

CANADA / JUDGMENT

Lister v. Bal

2025 BCSC 1261

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Supreme Court of British Columbia

DECIDED

7 July 2025

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2025 BCSC 1261 Lister v. Bal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lister v. Bal,

2025 BCSC 1261

Date: 20250707

Docket: E63811

Registry: New Westminster

Between:

Laura Lee Lister

Claimant

And

Mandip Singh Bal

Respondent

Before: The Honourable Justice Layton

Reasons for Judgment

Counsel for the Claimant:

F.N. Qamar

T.D. Affoo

Counsel for the Respondent:

G.K. Tiwana

B.S. Sidhu

Place and Dates of Trial:

New Westminster, B.C.

October 28-31, 2024

November 1, 4-8, 2024

May 26-30, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 7, 2025

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Introduction

- [1] Laura Lee Lister and Mandip Singh Bal started dating in late 2016. She was 45 years old, and he was 38 years of age. Although they never married or had children, Ms. Lister and Mr. Bal lived together for not insubstantial periods of time over the next five years, until mid-November 2021, when she left their shared home for good.
- [2] About a week later, on November 24, 2021, Ms. Lister filed a notice of family claim against Mr. Bal pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA] seeking spousal support and an equal division of family property and debt.

- [3] In his response to family claim filed February 2, 2022, Mr. Bal disputes Ms. Lister's claim on the basis that they were never spouses.
- [4] On December 1, 2022, an order was made that a trial be held on the issue of whether the parties were spouses within the meaning of the FLA. That trial took place before me over a period of three weeks in late 2024 and May 2025.
- [5] Given these circumstances, to be spouses under the FLA Ms. Lister and Mr. Bal would have had to live in a marriage-like relationship for a continuous period of at least two years.
- [6] Ms. Lister and Mr. Bal agree on when they started dating and when their relationship finally ended. But they disagree as to whether the nearly five-year period in between included a continuous two-year stretch during which they lived in a marriage-like relationship.
- [7] Ms. Lister contends that she and Mr. Bal were in an uninterrupted marriage-like relationship from January 2017 until mid-November 2021. She acknowledges they lived apart for two months in late 2017, but says this was only because he was in an addiction-treatment residence, and they remained in a fully committed relationship throughout. Ms. Lister also accepts that she and Mr. Bal lived apart for roughly six months starting in early June 2019. However, she argues that during this latter gap they worked together to improve their relationship, which remained marriage-like in nature.
- [8] Alternatively, Ms. Lister submits that, even if there was no marriage-like relationship during this six-month gap in 2019, by that point she and Mr. Bal had already been in a marriage-like relationship for over two years, with the result that s. 83(1) of the FLA treats them as not having separated until November 13, 2021 for the purposes of determining family property and debt.
- [9] As for Mr. Bal, he contends that his marriage-like relationship with Ms. Lister did not start until February 2020, and had therefore lasted for under 22 months when they separated in mid-November 2021.
- [10] Alternatively, Mr. Bal argues that the marriage-like relationship began in December 2017 at the earliest, and then ended in June 2019 for at least six months. On this view, when the June 2019 separation occurred the marriage-like relationship had only existed for 19 months, meaning that the parties were never "spouses" within the meaning of the FLA so as to engage s. 83(1). And even if it resumed at the end of December 2019, and not in February 2020, he and Ms. Lister had still not completed two years of a continuous marriage-like relationship by the time they separated in mid-November 2021.
- [11] In determining whether Ms. Lister and Mr. Bal were spouses under the FLA, I will begin by setting out the legal principles governing when a marriage-like relationship exists. I will then comment on the credibility and reliability of the witnesses who testified before me. After that, I will examine the history of the parties' relationship and decide when and for how long it was marriage-like in nature.

Relevant Legal Principles

- [12] Section 3(1)(b) of the FLA defines spouses to include unmarried persons living in a marriage-like relationship for a continuous period of at least two years.
- [13] Ms. Lister and Mr. Bal agree that this is the only definition of spouses in the FLA that potentially applies to them. If it is met, their spousal relationship will have begun at the start of that continuous period: s. 3(3), FLA.
- [14] The onus of establishing that parties were spouses within the meaning of s. 3(1)(b) rests with the party making that assertion: *Skawski v. Peters*, 2023 BCSC 2244 at para. 25.
- [15] Spousal relationships are varied, and usually reflect the needs and desires of the couple. Whether persons are spouses by virtue of a marriage-like relationship is thus determined on a holistic view of the relationship, considering and weighing all relevant factors, and not by rotely deciding whether specific elements exist. No one factor or element, whether present or absent, will be determinative. See *Skawski* at para. 43; *McDowell v. Andrews*, 2018 BCSC 2216 at para. 22; *Coad v. Lariviere*, 2022 BCCA 222 at para. 127.
- [16] The parties' intentions may be important in determining whether and for how long they lived in a marriage-like relationship. A key is whether they intended their relationship to be similar to marriage, and particularly whether they saw it as being of indeterminate, lengthy duration. But the parties' professed intentions must be tested against objective evidence of lifestyle and interactions, which provides direct guidance as to the circumstances of the relationship and thus may better reflect its true nature. See *Weber v. Leclerc*, 2015 BCCA 492 at paras. 17, 23-24; *Jones v. Davidson*, 2022 BCCA 31 at para. 24; *Dey v. Blackett*, 2018 BCSC 244 at paras. 195, 235.
- [17] While a checklist approach is to be avoided, objective evidence of lifestyle and interactions often includes whether and how the parties lived together, sexual and personal behaviour, domestic services, social activities, economic support, children, and societal perception of them as a couple: *Dey* at para. 193; *McDowell* at paras. 23-24; *Bellerose v. Reda*, 2023 BCSC 748 at para. 48.
- [18] Consistent with the principles guiding the s. 3(1)(b) analysis, cohabitation is not conclusive in determining when a marriage-like relationship began. It is frequently afforded significant weight, but people may live together interdependently and yet fail to establish the kind of psychological and emotional union associated with marriage. See *M.P. v. P.P.*, 2024 BCSC 2138 at para. 34; *C.F.M. v. G.L.M.*, 2018 BCSC 815 at para. 11.
- [19] By the same token, the "lived with" requirement in s. 3(1)(b) is approached flexibly and may be satisfied even where the parties maintained separate residences as opposed to living under the same roof: *Matossian Estate v. Clark Estate*, 2024 BCSC 2214 at para. 65; *Blake v. Marining*, 2022 BCSC 1529 at para. 64.

- [20] A relationship that exhibits dysfunction or conflict may still be marriage-like: *L.T.F. v. R.B.F.*, 2023 BCSC 834 at para. 97. Whether a couple achieves some objective level of success in their relationship is therefore not the benchmark against which the standard in s. 3(1)(b) is assessed.
- [21] A break in the continuity of a marriage-like relationship requires a separation: *L.T.F.* at paras. 80-84. Determining whether a separation has occurred involves considering a range of factors, including whether the characteristics of marriage continued following a physical separation: *Gupta v. Kumar*, 2023 BCCA 106 at para. 13; *O.M. v. V.G.*, 2025 BCSC 209 at para. 250; *C.L.D. v. J.J.P.D.*, 2024 BCSC 1123 at para. 47.
- [22] Section 3(4) of the FLA provides that, as evidence of separation, the court may consider a communication by one spouse to the other of an intention to separate permanently, and action by a spouse that demonstrates the spouse's intention to separate permanently.
- [23] The wording in s. 3(4) reflects that it only takes one spouse to end a marriage-like relationship by declaration or conduct. Mutuality of intention is not necessary, nor is an unequivocal communication to the other spouse of an intention to separate. Generally, if the parties have physically separated and at least one of them has evinced a settled intention of living separate and apart, and taken steps consistent with that intention, separation under the FLA will have occurred. See *Gupta* at para. 13; *Nearing v. Sauer*, 2015 BCSC 58 at paras. 54-56; *H.S.S. v. S.H.D.*, 2016 BCSC 1300 at paras. 40-44, rev'd on other grounds, 2018 BCCA 199, leave to appeal to SCC ref'd, 2019 CanLII 7962 (S.C.C.); *O.M.* at paras. 245-248; *C.L.D.* at para. 45.
- [24] Some degree of physical separation after an argument does not, without more, automatically bring a relationship to an end. A break of this sort may constitute a mere "cooling off" period falling short of demonstrating a settled intention to terminate the relationship. In such cases, the marriage-like relationship will have continued despite the temporary physical separation. Determining whether the separation is only physical in nature, as opposed to being a separation at law, involves viewing the evidence holistically in light of the particular relationship in issue. See *L.T.F.* at paras. 82-88; *M.P.* at para. 54.
- [25] There is, however, a nuance to the application of s. 3(4) of the FLA, because it applies to "spouses" within the meaning of s. 3(1), which - absent marriage or a shared child - requires a continuous marriage-like relationship for at least two years. If this two-year threshold has not been met, the party opposing a finding that the couple are spouses does not then bear the onus to demonstrate communications or actions establishing an intention to separate permanently. That said, as already noted the factors relating to an intention to separate permanently can also be indicative of whether the parties did or did not intend to continue in a marriage-like relationship. See *Parke v. Veale*, 2015 BCSC 2554 at paras. 76-80.

- [26] Under s. 83(1) of the FLA, for the purposes of property division spouses are not considered to have separated if, within one year after separation, they begin to live together again and the primary purpose for doing so is to reconcile, and they continue to live together for one or more periods totaling at least 90 days.
- [27] But s. 83 only applies to "spouses" as defined in s. 3 of the FLA. Accordingly, in the circumstances of this case the separation/reconciliation mechanism created and allowed by s. 83 will only apply if the parties already lived in a marriage-like relationship for a continuous period of at least two years. See *R.A.K. v. V.J.S.*, 2025 BCSC 578 at paras. 19-25.

