
CANADA / JUDGMENT

Landriault Estate (Re)

2019 BCSC 1089

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Supreme Court of British Columbia

DECIDED

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2019 BCSC 1089 Landriault Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Landriault Estate (Re),

2019 BCSC 1089

Date: 20190704

Docket: P19967

Registry: Chilliwack

In the Matter of the Estate of Shirley Denise Landriault, Deceased

Before: The Honourable Madam Justice Duncan

Reasons for Judgment

Counsel for the Applicant, Thomas Harlton:

T. Watkins

Counsel for the Respondents, Sandra Conaway, Sharron McStay & Ronald Landriault

M. Menkes

Place and Date of Hearing:

New Westminster, B.C.

June 25, 2019

Place and Date of Judgment:

Chilliwack, B.C.

July 4, 2019

Introduction

- [1] Shirley Denise Landriault died on August 15, 2018 in Maple Ridge at the age of 76. Ms. Landriault left an estate of just over \$400,000. There is no known will.
- [2] Ms. Landriault is survived by three adult children: Sandra Conaway, Ronald Landriault and Sharron McStay. Ms. Landriault and Mr. Harlton commenced a marriage-like relationship in 1989 when they began cohabiting.
- [3] On October 19, 2018, Thomas Harlton applied for a grant of administration without will annexed. On November 27, Sandra Conaway filed a notice of dispute alleging that the deceased had terminated her spousal relationship with Mr. Harlton in or about 2010.
- [4] Mr. Harlton seeks three orders:
 - 1. a declaration that he is the spouse of the deceased, Shirley Denise Landriault, pursuant to s. 2(1) of the Wills, Estates and Succession Act [WESA];
 - 2. a declaration that, as the spouse of the deceased, he is the beneficiary of a preferential share of \$150,000 and of one-half of the residue of the intestate estate, pursuant to s. 21 of WESA;
 - 3. an order that the notice of dispute filed by Sandra Conaway on November 27, 2018 in the Chilliwack Registry under action number CHI-V225 be removed pursuant to Rule 25-10(10) of the Supreme Court Civil Rules [SCCR].
- [5] Ms. Conaway and her siblings are opposed to a summary determination of the application. Their counsel, Mr. Menkes, maintains that a fast track trial or at least examinations for discovery should be conducted before the issues are adjudicated, although no requests in that regard have been made since the dispute was filed in November 2018. He maintains that issues of credibility cannot be decided on the basis of the materials filed.
- [6] In *Richardson Estate (Re)*, 2014 BCSC 2162, Mr. Justice Steeves determined that a summary proceeding was permitted under the SCCR for the same type of relief sought in this case. In *Richardson Estate*, as in this case, the disputant was on notice that there would be an application to remove the notice of dispute. In *Richardson Estate*, as in this case, no request or application for cross-examination on affidavits or application for an alternate proceeding had been made.
- [7] The primary question in the matter before me is whether Ms. Landriault terminated her spousal relationship with Mr. Harlton in or around 2010, as contended by Ms. Conaway in her notice of dispute. While there are undeniably conflicts in the affidavit evidence, the issue is whether the conflicts are material to that question. For the reasons that follow, I find the conflicts are not material to the issue and a summary determination is appropriate.

The Background

- [8] While the respondent and the other adult children of the deceased do not dispute that Mr. Harlton and Ms. Landriault were in a spousal relationship prior to 2010, events pre-dating 2010 are relevant to contextualize the relationship.

