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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *J.S.W. v. J.M.D.,*
2026 BCSC 316

Date: 20260226
Docket: E138637
Registry: Kelowna

Between:

J.S.W.

Claimant

And:

J.M.D.

Respondent

Before: The Honourable Justice G.C. Weatherill

Reasons for Judgment

Counsel for the Claimant:	D. Maio
Counsel for the Respondent:	J.C. Chandler B. Crow
Place and Dates of Trial:	Kelowna, B.C. February 3–6; 9–13, 2026
Place and Date of Judgment:	Kelowna, B.C. February 26, 2026

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Introduction

[1] The issue to be determined in this trial portion of this bifurcated family law proceeding is the parties' date of separation. The parties never married but lived in an on and off marriage-like relationship for many years. The claimant says that they separated permanently in June 2023 after an eight-and-a-half month separation and subsequent reconciliation in 2022. The respondent maintains that they separated permanently in January 2020.

[2] If the respondent's position is accepted, the claimant's property division claims—as set out in his notice of family claim filed July 27, 2022—may be statute-barred pursuant to s. 198(2)(b) of the *Family Law Act*, S.B.C. 2011, c. 25 [*FLA*].

[3] For the reasons that follow, I find for the claimant.

Background

The Principal Evidence

[4] The claimant and the respondent are currently 54 and 44 years of age, respectively. Each of them has at least one child from a previous relationship. In the case of the respondent, the child is a daughter, P.P., now aged 22.

[5] The respondent testified that she met the claimant in 2004 in Vancouver and shortly afterwards he "swept [her] off [her] feet". From June 2005 to 2006, and again from 2010 to 2014, the parties (together with P.P.) lived in Central and South America. The respondent testified that they were "on the run" because the claimant was involved in the drug trade and that they moved around from Mexico to Colombia to Belize to Guatemala to Brazil and to Costa Rica, although not necessarily in that order. She testified that the claimant travelled on a fake passport under another name. The claimant conceded that he stupidly purchased a fake passport but denied using it for any purpose, including travel. He testified that the parties were not on the run from anything or anyone and that he worked remotely in his family's mining business.

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[6] The respondent testified that she and P.P. returned to Canada in 2006. She purchased a house in Vancouver in July 2008 and registered it in her name (the "Quebec Street Property"). The claimant returned to Canada some time later and resumed cohabitation with the respondent. They had two children together.

[7] The parties returned to Mexico in July 2010 with their children. The respondent returned to Canada in July 2014. She testified that he did so because the claimant had abandoned her and the children. The claimant denied that he had abandoned them, testifying that he travelled to Cuba to attend a business course and returned to their home in Mexico every weekend. The claimant returned to Canada in October 2014. The claimant testified that he and the family moved to Kelowna, British Columbia in October 2014 where, until approximately 2016, he continued to work in his family's business.

[8] The parties had a total of four biological children together, now aged 17, 14, and twins aged 10.

[9] By any measure, the parties' relationship was complicated and dysfunctional. The claimant testified that he and the respondent often fought, primarily because the respondent was an alcoholic and drank to excess. The respondent testified that she was not an alcoholic but drank to cope with the claimant's physical and emotional abuse. The claimant denied ever having been physically or emotionally abusive towards the respondent.

[10] The claimant testified that, in August 2015, he suffered several injuries in a worksite accident in Ontario, including a traumatic brain injury that required extensive therapy and a lengthy recovery period. He testified that, as a result, he functioned mostly as a stay-at-home father and that the respondent went to work as a realtor to support the family. From late 2018 until September 2022, the claimant worked part-time as a technology consultant in the marijuana grow-op industry. He testified that he has not worked since September 2022 due to various health issues.

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[11] The respondent testified that she never saw any indication that the claimant had suffered a head injury and described the injuries he sustained as “minor”. She testified that he never contributed to any of the family’s living expenses and that she paid for everything.

[12] The claimant testified that after his head injury, the respondent routinely made him feel worthless, devalued him as a husband, demoralized him, and completely controlled him. He testified that he became “a shell of a man”. He described the respondent as “controlling and manipulative”.

[13] When the parties moved to Kelowna, they initially lived at a house owned by the claimant’s parents in the “Snowpines” area of the Big White ski resort (the “Snowpines House”). They subsequently moved to rented accommodation in an area called Black Mountain.

[14] The claimant testified that, in September 2018, the parties and the children moved to a rented house on Doekson Road in Kelowna (the “Doekson Road House”). The respondent denied that the claimant ever lived at that house. She testified that the claimant would simply “come and go” from the house as and when he pleased.

