because it applies to "spouses" within the meaning of s. 3(1), which - absent marriage or a shared child - requires a continuous marriage-like relationship for at least two years. If this two-year threshold has not been met, the party opposing a finding that the couple are spouses does not then bear the onus to demonstrate communications or actions establishing an intention to separate permanently. That said, as already noted the factors relating to an intention to separate permanently can also be indicative of whether the parties did or did not intend to continue in a marriage-like relationship. See *Parke v. Veale*, 2015 BCSC 2554 at paras. 76-80.
- [26] Under s. 83(1) of the FLA, for the purposes of property division spouses are not considered to have separated if, within one year after separation, they begin to live together again and the primary purpose for doing so is to reconcile, and they continue to live together for one or more periods totaling at least 90 days.
- [27] But s. 83 only applies to "spouses" as defined in s. 3 of the FLA. Accordingly, in the circumstances of this case the separation/reconciliation mechanism created and allowed by s. 83 will only apply if the parties already lived in a marriage-like relationship for a continuous period of at least two years. See *R.A.K. v. V.J.S.*, 2025 BCSC 578 at paras. 19-25.
- [11] I emphasize that there are a range of types and phases of relationship--not every romantic or intimate union will be a marriage-like, just as not every marriage will be a romantic or intimate union. The holistic inquiry into whether a relationship was a marriage-like one involves the consideration of a number of factors. In L.T.F. at para. 78, Justice Branch set out common indicators of a marital relationship to consider, derived from *Molodowich v. Penttinen*, [1980] O.J. No. 1904, 1980 CanLII 1537 (O.N.S.C.). These characterize what courts will consider in determining whether an unmarried couple should be considered spouses under the FLA, with the benefits and obligations that designation provides. These indicators assess the parties':
- a) living arrangements;
 - b) sexual, intimate, and emotional behaviours;
 - c) household duties and services;
 - d) social and community lives;

- e) economic and financial arrangements;
- f) children; and
- g) future outlook.

See also *Armstrong v. Scholz*, 2022 BCSC 863 at para. 34; *Austin v. Goerz*, 2007 BCCA 586 at paras. 55-56.

- [12] These factors are not treated as a checklist, but a court must consider how these and any other relevant features reflect on the character of the relationship. The evidence may address a wide range of possible indicia, "for which there is no definitive classification system to determine the ultimate characterization of the relationship": *Jones v. Davidson*, 2022 BCCA 31 at para. 24. As Justice Donegan expressed in *Voth v. Martin*, 2019 BCSC 834 at para. 14: "People may live together interdependently and continuously and yet fail to establish they developed 'the kind of psychological and emotional union' associated with marriage" (citing *C.F.M. v. G.L.M.*, 2018 BCSC 815 at para. 10.).
- [13] Couples will structure their relationships in different ways and there is no one way to be in a marriage-like relationship, so it is important not to apply a set of mandatory expectations: *Yakiwchuk v. Oaks*, 2003 SKQB 124 [Yakiwchuk] (adopted by our Court of Appeal in *Coad v. Lariviere*, 2022 BCCA 222 [Coad]). See also: *M.P. v. P.P.*, 2024 BCSC 2138 at para. 36; *Austin v. Goerz*, 2007 BCCA 586 at para. 38, 58; *Coad* at para. 127. The conduct of couples will be different in every case, including with financial decisions, private sexual relationships, public expressions of the relationship in social interactions, engagement in shared activities, and so on. Often the people in the relationship will not agree on when it began and how it operates: *Yakiwchuk* at para. 11.
- [14] Whether there is mutual intention to have a lengthy indeterminate relationship may be an important factor in determining if a marriage-like relationship exists and when it began: *M.P.* at para. 22. However, evidence of the parties' subjective intentions may be overtaken by objective evidence of their lifestyle or interactions: *Dey v. Blackett*, 2018 BCSC 244 at para. 195.
- [15] The question of the existence of a marriage-like relationship is highly fact-specific, but there is no middle-ground. The assessment must ultimately give rise to a bright-line conclusion. Either a person is a "spouse" or not: *Voth* at para. 14.

Evidence and Credibility

- [16] Justice Blake in *Mand v. Cheema*, 2024 BCSC 1701 sets out the following helpful summary of principles which guide the court in assessing credibility:

- [29] it is helpful to review briefly the generally accepted process through which a trial judge assesses credibility. In the often-quoted case of *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, Justice Dillon set out a helpful methodology for determining credibility at para. 187:
- a) first, consider the testimony of a witness on a stand-alone basis, followed by an analysis of whether the witness' story is inherently believable;
 - b) second, if their testimony has survived relatively intact, then evaluate their testimony based upon the consistency with other witnesses and documentary evidence (the testimony of non-party, interested witnesses may provide a reliable yardstick for comparison); and
 - c) finally, determine which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in the circumstances.
- [30] In the first stage of assessing the stand-alone credibility and reliability of a witness, the trial judge should consider a number of relevant factors. Justice Kent in *Eaglestone v. Intact Insurance*, 2022 BCSC 2007 at para. 17 summarized some of the factors as including:
- a) consistency of the witness' account of events;
 - b) consistency with other admissible evidence from witnesses, documents, or other physical objects;
 - c) whether the evidence is reliably corroborated or contradicted by other evidence;
 - d) the witness' ability to reliably recall and communicate details;
 - e) the demeanour of the witness and whether the questions are answered in a frank and forthright fashion without evasion, speculation, or exaggeration; and
 - f) the inherent plausibility of the evidence and its consistency with the probabilities as they affect the case as a whole.
- [31] Further, when determining whether a witness' evidence is "reasonable" or "inherently believable", or "plausible", a trier of fact must be alive to the fact that it can often be a subjective assessment reflecting personal experience, that may be unintentionally informed by implicit bias and even inappropriate stereotyping or myths. This may be particularly true in cases involving testimony of witnesses from different cultures and backgrounds, or where English is a second language and the evidence is received through an interpreter: *Fu v. Zhu*, 2018 BCSC 9 at paras. 39-42. However, while this caution is instructive, it does not "provide a license for a witness to lie": *Kim v. Choi*, 2019 BCSC 437 at para. 18.
- [17] I must apply the foregoing principles in considering all of the evidence before me.

