
CANADA / JUDGMENT

Lariviere v. Coad

2019 BCSC 1691

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 1691 Lariviere v. Coad

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lariviere v. Coad,

2019 BCSC 1691

Date: 20191003

Docket: S186225

Registry: Vancouver

Between:

Kenneth Lariviere

Plaintiff

And:

Sasha Jan Coad

Defendant

Docket: S186247

Registry: Vancouver

Between:

Kenneth Lariviere

Petitioner

And:

Sasha Jan Coad

Respondent

Docket: S1710059

Registry: Vancouver

Between:

Sasha Jan Coad

Petitioner

And:

Kenneth Lariviere

Respondent

Docket: P17770

Registry: Chilliwack

In the Matter of the Estate of Barbara Louise Lariviere, Deceased

Docket: P17711

Registry: Chilliwack

In the Matter of the Estate of Barbara Louise Lariviere, Deceased

Before: The Honourable Mr. Justice Walker

Reasons for Judgment

The plaintiff, Kenneth Lariviere, appearing in person:

K. Lariviere

Counsel for the Defendant, Sasha Jan Coad:

J. Locke

A.A. Curley

Counsel for the Third Party, Olga Phillips Estate:

J. Bohbot

Place and Dates of Trial:

Vancouver, B.C.

May 13-17, 2019

June 21 & 24, 2019

July 19, 2019

August 21-23, 2019

Place and Date of Judgment:

Vancouver, B.C.

October 3, 2019

Introduction

- [1] Barbara Louise Lariviere passed away on December 25, 2016.
- [2] Whether Ms. Lariviere died intestate or with a valid testamentary document in effect is one of the hotly contested issues in this case. Her first husband, Mr. Kenneth Lariviere, seeks to prove in solemn form that when Ms. Lariviere died, a document she signed in 2001 was her last will and testament.
- [3] Other issues arise if Ms. Lariviere died intestate. Was Mr. Sasha Coad living in a marriage-like relationship with Ms. Lariviere, such that he is the sole beneficiary of her estate? If not, who should be appointed as her administrator?
- [4] Five separate proceedings were tried before me at the same time: two commenced in the Chilliwack registry (CW P17770 and CW P17711) and three in the Vancouver registry (VA S186247, VA S186225, and VA S1710059). Particulars of those actions are discussed in a separate section of these reasons.
- [5] The proceedings emanate from conflicting desk orders issued by the Chilliwack registry of this Court in two separate registry files: CW P17770 and CW P17711.
- [6] The first order was issued to Mr. Sasha Coad on August 9, 2017 in file CW P17770. It is a grant of administration without will annexed ("Coad Order").
- [7] The second and third orders were issued to Mr. Lariviere in file CW P17711. The first of them, issued on September 5, 2017, orders that the document signed by Ms. Lariviere in 2001 is a valid last will and testament. The second of them, issued on September 14, 2017, is a grant of administration with will annexed. I refer to the first of those two orders as the "Lariviere Sept. 5 Order" and the second one as the "Lariviere Sept. 14 Order". When I refer to them collectively, I call them the "Lariviere Orders".
- [8] Mr. Coad is the applicant in CW P17770, where he sought and obtained the Coad Order. He is also the petitioner in VA S1710059.
- [9] Mr. Lariviere is the applicant in CW P17711, where he sought and obtained the Lariviere Orders. He is also the petitioner in VA S186247 and VA S186225.

- [10] On November 8, 2017, Master Taylor dismissed a summary trial application brought by Mr. Coad to have the Lariviere Orders revoked as unsuitable. He ordered the determination of the issues in dispute put over to the trial list. Likewise, Madam Justice Fleming reached the same conclusion on February 11, 2019, concerning Mr. Lariviere's summary trial application brought as petitioner in VA S186225.
- [11] As a result, all of the proceedings commenced by Mr. Coad and Mr. Lariviere concerning the disposition of Ms. Lariviere's estate were heard at trial at the same time. They were also converted to actions on the first day of trial (the order went by consent).
- [12] Another related action, VA SH180184, was brought by the Toronto Dominion Bank, seeking foreclosure relief in respect of its mortgage on real property owned by Ms. Lariviere at the time of her death, and naming Mr. Lariviere and Mr. Coad as parties (amongst others). This proceeding was not heard at trial. The property is the only asset of significance in Ms. Lariviere's estate. It is located at 3241 West 2nd Avenue, Vancouver, B.C. ("Property").
- [13] The facts set out in these reasons are my findings of fact. Credibility is very much in issue in this case. When I mention a party's version of events, I provide my determination.
- [14] No suggestion has been made that any of the purported testamentary documents are the result of undue influence or that Ms. Lariviere lacked capacity to make them.

The Parties

- [15] Mr. Lariviere and Ms. Lariviere married in May 1976. After their divorce in the 1980s (there is a lack of clarity about the date), Ms. Lariviere remarried and for a time, assumed the last name of her second husband, Rumball. Her second marriage was brief in comparison to her first. Ms. Lariviere's second husband is not a beneficiary, actual or contingent, and hence, is not a party to any litigation concerning her estate.
- [16] Mr. Lariviere claims that when Ms. Lariviere died, a testamentary document that she signed on August 1, 2001 ("2001 Document") is the sole valid testamentary document in effect, despite its various defects (including the absence of signatures of witnesses to her execution). Mr. Lariviere is the primary beneficiary under the 2001 Document. As mentioned, he applied for and ultimately obtained the Lariviere Orders after satisfying the issuing court officer that the deficiencies in the 2001 Document could and should be cured pursuant to s. 58 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA].
- [17] On the other hand, Mr. Coad claims that Ms. Lariviere died intestate and that he is her sole beneficiary because he and the deceased lived in a marriage-like relationship at the time of her death. He says that none of the testamentary documents signed by Ms. Lariviere, including the 2001 Document, were in force at the time of her death.
- [18] The other parties to the litigation are Ms. Lariviere's mother, Olga Kathleen Phillips, who is represented by her litigation guardian, and Ms. Lariviere's sister, Dianne Kathleen Phillips. Their counsel briefly attended at the outset of trial and a short time later, asked to be

excused, advising that his clients did not wish to participate in the trial. Mr. Coad and Mr. Lariviere agreed. As a result, those parties did not participate in the trial. I was subsequently advised near the end of trial that Ms. Lariviere's mother, Olga Phillips, had recently passed away.

The Desk Order Applications Resulting in the Conflicting Orders

- [19] In April 2017, several months after Ms. Lariviere's death, Mr. Lariviere served notice upon Mr. Coad, and others, of his intention to apply for a grant of probate in respect of the 2001 Document. He served notice on Mr. Coad as required by the Supreme Court Civil Rules [Rules], which is done by serving a Form P1.
- [20] Mr. Lariviere subsequently commenced the formal application process with the Chilliwack registry on approximately June 13, 2017. Approval of his application was delayed pending proof that the deficiencies in the 2001 Document could be cured under s. 58 of WESA. In response to requests from registry staff for further information, Mr. Lariviere submitted additional documents over the course of that summer.
- [21] Mr. Coad filed a notice of objection to Mr. Lariviere's application for the grant of probate on May 1, 2017. However, he subsequently withdrew it by filing a withdrawal of his notice of dispute dated July 26, 2017. He filed with the registry on August 3, 2017.
- [22] With Mr. Coad's dispute notice having been withdrawn, and the determination reached by the issuing court officer that the defects in the 2001 Document were cured under s. 58 of WESA, the Lariviere Orders were issued in September 2017.
- [23] The Sept. 5 Lariviere Order provides:

THIS COURT ORDERS:

1. the document dated August 1st, 2001 signed by the Testatrix but unwitnessed, is a valid Last Will and Testament of Barbara Louise Lariviere pursuant to Supreme Court Civil Rule 25-3(22).
- [24] The Lariviere Sept. 14 Order was issued nine days later because Ms. Lariviere's father, who was named executor of her estate in the 2001 Document, predeceased his daughter. Mr. Lariviere now stood in the capacity of administrator of the estate of Ms. Lariviere.
- [25] However, by that time, the Chilliwack registry had issued the Coad Order in a separate file number. The genesis of that order began on March 22, 2017, before Mr. Lariviere commenced his application process with the Chilliwack registry. Mr. Coad's lawyer wrote a joint letter to Mr. Lariviere and the deceased's elderly mother, brother, and sister, advising that Mr. Coad intended to seek a grant of probate over a testamentary document that he claimed that Ms. Lariviere signed on July 1, 2005.

- [26] According to Mr. Coad, Ms. Lariviere signed the document on that date but did not date it. The only date reference on the document was "2005". It is in the same type font as the contents of the document. I refer to it as the "2005 Document". Mr. Coad testified that he later inserted "1st" after the word "day" and "July" after the word "of" on a photocopy of that document. I refer to the document with his insertion as the "July 1, 2005 Document". The contents of both documents are identical. When I discuss them collectively, I refer to them as the "July 2005 Documents".
- [27] Mr. Lariviere immediately objected to Mr. Coad's entitlement to the grant on the basis that the 2001 Document was the only valid will in force at the time Ms. Lariviere died. He delivered written notice of his objection to Mr. Coad's lawyer. Later, after Mr. Coad commenced his application, Mr. Lariviere filed a notice of dispute with the Chilliwack registry (which is a Form P29), disputing Mr. Coad's entitlement to the grant of probate.
- [28] Ultimately, Mr. Coad did not proceed with his intended application for a grant of probate of the July 1, 2005 Document in light of a document he received from Mr. Lariviere. The document is a photocopy of a revocation signed by Ms. Lariviere on April 20, 2006 ("April 2006 Revocation"), which states, on its face, that she revoked the 2005 Document and all wills and testamentary documents signed in 2006 purporting to be "the same".
- [29] Upon being advised of the April 2006 Revocation, Mr. Coad decided to apply for a grant of administration without will annexed on the basis that the April 2006 Revocation rendered the July 2005 Documents invalid, such that Ms. Lariviere died intestate.
- [30] Mr. Coad's lawyer wrote to the deceased's family members and Mr. Lariviere on May 16, 2017, advising that his client "will be applying" for a grant of administration without will annexed. Mr. Lariviere denies receiving the letter.
- [31] Mr. Coad's lawyer sent a further letter to Mr. Lariviere on June 6, 2017, asking him to withdraw the dispute notice he previously filed in respect of Mr. Coad's application premised on the 2005 Document in order to allow Mr. Coad to apply for a grant based on an intestacy:

If you are unwilling to remove your Notice of Dispute and allow us to make our application for administration without will annexed, Barbara's estate will be tied up for at least a year or more.