Mr. Harlton's affidavit evidence

- [9] Mr. Harlton and Ms. Landriault met in 1988 through the personal ads in the newspaper. They played Scrabble and got along very well. Mr. Harlton was 46, soon to be divorced with no dependents. The deceased was also 46 with three grown children. Mr. Harlton was employed; the deceased was on social assistance.
- [10] Mr. Harlton moved into the deceased's modest basement suite in Maple Ridge on April 5, 1989. Later that year, he completed the purchase of a condominium and the couple moved there together.
- [11] Mr. Harlton retired in 1996 and began drawing a pension from his former employment when he turned 55. The deceased was still on social assistance. They filed their taxes as single persons so her eligibility for social assistance would not be affected.
- [12] Ms. Landriault was struck by a car in 1997 and sustained serious orthopedic injuries. She spent six months in hospital and was never again able to walk unaided. Her pelvic injuries precluded the resumption of sexual relations. She became totally reliant on Mr. Harlton, but he did not end their relationship. They continued to share the same bed and live in the same residence.
- [13] Ms. Landriault began an action for injuries from the accident and settled the claim in 2000. She received a lump sum of \$100,000 and an annuity of \$3,000 per month.
- [14] The deceased did not want to continue living in the condominium that Mr. Harlton had purchased, and the two moved into a rental unit in 2000. The unit was rented in the name of the deceased, but Mr. Harlton still lives there. He sold his condominium at a loss in 2001.
- [15] Mr. Harlton was aware that the deceased had cognition issues, dating back to a ruptured aneurysm and intracranial bleeding that occurred before they met. He said she told him that this caused emotional swings and fixations which persisted after their relationship commenced.
- [16] By January 1, 2004, the deceased's mobility had deteriorated to the extent that Mr. Harlton could no longer lift or physically assist her. She was admitted to an extended care unit at a hospital on that date. Mr. Harlton visited her daily, consulted about her medical care, managed her financial affairs and paid her bills. Two years later she moved into a residential care facility, Baillie House, where she lived until her death.

- [17] Mr. Harlton deposes that he continued to visit Ms. Landriault daily, spending at least a few hours and having lunch with her, apart from a few days when he was ill.
- [18] In January 2010, Mr. Harlton retained a lawyer to assist him with an appointment as committee of Ms. Landriault's person and estate. The lawyer obtained affidavits from her primary care doctor and a psychiatrist, both of whom opined that the deceased remained competent.
- [19] A consultation report from Dr. Nanda, a psychogeriatric psychiatrist, is appended to Mr. Harlton's affidavit. He noted that as a result of an aneurysm in 1981, Ms. Landriault had disinhibited behaviour and depression and was at times aggressive and belligerent. The report reflects that she was content with Mr. Harlton continuing to manage her financial affairs and that she completely trusted him. She described him to the doctor as a loving, understanding and supportive spouse.
- [20] The deceased's family doctor observed that she could be a very difficult personality and was prone to extreme emotional outbursts but was competent to make a decision that Mr. Harlton could look after her financial affairs.
- [21] Given the medical opinions that the deceased was competent, Mr. Harlton's lawyer prepared an enduring power of attorney. The deceased executed it on April 28, 2010.
- [22] The deceased's monthly income exceeded her expenses. As funds accumulated in her account Mr. Harlton would invest the money in term deposits, which comprise the principal assets of her estate. He paid the rent on their apartment out of her account, but remitted two-thirds of the cost to her account by agreement with the deceased. By 2012, Mr. Harlton paid all of the rent and utilities himself.
- [23] Mr. Harlton gave about \$200 per month at the deceased's request to her son Ronnie Landriault, who lived nearby and visited her regularly. He was on social assistance. Her daughter Ms. Conaway lived in Texas. Mr. Harlton sent her \$5,000 at the deceased's request to cover travel costs to visit British Columbia. The other daughter Ms. McStay lives in Saskatchewan and came to visit once or twice a year.

Ms. Conaway's affidavit evidence

- [24] Ms. Conaway and her siblings attest to events in their affidavit prior to 2010 concerning the uncertain state of their mother's relationship with Mr. Harlton; however, since the focus of the notice of dispute is the alleged termination of the common law relationship in or around 2010, I will focus on that time period.
- [25] Ms. Conaway deposed that in 2011, Mr. Harlton told her that he had met a woman and was going to move in with her. He asked Ms. Conaway to convey to her siblings that they should clear the contents and personal belongings from the apartment. Ms. Conaway says that around this time, she and her sister discussed whether to move their mother to Saskatchewan, as Ms. McStay had a personal connection with a long-term care facility. This

did not come to fruition because they did not believe their mother would be happy with the weather or the unfamiliar area. They were also satisfied with her care at Baillie House.