[15] Grant Menzies was the landlord of the Doekson Road House. He testified that his initial two-year rental agreement was with the respondent alone and that she was his point of contact. He testified that he met the claimant when the parties moved to the Doekson Road House. He testified that he discussed with the claimant how to balance the water in the pool. When it later appeared to him that the pool and yard maintenance was not being done, Mr. Menzies either did it himself or had a service company do the work. He testified that he did not see the claimant at the house during his visits but could not say whether or not the claimant was there.

[16] The claimant testified that, just before Christmas 2019, the respondent took the children to Calgary without his prior knowledge. He testified that when the respondent and the children returned on December 31, 2019, the fighting between

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him and the respondent was “non-stop” and he left the house to stay with a male friend. On cross-examination, he denied being involved with another woman at the time or at any other time prior to June 2023.

[17] The claimant testified that, approximately one week later, the respondent told him she had discovered a lump in her breast. He testified that the discovery seemed to frighten her and caused her to “sober up”. He testified that she asked him to return home, which he did. He testified that this incident prompted him to apply for life insurance coverage for the respondent.

[18] The respondent’s version of these events was that in December 2019, she discovered that the claimant had a girlfriend and she left for Calgary without him. She testified that when she returned, the claimant had already moved out of the Doekson Road House. She testified that the parties separated permanently at this time (January 2020) and never reconciled or resumed a marriage-like relationship thereafter. She testified that she could not recall having had any discussion with the claimant regarding a lump in her breast. She also denied having had any knowledge of a life insurance application, but on cross-examination, conceded that she had signed it.

[19] The claimant testified that, in February 2020, there was an incident during which he blocked the respondent from leaving a friend’s residence in her vehicle with one of their children because she was intoxicated. He testified that he called the respondent’s then-real estate manager, M.S.P., who attended and helped the claimant remove the child from the vehicle. The respondent denied that the event had occurred, stating that it was entirely made up.

[20] The claimant testified that, beginning in March 2020, the COVID-19 pandemic resulted in the respondent’s pending real estate transactions collapsing. The stress caused the respondent to resort to drinking again, which in turn led to more fighting between her and the claimant. He testified that he left the home once again because of the toxic environment.

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[21] The claimant testified that he could not tolerate the respondent's emotional instability and "cycling" from sobriety to alcoholic excess. He decided that he and the children needed an "exit strategy" and "a place to land" in the event the respondent continued her excessive drinking. In March 2020, he signed a "rent to own" agreement (the "RTO Agreement") with M.S.P. for a house on Hazell Road in Kelowna (the "Hazell Road House"). The Hazell Road House included a self-contained one-bedroom suite attached to the main house (the "Hazell Suite"). The claimant testified that he did not disclose the RTO Agreement to the respondent at the time because, if he needed a place to go with the children, he did not want her showing up. Over the course of the next year or so, the claimant paid M.S.P. $42,000 towards the deposit on the RTO Agreement, money he borrowed from a wealthy friend. M.S.P.'s ongoing mortgage payments were covered by rent received from tenants who occupied the Hazell Road House and the Hazell Suite.

[22] Gustavo Minor was a Mexican worker employed in the marijuana grow-op company that the claimant was involved with. He testified that he met the parties in September 2019 and lived in the Hazell Suite from June 2020 to September 2021.

[23] The claimant testified that by the spring of 2020 the respondent had stopped drinking, apologized to him, and asked him to return home to the Doekson Road House, which he did. He described the parties' relationship for the next year or so as "good" and "hot and heavy". The respondent maintained that the parties' relationship had ended and that she had no idea where the claimant was living.

[24] The claimant's bank account and car insurance records during this period of time show his address as the Doekson Road House.

[25] Although the respondent was adamant that the parties never reconciled or resumed cohabitation after December 2019, she testified that the claimant came over to the Doekson Road House and had sex with her "a couple of times per month". On cross-examination, she said that, at Easter in 2020, she asked the claimant to "come over" and that he spent "a couple of days" with her, yet during her

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examination for discovery conducted less than four months earlier, she had stated it had been for “a couple of weeks”.

[26] The respondent testified that, in June 2020, she negotiated with Mr. Menzies for reduced rent for the Doekson Road House because she was concerned she would be unable to pay the rent due to the collapse of the real estate market. Mr. Menzies testified that, at the respondent’s request, he agreed to extend the rental agreement for another year at the same rent because the respondent wanted to stay beyond the existing rental expiry date and that the extension had nothing to do with the respondent’s money concerns.

[27] When shown a photograph dated July 29, 2020, of her and the claimant close together, the respondent asserted that the photograph was untrue and “completely made up” with “fake data”. When shown a photograph of the claimant and the respondent rock climbing in an indoor facility on August 29, 2020, she asserted that the photo was not real or legitimate.