- [18] Ms. Kovacevic represented herself. Although she struggled to advance an organized account of her evidence, and her documentary record she presented her testimony in a manner that told a consistent story: in her view, the parties were "together" consistently for much longer than two years, and more or less continuously from 2017 to 2023 or 2024. Ms. Kovacevic's version of that story was thoroughly tested on cross-examination and she was compelled to resile from some of the more strident aspects of her position, including in particular the time periods within which the parties resided in the same home.
- [19] Mr. Hickey had counsel. His evidence was also not perfect, but in the course of testimony, he was not moved far from his original position on most of the evidence.
- [20] Both parties were self-motivated in their testimony. Both parties wanted to portray the other as manipulative. Both wanted to show their own good intentions. Both were affected by the clear challenges of this case and its emotional weight. Neither was thoroughly reliable from beginning to end. Nevertheless, I found both to be generally credible.
- [21] While there were some direct contradictions in the evidence on some issues, I observe that the most significant departure between the parties was not a fundamentally different account of the underlying facts, but a difference in belief about the significance of facts and events, particularly what these circumstances meant about the parties' connection to one another.
- [22] I illustrate this difference with an example that permeated the evidence. Ms. Kovacevic led evidence that after she and Mr. Hickey no longer resided together, he nevertheless would communicate with her in loving and intimate ways and would sometimes support her and her family financially. Mr. Hickey did not deny that such communications were made, or that he supported Ms. Kovacevic after they resided together. Ms. Kovacevic described this conduct as proof that their relationship was ongoing in a spousal sense. Mr. Hickey characterized such communication as being genuine, or sometimes attempts to "work on things", but not as proof that the parties were currently 'together' as a couple or continuing in a marriage-like relationship. His understanding was that the support he provided to Ms. Kovacevic was not because they were spouses, but because he cared about her more generally and cared about the wellbeing of her sons.
- [23] On the whole, although both parties were motivated to convey their version of events to best support their legal position, I found each of the parties to make a sincere effort to give evidence honestly, and I find that much of the dissonance in the evidence can be ascribed to different understandings of its significance.
- [24] I am sympathetic to a situation where the parties have different understandings, and also note that there is some unfairness and confusion that arises when one party fails to disabuse the other of an understanding they may possess. This does not change the legal burden, which is on Ms. Kovacevic to prove on a balance of probabilities that the parties were in a marriage-like relationship for the requisite period of time.

The Relationship

- [25] Where parties have not opted to solemnize their relationship by getting married, the FLA determines whether their relationship fits into a marriage-like box. As with any such legislated category, there is a degree of arbitrariness, such as the requirement to have lived with another person in a marriage-like relationship for no less than two years. This bright line time period is how the legislature has seen fit to create public parameters around private and intimate affairs.
- [26] On this key issue, of whether the parties' involvement was marriage-like for the requisite time period, the parties' divergent accounts produce, to an extent, competing timelines. Ms. Kovacevic's position is that the parties dated more or less consistently from the time they first met in 2016, they commenced a marriage-like relationship in 2017 when she says she first moved into Mr. Hickey's home, that they mutually intended to be spouses from then on, and that this status persisted until at least 2022. Mr. Hickey says that although Ms. Kovacevic moved into his home in 2017, she also moved out at times and they had periods of separation. His position is that the longest period of cohabitation that could qualify as being marriage-like under the FLA was around 20 months between August 2020 and April 2022.

Timeline

- [27] The evidence of key events in the timeline of the relationship is as follows.

2016

- [28] Ms. Kovacevic and Mr. Hickey agreed they met at a pub in July 2016. Ms. Kovacevic worked there, and Mr. Hickey was a regular customer. At the time, she worked in the pub in the evenings and as a mail carrier during the day. Mr. Hickey worked in the pipeline industry and was often away for work for long stretches of time.
- [29] On their first date, they went to a restaurant downtown and spent the night together. The evidence is consistent that they started dating regularly following their first date. At that time, Ms. Kovacevic lived in an apartment on Brown Road. Mr. Hickey lived in a house at 3022 Ironridge Place in West Kelowna ("Ironridge"). He had bought Ironridge several weeks before they started dating. Ms. Kovacevic said that she and her younger son started staying at Ironridge as soon as she and Mr. Hickey started dating.

2017

- [30] Ms. Kovacevic said that in January or February 2017 she was living "officially" at Ironridge. Mr. Hickey said that at that time she would "stay over".

- [31] Mr. Hickey worked out of town a great deal, but Ms. Kovacevic testified that whether or not he was in town, she and her kids were living full-time at Ironridge. She explained that she became responsible for the Ironridge property, including maintaining the rentals in the suite, organizing upkeep and yard maintenance. Mr. Hickey's mother lived in the basement suite at Ironridge but moved out in January 2017. Ms. Kovacevic testified that she sublet her apartment on Brown Road to a third party in about February 2017.
- [32] In March 2017, the parties collaborated to open a pub/restaurant in Peachland (the "Restaurant"). This venture started when Mr. Hickey purchased a restaurant's business and its assets. The parties then together formed a numbered company of which they were both shareholders and directors. Mr. Hickey paid around \$29,000 for the assets. The company had a chequing account and a Visa card both guaranteed by Mr. Hickey. He testified that the startup of the Restaurant cost about \$89,000 between March and May 2017.
- [33] Mr. Hickey said that he was not involved in the Restaurant's operation. He trusted Ms. Kovacevic to do the work because she had experience in the industry and the Restaurant was her initiative, which he supported.
- [34] Ms. Kovacevic testified that Mr. Hickey wanted her to quit her jobs working for Canada Post and at the pub, and she did so as of March 2017. The Restaurant opened in May 2017. Ms. Kovacevic operated the Restaurant throughout its existence.
- [35] The evidence is consistent that parties thought of the Restaurant as a joint venture into which Mr. Hickey would make economic investment and Ms. Kovacevic would provide management and labour. The Restaurant appears not to have been profitable for the first several years, but picked up in revenues as the years went on. At trial, I was informed that I was not going to be put in a position where I could carry out a forensic accounting of what happened with the business affairs of the Restaurant. That proved abundantly true. The records for the Restaurant, its operations, its debts, its management and its devolution are not well maintained or possible to meaningfully evaluate.
- [36] Ms. Kovacevic testified that she used Ironridge as her delivery and mailing address as of April 2017. She ordered food there and had important documents sent there. Ms. Kovacevic agreed that she did not make mortgage or utilities payments for Ironridge.
- [37] Mr. Hickey said that Ms. Kovacevic moved into Ironridge on August 1, 2017.

2018

- [38] Mr. Hickey testified that in March 2018 the parties broke up. At this time, Ms. Kovacevic moved into the basement suite at Ironridge and resided there until July 2018. He said they did not speak for a few months while they were broken up. Ms. Kovacevic characterizes this event as an argument. She denied that she moved into the basement suite at that time.

