

CANADA / JUDGMENT

Volk v. Tyrrell

2024 BCSC 326

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Supreme Court of British Columbia

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2024 BCSC 326 Volk v. Tyrrell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Volk v. Tyrrell,

2024 BCSC 326

Date: 20240226

Docket: E56845

Registry: Kamloops

Between:

Wayne Vincent Volk

Claimant

And

Judith Anne Tyrrell

Respondent

- and -

Docket: 57114

Registry: Kamloops

Between:

Judith Anne Tyrrell

Plaintiff

And

Wayne Vincent Volk

Defendant

Before: The Honourable Justice E. McDonald

Reasons for Judgment

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Place and Dates of Trial:

Kamloops, B.C.

November 21-25, 28,

December 5-9, 2022, and

January 23-27, March 20-24, April 17-21, May 29-31, July 20-21, 2023

Place and Date of Judgment:

Vancouver, B.C.

February 26, 2024

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Introduction

- [1] There are two claims before me. The first claim is a family law claim and the second claim is a civil claim seeking a "full review of [the parties'] respective contributions towards the assets, deprivations and enrichment". As a result, the questions I have to decide are: (1) were the parties involved in a marriage-like relationship within the meaning of the Family Law Act, S.B.C. 2011, c. 25 [FLA]; and (2) if there was no marriage-like relationship, was there unjust enrichment?
- [2] Judith Tyrrell and Wayne Volk met more than twenty years ago. While there is disagreement over some of the details, it is not disputed that the parties resided together for at least 14 years in homes they co-owned.
- [3] There is significant disagreement about the nature of the parties' relationship. In Mr. Volk's view, the parties were involved in a 16-year, marriage-like, relationship. In his family claim, Mr. Volk seeks determination and division of family property and debt. In Ms. Tyrrell's response and in her claim, she alleges there never was a marriage-like relationship. In her view, she and Mr. Volk were merely business partners who jointly invested in real estate.
- [4] If Mr. Volk cannot establish a marriage-like relationship, the next issue is whether Ms. Tyrrell can establish that Mr. Volk was unjustly enriched. Ms. Tyrrell's claim alleges that Mr. Volk exploited her during the relationship and he unjustly enriched himself.
- [5] For the reasons that follow, I have determined that the parties were in a marriage-like relationship.

Background

- [6] Mr. Volk is presently 69 years old. Mr. Volk did not graduate from high school. Mr. Volk was previously married. He has two adult children from that relationship.
- [7] Mr. Volk currently works full-time as an employee in the customer service area of an automobile dealership. Mr. Volk began working at the dealership in 2005. His initial job duties included driving the customer shuttle.
- [8] Mr. Volk is originally from Alberta. He had a business that operated some convenience stores in gas stations. However, in 2004, Mr. Volk sold that business in Alberta and he moved permanently to Kamloops, British Columbia.
- [9] Ms. Tyrrell is presently 68 years old. Ms. Tyrrell attended university and she obtained qualification as a registered nurse. Ms. Tyrrell retired from her nursing career in February 2016.
- [10] Ms. Tyrrell was previously married. She has four adult children from her first marriage. She has no children from her second marriage.
- [11] Ms. Tyrrell used to live in Williams Lake where she worked as a nurse. By 2002, Ms. Tyrrell was planning a move to Kamloops to work as a nurse there. Prior to her move, Ms. Tyrrell's second marriage to Mr. Tyrrell had ended in divorce. She was fearful of Mr. Tyrrell after their divorce. Ms. Tyrrell experienced a traumatic event at work in Williams Lake that caused her to experience depression. She took a medical leave from her work, although she later returned to nursing full-time.
- [12] The parties first met in approximately 2002. Their initial meeting was as a result of connections between their family and friends. Ms. Tyrrell's son dated, and eventually married, the daughter of Mr. and Mrs. Clark. Mr. Clark was best friends with Mr. Volk. Because of these connections with family and friends, the parties' paths crossed and over time, they became acquainted.
- [13] The parties eventually began to reside in the same house and they continued doing so many years. However, as mentioned, there is disagreement as to whether they ever lived in a marriage-like relationship.
- [14] Mr. Volk alleges that the parties separated on August 30, 2018. Ms. Tyrrell alleges in her response to the family claim that Mr. Volk moved out of the parties' home on September 9, 2018.

Were the parties living in a marriage-like relationship?

Credibility

[15] In this case, the credibility and reliability of the witnesses is important. Each party testified about the nature of the relationship in starkly contrasting ways. Ms. Tyrrell's evidence is that Mr. Volk was abusing and exploiting her and there was no spousal-like relationship. Mr. Volk denies that allegation and his evidence is that the parties had a lengthy marriage-like relationship.

[16] The well-known principles applicable to assessing credibility are set out in *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357 [Faryna]:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say "I believe him because I judge him to be telling the truth," is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

[17] In *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186 [Bradshaw], Justice Dillon describes the process for assessing credibility:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N.

202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Faryna*]; *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[18] Ms. Tyrrell testified at length about many events during the parties' relationship that she characterized as sexual, emotional and financial abuse. She was agitated and upset while testifying about certain events that took place between the parties.

[19] While I accept that Ms. Tyrrell was sincere as she gave her evidence, for reasons that I will set out in more detail below, I found there were many inconsistencies in the evidence she gave about her emotional state and the events which took place with Mr. Volk and others. I also find, for the reasons set out below, that there are many inconsistencies between Ms. Tyrrell's evidence and the evidence presented by other witnesses, in circumstances where I accept the evidence of the other witnesses.

[20] I have considered the credibility of the parties and the other witnesses who testified with these guiding principles from the authorities in mind. In short, and as I will explain in more detail later, on key matters, I find Mr. Volk to be a more credible and reliable witness than Ms. Tyrrell and I accept his evidence on a number of relevant points.

Legal Principles - Marriage-Like Relationship

[21] Sections 1 and 3 of the FLA are at issue. These sections deem a person to be a "spouse" if certain conditions are met:

1 In this Act:

...

"spouse" means a person who is a spouse within the meaning of section 3 [spouses and relationships between spouses];

...

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

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
- (i) has done so for a continuous period of at least 2 years, or
- (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

[22] In *Bellerose v. Reda*, 2023 BCSC 748 at paras. 48-49, Justice Brongers summarizes the legal principles, including recent decisions from our Court of Appeal, that apply to determining the existence of marriage-like relationship:

[48] These principles can be summarized as follows:

- a) The burden is on the claimant to prove that they meet the definition of "spouse". The standard is on a balance of probabilities (*Voth v. Martin*, 2019 BCSC 834 at para. 8, citing *F.H. v. McDougall*, 2008 SCC 53 at para. 49).
- b) Section 3 of the Act imposes both a two-year continuous "cohabitation requirement", and a marriage-like "relationship requirement". The cohabitation requirement is approached flexibly and may be satisfied even if the parties may have lived for extended periods at different locations (*Hu v. Lee*, 2022 BCSC 56 at paras. 41&42; *Thompson v. Floyd*, 2001 BCCA 78 at paras. 22&36).
- c) The determination of whether a relationship was marriage-like requires a holistic approach in which all of the relevant factors are considered and weighed, but none are treated as being determinative of the question (*Austin v. Goerz*, 2007 BCCA 586 at para. 62).
- d) While a "checklist" approach should not be employed, it can be helpful to consider the presence or absence of commonly accepted indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship (*Weber v. Leclerc*, 2015 BCCA 492 at para. 25).
- e) Such indicators of a marriage-like relationship may include: (1) shared shelter; (2) sexual and personal behaviour; (3) services; (4) social activities; (5) economic support and children; and (6) societal perception of the couple (*M. v. H.*, 1999 CanLII 686(S.C.C.), [1999] 2 S.C.R. 3; citing *Molodowich v. Penttinen* (1980), 1980 CanLII 1537 (O.N.S.C.) at para. 16 - these are sometimes referred to as the "Molodowich factors").
- f) Evidence of the subjective intentions of the parties is important to the determination of whether the relationship was marriage-like. However, this evidence must be tested against objective evidence of their lifestyle and interactions, which will provide direct guidance on the nature of the relationship (*Dey v. Blackett*, 2018 BCSC 244 at para. 195).
- g) A person is either a "spouse" or is not. There is no middle ground. People may live together interdependently and yet fail to establish that they developed the kind of psychological and emotional union associated with marriage (*C.F.M. v. G.L.M.*, 2018 BCSC 815 at para. 10).
- h) A marriage-like relationship is akin to a marriage without the formality of a marriage. However, it must be borne in mind that people treat their marriages differently and have different conceptions of what marriage entails (*Mother 1 v. Solus Trust Company*, 2019 BCSC 200 at para. 143).