- [26] Ms. Conaway visited Canada in June and August of 2011. On one of those two trips, she says her mother reported that she had seen Mr. Harlton kiss a care aide ("M"). Her mother also said she asked to see M's breasts and M obliged. There were other allegations made by the deceased that a male care aide had pinched her.
- [27] Ms. Conaway says that her mother's statements and unexplained bruising were brought to the attention of Fraser Health. She received a call a few weeks later in which the denials of Mr. Harlton and M were preferred over the statements of the deceased. Ms. Conaway also says that a nurse told her that her mother said she knew that "that part, of her relationship was over" with Mr. Harlton and the two of them were merely friends.
- [28] Ms. Conaway believes her mother's attitude towards Mr. Harlton was from that time forward consistent with a platonic relationship. After some time, Ms. Conaway and Mr. Harlton's relationship became amicable once again. He sent her money from her mother's account to come to Canada for visits, wrote to her and sometimes called.
- [29] Ms. Conaway said that in 2015 and 2016 Mr. Harlton reported to her that Ms. McStay and her husband took documents from him and did other unusual things, such as pinching oranges in the grocery store so no one else would buy them. She said Mr. Harlton was intoxicated during one conversation and "inadvertently disclosed" that M had exposed her breasts, confirming her mother's statement in 2011.
- [30] Ms. Conaway said that her mother voiced her mistrust of Mr. Harlton on several occasions and the two were not affectionate with each other. She accused him of failing to notify her or her siblings of the deceased's passing, failing to consult with them about a funeral and burying her in a sheet, dressed in an old fur coat and hat.

Ms. McStay's affidavit evidence

- [31] Ms. McStay deposes that Mr. Harlton confided in her in 2010 that he was in a relationship with M, that he would often "sup" with M and her family and that he gave her a case of wine as a gift. Ms. McStay believed the relationship was inappropriate but did not complain to the health authority about it. She deposes that Mr. Harlton said M had "beautiful nipples" and wanted to have his baby.
- [32] Notwithstanding Mr. Harlton's alleged confession that he was in a relationship with M, Ms. McStay maintained a close relationship with him. She considered him to be a close family friend and she trusted him. In late 2016, however, their relationship changed because he said M had asked for \$30,000 to pay for her mother's surgery. Ms. McStay said she felt this kind of request was inappropriate, but she did not advise the health authority because she trusted Mr. Harlton's judgment.

- [33] Ms. McStay said Mr. Harlton had planned to move into M's basement, but she told him she doubted Fraser Health would allow it and that as a Registered Nurse, she knew this would be a conflict of interest. She also told him he had bad hip and knee pain and that climbing stairs from the basement would cause more pain.
- [34] Ms. McStay says that after her mother's death, she found a card from M to Tom signed "Love your wife". She denies removing any papers from the apartment so the card is not in evidence. She complained that Mr. Harlton got rid of some of her mother's belongings and that he showed no sentimental attachment to them.
- [35] Ms. McStay said her mother told her in 2017 that "Tom is not as nice as you think he is". After 2010, he was not affectionate towards her mother.

Mr. Landriault's affidavit evidence

- [36] Mr. Landriault visited his mother most days from 2010 on for lunch and supper until the time she passed away. He says his mother alleged she saw Mr. Harlton kissing M. He was upset that the managers of the care home attributed this to dementia, which was contrary to the opinion of the doctors in 2010 when Mr. Harlton obtained the power of attorney.
- [37] Mr. Landriault said he would ask his mother where Mr. Harlton was and she would say "don't know, don't care" and "I can't stand to look at his face". On days like that Mr. Harlton did not sit at the lunch table with them. Mr. Landriault also says that his mother referred to Mr. Harlton as an "asshole" and that she did not want him there. Her verbal abuse was frequent and Mr. Harlton often left the lunch table because of it.
- [38] Mr. Landriault asked Mr. Harlton in about 2012 if he was involved with M. Mr. Harlton replied "She makes me feel young again."
- [39] Mr. Landriault said that in 2013, Mr. Harlton let an employee of the care home stay overnight at his apartment because she could not get home to Mission. He said that in 2015, Mr. Harlton spent his mother's money on pizza for the staff at Baillie house as well as for a birthday cake or Chinese food for staff and occupants of the ward.
- [40] Mr. Landriault repeats the allegation that M showed his mother her breasts. He complains about what Mr. Harlton chose to bury his mother in, what he wore to the funeral (shorts, a golf shirt and a pair of rainbow suspenders), the fact that he offered to show Mr. Landriault his mother's bank statements but later refused, that he refused to change the date of the funeral and that he refused to contribute to a reception after the funeral because he said the deceased had not wanted one.