[Emphasis added]

- [32] Mr. Lariviere never agreed to withdraw his dispute notice.
- [33] According to Mr. Lariviere, he was waiting to be served with court documents on behalf of Mr. Coad, at which time he intended to file a notice of dispute, Form P29, with the Chilliwack registry.

- [34] Mr. Lariviere insists that he was never notified that Mr. Coad's application was in fact filed with the Chilliwack registry and only learned of it much later, after the Coad Order and the Lariviere Orders were granted. He maintains that if he had received notice through a Form P1 in the Rules, he would have immediately filed a Form P29. I am satisfied that he would have.
- [35] A grant of administration may be ordered if the application is unopposed: WESA, s. 129(3). Without a formal dispute notice filed with the registry, and acting on the basis that the application was unopposed, the grant of administration sought by Mr. Coad was granted, on a desk order basis, in file CW P17770 by the Chilliwack registry on August 9, 2017.
- [36] Mr. Lariviere disclosed the April 2006 Revocation document in his application materials filed with the Chilliwack registry. The registry accepted it as revoking the July 2005 Documents and as mentioned, after obtaining further information from Mr. Lariviere, agreed with him that the 2001 Document was Ms. Lariviere's last will and testament.

Post Desk Order Complications

- [37] Further complicating matters is the existence of another purported testamentary document which appears on its face to have been signed by Ms. Lariviere on May 18, 2006 ("May 2006 Document"), approximately one month after she signed the April 2006 Revocation.
- [38] In the May 2006 Document, Mr. Lariviere receives a greater inheritance in the sense that it is an unconditional half interest in the net sale proceeds of the Property.
- [39] Although he cannot recall it, Mr. Coad believes that he was present when Ms. Lariviere signed the May 2006 Document. However, he says he cannot locate the original, despite exhaustive search efforts.
- [40] Mr. Coad did not refer to the May 2006 Document in his affidavit or other supporting documents that he filed in support for his grant of administration without will annexed. At trial, he testified that he found the document some time after his appearance before Master Taylor in early November 2017, which was long after he had filed for and obtained the Coad Order. He produced a photocopy of the document at trial.
- [41] Mr. Coad did not notify the Chilliwack registry that he had found a copy of the document, explaining that he understood that when an original of a testamentary document cannot be located, the law presumes the testator/testatrix intended to revoke it through destruction. However, that did not stop him from filing a notice of application in February 2019 in one of the proceedings commenced by Mr. Lariviere, seeking, albeit in the alternative, to propound the May 2006 Document as the last will and testament of Ms. Lariviere.
- [42] Also complicating matters is the existence of various photocopies (but not originals) of the other purported draft unsigned testamentary documents prepared subsequent to the 2001 Document and prior to the July 2005 Documents that Mr. Coad testified he prepared for Ms. Lariviere at her request. Mr. Coad has not produced the originals. Mr. Lariviere's position is

that since only photocopies of the documents exist, none of them are capable of standing as valid testamentary documents unless Mr. Coad can establish they are true copies, which he says Mr. Coad has failed to do. Mr. Coad does not assert that any of them are valid testamentary documents.

The Various Proceedings Heard at Trial

- [43] Competing applications were filed in some of the proceedings. Those filed on behalf of Mr. Lariviere seek orders propounding the 2001 Document as the last will and testament of Ms. Lariviere and revoking the grant of administration to Mr. Coad. Those filed by Mr. Coad seek declarations that Ms. Lariviere died intestate while she and Mr. Coad lived in a marriage-like relationship and orders cancelling a caveat ("Caveat") and discharging a certificate of pending litigation ("CPL") filed by Mr. Lariviere against title to the Property.
- [44] Some confusion concerning the time sequence in which Mr. Lariviere filed documents with the Chilliwack registry resulted from an inexplicable, repetitive seal affixed by the registry on different dates by the Chilliwack registry.
- [45] Consequently, I think it will be useful to briefly describe the particulars of the various proceedings heard at trial. No significance should be attached to the order in which they are listed below.

Proceedings Commenced by Mr. Coad

- [46] Mr. Coad initiated an application in the Chilliwack registry, CW P17770, seeking a grant of administration without will annexed. His submission for estate grant was filed on June 19, 2017. The grant was issued on August 9, 2017.
- [47] Mr. Coad also issued a petition in the Vancouver registry, VA S1710059, on October 27, 2017, seeking an order discharging the Caveat and CPL.

Proceedings Commence by Mr. Lariviere

- [48] Mr. Lariviere initiated an application in the Chilliwack registry, CW P17711, seeking a grant of probate. His written submission for the estate grant was dated and filed on June 13, 2017. The registry file indicates that the submission was stamped a second time by the registry on August 16, 2017. No explanation is apparent from the registry file materials. The probate grant was issued to Mr. Lariviere on September 5, 2017, and the grant of administration with will annexed was issued on September 14, 2017 (with the registry seal affixed on September 18, 2017).
- [49] Mr. Lariviere also issued a petition in the Vancouver registry, VA S186225, on May 30, 2018, seeking to propound the 2001 Document as a will in solemn form.

- [50] On February 20, 2019, Mr. Coad filed an application in VA S186225, for an order propounding the validity of the May 2006 Document as Ms. Lariviere's last will and testament, as alternative relief.
- [51] Mr. Lariviere also issued a second petition in the Vancouver registry, VA S186247, on March 28, 2018, seeking an order revoking the grant of administration without will annexed issued to Mr. Coad.

The Estate's Primary Asset

- [52] The current market value of the Property, which is the estate's only asset of significance, is estimated to be between approximately \$1.6 and just under \$2 million. Mr. Lariviere and Mr. Coad each claim that some of Ms. Lariviere's paintings are valuable, but no evidence of value, either on an individual or aggregate basis, was adduced.
- [53] The Property is encumbered by two mortgages, with a total indebtedness of approximately \$1 million. Both mortgages are in default. The first mortgagee, Toronto Dominion Bank ("TD Bank"), has obtained an order nisi in the foreclosure proceedings. TD Bank is threatening to bring an application for an order for conduct of sale. Both Mr. Coad and Mr. Lariviere said that the interest and penalties accruing on both mortgages are approximately \$10,000 per month.
- [54] After Mr. Lariviere learned of the Coad Order, he immediately instructed his lawyer to file the Caveat and CPL. The Caveat was filed on October 13, 2017, just as Mr. Coad was seeking to transfer title to the Property into his own name. As a result, the transfer did not occur.
- [55] Mr. Coad currently resides on the top two of three floors of the Property. He rents out two rooms on the bottom floor. Even though he collects rent from tenants, Mr. Coad has not made any mortgage payments since Ms. Lariviere's death. Mr. Coad says that he spends all of the rental income to maintain the Property.
- [56] Mr. Coad blames Mr. Lariviere for impeding his ability to secure new financing to pay out the existing mortgages (with a better rate than currently charged under the second mortgage). The lender from whom Mr. Coad sought to obtain refinancing to pay out the existing mortgages, People's Trust, will not advance proceeds until title is transferred into Mr. Coad's name. Mr. Lariviere is not prepared to agree to allow title to be put in Mr. Coad's name, only to have it reversed if he is successful at trial. He points to the Lariviere Orders and says that he is the only person entitled to deal with the Property. He wants the issues in this case determined by the Court before any transfer of title occurs.
- [57] Mr. Lariviere also objects to Mr. Coad's failure to make the mortgage payments, especially as he is residing at the Property. Mr. Lariviere disputes the necessity of much of the work done on the Property, and complains that some of the expenditures (such as utilities, cable, and internet) wholly benefit Mr. Coad's occupation in a home located in the desirable Kitsilano neighborhood of Vancouver.

- [58] Mr. Lariviere also complains that it is "shameful" (his word) that Mr. Coad allowed the mortgages of Ms. Lariviere's only asset of real value to go into default, especially if he was Ms. Lariviere's common law spouse as he claims.
- [59] Even though Mr. Coad listed the Property for sale with a real estate agent, Mr. Lariviere asserts that Mr. Coad's efforts to sell the property have been de minimus, so as to allow Mr. Coad to live there for as long as possible while paying no rent. Mr. Lariviere also takes umbrage with Mr. Coad's efforts to block him from acting pursuant to the Lariviere Orders that on their face allow him to deal with the Property. Mr. Lariviere maintains that if he had, he would have been able to sell the Property much sooner, at a time when its market value was higher, and paid out the mortgages, all resulting in an increased benefit to the estate.

Who Stands to Inherit?

- [60] Who inherits and to what extent depends on the outcome of the issues in this case.

July 2005 Document

- [61] If the 2001 Document is determined to be the last will and testament, Mr. Lariviere will inherit the Property as he is the primary beneficiary named in the document. Smaller bequests of cash of \$20,000 will go to each of three individuals listed in this order: Ms. Lariviere's brother, John Barry Phillips; her friend, Denis Provencher; and Mr. Coad. Ms. Lariviere named her father, John Harold Phillips, as executor.

2005 Documents

- [62] Ms. Lariviere appointed Mr. Coad as executor in the July 2005 Documents. If they are determined to be the last will and testament, both Mr. Lariviere and Mr. Coad are significant beneficiaries, although Mr. Coad is directed to manage a trust fund established for Mr. Lariviere.
- [63] In respect of her personal possessions, Ms., Lariviere instructed Mr. Coad to allow, "in a fair manner", Mr. Lariviere, Mr. Coad, and her parents and siblings to claim "any of my personal possessions which they desire". Any unclaimed possessions shall be disposed of.
- [64] As for what Ms. Lariviere described as her "assets of significant financial worth", she instructed Mr. Coad to deal with them in the following manner:
- (b) Cash and Specific Gifts: My Estate Trustee shall pay cash gifts as follows:

All of my assets of significant financial worth will be liquidated, except my vehicle (Jeep Cherokee) which goes to Ken Lariviere. The proceeds of my assets will be used to pay off all of my outstanding taxes and other debts. Half of the remaining proceeds will go to Sasha Coad. The other half will go into a trust fund managed by Sasha Coad. From this fund, Ken Lariviere will receive a monthly amount of \$2000.00 until his stocks with Royal Indian Raj become publicly traded. At that point, the remainder of the funds in trust will go to Sasha Coad. If at some point it becomes clear that the stocks with the Royal Indian Raj will never become publicly traded, then

the remainder of the funds in the trust fund will go to Ken Lariviere.