- [39] The parties agreed that in April 2018, Mr. Hickey proposed to Ms. Kovacevic and gave her a ring. Ms. Kovacevic said she accepted. Mr. Hickey said that she declined, not wanting to get back together, and told him that she threw the ring in the lake. Mr. Hickey testified that they later worked things out in about June or July 2018 and Ms. Kovacevic moved back upstairs at Ironridge.
- [40] Mr. Hickey testified that in July 2018, he proposed again to Ms. Kovacevic, and she said yes. They did not set a date as Ms. Kovacevic had never been divorced from her former husband. Ms. Kovacevic testified that following the second proposal by Mr. Hickey, she pawned the engagement ring at a time when the parties were at odds and Mr. Hickey had frozen her accounts at the Restaurant.
- [41] Mr. Hickey testified that in October 2018 the couple went to Vegas. After that trip, Mr. Hickey was away for work as of the end of October and Ms. Kovacevic called him to say she was moving out and they were breaking up.
- [42] Ms. Kovacevic testified that when Mr. Hickey came home from working in November 2018, he told her he wanted to be together but that she should move out. She denied that they had broken up. However, Ms. Kovacevic then rented an apartment as of December 1, 2018, across the street from the Restaurant in Peachland, on Beach Avenue very close to the Restaurant (the "Peachland Apartment"). Mr. Hickey testified that Ms. Kovacevic moved into the Peachland Apartment and they were broken up when she moved out.
- [43] I conclude that the parties' initial cohabitation terminated after about 21 months (February 2017-November 2018 per Ms. Kovacevic) or just a few months (per Mr. Hickey) given interruptions. Either account results in living together short of two years, which is not sufficient for spousal status under the FLA.

2019

- [44] The parties' accounts of 2019 are significantly divergent.
- [45] Mr. Hickey's account is that 2019 was a rough year for the relationship and the parties were separated much of the year. He said they were not in contact until April 2019. He said they then 'dated' from April until July 2019, and were broken up for the rest of the year. Mr. Hickey testified that they were both dating other people while broken up. Ms. Kovacevic stated she had a brief relationship during this time with an individual who later harassed and stalked her.
- [46] Ms. Kovacevic stated that the parties reconciled in February 2019, and at that time she was back living at Ironridge but still had the Peachland Apartment. Ms. Kovacevic continued to rent the Peachland Apartment throughout 2019. She said the parties were together throughout that period. Ms. Kovacevic acknowledged that Mr. Hickey was away working for a large part of 2019, but denied that they were separated for most of 2019.

- [47] Ms. Kovacevic also testified she was adamant during this period of time that if she and Mr. Hickey were going to be together, they needed to buy a home they could live in as a family, and that she would not live at Ironridge. In her view, it was important to live somewhere he could not evict her and her sons, so they should purchase a home as a couple. Mr. Hickey similarly testified that Ms. Kovacevic told him she would not move into Ironridge with him. The parties' consistent testimony is that Ms. Kovacevic was unwilling to share Ironridge as a home. This later led to Mr. Hickey purchasing another property in 2020, as discussed below.
- [48] Mr. Hickey testified that while they were broken up in 2019, he engaged counsel, and through counsel asked for money back from Ms. Kovacevic that he had paid toward the Restaurant's operations through shareholder's loans and other transfers. He also asked her to return the ring he had given her, and asked her to return a Ford Explorer vehicle that was in her possession. Mr. Hickey's counsel at the time sent demand letters to Ms. Kovacevic in both January and December 2019. Ms. Kovacevic testified that she did not think this was the end of the relationship because she was accustomed to him involving counsel and receiving demand letters. I did not receive evidence of prior correspondence from counsel, although after this time there were other communications and demands made.
- [49] The parties have divergent accounts of what occurred in December 2019. Ms. Kovacevic said that at that time she was looking at properties in McKinley Beach for the couple. Mr. Hickey said that he was working away from Kelowna from November 2019 to March 22, 2020. He said his only returns home during that period were for 10 days at Christmas and briefly for a funeral in February. His testimony was that Ms. Kovacevic was living at the Peachland Apartment during this time. It was not clear to me from her testimony where Ms. Kovacevic said that she was living while Mr. Hickey was working away during late 2019. I cannot conclude from all of the evidence that they were residing together.
- [50] On the evidence before me, I do not find that there was any period of cohabitation that could qualify as a marriage-like arrangement during 2019. Although the parties reconciled romantically at times during that year, there were at least two significant periods of separation. The instability and uncertainty around the evidence of residence, and particularly Ms. Kovacevic's determination that Ironridge would not be their family home, in addition to Mr. Hickey retaining counsel and making demands for return of property, indicates to me that 2019 was not a period of cohabitation for the parties.

2020

- [51] In early 2020, the parties remained interconnected. In January 2020, while Mr. Hickey was away at work, Ms. Kovacevic completed the purchase of a Range Rover vehicle, paid for entirely by Mr. Hickey. It was registered in Ms. Kovacevic's name. Ms. Kovacevic testified that Mr. Hickey bought her the Range Rover as a gift. Mr. Hickey said that Ms. Kovacevic purchased the car for him. The status of the Range Rover is addressed below.

- [52] The evidence before me about the parties' residence in 2020 was inconsistent. Ms. Kovacevic testified that in 2020 she rented out the Peachland Apartment to a restaurant employee, Devyn Burrows. She said that as of January 2020 she was living at Ironridge. Ms. Kovacevic said that at that point she only kept a suitcase, a mattress, and a snowboard at the Peachland Apartment. Ms. Kovacevic said that February 2020 was a happier time for the couple.
- [53] Mr. Hickey said that in February 2020 the couple were "on the outs". His evidence was that they were involved romantically in early 2020, but were not living together. Mr. Hickey testified that the two were not back together as boyfriend and girlfriend until March 22, 2020, when he returned from working away. He stated that at this time he lived at Ironridge and Ms. Kovacevic lived at the Peachland Apartment. His testimony was that between March and July 2020, Ms. Kovacevic did spend time with him at Ironridge, but she did not live there.
- [54] Mr. Hickey testified that Ms. Kovacevic maintained the Peachland Apartment until July 2020 and no one else lived there. He said most of her belongings were at the Peachland Apartment, and that her son K. did not have a room at Ironridge. Further, he said that only Mr. Hickey and his son L. had rooms at Ironridge until August 2020. Mr. Hickey's evidence was that Ms. Burrows moved into the Peachland Apartment in August 2020. Ms. Kovacevic testified that this did not make sense since she said Ms. Burrows lived there over the summer while she worked for the Restaurant.
- [55] The documents Ms. Kovacevic referred me to were of no assistance in confirming the start or end of Ms. Burrows' sublease of the Peachland Apartment; there was no rental agreement, communication about the sublease's beginning or ending, or any clear tracking of rent payments. There was a rent deposit for Ms. Burrows for the month of August 2020. Ms. Kovacevic admitted that her records and accounts were sloppy at that time and explained that such transfers and deposits were made in a range of ways, including with cash.
- [56] Ms. Kovacevic also testified that her sons did not have rooms set up at Ironridge in 2020. This appears to be consistent with Mr. Hickey's testimony and with photos taken of the property when the parties attempted to list it for sale in 2020.
- [57] In March 2020, Mr. Hickey purchased a home on McKinley Beach Drive ("McKinley"). Mr. Hickey is the only party on title for McKinley, and the sale was approved in May 2020. He testified that the decision to purchase McKinley was related to Ms. Kovacevic having told him she would never move back to Ironridge. He explained that buying a new home was an attempt to make the relationship work. They listed Ironridge for sale but because of the market conditions around the COVID pandemic, it did not sell. The parties listed the upstairs and downstairs suites at the Ironridge property for rent.