Mr. Harlton's responsive affidavit

- [41] Mr. Harlton focussed on the issue of whether the common law relationship with the deceased continued until her death. He denied an affair with any other woman. His visits with the deceased were not "social", as he continued to assist her with personal care and hygiene and acted as her spouse and designated care decision-maker. He denies telling Ms. Conaway in 2011 that he had met another woman and was moving in with her.
- [42] Mr. Harlton says the assertion by the deceased that he kissed the care aide M was part of a complaint made by Ms. Conaway to Fraser Health. He was interviewed by a senior manager, as were members of staff. M continued to be the deceased's caregiver as the accusations were found to be baseless. M was one of the deceased's regular and best caregivers. He acknowledges he took M and her family to dinner out of gratitude and bought her wine as a birthday present. He also acknowledges that he flirted with M and other staff and that Ms. Conaway and her siblings may be taking his bawdy humour out of context. He maintains he is impotent and was in 2010.
- [43] Mr. Harlton's comment about bawdy humour reflects comments in correspondence he sent to Ms. Conaway dated February 22, 2015. In that letter, appended to Ms. Conaway's affidavit, he says:

Dear Daughter Sandra, you say our relationship has changed but I hope not as much as you think. I have in the past said things to tease - I thought that was behind me. I did not expect the results that came and I apologize. I did not see Fraser Health reply but I imagine it hurt. Sorry.

I had no intention of abandoning your Mom - Shirley. Perhaps I can suggest that our relationship was not quite regular. When your Mom and I met, we were both lonesome and I felt a relationship could benefit us both. I hope you don't misunderstand - I didn't ever feel sure it would last or how long. Shirley became a project I didn't want to fail. Her life was not what she wanted and I felt we could do something about that and it's still in progress. I do not feel she is a burden I don't need. I enjoy still being there for her.

[emphasis added]

- [44] Mr. Harlton said "Glad you are still my daughter and I'll try not to distress you again. If you think there is a problem - please talk to me first."
- [45] Mr. Harlton said the deceased was generally lucid but her moods could fluctuate wildly and she could be very unpleasant at times and was racist towards M and other staff. She was designated as potentially aggressive, as shown by a purple dot on her door. Mr. Harlton said the episodes would pass and the deceased was affectionate on her good days.
- [46] Consistent with the account of Ms. Conaway and Ms. McStay, Mr. Harlton says his relationship with them was amicable after the 2011 complaints were determined to be unfounded. He refers to correspondence from Ms. Conaway in which she thanked him for "loving mom and accepting her as she was and caring for her during the remainder of her

life", referred to her mother as "combative and ugly" to the staff but that his presence was a big asset. In 2016 she complained to him about her difficulties with her siblings and thanked him for his advice not to talk to them about the money he had sent for her to travel to visit her mother. Ms. Conaway also referred to her sister's alcohol abuse and how it was destroying her brain cells.

- [47] Ms. Conaway wrote to "Mom and Tom" in September 2017, thanking Mr. Harlton for sending a birthday card and the fact that he was still a part of their lives.
- [48] Mr. Harlton denies asking for \$30,000 for M's mother's surgery. He says he passed on the story to Ms. McStay that M's mother had health problems while visiting Canada and had a large uninsured medical bill. He felt badly for her but neither offered money nor solicited it from Ms. McStay. He acknowledges that he did think of moving into M's basement suite to save on rent and help M, but that Fraser Health deemed the arrangement inappropriate so they never pursued the idea.
- [49] Mr. Harlton did allow an employee - not M - to stay at his apartment one night during a storm when it was unsafe for her to drive home. He acknowledged Mr. Landriault's evidence that he provided treats for staff, but he only used the deceased's money when it was a party for her. He points out that none of the three children raised concerns with his management of their mother's finances during her lifetime and that he filed annual accountings with the Public Guardian and Trustee pursuant to the power of attorney he had in relation to the deceased's affairs.
- [50] Mr. Harlton said Mr. Landriault was notified by staff of his mother's passing and understood him to have broken the news to his sisters. Mr. Landriault and Ms. McStay were involved in the funeral planning. Mr. Harlton buried the deceased in her favourite clothing, including a hat and slippers which were gifts from her children. She did not want a reception and he honoured her instructions.