[49] Also worth mentioning are two recent "marriage-like relationship" decisions issued last year by our Court of Appeal, albeit in the context of estate litigation: *Coad v. Lariviere*, 2022 BCCA 222 at para. 127; and *Jones v. Davidson*, 2022 BCCA 31 at paras. 21&24. They effectively confirm that there is no specific definition of whether marriage-like relationships exist. In particular, such relationships are not simply defined by financial dependence, sexual

relationships, or the mingling of property and finances. In sum, their existence ought not to be determined through a formulaic "checklist" approach, but rather through a contextual and holistic examination of all of the relevant aspects of the parties' relationship.

- [23] In *Kneller v. Greenwood*, 2015 BCSC 1410 at para. 100, citing *Takacs v. Gallo* (1998), 48 B.C.L.R. (3d) 265 (C.A.) at para. 53, leave to appeal ref'd [1998] S.C.C.A. No. 238, Justice G.C. Weatherill states: " Although a party may subjectively believe that he or she is not in a marriage-like relationship, the reality may be otherwise."
- [24] Even though the courts are not to employ a "formulaic checklist", it may still be useful to consider the presence or absence of commonly accepted "indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship": *Weber v. Leclerc*, 2015 BCCA 492 at para. 25. I will therefore consider a number of relevant factors that may be helpful to a holistic analysis of the circumstances of this case.

Shelter

Kamloops Rental House

- [25] According to Ms. Tyrrell, she first met Mr. Volk in approximately May 2002 while she was with Mrs. Clark. Mrs. Clark had arranged for her and Ms. Tyrrell to stay at Mr. Volk's house in Alberta. Ms. Tyrrell's son was either dating or engaged to be married to the Clark's daughter and they were going to visit the young couple. Ms. Tyrrell did not know Mr. Volk at the time, but she understood that he and Mr. Clark were best friends.
- [26] In addition to staying at Mr. Volk's house in Alberta, Ms. Tyrrell also got to know Mr. Volk in approximately 2002 when he visited her house in Williams Lake for dinner and he attended her son's wedding. Mr. Volk also assisted Ms. Tyrrell once when her car broke down. Mr. Volk picked Ms. Tyrrell up and made all the arrangements for repairs and transportation. Ms. Tyrrell described feeling extremely grateful to Mr. Volk for his assistance. She regarded Mr. Volk's actions as kind and generous.
- [27] The first place where the parties are alleged to have resided together is at Mr. Volk's rented house in Kamloops (the "Kamloops Rental House").
- [28] According to Ms. Tyrrell, in 2002 after they had already met, she learned that Mr. Volk was looking for someone to live in the Kamloops Rental House and supervise his teenage daughter, Crystal. Sometime after that, Ms. Tyrrell decided to move from Williams Lake to Kamloops for a nursing job, so she asked Mr. Volk if he was still looking for someone to live with Crystal.

- [29] Ms. Tyrrell and Mr. Volk agreed that she would move into the Kamloops Rental House and pay Mr. Volk a monthly rent of \$1,000. Ms. Tyrrell said that after she moved in sometime in 2002, she supervised Crystal, cooked meals and bought the groceries. She sometimes took Crystal shopping, for example, to buy her a new pair of jeans. Ms. Tyrrell said Mr. Volk used the master bedroom and she used another bedroom on the main floor, while Crystal used the downstairs bedroom of the Kamloops Rental House.
- [30] Ms. Tyrrell testified she was just happy to have somewhere to live because she felt safe that her ex-husband could not find her. I find that in respect of moving into the Kamloops Rental House, Ms. Tyrrell was motivated, at least in part, by a wish to develop a closer relationship with Mr. Volk.
- [31] According to Ms. Tyrrell, Mr. Volk only occasionally used the master bedroom of the Kamloops Rental House when he was visiting Kamloops. She said he would drop by unexpectedly and she rarely saw him there because she was working long hours as a nurse.
- [32] Ms. Tyrrell estimated that she lived in the Kamloops Rental House for four to five months in total.

Huntington House

- [33] While she was living at the Kamloops Rental House, Ms. Tyrrell testified that Mr. Volk suggested that she buy a house. Buying a house had never occurred to her, but Mr. Volk told her she would qualify for a mortgage. Mr. Volk also said that if she bought a house and let Crystal stay in the house, he would pay her rent of \$1,000 each month.
- [34] Ms. Tyrrell agreed to go look at houses to buy. They viewed about three houses together. In March 2003, Ms. Tyrrell purchased a house that the parties referred to as the "Huntington house" (the "Huntington House"). She paid \$140,000 for it and was the sole owner on title.
- [35] Mr. Volk arranged for the realtor and he took Ms. Tyrrell to the bank for the mortgage. Ms. Tyrrell obtained a \$137,987 mortgage from RBC to finance the purchase of the Huntington House as the sole borrower.
- [36] Ms. Tyrrell's memory of the events around the purchase of the Huntington House was not good. She described herself as exhausted due to working regular night shifts and lots of overtime shifts. She remembers that she felt isolated and friendless around this time.
- [37] At work, Ms. Tyrrell was dealing with a great deal of stress. The staff resented her as an outsider and she eventually had to initiate a grievance. Ms. Tyrrell's troubles at work during these early years were confirmed by one of her former co-workers, Carol Pittman.
- [38] While Ms. Tyrrell said she had very little to do with Mr. Volk, she also testified that Mr. Volk offered her friendship and social interaction that she craved. She said he found Mr. Volk non-threatening and comfortable to be around. Ms. Tyrrell said that Mr. Volk seemed to care about her and she had no one else to talk to.

- [39] Ms. Tyrrell also testified that she trusted Mr. Volk's advice because he was a businessman and she believed him when he said that it was a good idea to buy a house. Ms. Tyrrell testified that she also trusted Mr. Volk when he said he would pay her rent for Crystal. She factored the \$1,000 monthly that Mr. Volk said he would pay her into her budget calculation.
- [40] Crystal did move into the Huntington House but she didn't stay there long. Ms. Tyrrell thought that Crystal stopped living at the Huntington House by July 2003, at which point she went to live with one of Ms. Tyrrell's daughters.
- [41] Ms. Tyrrell offered Mr. Volk a place to stay at the Huntington House for when he was in town. However, Ms. Tyrrell said that Mr. Volk rarely stayed there. She could recall only one time when Mr. Volk and his son, Brent Volk, stayed overnight at the Huntington House.
- [42] Ms. Tyrrell testified that although she wanted to remain in the Huntington House it was not long after she moved in, that Mr. Volk began encouraging her to sell and purchase a different house.
- [43] Ms. Tyrrell sold the Huntington House in October 2003. By this time, the parties had decided to jointly purchase a house together.

Blind Bay House

- [44] In September 2003, the parties jointly purchased a house in Blind Bay, British Columbia (the "Blind Bay House"). The Form A Freehold Transfer and mortgage that the parties signed indicates that they were joint tenants. Ms. Tyrrell testified that the parties' business partnership began with their investment in the purchase of the Blind Bay House.
- [45] Ms. Tyrrell said that Mr. Volk convinced her to invest with him in the Blind Bay House, telling her that it would be a good investment. In cross-examination, Ms. Tyrrell said that when Mr. Volk proposed investing in a house together, she was unaware that he had not been paying her rent for Crystal and she would not have agreed had she known that.
- [46] According to Ms. Tyrrell, Mr. Volk asked her to accompany him to Blind Bay to look for a house to buy. She agreed to go because she was lonely and desperate for social interaction. They drove around and it was not long before Mr. Volk located the Blind Bay House which had a "for sale by owner" sign on the lawn.
- [47] They purchased the Blind Bay House directly from the owners. Mr. Volk made all of the arrangements to sell the Huntington House and to purchase the Blind Bay House. Ms. Tyrrell had little recall of the details of these events. In retrospect, she realizes that she was not thinking straight due to exhaustion, stress and isolation.
- [48] The Blind Bay House was more expensive than the Huntington House. Ms. Tyrrell was concerned that the house was too expensive and far away from her work. She did not have any cash to put towards the purchase of the Blind Bay House.