Witness Credibility and Reliability

- [28] Credibility refers to a witness's sincerity or honesty, essentially assessing whether they are trying to be accurate. Reliability relates to whether a witness's evidence might be inaccurate for a reason other than deceitfulness, such as deficits in powers of observation, memory or narrative skills.
- [29] A multitude of factors may bear on whether a witness is credible and reliable. Many of those factors are referenced in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296, and I have taken them into account in making my findings of fact in this case.
- [30] The main witnesses at trial were the parties themselves, and a large body of documentary evidence was entered in connection with their testimony.
- [31] Having assessed the testimony of Ms. Lister and Mr. Bal in the context of all the evidence, I have credibility and reliability concerns regarding each of them. For the most part, I attribute these concerns to the passage of time and the conscious or unconscious bias that can arise where a witness testifies about contested matters in which they have a stake. See *L.B. v. D.F.*, 2024 BCSC 2027 at paras. 13-14.
- [32] I will provide a few examples from the testimony of each party, starting with Ms. Lister. Parenthetically, while some of these examples involve matters that ended up being peripheral or immaterial to my determination of the disputed issues, at the time they testified the parties undoubtedly viewed them as important.
- [33] In chief and initially in cross-examination, Ms. Lister insisted that she and Mr. Bal lived together for all of 2018 and that she never lived at her mother's residence. But in cross-examination, Ms. Lister was taken to her examination for discovery, where she stated that, although she and Mr. Bal did not break up, on one occasion in 2018 she stayed with her mother for a week following an argument. Confronted with this prior inconsistent statement, Ms. Lister explained that she had forgotten about this incident and admitted that her previous trial testimony was to at least some extent inaccurate.
- [34] Another instance where I find Ms. Lister's evidence to be unreliable relates to her testimony that she provided the necessary paperwork to the mortgage broker for a house that became the family home in late 2020. The mortgage broker, Rupinder Tatla, testified that she

received this paperwork from Mr. Bal, not Ms. Lister, and that her only contact with Ms. Lister was being briefly introduced over the phone during a conversation Ms. Tatla had with Mr. Bal. Ms. Tatla had no prior relationship or affiliation with Mr. Bal, and I accept her evidence on this point as accurate.

- [35] A third illustration as to why I have concerns about Ms. Lister's credibility or reliability arises from her steadfast refusal in cross-examination to admit that a particular document could be the residential lease for the house she and Mr. Bal moved into in October 2018, on the basis that the house's address was listed as the address for service instead of the address for the leased property. Clearly, the two addresses had been mistakenly transposed in the document, and Ms. Lister's refusal to accept that this is probably what happened was unreasonable.
- [36] A fourth example bearing on Ms. Lister's credibility or reliability arises from her initial claim in cross-examination that she filed her taxes as a single person in 2017 and 2018 because she did not know the law in this area. Ms. Lister was then taken to an affidavit where she said she filed her taxes as a single person because Mr. Bal was concerned that filing as common law spouses might negatively impact him in relation to his child support payments.
- [37] A final example of testimony that has led me to exercise caution regarding Ms. Lister's credibility or reliability relates to her evidence concerning the period during which she lived separately from Mr. Bal following their June 2019 argument. I will address this testimony in much more detail below, but as a general proposition it was materially contradicted by independent evidence and struck me as unlikely to be true in all the circumstances.
- [38] I will now provide a few examples from the testimony of Mr. Bal that illustrate why I also have concerns about his credibility and reliability.
- [39] First, there are inconsistencies between Mr. Bal's testimony and his pleadings, such as the statement in his response to notice of family claim that he first met Ms. Lister in 2017, which is contrary to his testimony, and hers, that they met in late 2016.
- [40] Second, in his affidavit made September 27, 2022, Mr. Bal states that he rented an apartment in Burnaby from February until September 2017, and that he rented the coach house in Surrey beginning in November 2017, whereas at trial Mr. Bal agreed, as did Ms. Lister, that they lived in two different apartments in Burnaby, and that the coach house was not rented until December 2017. Mr. Bal made the same erroneous statement about when the coach house was rented in a "cheat sheet" he used at his examination for discovery.
- [41] Third, Mr. Bal testified that he picked "Fresh Start" as his first choice for the name of the company incorporated in April 2018 simply because he liked the name, and that Ms. Lister played no role in selecting it and was merely following his instructions. I find this explanation unlikely, and thus unconvincing, given that Fresh Start was the name of Ms. Lister's already existing cleaning business, and that she was the one who filed the document.

- [42] Fourth, in his affidavit made September 27, 2022, Mr. Bal states that in 2020 he was not looking to be tied down to another marriage, especially given his history with Ms. Lister, and that he was not ready for that level of commitment in the relationship. However, in his trial testimony Mr. Bal stated that on the resumption of their cohabitation in 2020 he was fully committed to a long-term relationship of indefinite duration with Ms. Lister, and proposed marriage to her on Valentine's Day.
- [43] Finally, and as was the case with Ms. Lister, aspects of Mr. Bal's testimony about the period during which they lived apart beginning in June 2019 were problematic, for example inconsistencies between his evidence in chief and cross-examination, as well as between his trial testimony and his examination for discovery. I will review these problems in detail later in my reasons.
- [44] I will now comment in a mostly general way on the credibility and reliability of the other witnesses who testified at trial.
- [45] Ms. Lister called as witnesses several members of her family: her mother Dolores Lister, her brother Curtis Lister, Curtis's wife Anna Zlaman, and her children Desiree Lister and Andre Perez. Ms. Lister also called as witnesses several friends or acquaintances that she knew through work: Harry Caya, Vanessa Burrell, Jackie Ainembabazi, Heather Brailean and Andrew Edwards.
- [46] Most of the family members Ms. Lister called as witnesses did not provide much salient evidence regarding the key time periods in dispute at trial, namely, from January to November 2017, and June to December 2019. Regarding these two stretches of time, Ms. Lister's closing submissions contained little or no mention of the evidence of Curtis Lister, Ms. Zlaman or Andre Perez. The exceptions were Ms. Lister's mother Dolores and her daughter Desiree, but as explained later in these reasons neither had much material first-hand knowledge in this regard.
- [47] As for Ms. Burrell, Mr. Edwards and Mr. Caya, they were barely mentioned, if at all, in Ms. Lister's closing submissions. And the evidence of Ms. Brailean and Ms. Ainembabazi was only referenced regarding the incorporation and reorganization of On Command in 2018, which as elaborated on below is of limited relevance to the issue of whether the parties were in a marriage-like relationship.
- [48] Mr. Bal's other witnesses included friends or acquaintances he met through work: Tanya Verhage, Kirsty Donaldson and Darcy MacDonald. In addition, Mr. Bal called as witnesses his former wife Jennifer Kiefer, and the already-mentioned mortgage broker Rupinder Tatla.
- [49] I will address Mr. MacDonald's credibility and reliability more extensively later in these reasons. But, in my view, Mr. MacDonald, Ms. Donaldson and Ms. Verhage were credible witnesses whose testimony was generally reliable.

- [50] Mr. MacDonald and Ms. Donaldson had been friends of both parties. I detected no animus towards Ms. Lister from either of them, and Mr. MacDonald spoke warmly about Ms. Lister in his testimony. As for Ms. Donaldson, a central component of her evidence was confirmed by text messages she exchanged with Ms. Lister in 2019. Ms. Verhage was a workmate of the parties at Winmar Property Restoration ("Winmar") and had barely seen Mr. Bal since the summer of 2019.
- [51] I appreciate that the evidence of Mr. MacDonald, Ms. Donaldson and Ms. Verhage is impacted to varying extents by the passage of time. But none of them professed to have a suspiciously precise memory of events or dates. In fact, Mr. MacDonald was candid about not recalling certain details. I therefore do not view the material parts of their evidence as being undermined by faulty recall.
- [52] As both parties appear to view Ms. Kiefer's evidence as potentially quite important, I will comment in more detail on her credibility and reliability.
- [53] Although Ms. Kiefer co-parents with Mr. Bal, in my view she did not demonstrate bias in his favour. For example, she testified that his assaulting her led to the breakup of their marriage, and she recounted his angry response upon hearing that she was in touch with Ms. Lister following the November 2021 breakup and assault charges.
- [54] I have considered all of Ms. Lister's submissions as to why I should find Ms. Kiefer to be neither credible nor reliable. However, I do not find these submissions persuasive. I will provide four examples, without purporting to address every submission made in this respect.
- [55] First, I do not agree with Ms. Lister that Ms. Kiefer's evidence was skewed out of fear of Mr. Bal. Ms. Kiefer came across as a confident individual who is aware of the legal tools she can bring to bear to protect her and her children's interests if necessary, and I reject that her testimony is tainted by undue influence directly or indirectly brought to bear by Mr. Bal.
- [56] Second, I do not accept that Ms. Kiefer's testimony appeared rehearsed. I listened to her testimony carefully and detected nothing amiss in this regard.
- [57] Third, I reject Ms. Lister's submission that Ms. Kiefer's testimony about how well she knew Ms. Lister in 2018, or how often Ms. Lister was involved in child exchanges that year, negatively impacts her credibility or reliability on the material issues. In chief, Ms. Kiefer stated that Ms. Lister did not pick the kids up on her own so much in 2018, while in essence admitting that her memory was unclear given the passage of time. And her reference to not really knowing Ms. Lister in 2018 was accurate insofar as they met for the first time in March. The fact that this had changed by December 2018 is not a material inconsistency.
- [58] Fourth, Ms. Lister attacks Ms. Kiefer's credibility on the basis that she readily identified texts the two of them exchanged in chief, but purported not to have seen these same texts when asked about them in cross-examination.