- [58] The parties agreed that they moved in together into McKinley on July 31, 2020. Mr. Hickey said Ms. Kovacevic lived at the Peachland Apartment until that time. Ms. Kovacevic said that she had returned to Ironridge prior to moving into McKinley.
- [59] Mr. Hickey testified that the parties lived together at McKinley from August 2020 to April 2022. He said the relationship was generally good. He described events in September 2021 where there was a rupture in the relationship around his father's death, he did not invite Ms. Kovacevic to the funeral, and they did not speak for a few months.
- [60] Ms. Kovacevic agreed that she did not pay for the mortgage at McKinley and did not pay for utilities there until 2024. Nor did she contribute any funds toward the purchase of the property.
- [61] On the evidence before me, I am unable to find that the parties were cohabiting in a marriage-like relationship in 2020 prior to August. I find that it is more likely than not, given the ongoing rental of the Peachland Apartment, the consistent evidence of the parties that Ms. Kovacevic refused to live together at Ironridge, and that Ironridge had no rooms set up for Ms. Kovacevic's sons, the parties did not in fact live together in a spousal context until moving into McKinley. I do find, however, that when the parties moved in together at McKinley, it was with the intention of moving forward with a marriage-like relationship.
- [62] Ms. Kovacevic described that during the period of 2020-2021 she was involved in managing both of the McKinley and Ironridge properties and their rental suites.

2022

- [63] Mr. Hickey testified that in March 2022, he came home from work at the end of the month, and the parties broke up. He said that he went to stay with his son L. and then went away for work again.
- [64] Ms. Kovacevic described the relationship at that time as "rocky".
- [65] The parties agreed that Mr. Hickey did not live at McKinley after April 2022. Mr. Hickey sent a letter through counsel demanding Ms. Kovacevic's eviction in April or May 2022.
- [66] Mr. Hickey said that he was away for work from April to November 2022, and that when he returned, he moved his things out of McKinley and moved back into Ironridge. Ms. Kovacevic was living at McKinley with her two sons.
- [67] Ms. Kovacevic filed her notice of family claim on May 30, 2022, in which she asserted the parties had separated in April 2022. Ms. Kovacevic said Mr. Hickey "cut her off" financially in November 2022.
- [68] Ms. Kovacevic and Mr. Hickey agreed that the parties got back together in December 2022. They went together in late 2022 to repurchase the engagement ring from the pawn shop.

[69] Mr. Hickey said that the parties were in discussions in late 2022 about how to resolve things between them. During this period, Mr. Hickey said they made an agreement resolving their issues, including the sale of McKinley. He said that the agreement included that Ms. Kovacevic would receive a \$15,000 payment, \$25,000 profit from the sale of McKinley, and a loan of \$50,000 to support her purchase of a home. Mr. Hickey said he paid Ms. Kovacevic the \$15,000 in late 2022. Ms. Kovacevic denied that there was any agreement, but does not deny receiving transfers from Mr. Hickey, including a deposit of \$15,000. This payment is addressed further below.

[70] On the basis of both parties' accounts of the nature of the relationship in 2020-2022, and that Mr. Hickey never lived at McKinley again after April 2022, whereas Ms. Kovacevic resided there until the time of trial, I find that Ms. Kovacevic and Mr. Hickey resided together from August 2020 to April 2022. This cohabitation period amounts to approximately 20 months.

2023

[71] Although they agree they reunited as a couple, it was not a straightforward reunion when the parties got back together in late 2022. Despite the parties' reconnection, Ms. Kovacevic testified that at Christmas 2022, Mr. Hickey issued a 20-day eviction notice to Ms. Kovacevic. In January 2023, Mr. Hickey stopped paying the utilities at McKinley and the heat was turned off. In February 2023, the parties were in court. I would not consider this period of time to signal a resumption of the intention to engage in an indeterminate relationship of a spousal character.

[72] In 2023, Mr. Hickey was also supporting Ms. Kovacevic by funding her trip to attend her older son's hockey tournament, sending her money, and speaking to her in loving terms. I can see how this dynamic can mean different things to each party.

[73] For 2023, Mr. Hickey's evidence was that he lived at Ironridge or was away for work. Ms. Kovacevic generally lived at McKinley and the parties discussed renting out the house on Airbnb. In the spring or summer of 2023, Ms. Kovacevic moved into Ironridge. In September 2023, Ironridge was evacuated for wildfires and Mr. Hickey helped Ms. Kovacevic move back to McKinley in October 2023 when he returned from being away for work for six or seven months.

[74] Ms. Kovacevic testified at trial that the end of the relationship was October 2023.

[75] Ms. Kovacevic said that at the end of November 2023, she gave notice that the Restaurant would close and the moving out date for the business was December 1st. In November 2023, Mr. Hickey also served Ms. Kovacevic with another notice of eviction.

[76] Ms. Kovacevic testified that in December 2023 she pawned the second engagement ring Mr. Hickey had given her.

2024

- [77] The parties did not see each other for the first half of 2024. In June 2024, the two went on a trip to Osoyoos together.

Evidence respecting features of the relationship

- [78] The parties led a range of evidence relevant to whether their relationship could be characterized as marriage-like. This summary addresses evidence led to describe the nature of the relationship both during and outside of times of cohabitation.

Communication, intimacy and activities

- [79] The parties were consistent in describing their relationship as intimate, both in that they had a sexual relationship, and that they continued to communicate in intimate and loving terms during periods of time when they were separated from one another. They both also led evidence of fractious communications and conflict between them.
- [80] Their evidence was also relatively consistent about the activities that they shared. Specifically, they both enjoyed gambling and travel and did so together. Mr. Hickey alleged that Ms. Kovacevic was addicted to gambling, she alleged that together they gambled with regularity and did so at home online and on holiday. Mr. Hickey admitted to significant spending on gambling in his cross-examination as well. I accept that gambling was one of their main shared interests.

Financial relationship

- [81] There was considerable evidence of the parties' financial arrangements, and it was consistent in that their financial lives were intermingled in a number of ways.
- [82] First, they were joint shareholders and directors of the company that was formed to operate the Restaurant and undertook that venture together. Ms. Kovacevic contributed her labour and experience, Mr. Hickey contributed substantial funds towards the initiation and operation of the Restaurant. Without Mr. Hickey's contribution, it is clear that enterprise would not have been possible. It appears likely the revenues from the Restaurant would have gone back into its operations, and to an extent to some personal spending by Ms. Kovacevic and possibly Mr. Hickey. Ms. Kovacevic testified that she put all of her tips back into the business, and rarely took any kind of salary from the operation. She used her personal accounts to do the business of the Restaurant. She viewed the entire business accounting of the Restaurant as being a mess, and that both she and Mr. Hickey treated the Restaurant accounts fluidly. The company created for the Restaurant was behind by several years on its taxes. It was also in debt to a number of sources including for a Canada Emergency Response Benefit loan and for expenses paid for on Mr. Hickey's business Visa for his company, Rob Hickey Oilfield Services Ltd. The financial status of the Restaurant is an accounting I am not capable of rendering on the evidence before me, nor am I asked to do so.