- [49] To purchase the Blind Bay House, Ms. Tyrrell ported over her mortgage from the Huntington House. The parties became co-borrowers when the mortgage was registered against the Blind Bay House. Mr. Volk contributed \$20,000 towards the purchase price and Ms. Tyrrell contributed \$1,000.
- [50] As mentioned, the parties took the title of the Blind Bay House as joint tenants. Ms. Tyrrell states that she had no input into the arrangements for completing the sale, such as instructing counsel on the closing documents. Mr. Volk made all the arrangements and she simply showed up and signed whatever documents were put in front of her.
- [51] Ms. Tyrrell had no recollection of being asked how she wished to hold title to the property. In respect of later properties that the parties owned, Ms. Tyrrell agreed that she knew the parties held title as joint tenants and she did not seek to change that. She also testified that since Mr. Volk contributed towards the purchase price, she believed they were both co-owners.
- [52] Once they purchased the Blind Bay House, Mr. Volk insisted that they get new appliances. Ms. Tyrrell paid for the appliances using her credit cards. The parties also discussed how to furnish the house. For example, Mr. Volk suggested the basement would be perfect for a pool table and Ms. Tyrrell purchased a pool table for the basement.
- [53] Ms. Tyrrell said that when they purchased the Blind Bay House, she believed Mr. Volk was still living in Alberta. She described being surprised when Mr. Volk moved into the Blind Bay House with her sometime in the summer. Mr. Volk could not remember exactly when he moved into the Blind Bay House but he agreed it was probably during the summer of 2004.
- [54] Mr. Volk testified that he was travelling back and forth from Alberta to the Blind Bay House after they initially purchased it. He said that he would come and stay at the Blind Bay House for a couple of weeks at a time. Mr. Volk said that he and Ms. Tyrrell shared the back bedroom in the Blind Bay House because that bedroom had a water view.
- [55] The parties sold the Blind Bay House for \$235,000 in February 2005. The parties had accumulated a considerable amount of equity in the year and a half of ownership.
- [56] From the net sale proceeds, the parties directed approximately \$46,000 towards the purchase of their next house and \$36,000 into a joint account they had opened. Ms. Tyrrell used the funds deposited into their joint account to pay off debts such as each party's credit card balance.

- [57] Ms. Tyrrell testified that she decided it was a good idea not to go her separate ways from Mr. Volk after they sold the Blind Bay House because she thought there was no opportunity to do so. She described being concerned that her ex-husband, Mr. Tyrrell, who was previously stalking her, would find her if she had utilities registered in her own name. Mr. Tyrrell worked for the telephone company and he once told Ms. Tyrrell that he could find people by looking up their utility records.

Harrington House

- [58] The next house the parties purchased was located in Kamloops on Harrington Road (the "Harrington House"). Ms. Tyrrell testified that she was pleased to be moving back to Kamloops as this house was closer to her work.
- [59] In February 2005, the parties took title to the Harrington House as joint tenants. They paid \$190,000 and they obtained a mortgage from HSBC for that amount. On the signed loan application, Ms. Tyrrell is listed as the "applicant" and Mr. Volk as the "spousal co-applicant". Ms. Tyrrell denies ever telling the banker at HSBC that she and the claimant were spouses.
- [60] In 2005, Mr. Volk made a \$25,000 lump sum payment on the HSBC mortgage. Ms. Tyrrell testified that she insisted Mr. Volk make this payment to increase his contribution to their investment.
- [61] The parties sold the Harrington House in October 2006.

Nicolani House

- [62] In October 2006, the parties purchased a house on Nicolani Drive in Kamloops (the "Nicolani House") for \$225,000. The parties used mortgage funds from HSBC to finance the purchase and they took title as joint tenants. The HSBC registered a mortgage against the Nicolani House for \$225,000, with both parties listed as borrowers.
- [63] In September 2013, the parties sold the Nicolani House for \$317,000. From the net sale proceeds, Ms. Tyrrell received approximately \$240,000 and some of these funds went towards purchasing the parties' next house.

Ricardo House

- [64] In 2013, the parties jointly purchased a new manufactured home. Upon signing the sales agreement for the manufactured home, they put down a deposit of \$21,000, of which Mr. Volk paid \$20,000. The parties paid cash to complete the purchase.
- [65] The manufactured home is located on leased land on Ricardo Road in Kamloops (the "Ricardo House"). The Ricardo House is registered in the parties' joint names and it is not subject to any financing-related charges. In cross-examination, Ms. Tyrrell agreed that she made a deliberate decision to have the Ricardo House put into both parties' names.

[66] Mr. Volk moved out of the Ricardo House in September 2018 when Ms. Tyrrell asked him to leave.

Services

[67] Both parties testified about the services they provided to the other during their relationship. Ms. Tyrrell testified that she was responsible for grocery shopping and cooking. Mr. Volk would operate the barbeque. Ms. Tyrrell said that while she cooked meals and made lunches for work, Mr. Volk preferred to eat out.

[68] Mr. Volk would sometimes drive Ms. Tyrrell to or from work when he was not working. Mr. Volk said that sometimes when they lived in Blind Bay, they would stay together in town at the accommodation provided for hospital employees. Ms. Tyrrell also described having to pick up Mr. Volk and drive him home, for example, if he was socializing and drinking alcohol.

[69] Mr. Volk looked after the parties' vehicles and he arranged for Ms. Tyrrell's car to be serviced. Ms. Tyrrell received a family discount for servicing at the dealership where Mr. Volk worked.

Sexual and Personal Behaviour

[70] Regarding the parties' personal behaviour, Ms. Tyrrell tended to minimize her personal relationship with Mr. Volk throughout her testimony. However, she did testify that when she moved into the Kamloops Rental House, they spent time talking and getting to know one another.

[71] Ms. Tyrrell recalled telling Mr. Volk about stressful events in her past and how she feared her ex-husband, Mr. Tyrrell. Ms. Tyrrell said that during these conversations, she would become anxious and short of breath and Mr. Volk would help her calm down.

[72] Ms. Tyrrell described feeling safe around Mr. Volk. She came to appreciate that Mr. Volk was concerned about her. Ms. Tyrrell also noticed that Mr. Volk did not remark on her appearance or press her for attention, which helped her to feel relaxed around him. The parties also had intimate conversations where they discussed their ex-spouses, their past sexual experiences and financial issues.

[73] Ms. Tyrrell testified that she had no physical attraction to Mr. Volk and she felt no need to establish a romantic relationship with him or anyone else. However, her evidence includes many examples of her looking to Mr. Volk for intimacy and emotional support. For example, she testified about explaining to Mr. Volk that from time to time, she might need a hug from him and he provided that contact. One time she arrived home at the Kamloops Rental House after being in a car accident and when Mr. Volk saw that she was upset, he gave her a hug. Ms. Tyrrell welcomed that kind of touch and emotional support from Mr. Volk.

- [74] Regarding whether the parties had a sexual relationship, Mr. Volk testified that the parties' sexual relationship began after Ms. Tyrrell moved into the Kamloops Rental House. He said they were careful not to share a bedroom when Crystal was home as they wanted to set a good example for her. However, when Crystal was not at home in the Kamloops Rental and Harrington Houses, he and Ms. Tyrrell would sleep in the same bed together and have sex.
- [75] Ms. Tyrrell testified that she never consented to sexual activity with Mr. Volk. She testified that the first sexual incident with Mr. Volk happened in the fall of 2005 when they were sleeping in the same bed together. She said that Mr. Volk suddenly grabbed her head and forced her to perform oral sex on him.
- [76] Ms. Tyrrell described feeling scared and incapable of refusing Mr. Volk's command, so she did what he told her. Ms. Tyrrell said that she and Mr. Volk never had sexual intercourse but he would occasionally force her to perform oral sex on him.
- [77] Ms. Tyrrell agreed that the parties slept in the same bed from 2003 until around 2016 when she retired. They shared a bed including when they travelled and took vacations together. Ms. Tyrrell said that she did not mind sharing a bed with Mr. Volk because she felt safe and because there was no romantic relationship between them.
- [78] Ms. Tyrrell testified that the sexual activity with Mr. Volk ended once her uncle started to live with them in 2009. However, she continued to share a bed and bedroom with Mr. Volk for many years after that. Ms. Tyrrell testified that once she retired in early 2016, the parties occupied separate bedrooms.
- [79] Brent Volk testified to noticing that near the end of the parties' relationship, they no longer stayed in the same bedroom in the Ricardo House. Before, that Brent Volk observed the parties sharing a bed and bedroom. Brent Volk said that sometime after 2017, he began to observe disagreements between the parties. He became concerned about how the parties spoke to each other. Ms. Tyrrell recalls that Brent Volk pointed out to her that the state of the parties' relationship seemed unhealthy.
- [80] Ms. Tyrrell testified at length about her poor emotional condition and vulnerability to Mr. Volk's allegedly abusive behavior. I found Ms. Tyrrell's evidence about her mental and emotional state during the parties' relationship to contain many inconsistencies.
- [81] For example, Ms. Tyrrell testified that in 2003, when the parties were not living in the same house, she said she was "totally relaxed" and she had no concerns. However, she also testified that during this period, she was working far too much doing night shifts and she was in a "fog". She described having trouble at work because she was viewed as an outsider and from 2002 to 2005, she said she made no friends at work. She described having no one to confide in and being starved for social interaction. She says this is why she was drawn to Mr. Volk.