- [59] I disagree with this submission.
- [60] In chief, Ms. Kiefer was taken to the first page in a large sheaf of pages containing many texts, and said she and Ms. Lister had exchanged them after Mr. Bal was arrested on November 14, 2021. Ms. Kiefer then provided a synopsis of various communications with Ms. Lister, including by phone, and recounted her own communications with the Ministry of Children and Family Development. In cross-examination, Ms. Kiefer was taken to different pages in this sheaf of texts, and only mentioned not having previously reviewed them after answering several questions.
- [61] It is entirely possible that Ms. Kiefer reviewed none of the texts in this sheaf prior to testifying, or that she was only asked to review the first few pages by counsel for Mr. Bal, and not the pages put to her in cross-examination. I do not know, because she was not asked about this in cross-examination.
- [62] Moreover, nothing about Ms. Kiefer's responses in cross-examination suggested to me that she was being disingenuous when stating that she had not reviewed those particular texts prior to testifying. To the contrary, her demeanour in responding to these questions was consistent with her having not seen the texts since they were written, and I reject that she was being insincere or favouring Mr. Bal in the way she answered the questions.

Determining When Relationship was Marriage-Like

- [63] I will next examine the history of the parties' relationship, breaking the timeline into three segments and making relevant findings of fact. Along the way, I will apply the above-mentioned legal principles to determine when the parties were in a marriage-like relationship.

October 2016 to November 2017

- [64] The parties met in October 2016, when Mr. Bal started working for Ms. Lister's employer, Winmar, and they were dating by December.
- [65] Ms. Lister had three adult children: Julian (then aged 28); Andre (then aged 23); and Desiree (then aged 19). Ms. Lister lived with her mother Dolores in Surrey, along with Andre, Desiree and her brother Curtis.
- [66] When Mr. Bal started dating Ms. Lister, he was still married to Ms. Kiefer, but they had been separated for about two years and would divorce in 2018. Mr. Bal and Ms. Kiefer had three children, an eldest aged five and twins aged three. But he had no legal access to the girls, and had been renting a room from Winmar co-worker Tanya Verhage for about two months.
- [67] When they started dating, Ms. Lister and Mr. Bal were both experiencing addiction challenges: gambling for her, and cocaine and alcohol for him.

- [68] Ms. Lister testified that in December 2016 she and Mr. Bal were in a fully committed relationship, and she stayed over a lot at Ms. Verhage's house.
- [69] However, in my view Ms. Lister has overstated the parties' degree of commitment in this early period. Her mother testified that Ms. Lister sometimes stayed at Mr. Bal's place. Ms. Verhage testified that, while Ms. Lister occasionally joined Mr. Bal in babysitting for Ms. Verhage, from what she could see the relationship was fairly casual and Mr. Bal spent most nights at Ms. Verhage's home with her and her kids. I also find it unlikely that the parties would be in a fully committed relationship so soon after meeting and starting dating.
- [70] For the same reasons, and contrary to Ms. Lister's evidence, I find it unlikely that Mr. Bal began referring to Ms. Lister as his wife "very, very fast" in the relationship, as early as 2016, and so she reciprocated by calling him her husband. Darcy MacDonald and Kirsty Donaldson knew the parties at this time and neither recalled them using these terms.
- [71] To the extent that Ms. Lister's son Andre and her brother Curtis testified otherwise, I find they are mistaken about the timing. For example, Andre believed Mr. Bal used the term in a phone call around Christmas 2016, which he said was roughly a few months after he first met Mr. Bal. Given the relationship timeline set out in the parties' own evidence, it is highly improbable if not impossible that Andre would have met Mr. Bal a few months prior to Christmas 2016.
- [72] Ms. Lister testified that in January 2017 she and Mr. Bal began renting a two-bedroom apartment on Gilley Avenue in Burnaby, each paying half the rent, and that her daughter Desiree moved in with them. Mr. Bal generally agreed with this evidence, but testified that they did not start renting together until February.
- [73] Desiree and Dolores Lister supported Ms. Lister's evidence as to timing, while Ms. Verhage supported Mr. Bal's recollection in this regard. Desiree also testified that she lived in the apartment rent-free.
- [74] Although the exact month has little if any bearing on the outcome of this case, I prefer Ms. Verhage's evidence as to when Mr. Bal ceased living at her residence, because she presented as an independent witness and linked the timing at least in part to her needing the room for a friend who began staying with her in mid-February.
- [75] In coming to this conclusion, I have not ignored Ms. Lister's evidence that she recalls the month because Mr. Bal sent Desiree an email, entered in evidence, with information about buying a car. However, in my view this email is equally consistent with the parties starting to live together in February.
- [76] Additionally, given the contents of this email I reject Ms. Lister's suggestion that it demonstrates that Mr. Bal had by January 2017 begun treating Desiree as a stepdaughter or member of the family, as opposed to simply the daughter of a woman he had recently begun to date.

- [77] After they moved in together in early 2017, Ms. Lister and Mr. Bal continued working at Winmar. Ms. Lister also did occasional after-hours or weekend cleaning work through a business she called Fresh Start. Mr. Bal continued to have no access to his three young children.
- [78] Ms. Lister testified that she did most of the household chores at the Gilley apartment, and they would eat at restaurants or she would cook. She also said they had a sexual relationship. Mr. Bal did not materially dispute this evidence in his testimony.
- [79] Both parties described facing significant challenges individually and as a couple during this period.
- [80] Ms. Lister testified that Mr. Bal spent excessively on drugs and alcohol, and that she did the same with gambling. They were not responsible financially, and they were always fighting. Mr. Bal generally accepted this description of the relationship.
- [81] Desiree described "visuals" of cocaine and alcohol use at the Gilley apartment. She said Mr. Bal was addicted to these substances, and that her mother also had "struggles". It was a "super unstable" environment, and the parties' relationship was "unhealthy". Desiree therefore moved out in March 2017, and had less contact than usual with her mother for a time afterwards.
- [82] Ms. Lister testified that after Desiree left the Gilley apartment a Winmar co-worker named Connor moved into Desiree's bedroom for about a month. Ms. Lister said that she and Mr. Bal subsequently received an eviction notice, which led them to move to a one-bedroom apartment on Napier Avenue in Burnaby in July 2017.
- [83] Mr. Bal agreed that they moved to the Napier apartment in July, but testified that prior to this move they had a fight, caused by Ms. Lister gambling away the rent money, resulting in her moving out of the Gilley apartment for a couple of months. It was at this point, he says, that Connor took over a room to help with rent. Mr. Bal testified that he briefly dated another woman, but resumed his relationship with Ms. Lister and she moved back in with him a few weeks before they left for the Napier apartment.
- [84] Given the passage of time, I do not put much stock in either party's testimony regarding precise dates. However, I prefer Mr. Bal's testimony to the effect that he and Ms. Lister split up for a time, during which she moved out of the Gilley apartment.
- [85] I have come to this conclusion because, as described later in these reasons, I am confident that in her testimony Ms. Lister initially denied and then underplayed a split that occurred while the parties were living in the coach house in 2018.
- [86] While this point alone causes me to reject Ms. Lister's denial that she and Mr. Bal ever lived apart in the spring of 2017, a break of this sort would also not be surprising given the newness of their cohabitation and frequent fighting about money issues.

- [87] Also somewhat relevant is the evidence of Mr. MacDonald and Ms. Donaldson that the parties had an on-again, off-again relationship from its beginning or thereabouts. Given the passage of time, it is understandable that neither witness was specific about when the relationship was "off", apart from a lengthy stretch in 2019. But the description given by Mr. MacDonald and Ms. Donaldson is consistent with my conclusion that the parties lived apart and were not dating for a time in the spring of 2017.
- [88] I accept that Ms. Lister and Mr. Bal tried to help each other with their respective addictions during this period, which created some interdependence in their relationship. I also accept that at various points each was deeply appreciative of the other's efforts in this regard.
- [89] However, I do not agree with Ms. Lister's submission that in the first half of 2017 the parties' shared experience regarding addictions was a purely centripetal force vis-à-vis their relationship. In my view, their addiction issues also created a very tangible instability, which I conclude would have led both parties to recognize that there was a serious question as to whether the relationship would last much into the future. And as described in Mr. Bal's evidence, these addiction issues and the ensuing fights led Ms. Lister to leave the Gilley apartment for a time.
- [90] Moving on with the temporal narrative, the parties agree on a number of points regarding the nature of their relationship in the remainder of 2017.
- [91] They agree that they lived together at the Napier apartment from July until September 2017. Having considered the evidence, I find that their relationship during this roughly three-month period was as I have described above.
- [92] The parties also agree that in September 2017 Mr. Bal left to reside at an addiction treatment or recovery house called Together We Can, and that after returning to the Napier apartment for a few days later that month he then checked into a different recovery house, called Revolution Recovery.
- [93] Ms. Lister and Mr. Bal further agree that, by the time he returned to the Napier apartment from Together We Can, she had gambled away her rent money, he had spent all his money on drugs, and they were being evicted. She moved back into her mother's residence as a result.
- [94] Finally, the parties agree that following Mr. Bal's successful stint at Revolution Recovery they moved into a coach house together on December 1, 2017.
- [95] However, the parties disagree about the status of their relationship while Mr. Bal was in treatment for his addiction.
- [96] Ms. Lister says they were in a fully committed and loving relationship that was marriage-like in nature. Mr. Bal contends that he ended the relationship prior to moving to Revolution Recovery, but regardless that it was not marriage-like.