- [83] Second, Ms. Kovacevic was economically reliant on Mr. Hickey and he supported her personally. It is clear that Mr. Hickey paid for many of the domestic expenses while they lived together and when they lived in the houses he owned. He paid for the mortgages, utilities, taxes and so on. Mr. Hickey substantially supported Ms. Kovacevic personally through significant periods of their relationship, whether their standing was as romantic partners dating, romantic partners living together, or as business partners. He paid for the mortgage and utilities in the two properties he purchased and in which Ms. Kovacevic lived at various times. He paid for vehicles. He also funded their sometimes expensive lifestyle, including travel and gambling. Ms. Kovacevic managed matters at the Ironridge and McKinley properties, taking care of issues that arose, and managing rentals of the suites at various times. They did not have joint accounts for personal purposes, with the exception of a Visa card that was cancelled after about three months.
- [84] What is clear is that the parties characterized the significance of their economic situation differently. Mr. Hickey viewed the situation as him paying for everything on the domestic front and supporting their joint business enterprise on the other. His view was that Ms. Kovacevic treated the Restaurant accounts as her personal accounts. Ms. Kovacevic viewed the situation as Mr. Hickey contributing financially (admittedly disproportionately) to the family unit, while she contributed to that same unit by focussing on the success of the Restaurant and maintaining the homes and rental of suites.
- [85] Ms. Kovacevic alleged that in the course of the relationship, Mr. Hickey exercised coercive financial control over her by freezing the Restaurant's accounts when they would have arguments. Mr. Hickey agreed that he did so on at least one occasion when he was concerned that large sums were coming out of the account. He did not have any response to allegations that he had done so at other times.

Mutual intention of indeterminate relationship and connections to family

- [86] The evidence about the parties' intentions and the significance they place on the times they cohabited is divergent. Ms. Kovacevic emphasized that she put photos up in the homes they shared of each of their children. She emphasized that she took care of a range of responsibilities around maintenance and rental of suites. She emphasized that she used the address of Ironridge as her shipping and billing address and place for food delivery. Mr. Hickey on the other hand emphasized that he was frequently away, and that the relationship was on-again and off-again. He did not deny that Ms. Kovacevic would spend time at Ironridge, but did not agree that meant she and her son lived there with him.
- [87] While they cared for one another, the evidence did not support the conclusion that the parties ultimately formed parental relationships with one another's. The parties were not consistent about the degree to which they had taken on parenting roles with respect to one another's children, or the relationships they had with them, with the exception of Mr. Hickey's relationship with Ms. Kovacevic's son, R., who is an adult. The evidence was consistent that Mr. Hickey had a supportive relationship with R., and that he had taken a

significant interest in his hockey playing. R. also worked for Mr. Hickey for a period of time, and lived with him in Kamloops. Mr. Hickey did not claim to have a close relationship with Ms. Kovacevic's other son K., whereas Ms. Kovacevic claimed that as soon as they started dating, they were a family and intended to proceed that way together.

- [88] The parties did not have consistent evidence about their involvement with one another's extended families. Mr. Hickey testified that Ms. Kovacevic did not get along with his family. It appeared they were not significantly connected to one another's extended families. There was not significant evidence about their social circle or their presentation to the community as a couple.
- [89] The parties had very different views about the consistency of their relationship and their intentions about its continuity. Ms. Kovacevic was of the view that they were a couple throughout the period of at least 2017 to 2023. Mr. Hickey was of the view that when Ms. Kovacevic moved out or he moved out, they were separated, and that there were periods time where they were not in a long-term relationship, but were seeking to reunite, working on things, or otherwise in limbo. The parties also frequently and fractiously separated from one another in a range of ways, through moving out, retaining counsel, and otherwise breaking down their connections. They became engaged, broke up, engaged again. Engagement rings were pawned and recovered. These events epitomize the on-again and off-again aspect of this somewhat dramatic relationship.
- [90] It is clear from all of the foregoing that the parties were consistently enmeshed and involved in one another's lives. They had a sexual relationship. They spent time together in shared activities involving either travel or gambling. Both parties worked very hard in their professional endeavours, but this also meant they were not frequently together. They were business partners for a prolonged period. They operated home rentals together and they mutually supported one another in various ways. They had ongoing communications and periodic reunifications. They took an interest in one another's children but were not meaningfully connected to their respective extended families.

Decision under s. 3 of the FLA

- [91] The burden is on Ms. Kovacevic to prove on a balance of probabilities that the parties lived together in a marriage-like relationship for a period of at least two years. The evidence before me did not paint an abundantly clear picture: at times it was consistent, other times contradictory, and it was consistently complex. The parties lived together at times, they lived apart at times, Mr. Hickey worked away at times, and Ms. Kovacevic moved out at times to an apartment or to a suite in one of Mr. Hickey's homes. There were better and worse times between the parties. These ups and downs can happen in a marriage. In this case, where the picture of the extent and nature of cohabitation is opaque at times, I must consider whether the parties mutually intended the relationship to be indeterminate and with the nature and quality of a marriage. In this regard, I find that the relationship between Mr. Hickey and Ms. Kovacevic was marriage-like at times, and not at others, but that ultimately, Ms. Kovacevic

has not proven the parties lived together in a marriage-like state for at least two years.

- [92] On the basis of the chronology and features of the relationship I have set out, I conclude that the parties' longest cohabitation, and the period that could have constituted living together in a marriage-like relationship, was for a period of about 20 months between August 2020 and April 2022. On its own, this time period does meet the s. 3(1)(b) definition prescribed by the FLA.
- [93] Counsel for the respondent suggested that if I am unable to conclude that the parties lived together in the same home for two years or more, that should end the analysis. As referenced earlier, there is not only one way of carrying out a marriage. In this case, I must consider whether the parties were "living" together for a longer period of time in the sense that, despite working in different geographic locations, the fundamental baseline of their relationship was one of cohabitation.
- [94] Under s. 3 of the FLA, there are circumstances where a marriage-like relationship can continue while the parties are not under the same roof. Justice Branch expressed the nuance that may be applicable in such situations in L.T.F.:
- [95] parties can be cohabiting and dating without it being characterized as marriage-like. In *Y.T.C. v. J.C.V.*, 2018 BCSC 773, the court concluded at para. 65:

...Although the parties lived together for more than two years, in my view there was nothing marriage-like about their relationship. These are two young people who cohabited together for a short period of their lives. Period. In my view an obligation for one party to support the other arising from such a relationship is not what is intended by the spousal support provisions.