Other evidence

- [51] Affidavits from two employees of Baillie House were filed in support of Mr. Harlton's application. Ms. Battah wrote in October of 2018 that Mr. Harlton visited the deceased on a daily basis, encouraged her to participate in social events, spent hours by her bedside as she neared the end of her life and had been identified as her substitute decision-maker as her common law spouse. He attended annual care conferences at her request.
- [52] Ms. Owens worked at Baillie House as a recreational therapist with the deceased from September 2006 until she passed away. She observed that Mr. Harlton visited her on a daily basis, brought her yogurt and fresh fruits and salads, had lunch with her every day and that if he left the room, she would call out to him as her husband. He attended to her personal care if the unit was short-staffed, he brought clothes and sundries for her and he took her around Baillie House to participate in recreational programs.

The Law

[53] Section 2 of WESA provides:

When a person is a spouse under this Act

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.

[54] The dispute files in this case turns on s. 2(2)(b), whether one or both persons terminated the marriage-like relationship.

[55] The expression "terminate the relationship" was considered in *Robledano v. Queano*, 2019 BCCA 150. The Court traced the treatment of married and unmarried persons through various pieces of legislation and the efforts of the Law Institute in drafting WESA to reflect marriage-like relationships. Groberman J.A. said:

[52] The uncertainty of the expression "terminate the relationship" was noted at the committee stage in the Legislature. The following exchange occurred between the Justice critic (Mr. Krog) and the Attorney General (Mr. de Jong), as recorded in Hansard:

L. Krog: When it refers to "spouse" and it talks about the termination, if you will, of a relationship, it says that two persons cease being spouses of each other for the purposes of this act if, in the case of a marriage, they live separate and apart for at least two years and one of them has formed the intention to live separate and apart, or an event occurs that causes an interest in family assets, as defined under part 5 of the Family Relations Act, to arise -- which again applies only to married spouses.

But then it says if "(b) in the case of a marriage-like relationship, one or both persons terminate the relationship."

Now, I'm just wondering what "terminate" means. Does that mean if you have a fight on Saturday night and say this relationship is finished, and you storm out of the house and on Sunday morning are killed driving to your sainted mother's house because you want to tell her how tough things are, and your sainted mother doesn't get to see you . I mean, is that the termination of a relationship which would disentitle you entirely to an estate?

Hon. M. de Jong: I'm not sure that I can offer a conclusive definition of when a termination takes effect. I can advise the member that where a dispute arises, the act allows for or contemplates the intervention of a court to make a determination on the basis of evidence that is led. So in the member's example, a situation where a dispute occurs but it is apparent, on the basis of evidence, that the parties had not turned their mind to a permanent ending of the relationship, the court would make a determination on that basis.

I think it's also apparent that there will be circumstances . Situations may arise where there is some question about whether or not a relationship had conclusively come to an end. Depending on those circumstances, the stakes may be quite large, and the parties will need to appear before an arbiter or even a court to determine conclusively whether termination has occurred.

[British Columbia, Legislative Assembly, Official Report of Debates of the Legislative Assembly (Hansard), 39th Parl., 1st Sess., vol. 3 no. 2 (September 22, 2009) at 694.]