- [97] For several reasons, I generally prefer Mr. Bal's description of the relationship during this time.
- [98] First, I accept Mr. Bal's evidence that he was angry at Ms. Lister on learning they were being evicted from the Napier apartment, and that he told her the relationship was over and he had to focus on overcoming his addictions and getting his children back.
- [99] Mr. Bal's evidence finds support in Ms. Lister's testimony that he blamed her for gambling away the rent money and for their eviction. It is also understandable that Mr. Bal would want to prioritize his recovery by ending what to that point had been an unstable and at times fractious relationship.
- [100] My conclusion is further supported by the evidence of Mr. MacDonald that he drove Mr. Bal to Revolution Recovery. I prefer Mr. MacDonald's evidence on this point to that of Ms. Lister, who testified that she drove Mr. Bal to Revolution Recovery. Mr. MacDonald also later transported a number of Mr. Bal's personal items from the Napier apartment to Revolution Recovery.
- [101] As for text messages exchanged between Ms. Lister and a third party on September 22, 2017, referred to by Ms. Lister's counsel in closing submissions, I am unable to find any reference to them in Ms. Lister's evidence. Regardless, these messages were most likely sent when Ms. Lister believed she and Mr. Bal were going to need a new apartment for October 2017, and thus before he returned from Together We Can. It makes little sense that she would be looking for an apartment for December at this time. There is also no indication in the evidence that Mr. Bal ever knew these text messages were sent.
- [102] Second, I accept Mr. Bal's evidence that once at Revolution Recovery he remained intent on overcoming his addictions, as well as getting access to his children, and for these reasons - alongside having broken up with Ms. Lister - he had no interest in resuming their relationship during his first few weeks of treatment.
- [103] My conclusion is supported by Mr. MacDonald's evidence, which I accept, regarding: (a) Mr. Bal's state of mind and focus during this time; and (b) Mr. MacDonald's communication with Ms. Lister, wherein he told her to leave Mr. Bal alone so that he could work on his recovery, and if there was a chance to re-establish the relationship after Mr. Bal finished recovery that would be great.
- [104] I reject Ms. Lister's closing submission that Mr. MacDonald must be mistaken or lying because Mr. Bal was restricted in accessing a phone for the initial couple of weeks or so that he was at Revolution Recovery.

- [105] Mr. MacDonald was candid about his limited memory regarding precise dates, and in my view did not pin himself down in any definitive way regarding when or how he communicated with Mr. Bal. It is more likely than not that, as Mr. Bal testified, he received special permission from Revolution Recovery to contact Mr. MacDonald for the purpose of conveying this message to Ms. Lister.
- [106] Similarly, I draw no adverse inference against Mr. MacDonald's credibility or reliability simply because he could not remember the name of the recovery house, its precise location in Surrey or the months during which Mr. Bal was a resident. These are details I would not expect to have necessarily stuck in Mr. MacDonald's mind.
- [107] I also reject Ms. Lister's closing submission that Mr. Bal's account of his conversation with Mr. MacDonald about not wanting to be bothered by Ms. Lister was materially inconsistent with the account provided by Mr. MacDonald.
- [108] Mr. MacDonald's evidence about the conversation was less detailed, and he could only remember the gist of what they discussed and what he thereafter conveyed to Ms. Lister. But that is not surprising in the circumstances. These events, while probably memorable for Mr. MacDonald in terms of the big picture, did not carry the significance they did for Mr. Bal. And unlike Mr. Bal and Ms. Lister, Mr. MacDonald has presumably not been thinking about these interactions over the past several years.
- [109] I therefore have no concerns about Mr. MacDonald's credibility and reliability regarding the general nature of his communications with Mr. Bal and Ms. Lister during Mr. Bal's initial period at Revolution Recovery, and I do not accept Ms. Lister's evidence that in this period she had no communication with Mr. MacDonald.
- [110] As for the text messages exchanged between Ms. Lister and Mr. Bal's mother in early October 2017, these were probably sent without his knowledge, given he had little or no contact with Ms. Lister at this time. In the circumstances, these text messages do not undermine Mr. Bal's testimony, supported by Mr. MacDonald's evidence, that at this point he viewed himself as broken up from Ms. Lister.
- [111] Third, I accept Mr. Bal's evidence that once his phone privileges resumed he picked up a voice message from Ms. Lister and, feeling lonely, decided to call her. It was only at this point that the parties began moving towards re-establishing their relationship.
- [112] The initial concrete step taken in this respect was spending a night together at a Whistler hotel for Mr. Bal's birthday in late October. Regardless of whether Ms. Lister and Mr. Bal had sex while at Whistler - a point on which they disagree - the trip went well and by November they were meeting on at least some mornings at a fitness centre used by Revolution Recovery residents. They were also in fairly frequent contact by text message. Ms. Lister testified they went to White Rock one evening and had sex on the beach.

- [113] The text messages show that, by around the first or second week of November, Ms. Lister and Mr. Bal had agreed to try living together once he left the recovery house. In particular, he sent her Craigslist postings for vacant apartments. Also around this time, Ms. Lister exchanged text messages with Mr. Bal's mother in which she passed on information from Mr. Bal, and later in November she arranged to meet his mother at a temple.
- [114] The text messages nonetheless show that the relationship between Ms. Lister and Mr. Bal remained very choppy in mid-November 2017. There were expressions of love but also anger or disdain, the latter mostly if not entirely on Mr. Bal's part. One text message exchange shows him breaking up with Ms. Lister and then getting back together in what appears to be a matter of minutes. I find that their relationship thus continued to exhibit the same sort of instability as had existed prior to Mr. Bal moving to Revolution Recovery.
- [115] The fact that Ms. Lister called Mr. Bal her "spouse" in an October 30, 2017 email confirming their attendance at a forthcoming Winmar-related Christmas party does not change my view of the relationship to this point in 2017. This email is but one piece of evidence, and calling oneself the spouse of another person is not sufficient to make it so under the FLA.
- [116] Fourth, I reject that the "cheat sheet" Mr. Bal used at his examination for discovery undercuts the reliability of his evidence regarding the nature of the parties' relationship in the fall of 2017. Having heard Mr. Bal's cross-examination on this document, I find that its reference to him being at Together We Can and Revolution Recovery from mid-September until the end of November was a short-form method of reminding himself that he and Ms. Lister were not together at that time.
- [117] Fifth, I am also unable to draw any material conclusions from the two apparently or potentially inconsistent Revolution Recovery letters filed in evidence, one by Ms. Lister and the other by Mr. Bal. The purported author of the letters is deceased, and I was not presented with any other records bearing on precisely when Mr. Bal entered and left Revolution Recovery.
- [118] On a related point, I am not prepared to find that Mr. Bal is lying about moving to a second-stage sober or half-way house also run by Revolution Recovery sometime in November, or that his responses in cross-examination about the length of the Revolution Recovery program meaningfully militate against my accepting his evidence as to the nature of the parties' relationship from September to November 2017. For example, Mr. Bal's reference to Revolution Recovery on the cheat sheet can reasonably be read to encompass both a primary and a second-stage residence.
- [119] Sixth, I have considered the evidence of Ms. Lister's family members in assessing the nature of her relationship with Mr. Bal in this period. Most of them had little to say about what was happening in the relationship in 2017, and what they did say was mostly hearsay.

- [120] I have already referred to Desiree Lister's evidence regarding the first part of 2017, but she did not provide any first-hand information about the relationship after she moved out of the Gilley apartment. Indeed, she seems to have mistakenly believed Mr. Bal was in recovery while he and Ms. Lister lived at the coach house.
- [121] As for Ms. Lister's mother Dolores, she received relationship updates from her daughter in October and November 2017, but even putting aside possible hearsay issues, nothing in her evidence leads me to conclude that the parties' relationship was marriage-like in nature.
- [122] In sum, viewing the relevant factors objectively and holistically given the surrounding circumstances, I have concluded that the parties were not in a committed relationship of indefinite duration at any point from when they started dating in December 2016 until at or very near the end of November 2017, nor did they see themselves as being in such a relationship. This was not the kind of psychological or emotional union associated with marriage. Rather, Ms. Lister and Mr. Bal were constantly struggling to work things out between them, often in fits and starts and with significant set backs, amidst the instability and uncertainty caused by their respective addictions.
- [123] I also note that the attributes their relationship would later acquire, which as discussed below permits the conclusion that it became marriage-like in nature, had not manifested prior to the end of November 2017. To list but a few examples, Ms. Lister was not yet helping Mr. Bal to co-parent his children, he had not made a symbolic gesture of commitment to a long-term relationship in the form of a promise ring or marriage proposal, and they had not worked together to start a business that would finance their household expenses.
- [124] Finally, while a couple may be in a marriage-like relationship even though they are living apart, this was not the case with Ms. Lister and Mr. Bal during the two periods in which they had broken up and were living apart in 2017. Instead, these breakups were indicative of the tenuous nature of the relationship, and the fact that it was never marriage-like during this period.
- [125] But even were I to accept Ms. Lister's submission that these two periods of living apart were not real breaks in the relationship, for the reasons already expressed I would have in any event concluded that the relationship did not become marriage-like at any point prior to the end of November 2017.

December 2017 to early June 2019

- [126] At the start of December 2017, the parties began living together in a sexual relationship in a coach house above a garage in Surrey.
- [127] Neither of them appears to have been in active addiction, and while the relationship still had its ups and downs, in my view this positive change permitted Ms. Lister and Mr. Bal to enter a period of greater stability in their relationship.

- [128] At Christmas 2017, Mr. Bal gave Ms. Lister a "promise ring", which I find reflected a level of commitment to the relationship not previously evident on his part.
- [129] Ms. Lister supported Mr. Bal in his efforts to obtain access to his children. For instance, in March 2018, she attended the courthouse with him where she met Ms. Kiefer for the first time. As testified to by Ms. Kiefer, at this meeting Ms. Lister made a real effort to present herself as a responsible individual who would be engaged in helping Mr. Bal to parent the three girls.
- [130] On this occasion, or soon after, Mr. Bal obtained the right to have his children visit at the coach house on weekends, with exchanges at a location where Ms. Kiefer felt comfortable (initially, a McDonald's restaurant in Burnaby).
- [131] The parties agree that Ms. Lister was fully engaged in helping to parent the girls, and that she and the girls grew to love each other. The girls met several of Ms. Lister's family members in 2018. Ms. Lister and Mr. Bal did things with the girls as a family.
- [132] Ms. Lister testified that she bought the groceries for the household and did most of the chores and cooking, although Mr. Bal enjoyed cooking on occasion.
- [133] In cross-examination, Ms. Lister initially denied moving out of the coach house to live with her mother for about two months starting in July 2018, stating that she never lived with her mother that year. However, on being shown her examination for discovery, Ms. Lister agreed that she had stated that, although she and Mr. Bal did not break up, they had arguments and on one occasion she stayed with her mother for roughly a week. At trial, Ms. Lister testified that she had forgotten about this argument, and explained that while she had stayed with her mother for a week in September 2018, she was not living with her mother.
- [134] For his part, Mr. Bal testified that Ms. Lister left the coach house for a couple of months or so following an argument. While his evidence as to when this happened was confusing, to say the least, in my view the physical separation was lengthier and more significant than admitted to by Ms. Lister.
- [135] I say this because Ms. Kiefer, whose evidence I accept, testified that Mr. Bal and Ms. Lister attended church with her on Easter Sunday in 2018, which was April 1, and that after the service Mr. Bal privately told Ms. Kiefer that he planned to break up with Ms. Lister. I find that this statement of future intention was made in a natural way and not in circumstances raising a suspicion as to its reliability: *R. v. Bottomley*, 2023 BCSC 267 at para. 71; Paciocco, Paciocco & Stuesser, *The Law of Evidence*, 8th ed., 2020, at p. 225-227.
- [136] I also accept Ms. Kiefer's evidence that during this time she attended and often entered the coach house for child exchanges, and at some point after the Easter Sunday conversation she noticed that Ms. Lister no longer lived there. Mr. Bal's mother was living there instead, and Ms. Kiefer would visit with her at the exchanges. Ms. Kiefer further testified that Ms. Lister had taken a couch with her, so Mr. Bal bought a new one, and when Ms. Lister moved

back into the coach house Mr. Bal gave the couch he had bought to Ms. Kiefer because he did not need it any more.