[All emphasis in original]

[65] The July 2005 Documents revoke all previous wills:

I, Barbara Louise Lariviere, a resident of Vancouver, B.C., Canada, being of sound and disposing mind and memory, and not being actuated by any duress, menace, fraud or undue influence, do make and declare this to be my last Will, hereby expressly revoking all Wills And Codicils previously made by me.

May 2006 Document

[66] Mr. Coad and Mr. Lariviere are also significant beneficiaries if the May 2006 Document is determined to be the last will and testament. This document is similar but not identical to the July 2005 Documents. The instruction to her executor to allow distribution of Ms. Lariviere's personal possessions is unchanged. However, Ms. Lariviere's brother, John Phillips, is appointed executor in the place of Mr. Coad. Although the instruction to liquidate all "assets of significant financial worth" and to pay outstanding taxes and debts remains unchanged, Ms. Lariviere changed the distribution of the proceeds. There is no longer any reference to a trust fund. Instead, the remainder is divided equally between Mr. Coad and Mr. Lariviere:

(b) Cash and Specific Gifts: My Estate Trustee shall pay cash gifts as follows:

All of my assets of significant financial worth will be liquidated. The proceeds of my assets will be used to pay off all my outstanding taxes and other debts. Half of the remaining proceeds will go to Sasha Coad. The other half will go to Ken Lariviere.

[All emphasis in original]

[67] The clause that revokes all previous wills remains unchanged.

Intestacy

[68] If Ms. Lariviere died intestate, there are two possible outcomes. If she and Mr. Coad lived in a marriage-like relationship, Mr. Coad is sole beneficiary. If Ms. Lariviere and Mr. Coad did not live in a marriage-like relationship, the estate of Ms. Lariviere's mother, Olga Kathleen Phillips, who is represented by her litigation guardian, Dr. Diane Kathleen Phillips (who is Ms. Lariviere's sister), is the sole beneficiary.

Positions of the Parties

- [69] As noted at the outset of these reasons, Mr. Lariviere's position is that the 2001 Document is the only valid testamentary document in force, since it is the only original testamentary document produced. The other documents produced by Mr. Coad are photocopies for which Mr. Coad has failed, he maintains, to establish are true copies of the originals. Hence, the presumption that Ms. Lariviere intended to destroy the originals is engaged.
- [70] The presumption is well articulated in the case authorities: *Polischuk Estate v. Perry*, 2014 BCSC 1089 at para. 60; *Horton v. Bruce*, 2017 BCSC 712 at paras. 46-53; *Haider v. Kalugin*, 2008 BCSC 930 at paras. 9-11; *Lefebvre v. Major*, [1930] S.C.R. 252. In *Polischuk*, Mr. Justice Jenkins explained the presumption:
- [60] The law is clear: if a will is last known to be in the testator's possession and cannot be found, the law presumes the testator destroyed the will in order to revoke the will. However, the presumption can be rebutted by written or oral evidence.
- [71] Mr. Lariviere insists that the April 2006 Revocation (for which there is no original, only a photocopy) has no effect on the validity and enforceability of the 2001 Document. Accordingly, his position is that the Lariviere Orders are the only orders that have any force and effect and empower him to deal with the estate's assets as administrator.
- [72] Mr. Coad, on the other hand, maintains that the effect of the April 2006 Revocation, which was witnessed by Mr. Lariviere, is to revoke the 2001 Document and the July 2005 Documents. According to Mr. Coad, the presumption that Ms. Lariviere intended to destroy the May 2006 Document is also engaged. In this respect, his position is the same as Mr. Lariviere. At trial, neither propounded the May 2006 Document as the last will and testament of Ms. Lariviere. Hence, Mr. Coad's position is that she died intestate and since they were living in a marriage-like relationship at the time of Ms. Lariviere's death, he is the sole beneficiary.

Issues

- [73] Determination of many of the issues in this case involve questions of fact and law. Having briefly referred to some of the issues at the outset of these reasons, it is useful to describe them in greater detail before I discuss my further findings of fact and my determination.
- [74] The starting point is to determine whether a valid testamentary document was in effect when Ms. Lariviere passed away or whether she died intestate.
- [75] If a valid testamentary document was in effect, is it the 2001 Document (naming Mr. Lariviere as the primary beneficiary) or another document (i.e., the July 2005 Documents or the May 2006 Document)?
- [76] What is the effect, if any, of the April 2006 Revocation?

- [77] Even if the defects in the 2001 Document can be cured under WESA, is it revoked by either the July 2005 Documents or the May 2006 Document?
- [78] Has the presumption of revocation by Ms. Lariviere in the absence of true copies of original testamentary documents been rebutted?
- [79] If Ms. Lariviere died intestate, is Mr. Coad the sole beneficiary of the estate on the basis that he and the deceased lived in a marriage-like relationship?
- [80] Mr. Lariviere and Mr. Coad each claim that the other intentionally misled the court and failed to disclose all material facts when applying for their respective desk orders. Thus, another issue is whether either party failed to disclose material facts or misrepresent material facts in their respective desk order application materials for their respective grants. If so, what is the effect? Should any or all of the desk orders issued in favour of Mr. Coad and Mr. Lariviere be set aside on the basis of misrepresentation or non-disclosure?
- [81] Since this trial concerns proof of the 2001 Document as a will in solemn form, the Lariviere Orders are nonetheless susceptible to being set aside, regardless of the outcome of misrepresentation and non-disclosure allegations, if the defects in the 2001 Document are not capable of being cured by s. 58 of WESA.
- [82] The final issue concerns the identity of the possible administrator of the estate if I determine that Ms. Lariviere died intestate but reject Mr. Coad's claim that he and the deceased lived in a marriage-like relationship. Both Mr. Lariviere and Mr. Coad agreed that if the issue still arises after my reasons are released, then it should be addressed at that time by all interested parties, including Ms. Lariviere's family members.

Credibility

- [83] The credibility of both Mr. Coad and Mr. Lariviere and the reliability of their evidence loom large in respect of my determination of the issues in this case.
- [84] I will deal first with Mr. Lariviere, who was self-represented during the trial. Despite what I discerned to be an honest intention at trial to advance a case he genuinely believes to be meritorious, he presented as a challenging witness. His evidence lacked focus, and often jumped from one factual subject matter to another without any apparent rationale. He was unduly repetitive and often failed to differentiate between evidence and argument. On numerous occasions, he made statements in his evidence that were not supported by objective evidence but were borne out of his deep distrust of Mr. Coad. He believes that Mr. Coad ignored Ms. Lariviere's medical needs in her last days. He is angry that Mr. Coad failed to make the mortgage payments even though he collected rent revenue and lived at the Property rent-free.
- [85] Over the course of the several days that I heard his evidence, it was clear that his approach to his evidence, and indeed to the case, was shaped by his entrenched myopic view that since the Chilliwack registry had issued the Lariviere Orders, he was the only person to act

as administrator of the estate. His evidence often focused on his strongly held belief that every purported testamentary document created after 2001 that in some manner benefits Mr. Coad was the result of the mala fide influence or other dishonest conduct of Mr. Coad. He resents the suggestion that Mr. Coad and Ms. Lariviere lived in a marriage-like relationship at any time.

- [86] However, I did not find Mr. Lariviere to be deliberately evasive in testifying. I did not find that he intended to avoid answering questions in cross-examination. Nor did I find Mr. Lariviere intended to concoct or embellish events in order to mislead the court or to press an unfair advantage for a favourable outcome. I did not find his intention was to prevail at all costs. He was unaware of the law concerning republication of wills (so as to revive the 2001 Document if it was revoked by the July 2005 Documents or the May 2006 Document) until Mr. Coad's closing argument. Upon hearing the case authorities discussed in Mr. Coad's submissions, Mr. Lariviere clearly and candidly acknowledged that if it meant that Ms. Lariviere died intestate and he received nothing, then, "so be it", he said in words to that effect.
- [87] I have significant concerns regarding Mr. Lariviere's disclosure in his application for the Lariviere Orders, which I discuss in the next section. As for Mr. Coad's submission that Mr. Lariviere intentionally fabricated evidence to deceive the court at trial, I am satisfied that Mr. Lariviere's intent at trial was to try to demonstrate the manner in which Mr. Coad could have readily altered testamentary documents. While I found Mr. Lariviere to be persistently bombast in his accusations of dishonesty against Mr. Coad, I am satisfied that Mr. Lariviere did not intend to deceive the court.
- [88] Nonetheless, I am mindful of those aspects of his lack of disclosure and misrepresentation in his affidavit evidence filed in support of the Lariviere Orders. Accordingly, I have approached all of his evidence with caution and skepticism when assessing candour, truthfulness, and reliability.
- [89] Mr. Coad presented far better as a witness. He was articulate, more focused, and for a time, his evidence remained internally consistent. However, as he went on in his examination-in-chief, his evidence on certain key points - including the circumstances in which he found the May 2006 Document, his rationale for withdrawing his notice of dispute to Mr. Lariviere's grant application, his reason for asking Ms. Lariviere to leave his apartment as opposed to Mr. Lariviere, and financial aspects surrounding his relationship with Ms. Lariviere - raised significant questions and concerns. Initially, my concerns were with the reliability of his testimony, but as his evidence continued, my concerns expanded to include Mr. Coad's candour and credibility. Some of his evidence was oddly general or inexplicably vague in nature. I also found that as his cross-examination continued, and as he was confronted with point-blank questions on key topics, he would deflect with non-responsive answers as if reciting pre-formed statements by rote or evade answering certain pointed questions with argument.