- [96] Conversely, parties may be in a marriage-like relationship even while maintaining separate residences. In *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272, the court stated:
- [41] In addition, as a matter of law, it is well established that parties can maintain two residences and still be in a marriage-like relationship (*Campbell v. Campbell*, 2011 BCSC 1491, at paras. 49-51; *Coupar v. Roh*, 2014 BCSC 1392, at paras. 67-68; *Yake v. Chamberlain*, 2014 BCSC 1582, at paras. 13, 50-52; *Roach v. Dutra*, 2010 BCCA 264, at para. 17). In the subject case the work of the respondent was an appropriate reason for having two residences (in Whistler and New Zealand) and not one that, by itself, means there was no marriage-like relationship. Similarly, the benefit of R. completing the 2001-2002 school year in Vancouver was an appropriate reason for the claimant to have a separate residence there.

See also: *Mancinelli v. Mancinelli*, 2021 BCSC 94 at paras. 46-47, 49.

- [95] Ms. Kovacevic did not focus her argument or evidence specifically on the periods of time on either side of August 2020-April 2022 or directly ask me to draw a conclusion that the cohabitation period for the purposes of s. 3 should be viewed as longer because the parties merely worked in different geographic locations but were nevertheless maintaining their marriage-like relationship and essentially sharing a home. In fairness to Ms. Kovacevic, I

have endeavoured to consider this question as best I am able in the circumstances, as it reflects an underlying theme of her argument that the parties always intended to be together and plan a future together, despite their busy and sometimes remote working lives and their geographic separation. This overall theme was founded in the claimant's evidence of the parties' ongoing communications, their periodic reconnection and their travel together after separation, and Mr. Hickey's ongoing willingness to provide Ms. Kovacevic with support or financial assistance on occasion.

- [96] Given the importance of living together within the definition under s. 3 of the FLA, to overcome the absence of actual cohabitation for part of the time of the asserted marriage-like relationship, there must be persuasive evidence supporting the claimant's position that despite not sharing a residence, the parties were in a committed indeterminate relationship.
- [97] I conclude on the evidence before me that the parties did not have the mutual intention to live together as spouses in the time periods immediately outside of the time they cohabited in August 2020-April 2022.
- [98] I accept that prior to August 2020 (when the parties moved in to McKinley), they had resumed a relationship. However, I am not persuaded that during the period of March 2020 to August 2020 it was a marriage-like relationship. It is true that Mr. Hickey had formed the intention of trying to make the relationship work, including by purchasing McKinley in March 2020. However, Ms. Kovacevic was insistent that Ironridge would not be their home together, and that is where he resided. She had rented her own apartment in Peachland in response to their separation at the end of the previous year. It is not clear to me on a balance of probabilities that the period prior to August 2020, when they moved in together, can represent living together in a marriage-like relationship.
- [99] Respecting the period immediately following the time the parties lived together at McKinley, Mr. Hickey went away for work in April 2022, and his testimony was that the parties had broken up at that time, he was moving out, and he did not return to collect his possessions until November. He never moved back to McKinley. Ms. Kovacevic's evidence did not fundamentally undermine this characterization. She testified that he did not move out until November, when he removed his couch and other items. This timeline is consistent with Mr. Hickey's account of his return from work and retrieval of his possessions. Therefore, I find that it is more consistent with all of the evidence that the parties were indeed separated both physically and otherwise as of April 2022. This conclusion is also consistent with Ms. Kovacevic's notice of family claim filed in May 2022.

Section 83 of the FLA

- [100] I understand Ms. Kovacevic's assertion to be that, even with physical separations, the intention was always that the parties would have an ongoing relationship and a life together. Ms. Kovacevic argued that s. 83 of the FLA also specifically states that periods of living apart do not constitute separation of the marriage-like relationship if the parties

resume living together within the year, for at least 90 days, with the intention of reconciliation, and she suggests this should be applied to define the parties' relationship as ongoing despite periodic separations.

- [101] Justice Caldwell found in *R.A.K. v. V.J.S.*, 2025 BCSC 578 that the allowance for periods of separation in s. 83 does not affect the requirement in s. 3 that there be at least a two-year period of living together in a marriage-like relationship:
- [19] Section 83 clearly states that "spouses" are not considered to have separated if, within one year following separation, they resume cohabitation with the primary purpose of reconciling and they, within that one-year period, live together for one or more periods totalling at least 90 days.
- [20] The section does not refer to persons, individuals, or parties - it refers specifically to spouses.
- [21] "Spouse" is a term clearly defined by the FLA in s. 3, as noted above. By that definition, for those who are not married, people do not become spouses until they have lived in a marriage-like relationship for a continuous period of at least two years. For issues concerning property or pension division, having a child and living together in a marriage-like relationship does not necessarily make two people "spouses": FLA, s. 3(1)(b)(ii).
- [22] Thus, for the issues before me in the instant case, it is only upon having lived together in a marriage-like relationship for a continuous period of at least two years that the claimant and respondent would become spouses and trigger the separation/reconciliation mechanism created and allowed by s. 83.
- [23] With regard to both ss. 3 and 83, in my respectful opinion, there is solid public policy for such provisions. The legislation is intended to protect parties who have committed to at least two continuous years of marriage-like relationship, and, if issues arise, who may need some time apart to seek assistance toward possible reconciliation. In such case, the legislation allows and, in fact, encourages parties to attempt reconciliation within certain defined bounds and without compromising their overall positions, rights, and responsibilities.
- [24] The legislation is not intended to be a mechanism whereby individuals can simply move in together for a few weeks, separate for months, move back in together for a few months, and continue that uncommitted, random pattern of residence over the course of two to three years so as to claim spousal status.
- [25] I find support for this assessment in the decision of Justice Baird in *C.F.M. v. G.L.M.*, 2018 BCSC 815:
- [10] A party to a relationship that lacks such characteristics is not entitled to pursue FLA remedies. A person is a "spouse" or not. There is no middle ground: *Gostlin v. Kergin* (1986), 1986 CanLII 164 (BC CA), 3 B.C.L.R. (2d) 264 (C.A.) at para. 16. People may live together continuously and interdependently and yet fail to establish that they developed "the kind of

psychological and emotional union" associated with marriage: Takacs v. Gallo (1998), 1998 CanLII 6429 (BC CA), 48 B.C.L.R. (3d) 265 (C.A.) at para. 55, leave to appeal ref'd, [1998] S.C.C.A. No. 238.