- [53] The Attorney General also noted, at 695, that a flexible approach to unmarried spouses was justified, because they were treated differently from married spouses under the Family Relations Act.
- [54] The position of unmarried couples was brought closer to that of married couples with the coming into force of the Family Law Act in 2013. Property division provisions now apply to both married and unmarried spouses. While the Legislature made consequential amendments to s. 2(2)(a) of the WESA when it replaced the Family Relations Act with the Family Law Act, it chose not to amend s. 2(2)(b) to harmonize it with the new property division regime.
- [55] What we are left with, in s. 2(2)(b) of the WESA, is a rather imprecise and flexible legal standard. The question of whether a person has "terminated the relationship" requires a judge to consider the expressed and implicit intentions of each spouse, as well as the objective evidence concerning the subsistence of the relationship. The determination is a "judgment call" for the trial judge - the application of a broad legal standard to the factual circumstances of an individual case. It is a question of mixed fact and law. Where a trial judge has correctly identified the standard, and has not made any palpable and overriding error in applying it, deference to the trial judge's decision is required: *Housen v. Nikolaisen*, 2002 SCC 33.
- [56] It is useful to examine the relationship between Mr. Harlton and Ms. Landriault after 2010/2011 in the context of a series of factors from *Molodowich v. Penttinen* (1980), RFL (2d) 376 (ONDC), which are often applied to determine whether a "marriage-like relationship" exists:
- (1) SHELTER:
 - (a) Did the parties live under the same roof?
 - (b) What were the sleeping arrangements?

(c) Did anyone else occupy or share the available accommodation?

[57] Mr. Harlton and Ms. Landriault did not live under the same roof due to her medical needs. There is no evidence anyone moved in with Mr. Harlton after she went into care or after 2010/2011, despite Ms. Conaway's evidence that he said he was going to move in with another woman in 2011.

(2) SEXUAL AND PERSONAL BEHAVIOUR:

(a) Did the parties have sexual relations? If not, why not?

(b) Did they maintain an attitude of fidelity to each other?

(c) What were their feelings toward each other?

(d) Did they communicate on a personal level?

(e) Did they eat their meals together?

(f) What, if anything, did they do to assist each other with problems or during illness?

(g) Did they buy gifts for each other on special occasions?

[58] The parties did not have sexual relations after Ms. Landriault was injured in a motor vehicle accident in 1997. Mr. Harlton spent virtually all day every day with Ms. Landriault and ate meals with her. He weathered her outbursts. He provided personal care to her when the care aides were otherwise occupied.

(3) SERVICES:

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

(a) Preparation of meals,

(b) Washing and mending clothes,

(c) Shopping,

(d) Household maintenance,

(e) Any other domestic services?

[59] As Ms. Landriault was in a care home, her meals were provided, but Mr. Harlton brought her additional food items. He also purchased things for her, albeit with her own money, such as cigarettes and lottery tickets. He made sure her wishes that her son have some extra money each month were carried out and he sent money at her behest to Ms. Conaway so she could travel to visit. He performed personal care services for her when the care aides were busy with other residents of the care home.

(4) SOCIAL:

(a) Did they participate together or separately in neighbourhood and community activities?

- (b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?

[60] Mr. Harlton participated in events at the care facility with Ms. Landriault. He sent birthday cards and other correspondence to Ms. Conaway signed "Mom and Tom". Ms. Conaway wrote to him after the alleged affair in affectionate terms. All three of Ms. Landriault's children knew Mr. Harlton was constantly at their mother's side and had been looking after her finances for a number of years before she died. He was part of the fabric that held the family together.

(5) SOCIETAL:

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

[61] The two staff members who provided affidavits regarded Mr. Harlton as Ms. Landriault's spouse, based on the fact that he was a decision-maker for her and the fact that she referred to him as her husband, among other considerations.

(6) SUPPORT (ECONOMIC):

- (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?

- (b) What were the arrangements concerning the acquisition and ownership of property?

- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

[62] Mr. Harlton and Ms. Landriault maintained separate bank accounts. They filed their taxes as single persons so that Ms. Landriault could continue to receive social assistance as a single person. Financial dependence is not a necessary feature of a marriage-like relationship: *Austin v. Goerz*, 2007 BCCA 586, para. 60.