- [90] I have concluded that Mr. Coad has acted through self-interest and not in the best interests of Ms. Lariviere's estate. A good example is the state of the mortgages registered against the Property. As previously mentioned, they are in default and have significantly eroded the net equity of the Property.
- [91] Mr. Coad refuses to accept any responsibility for the current state of the mortgages. He blames Mr. Lariviere. Mr. Coad says that when Mr. Lariviere registered the Caveat and CPL, Mr. Lariviere destroyed his opportunity to refinance the mortgages and save them from default. He says that Mr. Lariviere has also refused to cooperate in the listing and sale of the Property.
- [92] I agree with Mr. Coad, but only in small part, concerning listing and sale of the Property. In that respect, attempts should have been made by both Mr. Coad and Mr. Lariviere to cooperate to facilitate sale of the Property to maximize estate value. Given the obvious friction between them, however, it is unclear whether it would have come to fruition.
- [93] However, Mr. Lariviere had good reason to register the Caveat and CPL - to protect his interests under the Lariviere Orders, especially in light of the sudden and accidental manner in which Mr. Lariviere learned of the Coad Orders and of Mr. Coad's pending application to the Land Title Office to transfer title to himself.
- [94] Mr. Coad bears a significant share of the blame for the present state of the escalating mortgage debt for several reasons.
- [95] First, Mr. Coad made the unilateral decision to take the rent revenue and apply it to what he describes as necessary repairs to the house. In hearing his evidence, I was satisfied that a few of the repairs were necessary but that a number of them appeared to be highly questionable in terms of necessity. I only have his spreadsheet showing expenditures, with no detailed information or documents to corroborate them. Further, some of the rent revenue was spent on utility bills to heat the Property, as well as cable (all of which clearly benefited Mr. Coad's enjoyment of the Property). The rent revenue of \$800 per month received from one of the tenants exceeded the monthly payment amount of \$500 required for the first mortgage (placed with TD Bank). Thus, there was more than sufficient revenue from one tenant to keep the first mortgage in good standing, avoid default and its consequential effect on the second mortgage, and prevent the foreclosure proceedings commenced by the TD Bank in VA SH180184.
- [96] Second, Mr. Coad has lived in the main and upper floors of a home in a highly desirable area of Vancouver rent-free since Ms. Lariviere's death.
- [97] Third, Mr. Coad failed to take any steps to reach an accommodation with the second mortgagor for a short-term renewal in order to bring down the default interest rate.

- [98] Fourth, I accept Mr. Lariviere's submission that Mr. Coad has failed to provide a reasonable explanation for his delay in listing the Property for sale until August 2018. I would go so far as to express my view that in the absence of such evidence, Mr. Coad's failure to pay rent and his retention of the rental revenue raise significant concerns about his bona fides in dealing with the estate.
- [99] These concerns, which I formed during the course of Mr. Coad's evidence, add to the concerns I have regarding the non-disclosure issues arising from Mr. Coad's application to the Chilliwack registry.
- [100] I will conclude this section by noting that I have considered the evidence proffered by Mr. Coad and Mr. Lariviere concerning statements made to them by Ms. Lariviere concerning testamentary intention. The evidence was tendered for both its truth and Ms. Lariviere's state of mind. The threshold test of necessity required to engage the exception to the rule against hearsay evidence is met in this case: Horton at paras. 11-14; Harshenin v. Khadikin, 2015 BCSC 1213 at paras. 33-34. Reliability is a different matter, given my concerns over the credibility and reliability of the evidence of Mr. Coad and certain aspects of the evidence of Mr. Lariviere. I have assessed their evidence in context of the circumstances in which it was tendered and in context of my concerns surrounding their testimony. My findings are premised on my determination of only reliable evidence and only in respect of Ms. Lariviere's possible state of mind.

Non-disclosure issues

- [101] Notice and disclosure obligations are contained in WESA and the Rules.
- [102] WESA requires that notice of a proceeding seeking a grant of probate or administration must be given in accordance with the Rules:

Notice of proposed application for grant of probate or administration

121 (1) An applicant for a grant of probate or administration must give notice of the proposed application to the persons referred to in the Supreme Court Civil Rules.

- [103] Notice is delivered in Form P1 per Rule 25-2(3) of the Rules.
- [104] Although Mr. Coad notified Mr. Lariviere and the deceased's family members of his intention to apply for a grant of administration without will annexed, Mr. Coad did not deliver actual notice in Form P1 to Mr. Lariviere. Nor did he deliver any other form of notice to Mr. Lariviere that he had initiated his application with the court.
- [105] Mr. Coad says that his lawyer sent the letter dated May 16, 2017 addressed to members of Ms. Lariviere's family and Mr. Lariviere advising that the proceeding was going to be commenced. As mentioned, Mr. Lariviere denies receiving the letter.

[106] From observing Mr. Lariviere answer repeated questions put to him in cross-examination about his discovery evidence and his state of knowledge of Mr. Coad's application, I find that:

- a) Mr. Lariviere was aware that Mr. Coad intended to apply for a grant of administration premised on an intestacy;
- b) Mr. Lariviere was waiting for delivery of notice that the proceeding had been commenced;
- c) once Mr. Lariviere had notice in hand, he intended to file a notice of dispute (Form P29) without delay; and
- d) Mr. Lariviere was not aware that Mr. Coad had applied for the Coad Order until October 2017, when he learned that Mr. Coad was attempting to transfer title to the Property into his name.

[107] I accept Mr. Lariviere's evidence in this respect and reject Mr. Coad's submission that Mr. Lariviere confirmed receipt of the letter in his examination for discovery evidence. From observing Mr. Lariviere answer repeated questions put to him in cross-examination about his discovery evidence and his state of knowledge of Mr. Coad's application, I find that:

- (a) Mr. Lariviere was aware that Mr. Coad intended to apply for a grant of administration premised on an intestacy;
- (b) Mr. Lariviere was waiting for delivery of notice that the proceeding had been or was about to be commenced; and
- (c) once Mr. Lariviere had notice in hand, he intended to file a notice of dispute (Form P29) without delay.

[108] The purpose of notice is to give recipients the opportunity to respond and possibly to object. WESA provides that the registrar of the Court may issue a grant if the application is unopposed and so long as it conforms with the Rules:

Grant of probate or administration

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- (3) The registrar of the court may grant probate of a will or administration of an estate for general, special or limited purposes in the circumstances described in subsections (1) and (2) if the application for the grant of probate or administration is
 - (a) unopposed, and
 - (b) made in accordance with the applicable Supreme Court Civil Rules.

- [109] Mr. Coad deposed in his supporting affidavit (Form P9) for his application for the Coad Order that he had delivered notice on all requisite parties. Mr. Coad did not mention Mr. Lariviere or that his Form P1 had not been delivered to Mr. Lariviere. Instead, he advised the registry in his Form P2 (Submission for Estate Grant) that delivery had been made to "all persons to whom", under Rule 25-2, his documents "were required to be delivered".
- [110] Mr. Coad also did not advise of his knowledge of Mr. Lariviere's opposition to Mr. Coad's application.
- [111] Mr. Coad says that he was not required to serve notice on Mr. Lariviere because Mr. Lariviere does not fall within the class of persons stipulated to receive notice in Rule 25-2(2). I disagree for the following reasons.
- [112] Mr. Coad's submission is premised on an unduly restrictive application of Rule 25-2(2). The Rule provides that notice must be delivered in certain circumstances, including on a person who is an intestate successor: Rule 25-2(2)(b). Mr. Coad contends that since Mr. Lariviere is not an intestate successor under Division 1 of Part 3 of WESA, there was no need to serve him with a P1, and that no other circumstances are engaged requiring notice.
- [113] Rule 25-2(2)(b) provides that if a deceased did not leave a will, then notice must be delivered to a group of persons that on its face does not include Mr. Lariviere. The sub-Rule provides:
- Persons to whom documents must be delivered
- (2) The documents referred to in subrule (1) must be delivered to the following persons:
- (b) if the deceased did not leave a will,
- (i) each person who, under Division 1 of Part 3 of the Wills, Estates and Succession Act, is an intestate successor of the deceased or would have been an intestate successor if the estate exceeded the preferential share of the spouse as described in section 21 (2) to (5) of that Act, and
- (ii) each creditor of the deceased whose claim exceeds \$10 000 and who is not referred to in subparagraph (i) of this paragraph;
- [Emphasis added]
- [114] However, and quite apart from his knowledge of Mr. Lariviere's ongoing intention to propound the 2001 Document, Mr. Coad should have delivered notice via Form P1 to Mr. Lariviere on the basis that Ms. Lariviere may have died with a will.
- [115] Rule 25-2(2)(a) provides that if the deceased left a will, notice must be delivered to the list of persons whom I am satisfied include Mr. Lariviere. I have excerpted the specific sub-Rule below:

Persons to whom documents must be delivered

- (2) The documents referred to in subrule (1) must be delivered to the following persons:
- (a) if the deceased left a will, each of the following who is not a person by whom or on whose behalf the documents referred to in subrule (1) are to be delivered (a person by whom or on whose behalf the documents referred to in subrule (1) are to be delivered is, in this subrule, called an "intended applicant"):
- (i) each person
- (A) who is named in the will as executor or alternate executor,
- (B) whose right to make an application for an estate grant in relation to the deceased is prior to or equal to the intended applicant's right to make that application, and
- (C) who is alive at the time of the deceased's death;
- (ii) each beneficiary under the will who is not referred to in subparagraph (i) of this paragraph;

[Emphasis added]

- [116] Mr. Coad did not know whether Mr. Lariviere's position or his would prevail. If the former, then Ms. Lariviere died with a will and Mr. Lariviere was the sole beneficiary. Mr. Coad also knew that Ms. Lariviere had executed the July 2005 Documents and was surprised when he received a photocopy of the April 2006 Revocation. He did not know the ultimate effect of that document. If it was of no effect, then it could mean that the July 2005 Documents comprise Ms. Lariviere's last will and testament, and Mr. Lariviere was again a beneficiary.
- [117] Mr. Coad was also well aware that Mr. Lariviere intended to oppose the application for the grant of administration and that Mr. Lariviere had applied for probate. Mr. Coad's lawyer had previously written to Mr. Lariviere advising him that the 2001 Document was not a valid testamentary document and asking him to withdraw his objection to Mr. Coad's application for a grant of administration regarding the July 2005 Documents. Mr. Lariviere never did. In these circumstances, not only should service been effected on Mr. Lariviere, the Chilliwack registry should have been advised that Mr. Lariviere had not withdrawn his objection.
- [118] In these circumstances, knowing that Mr. Lariviere had initiated his application with the registry and then later having withdrawn his dispute of it, Mr. Coad effectively denied Mr. Lariviere the opportunity to file a notice of objection (Form P29), which would have prevented the Coad Order being issued: WESA, s. 129.
- [119] As a result, Mr. Coad's application materials represented to the registry that all interested persons had been served and that his application was unopposed.
- [120] In addition, if Mr. Coad found the May 2006 Document in November 2017, he should have advised the issuing officer or registrar at the Chilliwack registry of its existence and the circumstances in which he found out due to its significant impact on the Coad Order. By that time, the registry would have been aware of Mr. Lariviere's position that he was never served with a Form P1 and that he opposed Mr. Coad's right to a grant without will annexed.