- [11] The "marriage-like" commitment must be combined with sufficient evidence of two years of continuous cohabitation. The FLA has no application to more transitory connections. There is, of course, substantial unpredictability in the progress of nascent relationships and this is why the legislature fixed a two year standard before imposing legal matrimonial obligations on common law couples without children: Parke v. Veale, 2015 BCSC 2554 at para. 79.
- [26] I find that, regardless of the nature and quality of the parties' relationship and whether it could be characterized as "marriage-like", they simply do not meet the definition of "spouse" as it is set out in s. 3 of the FLA because they did not live together for a continuous period of at least two years.
- [102] Given the meaning of s. 83 and that it does not operate to qualify the definition in s. 3, I cannot give effect to Ms. Kovacevic's argument to apply s. 83 to extend the length of the marriage-like phase of the relationship. It remains the claimant's burden to demonstrate that the time alleged to represent a marriage-like relationship can be characterized as such in substance, including with respect to any periods living "together" in atypical living situations. The fact that the parties were in a romantic or sexual relationship at other times does not necessarily mean that they were in a marriage-like relationship, and I cannot conclude that in this case the nature and quality of the relationship was spousal outside of the period they resided together.
- [103] The relationship in question in this case was a difficult one for both parties; there was clear love and dependence by each of them on the other. But there was also a difficult dynamic that caused their union to be unstable and variable over the period of time they were involved. While it was clear that Mr. Hickey wanted to maintain an intimate connection with Ms. Kovacevic at various times, including after their separation, it is also clear that this was challenging and possibly misleading for Ms. Kovacevic. Mr. Hickey's impression was that they were "working on things" or just having casual relations; Ms. Kovacevic perceived it as being back together, or remaining together, given the ongoing intimate communications. However, intimate communications, sexual intimacy, dating, or travel together do not define the relationship as marriage-like without other indicia of the long-term interdependent relationship that is understood by the FLA. In this case, I cannot conclude that the relationship was marriage-like after the parties stopped living together.
- [104] Although there were features of an interconnected relationship, and these repeatedly surfaced in the evidence at times throughout the relationship, they do not reveal in my view that the relationship was marriage-like at times other than when the parties chose to live together in the same residence. In this case, I cannot find that the parties in fact were living together in a marriage-like relationship other than during the period of August 2020-April 2022.

[105] Given all the foregoing, I find that the parties did not live together in a marriage-like relationship for a period of more than two years as required by s. 3 of the FLA, and accordingly they did not become spouses under the legislation. As a result, the relief sought by Ms. Kovacevic pursuant to the FLA is not available, and her claims are dismissed.

Counterclaims

[106] Mr. Hickey raised a number of claims by counterclaim and abandoned or clarified some of these in the course of the trial. The remaining claims are as follows.

[107] First, Mr. Hickey claims a payment of \$15,000 made to Ms. Kovacevic pursuant to an agreement he asserts the parties reached to resolve these proceedings. This claim is advanced on the basis of unjust enrichment.

[108] Second, Mr. Hickey seeks an order that Ms. Kovacevic transfer a Range Rover vehicle to him which is in her possession. This is sought on the basis that the vehicle is owned by him, it was not a gift, and he has been deprived of the use of it.

[109] These two issues come down to the parties' understanding of the nature of each transaction and what it represented. I must determine, on a balance of probabilities, what more than likely occurred and what the parties intended. In the case of the \$15,000 payment, I must determine whether it represented a portion of an agreement to resolve issues in this dispute. In the case of the Range Rover, I am required to determine whether the vehicle was an outright gift to Ms. Kovacevic, or whether it was acquired to be owned by Mr. Hickey but was put to Ms. Kovacevic's use.

Payment of \$15,000

[110] The evidence before me was that Mr. Hickey paid Ms. Kovacevic \$15,000 in late 2022, after their separation. The account records show that a branch to branch transfer was made from Mr. Hickey's business account to the Restaurant's business account on December 5, 2022.

[111] Mr. Hickey's evidence was that the \$15,000 payment was made as part of an agreement between the parties to resolve some or all of the issues in this dispute. Mr. Hickey said the terms included that the parties would agree to list McKinley for sale. Through this agreement, Ms. Kovacevic would receive the \$15,000 transfer, \$25,000 from the proceeds of the sale, and a loan of \$50,000 which she would put toward another home in Mr. Hickey's name, as her credit score was poor. I infer from Mr. Hickey's argument that he asserts the agreement also included a release of their respective claims. Mr. Hickey testified that Ms. Kovacevic asked that he make the transfer to the Restaurant's business accounts.

[112] Mr. Hickey testified that they then listed the McKinley property. In late December 2022, the parties started talking again. During the time it was listed, from December 2022 to June 2023, McKinley was shown many times. At some point later, after the \$15,000 payment was already made, Ms. Kovacevic opposed the sale of the McKinley property, and in doing so

repudiated the agreement. Mr. Hickey's position is that, as a result, although the agreement was no longer in place, Ms. Kovacevic received the \$15,000 consideration, but did not do her part in the bargain: principally, to cooperate in the sale of McKinley. Therefore, Mr. Hickey argues that she has been unjustly enriched.

- [113] Ms. Kovacevic did at some point oppose the sale of McKinley. On an application made May 9, 2025 by Mr. Hickey for interim sale of the property, I ordered on May 16, 2025 that McKinley be sold, and that Mr. Hickey have sole conduct of sale. My reasons for that decision are indexed as: 2025 BCSC 918.
- [114] Ms. Kovacevic's evidence was that Mr. Hickey's transfer of \$15,000 was just one of many transfers he made to her. She denied that the parties had reached any agreement. Her testimony was that they did have these discussions, but they did not result in her agreeing. Instead she says she refused to accept the proposed terms including cooperation in the sale of McKinley.
- [115] The bank statements for the Restaurant indicate that \$10,000 of the December 5, 2022 payment of \$15,000 was withdrawn by Ms. Kovacevic on December 7, 2022. There were a number of smaller transfers from the Restaurant account to Ms. Kovacevic that followed. Ms. Kovacevic did not deny these transfers were made, but testified that money that went into her personal account was used for the business.
- [116] Mr. Hickey has the burden to prove that Ms. Kovacevic was unjustly enriched by way of the \$15,000 payment.
- [117] The parties' testimony in this regard is directly contradictory. Mr. Hickey asserted there was an agreement, Ms. Kovacevic said there was not. Mr. Hickey said the payment he made was consideration for Ms. Kovacevic's release of claims in this litigation and her participation in facilitating the sale of McKinley. Ms. Kovacevic testified she would never have agreed to the sale of the house.
- [118] The written records surrounding the alleged agreement are generally unhelpful. One exhibit contains disjointed and incomplete text messages from early December 2022. These do not reveal an agreement between the parties. One message has Ms. Kovacevic writing: "Did you transfer that. Are we going ahead with the \$15,000 aside from the house. I can't really get going until things get paid." Mr. Hickey responds: "No I didn't, I will send you an email later once approval from you then you can go ahead. We still have lots to talk about here so pick a time tomorrow to discuss things going forward."
- [119] Another exchange adduced from Mr. Hickey says: "25 percent of the house after profit. You put up \$50,000 and I will put up \$50,000 to get you a house mortgage that's affordable, we buy house 50/50 so you are in the market and mortgage is cheaper than renting with that size down payment. \$10,000 advance when signed " (I note this text refers to 25 percent of the profits from the sale of the house, whereas Mr. Hickey's testimony referenced \$25,000 of the profit). Ms. Kovacevic responds: "I'm seriously just taking it in. I appreciate you putting

anything on the table."