- [137] Ms. Lister removing a large piece of furniture from the coach house upon moving out indicates that this physical separation was more than just a brief physical pause as implicitly suggested by Ms. Lister in her evidence. It is more consistent with the parties having broken up for a couple of months or so, and thus with Mr. Bal having acted on the intention he expressed to Ms. Kiefer on Easter Sunday.
- [138] Turning to a different aspect of the parties' relationship in 2018, in the first part of that year Ms. Lister and Mr. Bal worked together to start a restoration business called On Command. A fair amount of evidence was led regarding the incorporation of this company in April 2018, changes made to its governance and share structure in October 2018, and the parties' respective involvement in its operations from that point forward.
- [139] In closing submissions, however, neither party suggested that I needed to resolve the various factual disputes regarding On Command to decide whether they were in a marriage-like relationship. I agree, and I am also leery of doing so given the minimal amount of admissible and relevant evidence from independent sources, evidence I assume must exist but was presumably not called by the parties because of the narrow focus of the trial before me.
- [140] Accordingly, I am prepared to go no further than to make the following findings regarding On Command:
- a. Both parties were involved in creating the company, but Ms. Lister took the lead in doing the legwork, and was initially its sole director and shareholder. In the spring of 2018, Mr. Bal started working on On Command matters, while Ms. Lister continued to work full time at Winmar. I need not decide whether or to what extent she also did On Command work.
 - b. By October 2018, Ms. Lister had joined Mr. Bal in working at On Command, but Mr. Bal controlled the company's finances and the distribution of its income within the household. He also became its sole director and shareholder. I make no findings as to precisely how this happened or whether it was fair.
 - c. On Command seems to have been quite successful, and for the rest of the parties' relationship provided the sole source of income for the household, subject to a gap from June 2019 to around February 2020.
- [141] In October 2018, the parties moved out of the coach house and into a rented house on Bradford Place in Surrey. Ms. Lister helped find the Bradford house, and in an email to the landlord referred to Mr. Bal as her husband. This house had more space, allowing for bedrooms for the girls (the twins shared a room) and an office for On Command. Only Mr. Bal signed the lease, which I conclude was the result of his dominant role in making financial decisions for the household.

- [142] Ms. Lister set up the Telus account for the Bradford house in advance of the move, participated in the moving process, and obtained furniture for and decorated the children's bedrooms.
- [143] After the move to the Bradford house, the children continued to stay with the parties for two overnights every weekend. Ms. Lister had initially accompanied Mr. Bal for pick ups from Ms. Kiefer, but by the end of 2018, if not before, she began to communicate directly with Ms. Kiefer about child exchanges. Text messages exchanged between Ms. Lister and Ms. Kiefer show a warm relationship and a mutual interest in the girls' well-being.
- [144] Ms. Lister did most of the cooking, cleaning and laundry at the Bradford house. She bought groceries and made her truck payments from her On Command salary, although this vehicle was used in her work for the company. Mr. Bal paid the rent and utilities at the Bradford house, part of which were written off as On Command expenses.
- [145] Ms. Lister was in contact with Mr. Bal's mother, and would take the children to visit their grandmother in Langley. Sometimes Mr. Bal's mother visited them at Bradford Place. The parties also occasionally went to temple with Mr. Bal's mother. Text messages show that Mr. Bal's mother had a good relationship with Ms. Lister. On one occasion, Ms. Lister comforted Mr. Bal's mother because she and her son were going through a rocky time.
- [146] Ms. Lister and Mr. Bal continued to have a sexual relationship while living at the Bradford house. They bought a fitness centre membership, paid for by Mr. Bal and in his name, but using Ms. Lister's contact information for the agreement. They were busy with work and did not take any vacation trips.
- [147] While at the Bradford house, the parties entertained family for some holidays and special events, like birthdays, and they also hosted social gatherings for friends. They presented themselves to the world as a couple.
- [148] Mr. Bal would buy Ms. Lister gifts, such as earrings, necklaces, and rings, which he found romantic. She sometimes used his email account and sent emails signed, "Manny and Laura Lee".
- [149] On Christmas Eve 2018, Ms. Lister and Mr. Bal entertained family members at the Bradford house, including her children Desiree and Andre, his three children, Ms. Kiefer's older son Dayton, and both of their mothers. After everyone left, Mr. Bal asked Ms. Lister to marry him and gave her an engagement ring.
- [150] Ms. Lister's daughter Desiree lived with the parties at the Bradford house from February until early June 2019, and had her birthday party there.

- [151] The parties did not file their taxes as common law spouses for 2018 or 2019, which are the years during which they lived, in whole or part, at the Bradford house. They kept their own bank accounts and credit cards, and did not have access to each other's money. They did not have a shared cell phone plan. Ms. Lister kept her mother's address on her identification documents and tax returns.
- [152] In their testimony, the parties agreed that during this period at the Bradford house their relationship continued to be tumultuous at times, and that they would fight. Desiree, who as mentioned lived with them for a few months in 2019, testified that, although the parties were close, the relationship was unstable and unhealthy, and Mr. Bal would be irritable.
- [153] Based on this mostly undisputed evidence regarding the relationship between Ms. Lister and Mr. Bal from December 2017 until early June 2019, I conclude that for much of this period it was marriage-like in nature.
- [154] To summarize some of the relevant attributes of the relationship that favour of this conclusion:
- (a) they lived together in a sexual relationship, and co-parented Mr. Bal's children during his parenting time;
 - (b) they worked at the company they started together, On Command, which financed the household's expenses;
 - (c) although they did not have access to each other's personal accounts or file taxes as common law spouses, they exhibited interdependency when it came to looking after the household, including financially;
 - (d) they also exchanged gifts, helped each other with problems, established relationships with each other's family members, and entertained together socially;
 - (e) they presented themselves as a couple to the outside world; and
 - (f) Mr. Bal gave Ms. Lister a promise ring in December 2017 and they became engaged in December 2018.
- [155] It is true that the parties' relationship remained at times turbulent, and they appear to have often argued. It may even be that, viewed objectively, the relationship was in one or more significant ways unhealthy.
- [156] Nonetheless, a holistic assessment of the relationship leads me to conclude that for at least most of the time between December 2017 and June 2019, Ms. Lister and Mr. Bal intended it to be of indeterminate, lengthy duration, and that viewed objectively the relationship was in fact marriage-like.

- [157] Granted, the parties split up in the spring or early summer of 2018 for a number of weeks, perhaps as many as six or eight, when Ms. Lister moved out of the coach house. However, in his closing submissions, Mr. Bal took the position that, if I find there to have been a marriage-like relationship starting in December 2017, the interval during which Ms. Lister left the coach house was only a cooling-off period, as opposed to a cessation of the marriage-like relationship.
- [158] I therefore find that the parties' marriage-like relationship began on December 1, 2017, and continued until early June 2019, a period of just over 18 months.
- [159] The question becomes whether the marriage-like relationship extended beyond early June 2019, or if instead it ended at this point.

Early June 2019 to January 2020

- [160] In early June 2019, Mr. Bal was working on a job in Lillooet when Ms. Lister phoned him to report a break-in at the Bradford house garage. She called the police, who came to the house and spoke to her, as well as to Mr. Bal by phone.
- [161] Ms. Lister testified that Mr. Bal accused her of stealing items and fabricating the break-in. He yelled at her and said he would deal with her. Ms. Lister explained that Mr. Bal had been violent before. She did not want Desiree to see this, so they moved out of the Bradford house and into her mother's residence.
- [162] Ms. Lister testified that when Mr. Bal returned from Lillooet, he again accused her of stealing from him and demanded that she give him the Bradford housekey. She drove to the house with Desiree. Ms. Lister recounted that Mr. Bal lunged at the passenger window and told Desiree to give him the "fucking key", which upset Desiree. Ms. Lister did not give Mr. Bal her own key, although he told her to get rid of it.
- [163] Desiree's evidence regarding the events surrounding the move out of the Bradford house was generally consistent with Ms. Lister's testimony, although less detailed as she did not have the same degree of first-hand knowledge.
- [164] Mr. Bal gave a mostly similar version of events, but added that a day or two before receiving the phone call about the break-in from Ms. Lister, she had asked him for money despite having recently been paid, and he had refused. He testified that she was upset, and when she later called to report the break-in he did not believe her. He suspected she was gambling again, and had pawned the missing items. Mr. Bal testified that he told her to "get the fuck out of my house".
- [165] Mr. Bal agreed that during this phone call he may have also told Ms. Lister that he would deal with her when he returned. I find that Mr. Bal did make this comment, including because he admitted to threatening Ms. Lister with violence at other times.