Disclosure of the May 2006 Document in these circumstances should have led to the Coad Order being set aside.

- [121] I reject Mr. Coad's excuse for his failure to do so because he thought the presumption of revocation was engaged.
- [122] In his notice of application filed in VA S186255 on February 20, 2019, Mr. Coad sought to propound the May 2006 Document, as an alternative position, as the last will and testament of Ms. Lariviere. In the Factual Basis section of his notice of application, Part 2, Mr. Coad was definitive in his statement that the May 2006 Document was "last known to be in the Deceased's possession". If his evidence at trial is true, then he could not know that. His trial evidence was that he was surprised when he found the document, he could not recall being present when the document was signed, but believed he was present.
- [123] In these circumstances, the Coad Order must be set aside.
- [124] I must also observe that once Mr. Coad obtained his grant, he proceeded to move to transfer title to the Property into his own name. I reject his claim that he was entitled to do so as administrator and because the trust company from whom he was seeking mortgage financing to pay out the existing mortgages required it. Mr. Coad knew that Mr. Lariviere was applying for a grant of probate and that he had withdrawn his notice of dispute to Mr. Lariviere's application. He knew that Mr. Lariviere opposed his application for a grant. Mr. Coad acted precipitously in these circumstances, and did so without giving any notice to Mr. Lariviere.
- [125] Mr. Coad complains that Mr. Lariviere failed to disclose material facts in his application materials. I agree in part.
- [126] Mr. Lariviere properly disclosed of the existence of the July 2005 Documents and the April 2006 Revocation. He also set out his position that as a result of the April 2006 Revocation, the 2001 Document, for which he tendered the original, was the last will and testament of Ms. Lariviere.
- [127] I disagree with Mr. Coad's submission that Mr. Lariviere was incorrect in his later affidavit sworn August 15, 2017, when he said he was the only applicant applying for administration. By that time, Mr. Coad had withdrawn his dispute notice and Mr. Lariviere had not been served with the P1. He also believed it to be true when he deposed in that affidavit as well as a prior affidavit sworn June 12, 2017 that he was "not aware of any grant of probate or administration, or equivalent, having been issued", in relation to Ms. Lariviere.
- [128] However, in his evidence at trial, Mr. Lariviere conceded that his affidavit evidence concerning his efforts to search for testamentary documents was incorrect. Mr. Lariviere deposed as true to the following standard wording printed in Form P3:

6. I am satisfied that a diligent search for a testamentary document of the deceased has been made in each place that could reasonably be considered to be a place where a testamentary document may be found, including without limitation, in all places where the deceased usually kept his or her documents and I have found one testamentary document dated 2005, signed by the deceased, that was revoked by the deceased in a signed document dated April 20, 2006 --

[129] Mr. Lariviere admitted that he did not search Ms. Lariviere's home for other testamentary documents, even though he knew that she was, as both he and Mr. Coad agreed, a hoarder of documents, and kept volumes of documents in various places throughout her home.

[130] He was also incorrect in his affidavit filed with the Chilliwack registry that the 2001 Document met formal requirements under WESA even though it had not been witnessed with two signatures. His explanation that he thought it could be cured by WESA does not provide an excuse. However, the document's non-compliance with the statute is readily apparent on the face of the document.

[131] Mr. Lariviere is deserving of significant criticism when he deposed in his June 12, 2017 affidavit that he was not aware of any "issues" with the 2001 Document because he was clearly aware of Mr. Coad's objection.

[132] Mr. Lariviere's evidence that he may not have read the document in full before he deposed to its truth is no excuse. Given his misstatement of certain material facts, the Lariviere Orders must also be set aside.

Valid Testamentary Document or Intestacy?

[133] In this section, I set out my findings of the circumstances in which the various purported testamentary documents were created, whether they were sufficient to constitute testamentary documents, and if they are, whether they were revoked.

The 2001 Document

[134] The backdrop to the 2001 Document is the relationship between Mr. and Ms. Lariviere. They met while both were attending a philosophy course at a university in Quebec. They married in Montreal in 1976. Fortunately, and in spite of their divorce approximately 10 years later and Ms. Lariviere's albeit brief marriage to another person, their relationship remained close, to the end of Ms. Lariviere's life.

[135] For example, after their divorce, Mr. Lariviere regularly brought food and medications to Ms. Lariviere, took her to medical appointments, helped her look after her financial affairs (including placement of mortgage financing for the Property), and assisted her with a claim to ICBC following a motor vehicle accident on approximately April 30, 2006 ("Motor Vehicle Accident").

- [136] Of even greater significance, after Ms. Lariviere was released from the hospital in May 2006 following the Motor Vehicle Accident, Mr. Lariviere lived with his ex-wife for over a year after Mr. Coad asked her to leave his apartment (where she, Mr. Coad, and Mr. Lariviere had all been residing). Mr. Lariviere moved in with Ms. Lariviere and paid for their accommodation at the Ivanhoe Hotel (a circumstance I will discuss in the section concerning Mr. Coad's claim to have been in a marriage-like relationship at the time of Ms. Lariviere's death). Later, when she moved back into the Property after her main floor tenant departed, Mr. Lariviere continued to visit her and from time to time stayed overnight with her, sometimes up to several days at a time.
- [137] One afternoon in 2001, Ms. Lariviere telephoned Mr. Lariviere to ask him to meet for dinner. He wondered, in a joking manner, whether she wanted him to buy her dinner (which he usually did when they met for dinner). She told him, "no", that she had something to give him. During dinner, she handed him the original of the 2001 Document, telling him as she did, "[you] are the most important person in [my] life."
- [138] On its face, the document is signed by Ms. Lariviere. It is not witnessed. Mr. Lariviere maintains that it is her signature on the bottom of the page. Mr. Coad agrees.
- [139] Mr. Coad was unaware of the 2001 Will until Mr. Lariviere sent him a copy in the spring of 2017.
- [140] Based on the evidence adduced at trial, and having the original in hand, I have determined that the 2001 Document accurately reflects Ms. Lariviere's testamentary intent at the time of its execution and is capable of being cured under WESA: Hadley Estate (Re), 2017 BCCA 311 at para. 40; Estate of Young, 2015 BCSC 182 at paras. 17-19; Bennett et al. v. Toronto General Trusts Corporation, [1958] S.C.R. 392 at 397.
- [141] As I explain in the next section, however, it was revoked by the 2005 Document.

July 2005 Documents and the April 2006 Revocation

- [142] Mr. Lariviere's direct participation with Ms. Lariviere in the April 2006 Revocation establishes that the 2005 Document was a valid reflection of her testamentary intention when she signed it. Therefore, I find that the 2005 Document is capable of being cured under WESA, and revoked the 2001 Document. However, the 2005 Document was revoked by the April 2006 Revocation.
- [143] In or about April 2006, Ms. Lariviere confirmed to Mr. Lariviere that she wished to revoke the 2005 Document as it no longer represented her testamentary intention.
- [144] The April 2006 Revocation is affixed to the bottom of the 2005 Document and states:
- I, Barbara Louise Lariviere Hereby cancel and render null and void my will contained herein (above) and any other will(s) signed by me in the year 2006 that are the same.

[Emphasis in original]

[145] A handwritten line is drawn through the body of the 2005 Document.

[146] Ms. Lariviere's signature on the April 2006 Revocation was witnessed by Mr. Lariviere. Mr. Lariviere testified that he was present when the deceased signed the April 2006 Revocation. He does not have the original of the document, only a photocopy.

[147] I agree with Mr. Coad's submission that there would be no reason for Ms. Lariviere seek to revoke the 2005 Document if she thought it was invalid.

[148] The July 1, 2005 Document is a copy of the 2005 Document, and is no longer a valid testamentary document in light of the revocation contained in the April 2006 Document.

May 2006 Document

[149] The essence of Mr. Coad's evidence is that he had no recollection of the May 2006 Document when he applied for the Coad Order and even after he found it, he has no recollection of being present when Ms. Lariviere signed it.

[150] In his affidavit that he filed in support of his application for the Coad Order, he deposed to the truth of the following statement:

5 I am satisfied that a diligent search for a testamentary document of the deceased has been made in each place that could reasonably be considered to be a place where a testamentary document may be found, including, without limitation, in all places where the deceased usually kept his or her documents and .

[151] In his evidence at trial, he claimed to have conducted an exhaustive search throughout the whole of the Property including the many boxes and places where Ms. Lariviere did or might have kept documents.

[152] According to Mr. Coad, he only discovered the May 2006 Document by accident, soon after the court appearance before Master Taylor, when he was sitting at his desk at the Property. Mr. Coad explained that when he pulled open one of the drawers in a cabinet where he keeps important documents, he observed some documents stuck in behind the drawer. He pulled them out and found the May 2006 Document. Mr. Coad was surprised to find it.

[153] He testified:

A The first that I found this document after Barbara passed away was in 2017. I think it was around November. I have a cabinet where I keep most of my important documents, it's got three drawers. The middle drawer I pulled out all the way as far as it comes out, and then I noticed that there were some papers sticking out in the back. So I pulled out all of the drawers and I found that there was a number of papers and documents that had slid down the back, and this was one of those and that was the first that I realized I had a copy of one of the documents in 2006 that Barbara had actually signed.

Before this, I didn't even know she had signed any of those documents.