- [82] I find that Ms. Tyrrell's evidence about her emotional state and her involvement with Mr. Volk was largely self-serving and I find it lacks credibility and reliability. Where Ms. Tyrrell's evidence conflicted with the evidence of Mr. Volk, I have accepted the evidence of Mr. Volk.
- [83] Ms. Tyrrell provided considerable evidence about her past marriages. She described feeling no physical attraction and no romantic love for either of her ex-husbands, rather, she loved them in the same way as she loves as any other person. I find this strikingly similar to Ms. Tyrrell's description of her feelings towards Mr. Volk.
- [84] I have considered Ms. Tyrrell's testimony about her deeply held religious beliefs regarding the sanctity of marriage, including the prohibition against sexual activity outside of marriage. However, I find the preponderance of the evidence satisfies me that whatever Ms. Tyrrell believes, the parties did engage in sexual activity together at various times during their relationship.
- [85] Both parties testified about their sexual activities together during the relationship. Both recalled that the activities could be unusual and they sometimes included role-playing and involvement with third parties. Mr. Volk said that the parties discussed and voluntarily agreed to engage in sexual activity with each other and third parties.
- [86] Ms. Tyrrell says that all of this activity, whether with Mr. Volk or with third parties, was Mr. Volk's idea. She testified that she was trapped into engaging in the sexual activity and she did not consent.
- [87] However, I note that Ms. Tyrrell testified about engaging in some sexual activity with third parties when Mr. Volk was absent and when he was unaware it was taking place. Ms. Tyrrell said that she found the sexual activity with Mr. Volk and third parties to be upsetting and distasteful. Both parties testified that when Ms. Tyrrell told Mr. Volk that she did not wish to engage in the sexual activity, it stopped happening.
- [88] Ms. Tyrrell also testified that she felt coerced into the sexual activity because she feared that Mr. Volk would reveal the details to others. However, she agreed that Mr. Volk never threatened her about this. Rather, Ms. Tyrrell surmised that telling other people was something that Mr. Volk was capable of doing.
- [89] When I consider all of the evidence, I find it more likely than not that the parties began engaging in sexual activity together prior to 2005 and their sexual activity continued until the time when Ms. Tyrrell asked for it to stop. However, I note that the existence of sexual activity in the parties' relationship, whether consensual or not, is not dispositive. It is merely one circumstance to consider as part of the overall evidence in deciding whether the parties lived in a marriage-like relationship.

- [90] Regarding the personal behaviour that took place between the parties, from 2009 to 2012, Ms. Tyrrell's elderly uncle stayed with the parties. Over the years, Ms. Tyrrell provided a considerable amount of support and care for elderly friends and relatives, including her uncle.
- [91] At the time the uncle was living with them, he was in a wheelchair. Mr. Volk described helping to look after the uncle, for example, when Ms. Tyrrell was out at work. However, Ms. Tyrrell testified that Mr. Volk did almost nothing to assist with the care of her uncle.
- [92] Ms. Tyrrell was very reluctant to agree that Mr. Volk was providing any form of assistance by having her uncle live in their home. Instead, Ms. Tyrrell testified that Mr. Volk enjoyed having her uncle at the home because Mr. Volk disliked being alone.
- [93] One time, the parties took her uncle on a trip to Hawaii. Ms. Plewes, who is Ms. Tyrrell's sister, also testified about taking a cruise with Ms. Tyrrell, Mr. Volk and their aunt and uncle.
- [94] The evidence satisfied me that Mr. Volk did assist Ms. Tyrrell with the care of her uncle. Mr. Volk agreed to have the uncle come live with them and he did so for no purpose other than to support Ms. Tyrrell with the care of her loved ones.
- [95] Ms. Tyrrell also played a significant role in supporting Mr. Volk's relationship with his family members. Brent Volk described Ms. Tyrrell as a confident, strong-minded kind lady who liked to take care of people. When Brent Volk was a young adult, Ms. Tyrrell did not hesitate to point out to him that his behaviour was inappropriate. She advised him on how to behave better and how to treat his then-girlfriend, now wife. Brent Volk took Ms. Tyrrell's advice to heart.
- [96] Brent Volk regarded Ms. Tyrrell as his father's spouse and part of the Volk family. It was apparent that he admires and cares for Ms. Tyrrell. The parties attended Brent Volk's wedding together and they kept in regular touch over the years.
- [97] I do not find it surprising that Brent Volk regarded Ms. Tyrrell as part of the family. She helped them decorate their new house and she spent considerable time with his children over the years, acting as a grandparent to them. Photographs confirm that Ms. Tyrrell was very involved in the Volk family life for many years.
- [98] The evidence also demonstrates that Ms. Tyrrell contributed significantly to the Volk family events. She fully participated in family birthday parties, weddings and vacations. Ms. Tyrrell and Mr. Volk would drive to Alberta to visit Mr. Volk's elderly mother. Ms. Tyrrell took Mr. Volk's mother on a cruise and Mr. Volk also joined them on that cruise.
- [99] Brent Volk and his family spent time with the parties camping and staying at the parties' various houses. He described a very special occasion of being able to take his father and Ms. Tyrrell, as well as his own wife and children, on a multi-day vacation to Disneyland.

- [100] I find that Brent Volk was an honest and reliable witness and I accept his evidence, particularly about Ms. Tyrrell being a steady and important presence in the Volk family life for many years. In my view, the evidence taken as a whole, amply demonstrates that Ms. Tyrrell played a significant role in the Volk family for many years and she became part of the family.
- [101] Ms. Tyrrell testified that while her children and grandchildren did come to their houses and campsites to visit at times when Mr. Volk was there, they did not like Mr. Volk or feel comfortable around him. Ms. Tyrrell described one incident where Mr. Volk spoke lewdly to her adult daughter. Ms. Tyrrell said that because her children did not like Mr. Volk, her contact with them diminished. She would often visit her children without Mr. Volk being there.
- [102] Ms. Tyrrell's sister, Patricia Plewes, testified that Mr. Volk first appeared in 2002, around the time that Ms. Tyrrell's son was getting married. As far as Ms. Plewes was aware at the time, Mr. Volk was a friend of the bride's father. She did not observe that the parties were in a romantic relationship.
- [103] After Ms. Tyrrell moved from Williams Lake to Kamloops, Ms. Plewes saw Mr. Volk and Ms. Tyrrell together when she and her husband met them for camping trips. Ms. Plewes said Ms. Tyrrell told her she and Mr. Volk were buying an investment house together. Ms. Plewes said she never actually asked Ms. Tyrrell if Mr. Volk was her boyfriend because this would not be something she would ask her sister about anyway.
- [104] Ms. Plewes said she assumed the parties were friends and she never saw Mr. Volk touch Ms. Tyrrell. Ms. Plewes also recalled Mr. Volk and Ms. Tyrrell coming to her house for a visit once. During that visit, the parties stayed together in the guest bedroom.
- [105] Ms. Plewes recalled visiting Ms. Tyrrell and Mr. Volk at some of their houses. She remembered observing Mr. Volk to be aloof as he sat in the living room watching television while she and Ms. Tyrrell talked in the kitchen. Ms. Plewes also observed Mr. Volk acting in a demanding fashion and being critical of Ms. Tyrrell's cooking. This caused Ms. Plewes to ask Ms. Tyrrell why she put up with Mr. Volk and Ms. Tyrrell just shrugged.
- [106] One time, Mr. Volk called Ms. Plewes to ask about Ms. Tyrrell's birthday. He wanted to arrange a surprise party for her. Ms. Plewes said that she, her husband and two of Ms. Tyrrell's daughters and some grandchildren attended the party that Mr. Volk arranged for Ms. Tyrrell at their lake campsite. She said they all had a good time until Mr. Volk made some lewd comments about Ms. Tyrrell's daughter.
- [107] Ms. Plewes also recalled that their parents visited and socialized with Mr. Volk and Ms. Tyrrell. Ms. Plewes said that Mr. Volk and her father enjoyed chatting and having a drink together before dinner. Overall, Ms. Plewes observed that the parties' relationship and the atmosphere in their home became more strained as time went by. At some point when Ms. Tyrrell was visiting her, she noticed that Mr. Volk would call repeatedly on Ms. Tyrrell's cell

phone and this appeared to bother her. I found Ms. Plewes to be a credible and reliable witness and I accept her evidence. She answered questions in a truthful and clear manner. Ms. Plewes did not appear to favour any particular party's position in her testimony.