- [120] None of the exchanges put into evidence prove that one party made an offer and the other accepted. The terms and consensus are not clear from any of these records. The voluminous and imprecise records generated by the parties simply do not document an agreement in writing. They do reveal that there were discussions about resolutions. And they indicate that numerous transfers were made to and between the personal and business accounts of the parties. But there is no certainty in the evidence that would allow me to conclude on a balance of probabilities that a settlement was reached resulting in a payment by Mr. Hickey to Ms. Kovacevic of \$15,000. Accordingly, I dismiss Mr. Hickey's claim made in relation to the \$15,000 transfer.

The Range Rover

- [121] Ms. Kovacevic completed the purchase of the Range Rover in January 2020, and registered the vehicle in her name. The bill of sale is in Mr. Hickey's name. Mr. Hickey was working out of town. The contentious issue is what was intended by the purchase of this vehicle, and who was meant to own it.
- [122] Ms. Kovacevic testified that in January 2020, Mr. Hickey messaged her to say he would buy her an early birthday present and she could pick out a Range Rover. The message itself was not in evidence. Ms. Kovacevic said she picked out a 2016 vehicle. At the time she was driving a Ford Ranger truck. The Ford Ranger truck was later driven by a mutual friend, Wes, who made payments on that vehicle to Mr. Hickey.
- [123] Mr. Hickey said that the Range Rover was bought by Ms. Kovacevic on his behalf but was not a gift. He said that at the time, in January 2020, he asked Ms. Kovacevic to take his Ford Explorer to trade it in. Mr. Hickey explained this had to occur while he was away due to a pending deal with the dealership he had in place. He testified that at the time, Ms. Kovacevic had her own vehicle. She had leased it through the Restaurant, but Mr. Hickey said this lease was entered into without his knowledge.
- [124] The total cost of the Range Rover on January 29, 2020 was \$101,769.66. With a down-payment of \$5,000, the loan obtained for the Range Rover was for \$96,858.87. The bill of sale is in Mr. Hickey's name. The bill of sale indicates that a trade-in was part of the sale. Mr. Hickey explained that his Ford Explorer was traded in on the purchase of the Range Rover.
- [125] The payments on the Range Rover under the loan are \$1,475 per month. As of the end of 2024, there was approximately \$21,000 owing on the Range Rover. Ms. Kovacevic has made none of the payments on the vehicle.

- [126] The Range Rover is registered to Ms. Kovacevic and insured under her name. Ms. Kovacevic said that she insisted on registering it in her name because of her experience of Mr. Hickey being controlling, and this dynamic being present in their interactions respecting a previous vehicle.
- [127] Mr. Hickey said that the vehicle he purchased was assigned to Ms. Kovacevic and registered in her name so that she could drive it off the lot as he was away. He said he was surprised that it was ultimately still registered and insured in her name. Mr. Hickey testified that he never signed anything that would give Ms. Kovacevic ownership of the car.
- [128] Ms. Kovacevic has had ongoing possession of the vehicle and was the primary driver since its purchase. Ms. Kovacevic said she was the only one to drive the Range Rover and it was her only vehicle. Mr. Hickey said that he drove it when he was home from work.
- [129] Mr. Hickey expressed that he expected he would get the vehicle back when they broke up in 2022. At that time, he sent Ms. Kovacevic a receipt for back-payments on the loan and other charges related to the vehicle.
- [130] Ms. Kovacevic continued to possess the Range Rover at the time of trial. She continues to refuse to make payments on the vehicle or to sell it. Ms. Kovacevic has refused to sell the Range Rover or to pay the debt owed on it, and she expressed in her testimony that it was put in her name so that Mr. Hickey could not use it "as a pawn".
- [131] Ms. Kovacevic further testified that Mr. Hickey had the Range Rover repaired twice in 2024 and told her to pick it up. Ms. Kovacevic suggested this demonstrated that Mr. Hickey was not acting in a manner that suggested he thought she should not have possession of the vehicle.
- [132] At the time of trial, the Range Rover was not working. It was not insured and was parked in the driveway at McKinley.
- [133] I find that it is clear on the evidence that Mr. Hickey bore the cost of the Range Rover. He initially purchased the vehicle, has made all of the payments on it, and has contributed to its maintenance. What is less clear is the intention behind the purchase.
- [134] It is Ms. Kovacevic's burden to demonstrate that the vehicle was a gift, or that there was an agreement that Mr. Hickey would pay for the entire cost of the vehicle (i.e. the upfront payment and continuous loan payments) and Ms. Kovacevic would retain possession of the vehicle. I find that she has not done so. While I observe that the parties treated the Range Rover as Ms. Kovacevic's to use, and that she was the main user of the vehicle, I find this is insufficient to prove that it was a gift made to her by Mr. Hickey. The registration does not prove that Mr. Hickey intended the vehicle to be a gift. I have been shown no extrinsic evidence indicating that the vehicle was a gift, and the testimony of the parties is contradictory.

- [135] I accept Mr. Hickey's argument that it is reasonable to infer that Mr. Hickey was prepared to make the payments on the Range Rover and for Ms. Kovacevic to use the vehicle as long as they were together as a couple. I cannot infer from the evidence before me that Mr. Hickey intended to gift the vehicle to Ms. Kovacevic on terms that would require him to continue to make payments on the vehicle after they separated and after the Range Rover was not in use and in need of repair.
- [136] Accordingly, I conclude that Ms. Kovacevic has not shown that Mr. Hickey gave her the Range Rover as a gift. Pursuant to s. 57 of the Law and Equity Act, R.S.B.C. 1996, c. 253, I order Ms. Kovacevic to transfer the Range Rover back to Mr. Hickey and deliver it to his possession.

Conclusion

- [137] Ms. Kovacevic has not demonstrated that the parties were spouses within the meaning of s. 3 of the FLA. Accordingly, the relief sought pursuant to that legislation including spousal support, child support, and division of assets and debts is dismissed.
- [138] Mr. Hickey has not demonstrated that there was an agreement between the parties pursuant to which Ms. Kovacevic received a payment of \$15,000, through which she has been unjustly enriched. Mr. Hickey's claim to damages in unjust enrichment is dismissed.
- [139] Mr. Hickey has demonstrated that he is entitled to possession of the Range Rover, and Ms. Kovacevic is ordered to return the vehicle to Mr. Hickey.
- [140] The parties will bear their own costs of the trial.

"E. Sigurdson J."

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