[Emphasis added]

[154] He also testified that he cannot recall being present when Ms. Lariviere signed the document and can only go so far as to say that he believes that he was.

[155] I found Mr. Coad's evidence to be at odds with the approach he took in his evidence to refute the validity of the 2001 Document and to cast doubt on the April 2006 Revocation. In attempting to establish that the 2001 Document was revoked by the July 2005 Documents and the May 2006 Document, he testified in his examination-in-chief that he was an active participant in the preparation of both:

Q In your recollection, did Barbara ever tell you about this document?

A No, Barbara never mentioned either of these documents, even in 2005 and 2006 when I was helping her put together a will. I had many conversations with Barbara about wills and about her wishes for her estate. She never once mentioned anything about either of these documents.

[Emphasis added]

[156] He reiterated that testimony the following day, elaborating on the extent of his recollection when he said in chief:

A I've worked with Barbara on important documents countless times. I helped put together wills for her in 2005 and 2006. I helped put together wills for her in 2005 and 2006, and Barbara never did anything casually or spontaneously if it - - if it involved finances or her estate or her house. When I helped her put together the wills in 2005 and 2006, it took her forever to make decisions on every little detail. She just agonized over every issue.

Also, Barbara always talked to me about her important issues, especially when it came to money, finances or her house, and she never mentioned anything about this document to me, even when we were living together, even in 2005 and 2006 when I helped her put together wills. I had many discussions with Barbara over the years about wills and about what she wanted to do with her estate. She never once ever mentioned this document [2001 Document].

This [May 2006 Document] is the same document as the 2005 will except in early 2006, Barbara said to me that she wanted to make some changes to the 2005 will. The only issue was she was uncertain as to who she wanted to name as the executor. It was - - she made it clear she wasn't going to consider Ken, but there were a number of people that she was considering, and she couldn't make up her mind.

Yes. All of the wills that were - - the various will versions in 2005 and 2006, I produced all of those on my computer. I did all the edits. I was assisting Barbara in putting these together.

[Emphasis added]

[157] I have significant reservations concerning both the credibility and reliability of Mr. Coad's evidence regarding his lack of recollection about the existence of the May 2006 Document and the circumstances in which he says he found it. Given the nature of his evidence, where he went to considerable lengths to describe his close relationship with Ms. Lariviere, their discussions of her testamentary intent, and his intimate involvement in preparing draft wills for her review, his lack of recollection of the May 2006 Document is highly suspect.

[158] It was evident to me that Mr. Coad resents the notion that Mr. Lariviere should receive any part of Ms. Lariviere's estate outside of the limited trust established for him in the July 2005 Documents.

[159] Mr. Coad's unhappiness with the nature of the bequest in the 2001 Document and being treated in the same manner as Ms. Lariviere's friend and brother is also manifest in his evidence:

A Another thing is in this document [2001 Document], she's leaving the same relatively small amount to me, \$20,000, as she's leaving to Dennis Provencher [phonetic], who was just a friend of hers around that period of time, and Barry, her brother, who she wasn't particularly close to. and she's leaving the same amount to the person who she's living with who's the most dominant person in her life by far, as she's leaving to these other people? That makes no sense at all to me.

[160] I have also reached that view in spite of Mr. Coad's evidence that when he and Ms. Lariviere discussed purported changes in her testamentary intention in 2016, so that the Property would be left to Mr. Coad with bequests to her nieces and nephews, and with nothing to Mr. Lariviere, Mr. Coad urged her to leave something to Mr. Lariviere.

[161] His evidence, which I have excerpted below, lacks credibility:

A In the summer - - she passed away in 2016 in December, and around the spring or summer of 2016, she said to me on a number of occasions that she didn't want to leave anything from her estate to Ken. She said she wanted to leave the house to me .

Then, after that, at one point she started saying she wanted to leave something to her five nieces and nephews.

and to be honest, I actually - - I was thinking I should help her to put together a new will. At the time what I had thought is I could just print out a copy of one of the old ones that I had on my computer and then just show it to her and ask her what she wanted to do in the way of changes. Unfortunately, my printer wasn't working. It took me a few months before I got it fixed, and then by that time, it was - - there were just so many things going on with Barbara's health, it was like a day-to-day struggle and unfortunately we just never really dealt with it.

[Emphasis added]

[162] I found his evidence concerning this discussion with Ms. Lariviere in 2016 to be disingenuous, self-serving, and at odds with his other testimony concerning the close attention he paid to drafting wills for Ms. Lariviere. Knowing of her ill-health, which had

worsened quite considerably in 2016, and now being told by Ms. Lariviere that she wanted to leave the whole of the Property to him and nothing to Mr. Lariviere, I am satisfied that Mr. Coad would have acted on it promptly and prepared a new testamentary document for her signature.

- [163] In addition, I am not satisfied that Mr. Coad made all necessary efforts to locate all testamentary documents as he deposed that he did in his affidavit filed to obtain the Coad Order and as he said in his trial evidence. If he carried out the exhaustive search for testamentary documents that he said he did, it defies probability that he did not pull open the drawers to the desk in the house that he shared with Ms. Lariviere to look for testamentary documents. If he had, the documents he said he found sticking up from the back of the middle drawer in November 2017 should have been in view.
- [164] Mr. Lariviere says that Mr. Coad has not established that it is Ms. Lariviere's signature on the document, even though Mr. Coad has tendered an expert opinion from a handwriting expert confirming, following his examination of photocopies of the 2001 Document and the 2005 Documents, that the signatures are made by the same person. Mr. Lariviere contends that since the expert has only examined photocopies of documents, his opinion should be viewed with caution.
- [165] The expert's inquiry drew upon sufficiently reliable sources and I am satisfied, on the balance of probabilities, that it is Ms. Lariviere's signature on the document. However, as I go on to explain, I have determined that the presumption of revocation is engaged such that the May 2006 Document is not Ms. Lariviere's last will and testament.
- [166] In *Polischuk* at para. 61, Jenkins J. cited a useful, in-depth discussion of the case authorities concerning the presumption of revocation and the nature of the evidence required to rebut it as, from the decision of Mr. Justice Wilson in *Haider v. Kalugin*, 2008 BCSC 930. I, in turn, have excerpted it below:
- [61] In *Haider v. Kalugin*, 2008 BCSC 930 at paras. 9-13 Wilson J. helpfully summarized the law applicable to this issue:
8. The applicable law is not in dispute. When an original will has been lost, mislaid or destroyed or is not available, an application may be made for an order admitting the will to probate by a copy, a completed draft, a reconstruction or evidence of its content: *British Columbia Probate and Estate Administration Manual*, 2nd edition, 2007, s.5.61.
 9. If a Will last known to be in custody of testator is not found at his death, the presumption is that the testator destroyed it with the intention of revoking it ("animo revocandi"). However, that presumption may be rebutted by evidence, written or oral, of the facts. The strength of the presumption will depend upon the character of the custody which the testator had over the Will: *Sugden v. Lord St. Leonards* (1876), 1 P.D. 154 (Eng. C.A.).
 10. In *Sigurdson v. Sigurdson*, [1935] 2 D.L.R. 445 (Man. C.A.), at paragraph 49, Davis J. said:

- [49] It needs very clear and convincing evidence to establish what is alleged to be a lost will. . . .The person propounding such a will has a burden of proof that persists throughout the whole trial to satisfy the court at its conclusion that the will is in fact lost and was not destroyed by the testator with the intention of putting an end to it. Each case of course turns upon its own facts but the principles respecting the well-settled presumption against the Will must be applied to the facts.
11. In *Welch v. Phillips* (1836), 1 Moo. P.C. 299 (England P.C.), at 302, referred to in *Bohersky, Re*, [1954] A.J. No. 12 (Alta. Dist. Ct.), at paragraph 6, the court said:
- [6] If a will traced to the possession of the deceased, and last seen there, is not forthcoming on his death, it is presumed to have been destroyed by the deceased himself; and that presumption must have effect, unless there is good and sufficient reason to repel it. It is a presumption founded on good sense, for it is highly reasonable to suppose that an instrument of so much importance would be carefully preserved, by a person of ordinary caution, in some place of safety and would not be either lost or stolen, and if, on the death of a maker, is not found in his usual repositories or else where he resides, it is in a high degree of probable that the deceased himself has purposely destroyed it. But this presumption, like all others of fact, may be rebutted by others, which raises a higher degree of probability to the contrary.
12. As stated by MacKeigan, C.J.N.S. in *MacBurnie v. Patriquin*, [1975] N.S.J. No. 447 (N.S. C.A.), at paragraph 10:
- [10] I should emphasize that the burden on the person who is trying to rebut the presumption is a very heavy burden.
13. Some of the factors considered in determining whether the presumption has been overcome are:
- whether the terms of the Will itself were reasonable: *Lefebvre v. Major*, [1930] S.C.R. 252 (S.C.C.) [hereinafter *Pigeon*];
 - whether the testator continued to have good relationships with the beneficiaries in the copy of the Will up to the date of death: *Pigeon*, supra;
 - where personal effects of the deceased were destroyed prior to the search for the Will being carried out: *Pigeon*, supra;
 - the nature and character of the deceased in taking care of personal effects: *Pigeon*, supra
 - whether there were any dispositions of property that support or contradict the terms of the copy sought to be probated: *MacBurnie v. Patriquin*, supra; *Andersson v. Khan Estate*, [2006] B.C.J. No. 716 (B.C. S.C.);

- statements made by the testator which confirm or contradict the terms of distribution set out in the will: Bobersky Estate, supra, Andersson, supra, Holst Estate v. Holst, [2001] B.C.J. No. 1560 (B.C. S.C.), Green Estate, Re, [2001] A.J. No. 1253 (Alta. Q.B.);
 - whether the testator was of the character to store valuable papers, and whether the testator had a safe place to store the papers: Bobersky Estate, supra, Brimicombe v. Brimicombe Estate, [2000] N.S.J. No. 157 (N.S. C.A.);
 - whether there is evidence that the testator understood the consequences of not having a Will, and the effects of intestacy: Bobersky Estate, supra;
 - whether the testator made statements to the effect that he had a will: Bobersky Estate, supra
- [Emphasis added]

[167] I have considered and rejected a potential finding that the May 2006 Document was lost as opposed to destroyed.