- [166] The parties' accounts diverge significantly regarding the nature of their relationship after Ms. Lister and Desiree moved out of the Bradford house.
- [167] Ms. Lister testified that she wanted to work things out with Mr. Bal because she loved him, and continued to believe she would marry him. However, he had health issues, including "raging" from taking steroids, and she wanted to deal with these issues before moving back to the Bradford house. She stopped working at On Command to reduce conflict with Mr. Bal. Now lacking a job, she pawned her engagement and promise rings for cash. She was able to get them back a short time later, after obtaining employment with another restoration company.
- [168] Ms. Lister testified that she then returned the rings to Mr. Bal, with the idea that if they made it to the altar she would get them back, but he threw the rings in a river. In a text message sent to Ms. Lister on July 14, 2019, Mr. Bal stated that he had dumped the rings in a river and was "feeling lost". Ms. Lister does not appear to have responded to this text message.
- [169] Ms. Lister testified that, from July to December 2019, she spoke to Mr. Bal by phone almost every day, although she mostly hid this from her family because of what had occurred when she and Desiree returned the Bradford house key.
- [170] Ms. Lister recounted that Mr. Bal would call her before work, and they would also talk after work and make plans to hang out. She was seeing him romantically, and spent many nights at the Bradford house, and although they often had sex she would not stay over. They also went to restaurants together. Ms. Lister testified that they were "dating" and trying to work things out. He helped her financially by sending her money from time to time.
- [171] Ms. Lister further testified that she was invited to the twins' birthday party in August 2019, but decided not to attend because she did not want to confuse the kids, having been so present in their lives and then not present. Ms. Lister explained that she did not want to become part of their lives again until she was sure she and Mr. Bal were back on the path to be married.
- [172] Ms. Lister described how she subsequently learned from her mother, who was still Facebook friends with Mr. Bal, that he had posted a photo of himself leaning against another woman at the twins' birthday party. She was upset and hurt, but he told her that this woman did not mean anything, and that he loved her and wanted to work things out. He said he was a sex addict, which resulted in him having sex with other women and using a hookup app. Ms. Lister testified that she had known about his sex addiction, so she believed and supported Mr. Bal.

- [173] Ms. Lister testified that she was present with Mr. Bal when he received the phone call informing him that his father had died, and afterwards went with him to his mother's house where she met his sisters for the first time and he broke the news. She gave condolences to his mother. They went back to the Bradford house and spent the night. She could not recall when Mr. Bal received the news about his father, but it was sometime in the fall.
- [174] Ms. Lister described moving back to the Bradford house for good in late December, just after Christmas. Mr. Bal and his mother were travelling to India with his father's ashes, and she helped him pack. She went in the car with them to temple, then drove with them to Richmond to meet Ms. Kiefer and the kids. Ms. Lister, Mr. Bal and his mother then went to the airport. Ms. Lister drove the truck back to the Bradford house, and testified that she never left after that.
- [175] Facebook messages between Ms. Lister and Mr. Bal in January 2020, while he was in India, indicate they were communicating by video. The messages' contents also show they were treating each other very affectionately. At one point, he called her his "wife to be", and said he adored her and always needed them to be happy together. Ms. Lister and Mr. Bal also said they are each other's soul mates. He called her the love of his life and asked for her ring size. He said they were strong and stood together.
- [176] Ms. Lister testified that Mr. Bal returned from India in mid-January 2020, and she picked him up at the airport. She was living at the Bradford house, and described their relationship as very good. They spoke of getting married and moving forward with life, and putting the negative things behind them.
- [177] Mr. Bal's evidence about the relationship from when Ms. Lister moved into her mother's house in early June 2019 until late December of that year paints a different picture.
- [178] He testified that after returning from Lillooet he "got himself out there" in June and July, dating a number of women through social media sites. During this time, he met Kamaljit Bhullar ("Kamaljit"), and they became serious at the end of July or early August. He and Kamaljit both had kids, lived close to each other, and connected. He dated Kamaljit and was committed in the sense that he was not dating other people.
- [179] Mr. Bal also testified that when he and Ms. Lister broke up he asked for the promise and engagement rings back but she had pawned them. She later left them in an envelope in the Bradford house mailbox. He tossed the rings in the river because he thought they represented bad energy. It was part of letting go. Mr. Bal explained that, when he later texted Ms. Lister stating, "the rings been dumped in the river feeling lost", he felt lost because he had cared about Ms. Lister and thought they could make a life together, and now he had put that in the past.

- [180] Mr. Bal testified that Kamaljit met his friends and family including his mother, Mr. MacDonald and Ms. Donaldson. Kamaljit attended barbecues and similar gatherings, because she was the woman in his life. For instance, she attended the twins' birthday party on August 7. Mr. Bal identified the photo taken of him and Kamaljit at this party. He said Ms. Lister was not invited.
- [181] Mr. Bal testified that his father passed away in September. He denied having any contact with Ms. Lister at this time. The funeral was held the same month, and she did not attend. People in attendance included his family, his kids, and Ms. Kiefer, who in her testimony confirmed her presence at the funeral.
- [182] Mr. Bal testified that Kamaljit's mother was due to visit from England later in 2019. Kamaljit wanted to get engaged during the visit but asked him not to tell her mother about his previous marriage and having kids. Mr. Bal was not ready to be married to Kamaljit, let alone lie about his past, and they argued. By late November, he knew things were not working out, and they were broken up by early December.
- [183] Mr. Bal testified that he had contact with Ms. Lister at the tail end of his relationship with Kamaljit, in late November and the start of December. The contact occurred because Ms. Lister reached out about his father's death. He thought that Ms. Donaldson or someone had told her, and this is what triggered them talking more regularly. By December they were talking more often. They had sex at the end of November, and in December before he left for India, although on neither occasion did they spend the night together.
- [184] Mr. Bal testified that Ms. Lister did not move back into the Bradford house in 2019. He did, however, ask her to housesit while he was in India. She drove Mr. Bal and his mother to the airport, stopping on the way to meet with Ms. Kiefer and the kids.
- [185] Mr. Bal testified that he kept in contact with Ms. Lister while in India, both messaging and talking to her. During his time in India, he saw his roots and his relatives with their partners and kids. He saw continuity, love and family, and he wanted that for himself. He had always cared about Ms. Lister, and had lived and was very familiar with her, so he started to talk to her about whether she would be part of his life and be with him. He expressed his love for her and apologized for the past. The Facebook messages from January 2020 were part of these discussions.
- [186] Mr. Bal testified that he returned from India on January 21, 2020, and Ms. Lister picked him up at the airport. She brought him back to the house and they discussed her moving back in. She said she wanted to be in a relationship, but would need to speak to Desiree and smooth things over with her family. Ms. Lister returned to her mother's place, but moved back into the Bradford house in the first week of February.

- [187] In their testimony, Ms. Lister's mother Dolores, her children Andre and Desiree, and her brother Curtis said little regarding the state of the parties' relationship from June to December 2019. Ms. Lister explained that she had mostly kept them in the dark about her interactions with Mr. Bal at this time. In any event, they provided minimal evidence of any relevance.
- [188] Curtis appears to have been travelling for much of this time, and had no non-hearsay information to give. Similarly, Desiree identified little if any first-hand knowledge in support of her belief that the parties maintained a relationship despite living apart.
- [189] Dolores Lister's evidence was also mostly hearsay. Plus, she had some memory difficulties, as illustrated by her not recalling that Ms. Lister lived at her residence for at least some period of time in 2018.
- [190] As for Andre, he did not mention the parties being physically separated in 2019, and claimed to have spent Christmas and maybe also Thanksgiving dinner with his mother and Mr. Bal at the Bradford house, things that indisputably did not happen.
- [191] In cross-examination, another of Ms. Lister's witnesses, the parties' former Winmar boss Andrew Edwards, recalled hearing that Ms. Lister and Mr. Bal had separated. This information did not come from Mr. Bal. Rather, Mr. Edwards believed Ms. Lister told him when she asked for a reference in 2019. His memory is supported by Ms. Lister's testimony that Mr. Edwards gave her a reference for a new job after she stopped working for On Command in June 2019.
- [192] Several of Mr. Bal's witnesses also provided evidence regarding the period from June until December 2019.
- [193] Darcy MacDonald, Kirsty Donaldson and Tanya Verhage all testified that Mr. Bal introduced Kamaljit as his girlfriend at the twins' August 2019 birthday party.
- [194] Mr. MacDonald testified that he met Kamaljit two or three times in total, and that during this period Ms. Lister was not present when he visited Mr. Bal at the Bradford house.
- [195] In addition to testifying about meeting Kamaljit, Kirsty Donaldson told the court that after Ms. Lister moved out of the Bradford house in June she received numerous phone calls from the parties. Both told her they had broken up, but Ms. Lister also wanted Ms. Donaldson to choose sides, and when Ms. Donaldson refused to do so Ms. Lister hung up and stopped talking to her.
- [196] Ms. Donaldson testified that she subsequently texted Ms. Lister on August 11 and 15, 2019, in an attempt to repair their relationship. In her August 15, 2019 reply to Ms. Donaldson, Ms. Lister stated in part:

This breakup was very hard on me and you go to my old house I had with Manny and chill out with the new woman in his life. I don't feel comfortable that you hang out with Manny. Sorry you don't understand how much that hurts me. I wouldn't expect you to choose friendship but you seem to care more about hanging out with him.

[197] Ms. Kiefer gave evidence that in June 2019, Ms. Lister called to say she was leaving Mr. Bal and moving out of the Bradford house. Ms. Lister had been going to help Ms. Kiefer paint some walls, but was no longer able to do so because she was moving herself.

[198] Ms. Kiefer testified that she first met Kamaljit in July 2019, when Mr. Bal introduced her as his girlfriend. On other occasions, Kamaljit would be present when Ms. Kiefer dropped off or picked up the kids. Ms. Kiefer had a specific memory of Kamaljit being with Mr. Bal in October 2019, when they picked up and later dropped off the kids from Ms. Kiefer's house to go to a Thanksgiving dinner.