- [108] Graham Roberts, a friend of Mr. Volk's, testified about meeting Ms. Tyrrell at the Harrington House. When he first met Ms. Tyrrell, he noticed that she seemed to dote on Mr. Volk, for example, by hugging him. Mr. Roberts also testified about how he and his wife socialized with the parties at their Nicolani and Ricardo Houses.
- [109] Mr. Roberts and his wife would also meet the parties to socialize as part of a group at a local pub. He said he observed the parties to have a relationship like the one he had with his own wife. He noticed that the parties seemed to behave in a caring way towards each other. He never observed Ms. Tyrrell to be scared of Mr. Volk. I found Mr. Roberts to be a credible and reliable witness. I accept his evidence regarding his observations of the parties' actions and demeanor towards each other.
- [110] During the relationship, the parties and their families exchanged greeting cards containing warm messages. However, the parties did not appear to exchange many Christmas or birthday gifts with each other.
- [111] At some point, Mr. Volk did give Ms. Tyrrell a necklace during the relationship. Mr. Roberts confirmed that he saw that necklace on Ms. Tyrrell and he teased Mr. Volk about it, saying that a ring might follow.
- [112] Both parties testified about the leisure time they spent together during the relationship. For example, Ms. Tyrrell greatly enjoyed driving all-terrain vehicles ("ATVs"). She and Mr. Volk purchased ATVs and they spent leisure time driving ATVs with their friends and family. Mr. Volk arranged to haul their ATVs with his truck. The parties purchased trailers to facilitate their ATVs and camping activities.
- [113] Mr. Volk testified that during their relationship, he and Ms. Tyrrell agreed that he would look after the "fun" things. For example, the parties agreed Mr. Volk would pay for the parties' recreational pursuits, such as paying for equipment and camping rental costs.
- [114] The parties spent a considerable amount of their leisure time camping and travelling. They would "dry camp" in the wilderness and also stay at established campsites, including at a particular lake. The parties both paid for the pad rental to park their trailer or RV at the lake. Over the years, the parties purchased and sold various campers, RVs and trailers. One need that the parties had was to acquire trailers and vehicles to haul their ATVs. Mainly, it was Mr. Volk who looked after acquiring and maintaining the equipment they needed to use their ATVs and to camp.

- [115] Both parties described entertaining friends and family during their camping trips. They would often camp with groups of friends. Mr. Volk testified that Ms. Tyrrell would care for their guests, for example, by cooking and making people feel comfortable. Both Mr. Volk's and Ms. Tyrrell's families participated in some of these camping adventures.
- [116] Mr. Volk and Ms. Tyrrell also took many vacations together, including out of the country. Ms. Tyrrell also took vacations without Mr. Volk being there.

Social

- [117] Regarding the role that they each played in the other person's life during the relationship, Ms. Tyrrell testified that she never brought Mr. Volk to her workplace or introduced him to her coworkers. However, she said one time in 2005 or 2006, Mr. Volk showed up at her workplace with donuts for the staff. Ms. Tyrrell said this was totally unexpected and she did not want to talk to her co-workers about him. Ms. Tyrrell said that when her coworkers asked her who he was, she told them he was her co-investor in real estate.
- [118] Ms. Pittman testified about working with Ms. Tyrrell starting in 2005. Ms. Pittman testified that it took time to get to know Ms. Tyrell. She recalled that Ms. Tyrrell always seemed to be in financial disarray and she knew this because Ms. Tyrrell told her she needed to work lots of overtime to pay her bills.
- [119] At some point, Ms. Tyrrell mentioned to Ms. Pittman that the father of her renter, Crystal, wanted to invest in a house with Ms. Tyrrell. This idea caused Ms. Pittman some concern.
- [120] Ms. Pittman said she began to question Ms. Tyrrell about this arrangement. She urged Ms. Tyrrell to protect herself because nothing seemed to be written down. She said Ms. Tyrrell told her that once Mr. Volk sold his business, everything would be okay.
- [121] Ms. Pittman said that Ms. Tyrrell would attend work social events, such as dinners, but Ms. Tyrrell never brought Mr. Volk to anything. Ms. Pittman recalled meeting Mr. Volk at the Nicolani House when she and her husband went over there for coffee.
- [122] According to Ms. Pittman, Ms. Tyrrell never mentioned she was in a romantic relationship with Mr. Volk. Ms. Tyrrell never told Ms. Pittman that she and Mr. Volk took vacations or weekend trips together.
- [123] I find Ms. Pittman to be a credible witness. However, Ms. Pittman had few opportunities to observe the parties together. Much of what Ms. Pittman testified about came from things that Ms. Tyrrell had told her and not from her own observation of events. I do not find Ms. Pittman's evidence is particularly helpful for determining the issues in this proceeding.
- [124] Unlike Ms. Tyrrell, Mr. Volk included Ms. Tyrrell in the social activities at his workplace. For example, Ms. Tyrrell accompanied Mr. Volk to the annual staff Christmas party and they sat together during the dinner.

- [125] Joshua Fowler got to know the parties by working for the company that sold the parties the Ricardo House and also by working at the car dealership with Mr. Volk. Mr. Fowler recalled seeing Ms. Tyrrell drop by the dealership with baked goods for the employees. He also saw her with Mr. Volk at the staff Christmas party. He observed they seemed to act warmly towards each other and they behaved like an "old married couple".
- [126] In cross-examination, Mr. Fowler agreed that he spent more time with Mr. Volk than with Ms. Tyrrell and he agreed it seemed unfair to him that Ms. Tyrrell was denying that the parties had a romantic relationship. Mr. Fowler was candid about his desire to help Mr. Volk and because of this, I am approaching his evidence with caution.
- [127] I accept Mr. Fowler's factual observations about seeing the parties together at the Ricardo House, the staff Christmas party and the dealership because his evidence is consistent with the evidence of other witnesses. However, I give no weight to his evidence that, in essence, the parties appeared to him to be involved in a marriage-like relationship.
- [128] Jennifer Schepps testified about getting to know the parties from 2012 to 2016 while she worked as a manager and server at the pub where the parties socialized and while working at the car dealership. She first met Mr. Volk in 2008 but she did not know him well. The first time that Ms. Schepps could recall meeting Ms. Tyrrell was at a dealership work event, such as a Christmas dinner.
- [129] One of Ms. Schepps' duties as the marketing manager at the dealership was to organize employee reward events, such as trips. In 2014, she organized a trip to San Francisco for the managers and their spouses.
- [130] Ms. Schepps said that the owner of the dealership wanted the reward trips to include spouses. She understood from talking to Mr. Volk that Ms. Tyrrell was his partner, so the dealership invited Ms. Tyrrell on the trip. Mr. Volk and Ms. Tyrrell shared a hotel room during this reward trip.
- [131] Ms. Tyrrell confirmed that she would accompany Mr. Volk to the holiday dinners at his workplace. She also accompanied Mr. Volk on a workplace trip to San Francisco. During the trip, the parties occupied the same bed in their hotel room and they attended the social activities together. However, Ms. Tyrrell testified that at the time, she did not realize that this was an event for employees and their spouses only.
- [132] When Ms. Schepps was working at the pub, she made a point of chatting with the parties when they came in. A few times, she served their table. Ms. Schepps testified that the parties appeared to be a couple due to their interactions together.

- [133] Ms. Schepps recalled that the parties reminded her of her own father and her step-mother. She noticed the parties bantering with each other and Ms. Tyrrell would poke Mr. Volk and tease him. Ms. Schepps formed the impression that Ms. Tyrrell "wore the pants" and that she could be strong-willed. However, she also said that in large social gatherings, Ms. Tyrrell stuck close to Mr. Volk and seemed shy.
- [134] I found Ms. Schepps to be a credible and reliable witness whose evidence I accept. She provided her observations of events clearly and directly. I did not detect that Ms. Schepps was offering her evidence in an attempt to assist any particular party.
- [135] Kathleen Lidstone, another person who worked at the dealership and at the pub where the parties socialized, provided her testimony. Like, Ms. Schepps, Ms. Lidstone recalled seeing the parties together at the pub and dealership social events.
- [136] Ms. Lidstone served the parties and their friends while they were at the pub and she would chat while serving them. She formed the impression that the parties were in a romantic relationship because of the interactions she observed between them. I found Ms. Lidstone to be a credible and reliable witness and I accept her evidence, which is consistent with the evidence of other witnesses.
- [137] Ms. Tyrrell's evidence was that she went to great lengths to ensure that people did not think she was in a romantic relationship with Mr. Volk. One time, she recalled Mr. Volk asking her to pick him up because he had been drinking and could not drive. Ms. Tyrrell was waiting when Mr. Volk came outside and he introduced her to someone as his "wife". Ms. Tyrrell said that in response to this, she told the person that she was not his wife and said the person seemed taken aback by this.
- [138] Ms. Tyrrell was aware that other people were under the impression that she and Mr. Volk were spouses. For example, she knew that Mr. Volk sometimes referred to her as his wife at his workplace. On one occasion, a co-worker of Mr. Volk's was talking to Ms. Tyrrell and inferring that she was Mr. Volk's wife. Ms. Tyrrell said she would always correct people who were under the impression the parties were spouses.
- [139] Graham Roberts, who knew both Mr. Volk and Ms. Tyrrell during the relationship, testified that Mr. Volk introduced him to Ms. Tyrrell at the parties' home calling her his "better half" or something like that. He did not recall Ms. Tyrrell saying anything about that introduction.
- [140] According to Ms. Tyrrell, she attended the pub and work events with Mr. Volk because Mr. Volk did not like going to social events alone. She said that she was starved for social interaction and so these opportunities gave her a chance to socialize. Ms. Tyrrell denied that she attended any of these social events as Mr. Volk's spouse and she would have declined them if people thought they were spouses.