[168] Ms. Lariviere was a hoarder of documents. She had to be continually persuaded to rid herself of them and would routinely retrieve documents and personal items that she had previously been persuaded to dispose of. She was also much attuned to the disposition of her estate. I am satisfied that this is a document she would have retained if it reflected her testamentary intent.

[169] In addition, and as I explain in the next section, close to or at the time she signed the May 2006 Document, Ms. Lariviere was in the hospital recovering from the injuries she sustained in the Motor Vehicle Accident. Upon her release from the hospital, she did not return to Mr. Coad's apartment at his request. Mr. Coad testified that he was tired of what he described as the constant friction between Mr. Lariviere and Ms. Lariviere. Instead of asking Mr. Lariviere to leave, he turned Ms. Lariviere out. Mr. Coad did not allow her to return. In these circumstances, Ms. Lariviere's subsequent revocation of a testamentary document which leaves half of her estate to Mr. Coad is consistent with the presumption.

[170] I considered whether Ms. Lariviere's express intent in the April 2006 Revocation to revoke any testamentary documents signed in 2006

"that are the same" encompasses the May 2006 Document. I have determined that although closely similar, the testamentary dispositions in the July 2005 Documents and the May 2006 Document are not "the same". The bequest to Mr. Lariviere of a limited trust became an unqualified disposition of half of the net sale proceeds from the Property.

[171] While it is difficult to conceive that, despite Ms. Lariviere's focus on her estate over the years, she did not sign a testamentary document between May 2006 and her death, there is no evidence from which any findings may be inferred.

[172] There is also no presumption against intestacy when judges of this Court sit in probate as opposed to a court of construction: *McEwen Estate (Re)* (1967), 66 D.L.R. (2d) 87 (B.C.C.A.) at 92.

[173] In considering the factors discussed in *Polischuk and Horton*, I conclude that the presumption of revocation has not been rebutted and I would have reached that conclusion even if either Mr. Coad and Mr. Lariviere (or both) had sought to propound the May 2006 Document.

Was the 2001 Document Revived?

[174] For the 2001 Document to now constitute the last will and testament of Ms. Lariviere despite her revocation when she signed the 2005 Document, she must have demonstrated her intent to revive it through some conduct such as document(s) or words: *MacDonell v. Purcell* (1894), 23 S.C.R. 101 at 130-131; *Roelofs Estate (Re)*, 2004 MBQB 280 at para. 17. Mr. Lariviere provided numerous reasons in submissions that attempted to explain that Ms. Lariviere intended to revive the 2001 Document once she signed the April 2006 Revocation and that she was not aware of the law concerning revival. However, no evidence was adduced from which I may make those findings. Once Mr. Lariviere became aware of the issue during final argument, he candidly conceded that he had no such evidence to adduce.

[175] Consequently, I have determined that Ms. Lariviere died intestate.

Determination

[176] The orders issued in CW P17770 and CW P17711 are set aside, and I issue an order to that effect.

[177] I also issue a declaration that Ms. Lariviere died intestate.

Marriage-Like Relationship

[178] I must now determine whether Mr. Coad has established that he lived in a marriage-like relationship with Ms. Lariviere so as to be entitled to the whole of her estate. I will begin with a review of the instructing statutory and case authorities.

Law

[179] Where a person dies without a will leaving a spouse but no descendant, the intestate estate must be distributed to the spouse: *WESA*, s. 20; *Robledano v. Queano*, 2019 BCCA 150.

[180] "Spouse" is defined in s. 2 of *WESA* to include a person who was alive immediately before the deceased's death and was living in a marriage-like relationship with the deceased for at least two years:

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.

[181] WESA, s. 2(2) states that two persons cease being spouses of each other for the purpose of the statute in certain circumstances. In the case of a marriage-like relationship, persons cease being spouses if one or both persons terminate the relationship:

- (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, to arise, or
 - (b) in the case of a marriage-like relationship, one or both persons terminate the relationship.

[182] However, s. 2(2.1) provides that spouses are not considered to have separated if, within one year after the separation, they begin to live together again, the primary purpose is to reconcile, and they continue to live together for one or more periods totalling at least 90 days. Section 2(2.1) is not engaged on the facts of this case because if Ms. Lariviere and Mr. Coad were in a marriage-like relationship (which I address in the next section), I have found that their relationship terminated in 2006 and they did not resume cohabitation for the primary purpose of reconciling.

When does a Marriage-like Relationship Arise?

[183] Recently, in Robledano, the Court of Appeal considered the circumstances in which a marriage-like relationship arises and terminates under WESA.

[184] For the former, Mr. Justice Groberman, writing for the court, said at para. 38 that s. 2(1) is "on its face, quite straightforward. Married people become spouses when they get married. People who are not married to each other become spouses when they have lived together in a marriage-like relationship for at least two years." When considering the temporal aspect provided for in the statute, he rejected, at para. 39, the appellant's contention that an unmarried person can only qualify as a spouse of a deceased person under WESA if they were living in a marriage-like relationship for at least two years immediately preceding the deceased's death. Groberman J.A. construed WESA to mean that a marriage-like relationship could be established where the putative spouse and the deceased lived together for at least two years prior to the deceased's death and the relationship had not been terminated.

Indicia of a Marriage-like Relationship

- [185] The Court of Appeal's decision in *Austin v. Goerz*, 2007 BCCA 586 provides a useful starting point as it provides an in-depth discussion of the meaning of "spouse" (albeit in the predecessor to WESA, the Estate Administration Act, R.S.B.C. 1996, c. 122).
- [186] The Court's discussion of the indicia of a marriage-like relationship is useful nonetheless as it has been applied by the court in a subsequent decision considering WESA: *Weber v. Leclerc*, 2015 BCCA 492. The following excerpt is taken from *Austin*:
- [58] It is understandable that the presence or absence of any particular factor cannot be determinative of whether a relationship is marriage-like. This is because equally there is no checklist of characteristics that will invariably be found in all marriages. In this regard I respectfully agree with the following from the judgment of Ryan-Froslic J. in *Yakiwchuk v. Oaks*, 2003 SKQB 124:
- [10] Spousal relationships are many and varied. Individuals in spousal relationships, whether they are married or not, structure their relationships differently. In some relationships there is a complete blending of finances and property - in others, spouses keep their property and finances totally separate and in still others one spouse may totally control those aspects of the relationship with the other spouse having little or no knowledge or input. For some couples, sexual relations are very important - for others, that aspect may take a back seat to companionship. Some spouses do not share the same bed. There may be a variety of reasons for this such as health or personal choice. Some people are affectionate and demonstrative. They show their feelings for their "spouse" by holding hands, touching and kissing in public. Other individuals are not demonstrative and do not engage in public displays of affection. Some "spouses" do everything together - others do nothing together. Some "spouses" vacation together and some spend their holidays apart. Some "spouses" have children - others do not. It is this variation in the way human beings structure their relationships that make the determination of when a "spousal relationship" exists difficult to determine. With married couples, the relationship is easy to establish. The marriage ceremony is a public declaration of their commitment and intent. Relationships outside marriage are much more difficult to ascertain. Rarely is there any type of "public" declaration of intent. Often people begin cohabiting with little forethought or planning. Their motivation is often nothing more than wanting to "be together". Some individuals have chosen to enter relationships outside marriage because they did not want the legal obligations imposed by that status. Some individuals have simply given no thought as to how their relationship would operate. Often the date when the cohabitation actually began is blurred because people "ease into" situations, spending more and more time together. Agreements between people verifying when their relationship began and how it will operate often do not exist.
- [187] In *Weber*, the Court of Appeal reiterated that economic dependence is not an essential requirement when determining the issue under WESA, stating that social norms concerning marriage have changed over the years:

- [7] Social norms surrounding marriage have changed considerably over the years, and it should not be surprising that, along with those changes, evaluations of what relationships are 'marriage-like' have also evolved.
- [12] Today, though economic dependence or interdependence exists in many marriages, it would be difficult to characterize such dependency as being an essential characteristic of marriage.
- [188] The inquiry takes into account both objective and subjective criteria, which were reviewed in *McFarlane v. Sawatzky*, 2014 BCSC 1449 at paras. 20-24:
- [20] The Respondents point to a number of features of the relationship which they say are inconsistent with the plaintiff and Mr. Goodburn being regarded as common-law spouses. In addition to some of the facts stated above, they point to the fact that neither made the other beneficiary of any life insurance or health care plan; neither held themselves out to any government or administrative body as common-law spouses; and they acquired no property together.
- [21] The question of whether a couple is to be regarded as having had a marriage-like relationship can be answered having regard to objective and subjective criteria. The nature of the objective test and its limitations were described by Justice Cory in *M. v. H.*, [1999] 2 S.C.R. 3, at para. 59:

Molodowich v. Penttinen (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), sets out the generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, it was recognized that these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal. In order to come within the definition, neither opposite-sex couples nor same-sex couples are required to fit precisely the traditional marital model to demonstrate that the relationship is "conjugal".

- [22] In my view, there were sufficient objective indicators in this case for the couple to be regarded as spouses. They shared the plaintiff's home and they shared her bed. The plaintiff provided care and support to Mr. Goodburn to the degree and in the manner of someone who was more than simply a friend. In their interactions with members of her family, and in their other social interactions, they would have appeared to function as a unit.
- [23] The subjective test, based on the court's assessment of the parties' degree of mutual commitment, is as stated by Justice Lambert in *Gostlin v. Kergin* (1986), [1986] 5 W.W.R. 1, 3 B.C.L.R. (2d) 264 (C.A.). Referencing the support obligations set out in s. 57 of the Family Relations Act, R.S.B.C. 1979, c. 121, he stated:

So I would ask whether the unmarried couple's relationship was like the relationship of the married couple in that the unmarried couple have shown that they have voluntarily embraced the permanent support obligations of s. 57. If each partner had been asked, at any time during the relevant period of more than two years, whether, if their partner were to be suddenly disable for life, would they consider themselves committed to life-long financial and moral support of that

partner, and the answer of both of them would have been "Yes", then they are living together as husband and wife. If the answer would have been "No", then they may be living together, but not as husband and wife.

[24] As with any civil case, this aspect of the plaintiff's claim need only be proven on a balance of probabilities .