(7) CHILDREN:

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

[63] As noted earlier in these reasons, Mr. Harlton wrote to Ms. Conaway on behalf of himself and Ms. Landriault. He produced several undated Father's Day cards from Ms. Landriault's children. Ms. Conaway's correspondence with Mr. Harlton right up to her mother's death was warm and appreciative of his devotion.

Evidence of Termination of the Spousal Relationship

[64] The only objective evidence that Ms. Landriault terminated the spousal or marriage-like relationship with Mr. Harlton was that she referred to him in derogatory terms, ordered him out of her room and exhibited other outbursts of temper in his general direction. Ms. Landriault was, however, prone to such outbursts. She was also rude to staff.

- [65] Ms. Conaway says that after the alleged affair, her mother told a nurse, who told Ms. Conaway, "that part, of her relationship was over" and the two of them were merely friends. Apart from the double hearsay issues, I find that to be a vague statement that does not square with the daily involvement Mr. Harlton had with Ms. Landriault up to the date of her death and it was never communicated to Mr. Harlton or to the care staff who provided affidavits in these proceedings. While I agree with Mr. Menkes that the affidavits of the staff are not particularly detailed, they do not reflect any objective change in the parties' relationship after 2010/2011.
- [66] The affidavits of the deceased's children focussed on events in 2010 and 2011 to demonstrate that their mother had terminated the marriage-like relationship with Mr. Harlton. They point to an alleged affair Mr. Harlton had with M. Mr. Harlton denies any affair. Everyone accepts that Fraser Health investigated some kind of a complaint from the deceased's children and dismissed the complaint. They profess not to be happy with the conclusion, but their relationship with Mr. Harlton largely returned to normal after the complaint was dismissed.
- [67] Ms. McStay and her husband stayed with Mr. Harlton after the alleged affair. Ms. McStay did not depose of any observations consistent with the presence of another woman in the apartment, which casts doubt on Ms. Conaway's evidence that Mr. Harlton said in 2011 he was going to move in with another woman. The only observation Ms. McStay made that Mr. Harlton was involved with someone else was the card she saw, after her mother's death, wherein M referred to herself as "your wife".
- [68] Ms. McStay did not make a record of the card by taking a photograph of it or raising it with Mr. Harlton, notwithstanding the years of simmering suspicions that she and her siblings had entertained about him and the fact that her mother had recently passed away. I do not find her assertion to be credible and in any event, it is not evidence that the deceased terminated the relationship with Mr. Harlton, which is the focus of the notice of dispute.
- [69] Furthermore, despite the simmering suspicions, none of the siblings appear to have made any inquiries of their mother, who by their own accounts was still lucid in 2011 and for several more years, concerning her testamentary wishes or the nature of her relationship with Mr. Harlton. They made no inquiries after Mr. Harlton mused about moving into M's basement suite, something which he acknowledged he had considered. The only reaction to the announcement appears to have been Ms. Conaway remonstrating with him that it would be hard on his knees and probably against Fraser Health policy. And if Mr. Harlton was in a relationship with M as alleged by Ms. Landriault's children, one might well wonder why he was moving into a basement suite instead of with M.
- [70] The relationship between Mr. Harlton and the deceased did not appear to have been affected by the alleged affair, much less terminated by Ms. Landriault. I find that calling someone an "asshole", particularly when the utterer is prone to outbursts, was insufficient to terminate this longstanding marriage-like relationship. So are comments like not wanting to see Mr.

Harlton's face or not caring where he was. The affidavits of the two care staff are objective and do not support the contention that there was a rift in the relationship as alleged by Ms. Landriault's children, either through those comments or otherwise.

[71] In all the circumstances, I am not satisfied that the marriage-like relationship between Mr. Harlton and Ms. Landriault was terminated by her in or around 2010. Mr. Harlton is entitled to a declaration that he is the spouse of the deceased pursuant to s. 2(1)(b) of WESA. Accordingly, the notice of dispute shall be removed.

[72] Mr. Harlton is, accordingly, entitled to a declaration that he is the beneficiary of a preferential share of \$150,000 and one half of the residue of the intestate estate, pursuant to s. 21 of WESA.

[73] The application did not include an order for costs and none is made.

"Duncan J."

The Honourable Madam Justice Duncan

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