- [141] I do not accept Ms. Tyrrell's evidence about this. Regardless of her own intention, the preponderance of the evidence demonstrates that many people who the parties interacted with at these events, were under the impression that the parties were spouses.
- [142] A number of individuals testified about their close and long-term friendship with the parties. Doug Clark testified that he first met Ms. Tyrrell in approximately 2000 or 2001. In 2003, his daughter married one of Ms. Tyrrell's sons.
- [143] Mr. Clark and his wife have been friends with Mr. Volk for many years. Mr. Clark said that he began to see Ms. Tyrrell more regularly at the Kamloops Rental House and the Huntington House. He and his wife would drop by to socialize and have a meal with Mr. Volk and Ms. Tyrrell. The Clarks also hosted the parties at their home including by allowing them to stay in a camperette in their driveway for at least a month while the parties' home was being built. Mr. Clark recalled that the parties seemed happy and to enjoy being together.
- [144] Mr. and Mrs. Clark went on many camping and ATV trips with the parties over the years. He recalled going on out-of-province trips with the parties to attend the Grey Cup tournament.
- [145] Mr. Clark also recalled attending a birthday party for Mr. Volk in Alberta that he thought Ms. Tyrrell and Brent Volk had organized. He said that Mr. Volk and Ms. Tyrrell attended a memorial service for his parents. Mr. Clark recalled that the parties once rented a vacation property in Palm Springs from his boss.
- [146] Mr. Clark formed the impression that Ms. Tyrrell and Mr. Volk were a couple, although he agreed he never saw much physical contact between them. Mr. Clark expressed that testifying in the trial was very awkward because his daughter is married to Ms. Tyrrell's son.
- [147] However, I do not find that Mr. Clark was attempting to assist either Mr. Volk or Ms. Tyrrell through his testimony at trial. He provided evidence about what he observed in a factual and clear manner. I found Mr. Clark to be a credible and reliable witness and I accept his evidence.
- [148] Mr. Roberts said that he and his wife often socialized with the parties. They went out to eat together on a regular basis, including up to three times per month at a pub or restaurant. From 2005 to approximately 2017, they went to dinners and celebrated special occasions at the parties' homes, for example, Easter dinner. Mr. Roberts said that he and his wife would drop by and visit Mr. Volk and Ms. Tyrrell at home, or the parties would drop by the Roberts' home to visit. They also spent time socializing with the parties at the lake.

- [149] Mr. Roberts provided his observations of the parties' relationship. He noticed Mr. Volk and Ms. Tyrrell behaving with affection towards each other, for example, he recalls seeing Ms. Tyrrell give Mr. Volk a goodbye kiss before leaving the pub to go to work. I found Mr. Roberts to be a credible, reliable witness, who answered questions directly. He did not appear to try to favour one party over another. I accept Mr. Roberts' evidence.
- [150] Ms. Tyrrell tended to minimize her friendship and interactions with the Clarks and the Roberts throughout her testimony. She would not agree that she was close friends with Mr. Roberts and his wife. She also portrayed the Clarks as close friends of Mr. Volk but not really part of her social circle or extended family. I found this odd given that the Clarks are the parents of her daughter-in-law.
- [151] Ms. Tyrrell described an incident where one of her sons came to visit her at the Blind Bay House when Mr. Volk was also living there. She said her son thought the parties were living together as a couple. Her son became angry with her because the parties' living arrangements violated his and Ms. Tyrrell's religious beliefs. Ms. Tyrrell said she assured her son that she and Mr. Volk were merely business partners investing together in real estate.
- [152] When Mr. Volk turned 60 years old, Brent Volk testified that there was a birthday celebration at the Ricardo House. He said Ms. Tyrrell assisted him to arrange and host this birthday party. However, in cross-examination, Ms. Tyrrell insisted that she had nothing to do with the party and Brent Volk did everything. Throughout the trial, I heard evidence from numerous witnesses, including from Ms. Tyrrell, that she enjoyed hosting and ensuring guests felt welcomed. All of the evidence leads me to find it more likely than not that Ms. Tyrrell was indeed involved in the planning and hosting of Mr. Volk's 60th birthday party.

Support

- [153] Throughout the relationship, Ms. Tyrrell earned more from her employment than Mr. Volk did. That is not surprising considering their respective careers. Mr. Volk earned as much as \$65,000 in total income in 2006 and 2007, part of which was derived from dividend income from selling his business in Alberta. His employment earnings for subsequent years was approximately \$62,000 per year.
- [154] Ms. Tyrrell testified she routinely worked overtime throughout her time working in Kamloops. From 2004 to 2015, Ms. Tyrrell's total income ranged from \$84,000 to \$107,000, and she often earned over \$90,000 per year.

- [155] The parties also operated joint bank accounts for a portion of their relationship. In 2003, when they were purchasing the Huntington House, the parties opened a joint chequing account at the HSBC (the "Joint Account"). The purpose of the Joint Account was so that Mr. Volk could deposit \$1,000 per month for the cost of Crystal living with Ms. Tyrrell at the Huntington House.
- [156] Ms. Tyrrell said this arrangement was supposed to continue for the Blind Bay House except that she alone would live there. Mr. Volk was only to stay there when he was in town from Alberta or during his vacation. Ms. Tyrrell agrees that she never actually discussed the alleged investment partnership terms with Mr. Volk when they bought the Blind Bay House.
- [157] Ms. Tyrrell said she never realized that Mr. Volk was not depositing \$1,000 a month into the Joint Account. She eventually learned from the banker, that not only was Mr. Volk not depositing \$1,000 each month, he was also spending from the Joint Account.
- [158] Ms. Tyrrell arranged for her paycheques to be deposited into the Joint Account. Mr. Volk's paycheques were deposited to a joint account that he held with his son, Brent Volk. Mr. Volk also had a line of credit account and he continued using his account with his son and his line of credit account during the parties' relationship.
- [159] The parties closed the Joint Account in June 2007. Ms. Tyrrell said that she insisted on closing the Joint Account because she had learned that Mr. Volk was not contributing \$1,000 per month and he was using the funds in the account. During the relationship, the parties also opened and maintained a joint savings account at HSBC which they operated until approximately 2010.
- [160] On November 7, 2005, Ms. Tyrrell opened her own HSBC account where she directed her employment earnings and from which she paid bills. On some occasions, the net sale of proceeds of the parties' jointly owned homes was paid into Ms. Tyrrell's HSBC account. Ms. Tyrrell testified that Mr. Volk was also using her HSBC account to cover his expenses but she didn't realize it at the time.
- [161] Even after Ms. Tyrrell opened her own personal HSBC account, she continued paying the parties' bills. She also continued debiting funds from her personal line of credit to cover expenses, including Mr. Volk's expenses such as credit cards in his name.
- [162] Ms. Tyrrell admits that she did not inform herself about the transactions in the Joint Account or in her personal HSBC account. She never checked the bank statements or kept track of the balance. She said this was because the bank did not send her any statements but she did admit she had access to the balance information when she used the ATM machine. Ms. Tyrrell testified that she never actually saw any of the bank statements until 2018 when she was preparing for this litigation.

- [163] Ms. Tyrrell testified at length about her lack of knowledge about the details of her financial affairs. She kept track of things in her head. She knew how much she earned and how much her expenses were. On occasion, her personal banker would call her to notify her that there were insufficient funds in the Joint Account.
- [164] Ms. Tyrrell testified that she always felt compelled to work more to keep up with expenses. Ms. Tyrrell testified that in retrospect, she realizes that she was naïve, even negligent, in failing to inform herself of the facts and to keep better track of what was happening.
- [165] Since these proceedings began, Ms. Tyrrell testified about her efforts to reconstruct the parties' financial affairs by, for example, reviewing decades of statements. She testified about the credits/debits in various bank and credit card accounts going back as far as 2003. She insisted that she knew who was responsible for practically every transaction because of her very clear recollection of her own pattern of spending and paying bills.
- [166] The parties entered an agreed statement of facts regarding allegations that Ms. Tyrrell had made to the effect that Mr. Volk was accessing Ms. Tyrrell's personal bank account in 2022. To be clear, Ms. Tyrrell alleged that Mr. Volk accessed her bank personal account throughout their relationship and not just in 2022.
- [167] Following these allegations, Mr. Volk's counsel sought to verify who was accessing Ms. Tyrrell's bank account for the flagged transactions in 2022. Counsel contacted the bank at issue and asked them to check the ATM surveillance video.
- [168] A bank employee advised that there was an ATM surveillance video available for some of the transactions that Ms. Tyrrell flagged as instances of Mr. Volk using her bank account. The bank employee confirmed, after receiving photographs of the parties, that the surveillance video showed Ms. Tyrrell, not Mr. Volk, using the ATM. I asked counsel to clarify whether they agreed that it was Ms. Tyrrell who was using the ATM during these transactions and they confirmed their agreement that it was Ms. Tyrrell who was using the bank machine.
- [169] I do not find that Mr. Volk used Ms. Tyrrell's personal account after the parties' separation, including in 2022. I find Ms. Tyrrell's evidence concerning the parties' respective use of bank accounts is unreliable. Again, in her evidence, Ms. Tyrrell insisted that she could accurately say, going back to 2003, who was carrying out the transactions in the Joint Account and other bank accounts.
- [170] A review of the Joint Account shows that both parties made deposits and withdrawals from it. Mr. Volk does not deny that he used funds in the Joint Account. However, he says that Ms. Tyrrell was fully aware of it. Ms. Tyrrell testified that in 2004, Mr. Volk spoke to her about using her salary to cover their expenses and I find that Ms. Tyrrell knew about this proposal and she agreed to it.