[199] Ms. Kiefer testified that prior to Mr. Bal travelling to India to spread his father's ashes, he asked her to housesit at the Bradford residence. She declined because the house was too far from the kids' school. Ms. Kiefer knew that Mr. Bal subsequently asked Ms. Lister to housesit, because Ms. Lister told her. Ms. Kiefer described how in a text exchange she told Ms. Lister that Ms. Lister was crazy to housesit for her ex.

[200] Ms. Kiefer further testified that, after Mr. Bal returned from India, Ms. Lister told Ms. Kiefer that she was going to return to her mother's house to tell her family she was getting back with Mr. Bal and that her family would not be happy. Ms. Kiefer advised Ms. Lister not to get back with Mr. Bal because of their history of breaking up on and off, and because of Ms. Kiefer's own history with Mr. Bal.

[201] Ms. Kiefer knew that Ms. Lister subsequently moved back in with Mr. Bal, because Ms. Lister was once again present at the kids' drop-offs and pickups.

[202] Neither parties' evidence on its own provides a satisfactory basis for reliably ascertaining the nature of their relationship from June to December 2019. In explaining why, I will begin with some examples taken from Mr. Bal's testimony.

[203] In chief, Mr. Bal did not mention having sex with Ms. Lister prior to late November 2019, but in cross-examination he admitted to having sex with her in June or July. And when asked whether he would have told Ms. Lister in July that he loved and wanted to marry her, he said he was not sure, explaining that he was involved with other women around this time and would have said this to them as well. He maintained, however, that he would not have said this to Ms. Lister in August, because by then he was in a relationship with Kamaljit.

[204] Furthermore, at his examination for discovery, Mr. Bal admitted to having sex with Ms. Lister every month or so over this period of physical separation and described his relationship with Kamaljit as encompassing "a few months on and off" beginning in June or July. At trial, Mr. Bal described this discovery evidence as "confusing", and stated that he

only had sex with Ms. Lister early on in this time period, and then again in late November and December. He added that the relationship with Kamaljit was steady, not on-again, off-again.

- [205] Despite stating on numerous occasions in his testimony that he was in a serious relationship with Kamaljit, when cross-examined on whether that relationship was exclusive, or if he instead had sex with other women, Mr. Bal testified that he did not recall, but given that the relationship with Kamaljit was more serious he would "lean towards no". He also agreed that Kamaljit would have viewed his having sex with Ms. Lister, at the time that he did, as cheating.
- [206] Another inconsistency in Mr. Bal's testimony arose from his affidavit made September 27, 2022, where he stated that he and Ms. Lister had a couple of casual sexual hookups in November or December 2019, but were not dating and were simply friends, and that she knew he was seeing multiple other women. Mr. Bal admitted that this statement was inaccurate insofar as he was not seeing multiple other women in November or December. He also admitted that in December he was already speaking to Ms. Lister about giving their relationship another try.
- [207] Mr. Bal further conceded that at his examination for discovery he was asked to provide Kamaljit's contact information, but did not do so. He explained that Kamaljit felt used by him and the breakup was hard on her so they did not stay friends. He said he blocked and deleted Kamaljit's number to stop her from calling him, and therefore did not have her contact information. But Mr. Bal agreed that he knew where Kamaljit lived.
- [208] I have also considered Ms. Lister's closing submission to the effect that Mr. Bal's responses in cross-examination as to whether he had a sex addiction were materially inconsistent with each other and his discovery evidence so as to significantly undermine his credibility.
- [209] However, these responses are not nearly as significant as Ms. Lister contends, including because in his trial testimony: Mr. Bal's appeared to define sex addiction in different ways; he was referring to different periods in his life; and in my view he satisfactorily explained his response in his examination for discovery regarding Revolution Recovery's treatment philosophy.
- [210] While aspects of Mr. Bal testimony cause me concern as to his credibility or reliability regarding the parties' relationship from June to December 2019, in my view the credibility or reliability of Ms. Lister's evidence is more problematic. I will now recount some of those problems in detail.
- [211] First, after Ms. Lister moved out of the Bradford house, both parties told Ms. Donaldson they had broken up. Ms. Lister conveyed this same information to Ms. Kiefer. Mr. Edwards also indicated that Ms. Lister told him she had broken up with Mr. Bal.

- [212] I accept the evidence of these witnesses as to Ms. Lister's state of mind when she moved out of the Bradford house. She viewed the relationship as over, and not as entering a period of therapeutic separation where the aim was to maintain their commitment to each other while working out various problems.
- [213] Second, about two and a half months later, in mid-August 2019, Ms. Lister texted Ms. Donaldson to say that, "this break up was very hard on me", and expressed considerable hurt at Ms. Donaldson's decision to stay in touch with Mr. Bal. Ms. Lister's comment about "the new woman in [Mr. Bal's] life" can only be a reference to Kamaljit.
- [214] In both tone and content, this text message is significantly inconsistent with Ms. Lister's trial testimony that she and Mr. Bal were not broken up in August, but were just living apart, and from July onwards had been seeing each other romantically and frequently. I reject Ms. Lister's closing submission that the August 2019 text message to Ms. Donaldson was made in a moment of emotional anguish and did not represent Ms. Lister's true state of mind.
- [215] Third, I accept Mr. Bal's evidence that he was in a relationship with Kamaljit for several months during this time. Ms. Kiefer met Kamaljit in July, and then on other occasions during child exchanges, including on the Thanksgiving weekend in October. Mr. MacDonald also met Kamaljit on two or three occasions, and other witnesses met her at the twins' August 7 birthday party. Kamaljit's presence in Mr. Bal's life during this multi-month expanse of time, including at child exchanges and the twins' party, suggests more than a casual relationship with Mr. Bal.
- [216] I therefore do not accept that Mr. Bal's relationship with Kamaljit was the result of a sex addiction. And Ms. Lister's testimony that she believed otherwise is undermined by her August 15 text message to Ms. Donaldson. If, as Ms. Lister claimed, she was in touch with Mr. Bal almost every day and he had told her, and she believed, that Kamaljit was simply one of many women with whom he hooked up due to a sex addiction, she would not have expressed such deep hurt in this text message.
- [217] Fourth, none of the witnesses who were in contact with Mr. Bal during this time provided evidence to suggest Ms. Lister was still a part of his life. While Ms. Lister might have had a reason to hide a continued relationship with Mr. Bal from her family, it seems unlikely she would hide it from friends with whom she and Mr. Bal had previously associated.
- [218] In this respect, I reject Ms. Lister's testimony that she was invited to the twins' birthday party. Her evidence to the contrary is inconsistent with both her August 15 text message to Ms. Donaldson and Kamaljit's presence at the event.
- [219] Fifth, Ms. Lister's conduct in pawning her promise ring and her engagement ring, and returning the rings to Mr. Bal after getting them out of hock, suggests a markedly diminished commitment to the relationship. Perhaps even more significant is that, after getting the rings back, Mr. Bal threw them in a river.

- [220] The engagement ring in particular was symbolic of the parties' dedication to a long-term relationship. Pawning, returning and then discarding it suggests the opposite, and I accept Mr. Bal's evidence as to his state of mind when throwing the rings into the river. I do not accept Ms. Lister's submission that this was an impulsive act by Mr. Bal.
- [221] Sixth, in an affidavit made on November 23, 2021, Ms. Lister stated that she "separate[d] from" Mr. Bal for about six months beginning in June 2019 due to verbal and emotional abuse, and that she returned the engagement ring to him during this time. Unlike her trial testimony, the affidavit does not state that during this six-month period she and Mr. Bal were living apart but in constant contact and maintaining a romantic connection, with the goal of strengthening and improving the relationship.
- [222] Seventh, when Ms. Lister left the Bradford house she immediately stopped working with On Command, and Mr. Bal took her off the payroll around June 15. On Command had always been a part of their lives together. Leaving the company and getting a job at one, and then another, competitor is inconsistent with Ms. Lister's claim that she and Mr. Bal remained romantically involved and were speaking pretty much every day.
- [223] My conclusion in this regard would not be materially impacted even were I to accept Ms. Lister's evidence that she maintained some association with On Command while living with her mother, because the association as described in her testimony was minimal. But I am skeptical regarding her claimed involvement in the Abbotsford airport bid. Although Harry Caya's testimony provided some support for this claim, he was generally bad with dates, and in cross-examination admitted to assuming that this was to be an On Command bid. Moreover, Mr. Caya's initial assertion that he held no animus against Mr. Bal was effectively undermined in cross-examination.
- [224] Eighth, Ms. Lister did not attend the funeral for Mr. Bal's father. She became defensive when challenged on this point, stating that she was working and that not attending did not make her a bad person. However, if as Ms. Lister claimed she and Mr. Bal had maintained a very significant degree of contact during this period, and grew even closer once his father died, I would have expected her to attend the funeral. Her professed reason for not doing so is unconvincing.
- [225] Ninth, Ms. Lister's claim that she was in constant communication with Mr. Bal from July to December, speaking by phone almost every day, and usually more than once, is belied by the paucity of documentary confirmation.
- [226] In support of her testimony on this point, Ms. Lister referred to a log from her phone, but it only shows calls on August 26 and 27 and September 21. Furthermore, the log does not establish who was calling whom and indicates that some of these calls were unanswered. Even accepting Ms. Lister's evidence that she also used another work phone, as well as social media apps for which the records are no longer available, I would have expected a greater body of documentary support. Instead, we have a single phone log that indicates calls exchanged on a handful of days, which as Mr. Bal testified may well have partly

related to a dispute about how much Ms. Lister should be reimbursed for an On Command expense.