[189] In writing for the court in Weber, Groberman J.A. said, at para. 22, that the question of whether a cohabiting couple are in a marriage-like relationship is a question of mixed fact and law requiring a broad approach. In Austin, he wrote, at para. 62, that the chambers judge "properly took a holistic approach" to the issue. In Austin, he said, at para. 58, that the presence of absence of any particular factor is not determinative, and that "there is no checklist of characteristics that will invariably be found in all marriages."

[190] In Robledano, Groberman J.A. referred to emotional dependence and mutual commitment as factors:

[60] This was a case in which the respondent clearly met the criteria for becoming a spouse under s. 2(1)(b) of the WESA. It was a case where there was some equivocal evidence that might have led a judge to an inference that the marriage-like relationship was terminated in 2010, but the judge did not draw that inference. It was also a case where the post-2010 evidence showed continued emotional interdependence, mutual commitment, and attachment in the years that followed.

[Emphasis added]

[191] From these decisions, the factors that may be considered include:

- (a) The parties' intentions, particularly their expectation of whether the relationship would be lengthy and of indeterminate duration: Weber, para. 23.
- (b) Objective evidence of the parties' lifestyle and interactions supporting a finding that their interactions "closely resembled those typical of married couples": Weber, paras. 24, 29.
- (c) Whether the parties treat themselves as a family unit: Weber, para. 29.
- (d) Whether cohabitation was coupled with romantic and sexual relations: Weber, para. 29; Austin, para. 58.
- (e) Evidence of emotional interdependence, mutual commitment, and attachment: Robledano, para. 60.
- (f) Whether the parties co-mingled assets and shared expenses: Austin, para. 62.
- (g) Whether the parties treated themselves as single or cohabiting for income tax purposes: Weber, para. 30.

When is a Marriage-like Relationship Terminated?

- [192] In *Robledano*, Groberman J.A. also considered when a marriage-like relationship is terminated. He rejected the appellant's submission that the question to be asked under s. 2(2)(b) is whether the parties separated prior to the deceased's passing. In doing so, he contrasted the treatment of married persons to those in a marriage-like relationship. The "anomalies" in treatment, he concluded, were deliberate and the result of the legislative history. While not suggesting that separation is an irrelevant factor, it is not the only factor. Instead, the legislature intended a judge to consider the express and implied intentions of the parties when determining whether either or both has "terminated the relationship". It is, he wrote at para. 55, "a judgment call" for the trial judge, involving "the application of a broad legal standard to the factual circumstances of an individual case":
- [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.

Analysis and Determination

- [193] When Ms. Lariviere rented out the Property in 2001, she moved into Mr. Coad's apartment on West 5th Street, Vancouver, B.C. She asked Mr. Lariviere to move in as well. The three of them lived in Mr. Coad's one bedroom apartment between approximately 2002 and 2006.
- [194] At the end of April and for part of May 2006, and in or around the date shown on the May 2006 Document, Ms. Lariviere was in the hospital recovering from injuries she sustained in the Motor Vehicle Accident. While there, Mr. Coad advised her not to return to his apartment. His explanation at trial was that he was tired of what he described as the constant fighting between Ms. Lariviere and Mr. Lariviere. However, he did not ask Mr. Lariviere to leave, explaining that he thought with Ms. Lariviere gone, Mr. Lariviere would eventually leave as well.
- [195] In his testimony, Mr. Coad acknowledged that he knew she was suffering from anxiety at the time, which was so bad that she would not leave the hospital to go to a women's shelter he said he had arranged for her to stay. On his own evidence, Mr. Coad said he knew that she ended up in "this fellow's place in East Vancouver" for "a week or two" with drinking issues. He claimed that he tried to get her into "detox" and was visiting her every day. He said he brought her back to his apartment on May 18, 2006 (coincidentally, the day the May 2006 Document is signed) and within a day or two took her to a facility he called "Vancouver Detox". Mr. Coad did not let Ms. Lariviere return to live at his apartment. Moreover, he did not ensure that she was admitted to the detox facility. He testified that when the facility

called the police to complain that she was "camped out in front" of it (his words), it was Mr. Lariviere who looked after Ms. Lariviere's living arrangements. Mr. Lariviere, he said, was able to get her a temporary bed in a women's shelter and then moved in with her into the Ivanhoe Hotel.

- [196] Mr. Coad acknowledged in his submissions that the Ivanhoe Hotel is located in "a really seedy place on Main Street on the edge of the Downtown Eastside". He took no steps to get her better accommodation. Instead, he testified that he took food and other items to her while she and Mr. Lariviere lived there together.
- [197] Ms. Lariviere and Mr. Lariviere lived there for 13 months, at which time Ms. Lariviere moved into other temporary accommodation and then into the Property after her main floor tenant left. Mr. Coad remained living at his apartment.
- [198] I find that if Mr. Coad and Ms. Lariviere were in a marriage-like relationship at any point up to April 2006, Mr. Coad terminated it when he asked her not to return to his apartment.
- [199] Mr. Coad testified that he allowed Mr. Lariviere to assist Ms. Lariviere in presenting the Motor Vehicle Accident claim to ICBC and representing her at trial. His view of the matter, that he retained the right to give permission to Mr. Lariviere, is an example of his distorted view of the nature of his ongoing relationship with Ms. Lariviere.
- [200] Mr. Coad moved into the Property in 2013, and for a time, maintained his own quarters on the lower floor. At some point, he moved upstairs and shared the same bed and bedroom with Ms. Lariviere. He testified that he and Ms. Lariviere did not share conjugal relations after she moved out of his apartment in 2006.
- [201] There was no credible or reliable evidence from which I can make any findings regarding Ms. Lariviere's intent in allowing Mr. Coad to move into the Property in 2013.
- [202] After their divorce, Ms. Lariviere continued to enjoy a relationship, albeit not a marriage-like relationship, with Mr. Lariviere. Mr. Lariviere continued to visit Ms. Lariviere up until her death and continued, from time to time, to stay overnight (sometimes several nights at a time). When he stayed over, he shared her bed. When Mr. Lariviere visited Ms. Lariviere, Mr. Coad would leave the Property and stay elsewhere.
- [203] I do not accept Mr. Coad's evidence that he continued to have a loving, marriage-like relationship with Ms. Lariviere after 2006, when he told her not to return to his apartment. Any such finding defies all credibility in circumstances where he chose to have her leave as opposed to Mr. Lariviere. I also do not accept Mr. Coad's evidence that he continued in his relationship with Ms. Lariviere as he visited her and brought her things while she lived in the Ivanhoe Hotel.

- [204] When Mr. Coad moved into the Property in 2013, he and Mr. Lariviere attended to Ms. Lariviere's increasingly significant medical needs (she suffered from deteriorating chronic pulmonary disease and associated mobility problems), took her to medical appointments, and brought her food and other items. Mr. Lariviere, more so than Mr. Coad, gave Ms. Lariviere advice concerning her financial affairs. Both encountered points of significant friction with Ms. Lariviere from time to time.
- [205] However, I reject Mr. Coad's submission that he has established that their marriage-like relationship existed in 2013 when he moved into the Property and remained intact until her death. He has not established that the factors discussed in the case law (as summarized in para. 191 of these reasons) are engaged.
- [206] Quite apart from the concerns I have expressed about Mr. Coad's credibility, his own viva voce evidence concerning their purported joint financial dealings was vague and generalized. His own deliberate and specific reference to sharing a B.C. auto club membership demonstrated that he was alive to sources of information that could be sought out to corroborate his claim.
- [207] I do not accept that the evidence of the tenants, one former and one who continues to live on the lower floor of the Property, corroborates the claim.
- [208] For the former tenant, the most that he could do, after some prompting, as he appeared to have lost sight of what he was supposed to say, was shrug his shoulders and say that he knew Mr. Coad and Ms. Lariviere as "Sasha and Barb" and that they lived upstairs.
- [209] The current tenant, who lives on the bottom floor of the Property and was paid by Mr. Coad to carry out work at the Property, offered more information in his evidence in an attempt to corroborate that Mr. Coad and Ms. Lariviere were, as he put it, "a typical married couple". Specifically, he testified that they cooked together, that Mr. Coad went out to buy the groceries due to Ms. Lariviere's mobility issues, and witnessed "hugs and a peck on the cheek". At the same time, he conceded that Ms. Lariviere did not speak to him about her relationship with Mr. Coad. He said the only time that he can recall Ms. Lariviere speaking to him about her relationship with Mr. Coad was after she and Mr. Coad argued. In cross-examination, he admitted that Mr. Coad and Ms. Lariviere never told him that they were a common law couple. In all, I found that his evidence concerning the nature of the relationship between Ms. Lariviere and Mr. Coad was speculative.
- [210] I am satisfied that neither witness knew of the nature of the relationship between Mr. Coad and Ms. Lariviere. Neither were prepared to confirm that Mr. Coad and Ms. Lariviere told them they were living in a common law relationship or words akin to it.
- [211] Given my overall concerns over the credibility of Mr. Coad's evidence, I am not content to rely on his uncorroborated viva voce testimony, including his evidence that he provided financial support for Ms. Lariviere from 2013 until her death. He did not provide any documentary evidence let alone any other corroborating evidence to that effect.

- [212] What I am able to find is that Ms. Lariviere collected income from renting out her Property while she lived at Mr. Coad's apartment.
- [213] Mr. Coad did not tender any documents, including financial documents (such as bank account and credit card statements or utility accounts) to corroborate his claim that he lived in a marriage-like relationship with Ms. Lariviere in 2013, and that it carried on until her death. Instead, he sought to establish his claim through his viva voce evidence and that of the two tenants.
- [214] Accordingly, Mr. Coad has not established that he was living in a marriage-like relationship with Ms. Lariviere at the time of her death or at any time after 2006.

Summary

- [215] Barbara Lariviere died intestate.
- [216] When she died, she was not living in a marriage-like relationship with Sasha Coad.
- [217] The orders appointing Mr. Coad and Mr. Lariviere as administrators are set aside.
- [218] An administrator of Ms. Lariviere's estate should be appointed as soon as possible. The executor or administrator of Olga Phillips' estate should arrange to appear before me to appoint the administrator.

"Walker J."

The Honourable Mr. Justice Walker

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