- [171] However, in January 2004, when the parties were living at the Blind Bay House, Ms. Tyrrell testified that Mr. Volk suggested to her that they ought to try to live on her income only. Ms. Tyrrell asked Mr. Volk if there was a problem with his business in Alberta and he told her that he thought they could live off of what she made. Mr. Volk recalled having a conversation with Ms. Tyrrell where they discussed covering their expenses using her earnings and he said that he would invest \$100,000 from the revenue of his business into their real estate. Ms. Tyrrell testified that she agreed to pay for their expenses assuming it was going to be a temporary arrangement. However, at no point did Ms. Tyrrell discuss her assumptions that the arrangement would be temporary.
- [172] Ms. Tyrrell testified that she assumed they would later do an "accounting" of their contributions. When this accounting was done, Ms. Tyrrell assumed that she would get back money from Mr. Volk. However, at no point did Mr. Tyrrell actually ask Mr. Volk if her assumptions were correct and she did not confirm that he would repay her.
- [173] Ms. Tyrrell testified that her system of keeping track of their finances was to keep a balance sheet in her head. She did not write down who paid for what or who brought in money. She did not have any discussions with Mr. Volk about her understanding of the balance sheet or the budget.
- [174] Ms. Tyrrell testified that in late 2003, Mr. Volk showed her how to use on-line banking for the Joint Account. She was responsible for paying the bills using on-line banking. She said that Mr. Volk would tell her what to pay for the credit card bills and she would arrange the payment through on-line banking. Despite having access to the on-line banking, Ms. Tyrrell insisted that she was unaware of the bank balance. Ms. Tyrrell said that sometimes she would also use the ATM for the Joint Account but she claimed the receipts she got at the ATM didn't give her the account balance.
- [175] It strikes me as contradictory to Ms. Tyrrell's evidence that Mr. Volk was covertly orchestrating their finances and stealing money from her when he purposely arranged for Ms. Tyrrell to have online banking access. It also strikes me as inconsistent with an allegation of exploitation when Ms. Tyrrell agreed to Mr. Volk's request that they cover their joint expenses using only her income.
- [176] According to Ms. Tyrrell's evidence, she spent frugally, while Mr. Volk did not. Ms. Tyrrell said she did not like to buy on credit, while Mr. Volk liked to finance purchases, such as recreational vehicles.
- [177] Mr. Volk paid cash towards the parties' real estate investments over the course of their relationship. For example, Mr. Volk contributed \$20,000 towards the purchase of the Blind Bay House and \$25,000 towards each of the Nicolani and Ricardo Houses.
- [178] When the parties sold or refinanced their houses, they usually received some net proceeds or loan funds. Those proceeds went into the Joint Account or into Ms. Tyrrell's personal account. Ms. Tyrrell agreed that she was in charge of disbursing these funds. She and Mr.

Volk never discussed how to disburse the proceeds because they didn't have those kinds of discussions and it was her job to look after it. However, in cross-examination, Ms. Tyrrell would not agree that Mr. Volk allowed her to take charge of those funds because there was trust in their relationship.

- [179] For example, in 2009, the parties refinanced and obtained approximately \$60,000. The funds were used to pay off the parties' debts and loans. Ms. Tyrrell used part of the proceeds to pay off her car loan or, possibly, her line of credit.
- [180] Ms. Tyrrell rejected the suggestion that Mr. Volk was contributing, for example, by allowing her to use funds borrowed against their real estate. Instead, Ms. Tyrrell was adamant that Mr. Volk's failure to contribute and his use of the Joint Account was the reason she was in debt in the first place.
- [181] In cross-examination, it was put to Ms. Tyrrell that over time, the parties made a profit on their real estate and they managed to pay down their mortgages. Ms. Tyrrell insisted that to the extent they paid down the mortgages or paid off debts, it was due to the use of her earnings and not from any contribution by Mr. Volk. While she concedes that Mr. Volk made certain cash contributions, she maintains that his contributions are grossly overshadowed by her own.
- [182] After Ms. Tyrrell retired, and after she said she had realized that Mr. Volk was not contributing any money towards their living expenses, she said that in 2016 or 2017 she insisted he pay her \$500 each month as "rent". He did pay her \$500 each month starting in January 2017, but later he reduced his payment to \$350 because he was renting a spot for a trailer at the lake.
- [183] Ms. Tyrrell said that when she moved to Kamloops she had no furniture other than a bed. When Ms. Tyrrell purchased the Huntington House, Mr. Volk moved his furnishings from the Kamloops Rental House into the new house. Ms. Tyrrell said she agreed to Mr. Volk's offer because it made things easier for her.
- [184] Ms. Tyrrell was reluctant to acknowledge the benefit of Mr. Volk supplying furniture and instead, she criticized the style of the furniture. The parties testified that they used Mr. Volk's furnishings in many of their houses.
- [185] Ms. Tyrrell added Mr. Volk to her extended benefits plan offered through her employment. She testified to not realizing that she was representing to her employer that Mr. Volk was her spouse. Ms. Tyrrell said she added Mr. Volk because she wanted to help him out.
- [186] In early 2016, Ms. Tyrrell was preparing to retire. One day when Mr. Volk came home from work, Ms. Tyrrell asked him to sign a waiver of his entitlement to survivor benefits under her pension. Mr. Volk recalled that Ms. Tyrrell told him that by signing the form, it would mean her kids would get more money if she passed away. Mr. Volk said that he signed the form because that was how they operated and he trusted Ms. Tyrrell.

Conclusion regarding marriage-like relationship

[187] I am mindful that the court is to make a determination using a holistic and contextual approach that is grounded in an assessment of all relevant aspects of the relationship, not on a checklist of objective factors. When I take a holistic and broad contextual assessment of the circumstances, the evidence demonstrates that despite Ms. Tyrrell's subjective intention to limit her relationship with Mr. Volk to a financial partnership, the parties were in fact living in a marriage-like relationship for many years. In other words, despite Ms. Tyrrell's belief that she and Mr. Volk were merely business partners, the preponderance of the evidence on a holistic assessment of the circumstances, indicates the parties had a lengthy marriage-like relationship.

[188] A review of all of the evidence leads me to find that Mr. Volk and Ms. Tyrrell began living in a marriage-like relationship as of July 30, 2004, which roughly aligns with the evidence about Mr. Volk moving into the Blind Bay House with Ms. Tyrrell. Once Mr. Volk began residing in the Blind Bay House, I find the parties were living in a marriage-like relationship for all of the reasons that I have explained.

[189] I further find that the marriage-like relationship continued until September 8, 2018. By that time, Ms. Tyrrell asked Mr. Volk to move out of the Ricardo House and he complied with her request.

How to Divide Property/Debt?

[190] Part 5 of the FLA governs property division. Section 81 provides that spouses are entitled to family property and responsible for family debt without regard to their respective use or contribution. Section 81 also provides that when spouses separate, each has "a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt".

[191] In Ms. Tyrrell's response to the family claim, she does not seek unequal property division, for example, by alleging that certain property is excluded from family property, or that unequal division should be ordered because it would be significantly unfair to equally divide property: ss. 85 and 95, FLA. Ms. Tyrrell's counsel advised the court on several occasions during the trial, that Ms. Tyrrell had no intention of seeking an amendment to her pleadings to, for example, request unequal division of property and debt.

[192] Section 87 of the FLA provides that family property is valued based on its fair market value as of the date of trial.

[193] Ms. Tyrrell is concerned that Mr. Volk failed to disclose financial information. She was most concerned about whether Mr. Volk had failed to disclose information related to the funds he received from the business he sold in Alberta in 2004 and if he transferred money and assets to Brent Volk during the parties' relationship.