- [227] Finally, I do not accept Ms. Lister's evidence that throughout the physical separation that began in early June 2019, Mr. Bal helped her out financially by sending her money from time to time. The only documentary support for this claim was an electronic transfer to Ms. Lister from On Command for \$240 on August 2. However, as Ms. Lister testified when recounting an incident where she used the On Command bank card to buy groceries, Mr. Bal was strict about not using company funds to cover personal expenses. I find more plausible his explanation that this transfer repaid Ms. Lister for the expense mentioned in the preceding paragraph.
- [228] For these reasons, and despite having some concern about Mr. Bal's credibility and reliability, on balance I prefer his evidence to the testimony of Ms. Lister regarding the nature of their relationship after she moved out of the Bradford house in early June 2019.
- [229] I therefore conclude that from early June until at least the end of December 2019 the parties did not see themselves as being in a committed relationship of indeterminate, lengthy duration, nor were they in such a relationship viewed objectively. Rather, their statements and conduct demonstrate that the attributes that had made their relationship marriage-like as the end of March 2019 vanished in the following months.
- [230] At the very least, I find that Mr. Bal demonstrated a settled intention to permanently end the relationship by throwing the engagement ring into the river and establishing a relationship with Kamaljit that lasted for several months.
- [231] The fact that Mr. Bal had sex with Ms. Lister after she moved out of the Bradford house, whether later in June or in the early part of July, and that in late November and/or early December he had sex with her again and began to discuss the possibility of resuming their relationship, does not change my conclusions in this regard.

February 2020 to November 12, 2021

- [232] Based on Ms. Kiefer's evidence, which I prefer over that of Ms. Lister on this point, Ms. Lister did not move back into the Bradford house in late December 2019 with the intention of living there permanently in a long-term relationship with Mr. Bal. Instead, she was housesitting for him.
- [233] The possibility of resuming cohabitation was probably on both their minds by this point. But I accept Mr. Bal's evidence that a key catalyst in his committing to do so was the profound impression of seeing the love and closeness shared by his family in India.

- [234] As reflected in the January 2020 Facebook messages, and based on the testimony of Ms. Kiefer regarding her communications with Ms. Lister, I therefore conclude that by around the time Mr. Bal returned from India the parties had agreed that Ms. Lister would move back permanently. Indeed, the Facebook messages suggest they came to this decision fairly early in January.
- [235] After Mr. Bal returned to Canada, and as Ms. Lister told Ms. Kiefer she planned to do, I find that she went back to her mother's house for a time, to tell her family that she was going to resume living with Mr. Bal. Ms. Lister moved in with Mr. Bal not long afterwards.
- [236] The parties agree they were in a marriage-like relationship from this point until November 13, 2021. I will next review the evidence supporting this conclusion, which I accept.
- [237] To begin with, Ms. Lister and Mr. Bal were living together in a sexual relationship.
- [238] She helped him parent his children, including cooking meals, taking them to activities, and participating in child exchanges with Ms. Kiefer.
- [239] Ms. Lister also recommenced working at On Command, and Mr. Bal put her back on the company's payroll. As was the case prior to the June 2019 split up, On Command provided the income from which household expenses were paid.
- [240] On Valentine's Day in 2020, Mr. Bal proposed marriage to Ms. Lister and gave her an engagement ring. She accepted, and the location and size of their wedding became a topic of conversation with family and friends, although no date was ever set.
- [241] Soon after this engagement, Mr. Bal made Ms. Lister trustee for an insurance policy under which his children were beneficiaries, and added her to his health care coverage, telling his insurance agent she was his fiancée.
- [242] I do not, however, accept Ms. Lister's testimony that Mr. Bal committed to adding her to his health insurance in November or December 2019. The findings I have made regarding the events and nature of their relationship from June to December 2019 make it improbable that such a discussion would have occurred before 2020.
- [243] The parties also presented themselves as a couple to others, including Ms. Lister's family members, Mr. Bal's mother and children, Ms. Kiefer, and mutual friends like Mr. MacDonald, Mr. Caya, Ms. Burrell and Ms. Donaldson.
- [244] Ms. Lister usually bought the groceries and house supplies, and Mr. Bal sometimes bought groceries as well. She did most or more of the household chores, such as cooking, dishes and laundry, although Mr. Bal liked to cook and often barbequed.

- [245] Ms. Lister's brother Curtis and his wife Anna, and her son Andre and mother Dolores, described attending holiday dinners at the parties' residence in 2020 and 2021. Family members also attended a party for Desiree when she was going to Toronto for university. Curtis and Anna recounted how Ms. Lister and Mr. Bal visited their apartment to advise on a mould problem in April 2021.
- [246] Accompanied by friends, Mr. Bal and Ms. Lister took family vacations to the Sunshine Coast, Vancouver Island and Whistler.
- [247] In December 2020, Mr. Bal and Ms. Lister moved into a house in the Cloverdale area in Surrey, which was purchased in Mr. Bal's name.
- [248] There was some dispute as to the extent to which Ms. Lister was involved in the decision to buy the Cloverdale house, and about whether the purchase funds, which came from On Command in the form of dividends paid to Mr. Bal, belonged to just him or both of them. Regardless, Mr. Bal testified that he viewed the new house as a family purchase made with the intention of marrying Ms. Lister and continuing their life together in it.
- [249] Ms. Lister did a lot of the hands-on work moving their possessions to the Cloverdale house, and in setting up the household. She also did most of the landscaping, although she and Mr. Bal bought the plants together.
- [250] Mr. Bal paid the mortgage, property taxes and utilities on the Cloverdale house, which was also used as an office for On Command. He added Ms. Lister's name to the house insurance policy to cover her possessions.
- [251] Texts exchanged between Mr. Bal and Ms. Lister's daughter Desiree during this time show real affection. He paid her university tuition, and she bought him slippers for his birthday. Desiree would visit and sometimes stayed overnight.
- [252] Ms. Lister's son Andre lived at the Cloverdale house for about a week in early 2021, and briefly worked at On Command around that time.
- [253] Both Desiree and Andre got along well with Mr. Bal's children, and Desiree was friendly with Ms. Kiefer.
- [254] In October 2021, Mr. Bal and Ms. Lister opened a joint bank account into which they each deposited about \$40,000 paid out from On Command. Mr. Bal testified that the purpose of the joint account included possibly buying investment property together. Ms. Lister said they discussed using this account to give her a monthly draw, instead of keeping her on the On Command payroll.
- [255] Not all aspects of the parties' lives between February 2020 and November 2021 were integrated or showed interdependence. They kept their own phone plans. Ms. Lister continued to pay the insurance and make loan payments for her truck, although On Command covered the gas. They did not file their taxes as common law spouses or engage in joint estate planning. They also kept their own personal bank and credit cards. But in the

larger context these factors do not detract from the marriage-like nature of their relationship.

- [256] Nor does the fact that during this period the parties' relationship remained at times very volatile, as reflected in various angry text communications, and testimony about serious arguments at a couple of holiday events. An argument in 2021 appears to have led Ms. Lister to leave the family home for one night, and perhaps more. Tension and strife also arose because Mr. Bal resumed using cocaine, at least for a time. But neither party suggests that this periodic upheaval resulted in a separation prior to November 2021, and I agree.
- [257] Accordingly, for essentially the same reasons as I have already provided for the timeframe ending in early June 2019, I find that the parties were in a marriage-like relationship from early January 2020 until mid-November 2021, a period of about 22.5 months.

Incident on November 13, 2021 and Aftermath

- [258] The parties both testified that an incident on the evening of November 13, 2021, resulted in Ms. Lister leaving the Cloverdale house, never to return, and that they separated as at this date or the next day. However, they disagree as to the circumstances surrounding the incident.
- [259] Ms. Lister testified that Mr. Bal violently assaulted her following a social gathering at the house, injuring her head.
- [260] Mr. Bal testified that Ms. Lister's conduct at the social gathering, and her subsequent aggression towards him in front of his children, caused him to tell her in the harshest way possible to leave the house.
- [261] The next day, Ms. Lister made a police report and Mr. Bal was charged with assault.
- [262] Ms. Lister was the main Crown witness at the criminal trial, which began on January 9, 2023. The Crown also put into evidence a photograph of an injury to her head, and text messages sent by Mr. Bal to Ms. Lister after the incident. These messages were undeniably angry, threatening and highly derogatory.
- [263] Mr. Bal testified in his own defence at the criminal trial. He also called as witnesses two guests from the social gathering, neither of whom was a witness at the trial before me.
- [264] On February 14, 2023, the trial judge acquitted Mr. Bal on basis that she was unsure whether to believe him or Ms. Lister, which necessarily meant that the Crown had not proven the elements of the offence beyond a reasonable doubt.
- [265] In their closing submissions, neither party urged me to determine what happened on the night of November 13, 2021. They both accepted that I need not do so to resolve the issue in dispute at this family law trial. I agree, and will therefore make no findings of fact with respect to this incident.

[266] I should add that any finding I might have made regarding credibility in relation to the events of November 13, 2021 would not have impacted my decision as to whether and when the parties were in a marriage-like relationship.

Conclusion

[267] Ms. Lister and Mr. Bal started dating in December 2016, and lived together for a number of months between early 2017 and late September of that year, at which point Mr. Bal entered a residential treatment program. They were not in a marriage-like relationship at any point from when they began dating until the end of November 2017.

[268] The parties' relationship became marriage-like only when they recommenced living together at the beginning of December 2017. It remained marriage-like for the next 18 months or so.

[269] In early June 2019, that marriage-like relationship ended when the parties separated.

[270] It resumed sometime in January 2020, before ending once and for all in mid-November 2021, a continuous stretch of about 22.5 months.

[271] Although the two periods of time during which Ms. Lister and Mr. Bal were in a marriage-like relationship exceed two years when combined, neither lasted for a continuous two-year period as required to make them spouses under s. 3(1)(b) of the FLA.

[272] Ms. Lister and Mr. Bal therefore never became spouses within the meaning of the FLA.

[273] Unless there are factors of which I am unaware, as the substantially successful party Mr. Bal is entitled to costs, at a scale of ordinary difficulty. However, if the parties wish to make submissions on costs, they may submit a request to do so to Supreme Court Scheduling within 30 days of the date of this judgment. If both parties agree, then subject to any direction from me that further hearing may take place solely by way of written materials.

"D. Layton J."

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Prepared on 28 October 2026 · Esheria