- [194] Mr. Volk provided evidence regarding his extensive efforts to retrieve records from his bank, his former accountant, a credit reporting agency and the Canada Revenue Agency. He produced the records he obtained. I accept that Mr. Volk's financial institutions could not retrieve aged financial records, for example, going back as far as 2003, despite his request to do so. Mr. Volk also had a poor memory of financial matters, including the details of selling his business in 2004 and how he used and invested the sale proceeds.
- [195] It was put to Mr. Volk that he has additional assets, investments and income beyond what he disclosed. It was also suggested that Mr. Volk transferred his assets to his son, for example, by giving him chattels or allowing him to access funds in the joint account. Brent Volk testified that occasionally if his father owed him money for an expense, he would tell him to withdraw money from their joint account.
- [196] However, Brent Volk testified, and I believed him, that he did not generally access the joint account and he treated that account as belonging exclusively to Mr. Volk. I do not find that Mr. Volk illegitimately siphoned off family assets by transferring them to Brent Volk or anyone else. I accept Brent Volk's evidence that he assisted the parties by allowing them to store chattels at his house in Alberta and to register chattels, such as vehicles, in his name to save on tax and insurance costs.
- [197] There was evidence that both parties provided money or chattels to their respective adult children to help them out including during the parties' relationship. I do not find this conduct is unusual or unexpected, especially when parties have grown children from previous relationships.
- [198] Mr. Volk earned a modest income and he had modest assets, including investments, during the parties' relationship. He often financed the purchase of chattels and he and Ms. Tyrrell paid towards these chattels under the financing arrangements. The parties had difficulty keeping up with their spending and I do not accept that since 2004, Mr. Volk has, for example, hidden away approximately \$100,000 that he received for the sale of his business in Alberta.
- [199] All of the evidence I heard, and the evidence that I have accepted, satisfies me that Mr. Volk used the business sale proceeds he received in approximately 2004 during the parties' relationship, including to fund their real estate purchases and to reduce their mortgage debt. I do not find that the evidence establishes that Mr. Volk has more assets or income than he has disclosed in this proceeding.
- [200] Mr. Volk testified that Ms. Tyrrell was responsible for managing the parties' financial affairs and Ms. Tyrrell confirmed that she looked into matters such as paying the parties' bills. Considering the circumstances as a whole, I find that Mr. Volk has met his disclosure obligations and this is not a situation where he has flouted an order for disclosure.
- [201] The chattels that are family property in this family law proceeding available for division are as follows:

Manufactured Home

(Appraised value as at Oct. 25, 2022)

\$460,000

Smart Car

\$10,000

2012 Ford Escape

\$8,000

Total chattels

\$478,000

[202] Regarding the above chattels, the parties are entitled to an undivided half interest in this family property.

[203] There are some chattels that the parties acquired during the relationship that have been disposed of following separation. After separation, Mr. Volk sold a "2010 800 quad side-by-side" vehicle (the "Quad") to a friend and his friend assumed the outstanding loan for this chattel. I accept that evidence and find that for the Quad, there was no equity in it when it was transferred. I find that in respect of this Quad, there is no family property or family debt for division in respect of it.

[204] In addition to chattels, the parties accumulated retirement savings that are family property in this proceeding. For Ms. Tyrrell's retirement savings accounts, Mr. Volk submits that the growth in her RRSP account from February 2007 to June 2018 was approximately \$46,230, being the difference between the opening balance of \$98,553 and the closing balance of \$144,784. Therefore, Mr. Volk seeks one-half of \$46,230 of the growth in Ms. Tyrrell's RRSP during the relationship. The parties are entitled to an undivided half interest in this family property.

[205] Mr. Volk has an RRSP with a value as of June 30, 2018 of \$36,166 and a tax-free savings account with a balance as of March 29, 2019 of \$13,285. Mr. Volk also held a DPSP and RRSP through his employer that is valued at \$3,787 and \$4,813 for a total of \$8,600. The parties are entitled to an undivided half interest in this family property which has a total value of \$58,051.

[206] Mr. Volk was questioned extensively about the retirement savings he acquired through his employer in 2008 and 2011. I accept Mr. Volk's evidence that these amounts were transferred out by May 2017. I also accept Mr. Volk's evidence that these balance amounts were carried over and they are now reflected in the plans with his employer which I have already valued.

- [207] Mr. Volk also seeks an interest in Ms. Tyrrell's pension entitlement. As already mentioned, Ms. Tyrrell retired in February 2016 at which point she began to receive monthly pension benefits.
- [208] Division 2 of Part 6 of the FLA provides for division of benefits under local plans. Ms. Tyrrell receives benefits from the Municipal Pension Plan which falls within the definition of "local plan" within the meaning of s. 110 of the FLA.
- [209] Section 117(1) of the FLA applies because the benefits to be divided are under a local plan, they are not in a defined contribution account and the pension has commenced. Section 117(2) provides that a spouse is entitled, after giving certain notice, to "receive a proportionate share of benefits payable under the plan during the member's lifetime".
- [210] The next question is to determine the proportionate share of benefits payable under the plan that Mr. Volk is entitled to. I have already determined that the length of the parties' relationship is 14 years, having commenced on July 30, 2004 and continuing until separation in September 8, 2018. In respect of that period, I find that Mr. Volk is entitled to an equal share of Ms. Tyrrell's benefits payable, which shall be administered by the plan pursuant to s. 117 of the FLA.
- [211] There is also family debt to be considered. During the relationship, the parties purchased a "2010 Forest River XLR Toy Hauler Trailer" (the "Toy Hauler"). They financed that purchase through a loan from the RBC. Ms. Tyrrell said the parties paid \$69,000 for the Toy Hauler after receiving credit for a trade-in. The Toy Hauler loan payments were debited directly from Mr. Volk's RBC account.
- [212] In September 2014, the parties sold the Toy Hauler for \$35,000. They periodically received payments towards the sale price of the Toy Hauler from the couple they sold it to. The RBC loan for the Toy Hauler was not paid out when the parties sold it. Ms. Tyrrell testified that she made payments to RBC towards this Toy Hauler loan, even after separation.
- [213] A 2018 RBC loan statement for the Toy Hauler indicates the opening balance for the period of January 1, 2018 to December 31, 2018 was \$33,579.80 and the closing balance was \$27,323.80. Therefore, the loan balance owing by the parties to the RBC as of the date of separation was approximately \$29,930.
- [214] At trial, Mr. Volk estimated the outstanding balance of the Toy Hauler RBC loan was \$6,800. Ms. Tyrrell estimated during her testimony, that there was \$5,000 still outstanding. No party presented documents to show the precise balance owing as of the trial date.

[215] Ms. Tyrrell provided evidence of \$1,275 in payments she made directly to RBC for the Toy Hauler loan. Mr. Volk agrees that she should receive credit for those payments. I find that each party is liable for one-half of the \$29,930 Toy Hauler RBC loan as of the date of separation. As well, Mr. Volk shall receive credit for \$23,755 of payments he made towards that loan from the date of separation onwards and Ms. Tyrrell shall receive credit for \$1,275 of payments she made since separation.

[216] As I mentioned, the precise amount required to pay off the RBC Toy Hauler loan was not in evidence at trial. Therefore, the equalization payment related to the Toy Hauler loan is subject to a final accounting.

Can unjust enrichment be established?

[217] Ms. Tyrrell's counsel confirmed during the trial and in closing submissions that if the court determines that the parties were living in a marriage-like relationship, Ms. Tyrrell agrees that the FLA applies and her claim for unjust enrichment should be dismissed.

[218] As I have concluded for the reasons explained that the parties were living in a marriage-like relationship from 2004 to 2018, I dismiss Ms. Tyrrell's claim seeking a remedy for unjust enrichment.

Conclusion

[219] The parties were living in a marriage-like relationship from July 30, 2004 to September 8, 2018.

[220] The parties have a right to an undivided half interest in, and they are equally responsible for, the following family property and family debt:

- a) Chattels with a value of \$478,000;
- b) The increase in value to Ms. Tyrrell's RRSP of \$46,230;
- c) Mr. Volk's retirement and investment accounts of \$58,051;
- d) The Toy Hauler RBC loan balance owing of \$29,930, with adjustments required for the payments made by each party, and subject to a final accounting or agreement of the parties as to the precise equalization payment required in respect of this item of family debt; and
- e) For the period July 30, 2004 to September 8, 2018, Mr. Volk is entitled to an equal share of Ms. Tyrrell's pension benefits payable, which shall be administered by the plan pursuant to s. 117 of the FLA.

[221] The parties requested an opportunity to make submissions regarding costs. If the parties are unable to agree on costs, they have leave to make written submissions to me regarding the issue of costs pursuant to the following schedule:

- a) Mr. Volk's counsel may deliver his written submissions regarding costs, not to exceed 10 pages, to counsel for Ms. Tyrrell and SC Scheduling by no later than 21 days after the date of these reasons for judgment;
- b) Ms. Tyrrell's counsel may deliver written submissions responding to the issue of costs, not to exceed 10 pages, to counsel for Mr. Volk and to SC Scheduling by no later than 10 days after delivery of Mr. Volk's submissions; and
- c) Mr. Volk's counsel may deliver written reply submissions, not to exceed 5 pages, to Ms. Tyrrell's counsel and SC Scheduling by no later than 5 days after delivery of Ms. Tyrrell's responding submissions.

"E. McDonald J."

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