[28] In the fall of 2020, there was a sudden boom in the Kelowna real estate market. The respondent’s real estate business improved dramatically.

[29] The claimant testified that, in September 2020, he and the respondent hosted a wedding at the Doekson Road House for Mr. Minor. The respondent testified that she had no knowledge of the event until she arrived home from work, saw people in the backyard, and asked what was going on. She asserted that the wedding was a “fake”, orchestrated to enable Mr. Minor to obtain a Canadian visa.

[30] The claimant testified that, in October 2020, the parties and the children attended the wedding of M.S.P.’s son as a family. The respondent denied having attended that wedding.

[31] In January 2021, the respondent sent the following text messages to the claimant:

> January 15:
> I love your penis…

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> I miss you already. Wish we could spend everyday together. You are my favorite person in the world and I don't want to be without you ever again.
>
> January 21:
>
> Roommates don't have good sex like we do…
>
> I love you
>
> We will conquer the world
>
> No more nonsense

[32] Both the claimant's and the respondent's 2020 income tax returns were filed on the basis that they were in a common law relationship. The claimant's return was signed electronically and included an allocation of $29,500 of the respondent's income to him. The claimant testified that he was unaware of this filing until November 2023. The respondent's accountant advised him that he was told by the respondent that the claimant had earned the income assisting her in her real estate business and that the allocation was at her direction. The respondent testified that she met with the claimant and he signed his 2020 income tax return electronically on her cell phone. This assertion was not put to the claimant on cross-examination. The respondent testified on cross-examination that she paid the $29,500 to the claimant.

[33] The claimant testified that, in January and February 2021, he performed significant repair and other work to the Quebec Street Property, which had been occupied by tenants. The respondent conceded that she had no reason to doubt that he had done so.

[34] Mr. Menzies testified that he sold the Doekson Road House on January 29, 2021, but that the purchaser allowed the parties and the children to continue to live there until the end of March 2021. Mr. Menzies testified that he met the claimant and the respondent for coffee sometime prior to the sale and discussed with them the various options they might have for purchasing the Doekson Road House.

[35] The claimant testified that he disclosed the RTO Agreement to the respondent and that the family moved from the Doekson Road House to the Hazell Road House effective April 1, 2021. The respondent testified on cross-examination

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that she had no knowledge of the RTO Agreement prior to its disclosure in these proceedings.

[36] Mr. Minor testified that he and his wife were living in the Hazell Suite when the parties and the children moved in and that he saw them almost every day, including at frequent dinners with them, until September 2021, when he and his wife moved away. He testified that, based on his observations, the claimant and the respondent behaved like a normal “married couple”.

[37] The respondent testified that the claimant never lived in the Hazell Road House with her and the children. She testified that, if anywhere, he lived in the Hazell Suite and she denied that Mr. Minor occupied it between April 1, 2021, and September 2021.

[38] On April 14, 2021, the respondent completed and signed a form for admission to school for the twins. The form included a section to be completed if the parents of the twins were separated or divorced. That section was left blank. The respondent testified that she did not complete that section because they “were all living at Hazell”.

[39] In May 2021, the claimant and the respondent retained an accounting firm, Crowe MacKay, to assist them in family tax planning. The respondent was unable to explain why she did not take any steps to correct the accountant’s correspondence to them regarding planning for income splitting between the parties as a couple.

[40] The claimant testified that in June 2021, he discovered what he described as inappropriate text messages between the respondent and other realtors. He told the respondent that he wanted to end their relationship, but he stayed because she “coerced” him with sex and “love bombed [him] to death”. The respondent did not dispute this evidence.

[41] The respondent testified on cross-examination that she felt pressured and coerced to buy the Hazell Road House by the claimant and M.S.P., and agreed to do so because she understood that the claimant would be living in the Hazell Suite and

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not in the main house with her and the children. She stated that she "went along with it" because she felt she had no other option. During her examination for discovery less than four months earlier, she deposed that she could not remember anything about how she was motivated to purchase the Hazell Road House.

[42] In June 2021, the purchase of the Hazell Road House was completed. The funding for the purchase was comprised of:

a) the $42,000 deposit payment;

b) $136,800 representing the net proceeds of a settlement received by the parties in respect of a lawsuit involving the claimant's parents and others; and

c) proceeds of a mortgage obtained by the respondent.

[43] The respondent initially testified that she had no recollection of where the money for the $42,000 deposit had come from, but later asserted that it was money that she had given the claimant over time. During her examination for discovery, she deposed that she paid the $42,000 deposit by cheque. She later testified that she was "confused".

[44] The claimant testified that title to the Hazell Road House was registered in the respondent's name because she told him she would not be able to receive the "accredited investor" interest rate on the mortgage if he was on title. He testified that he accepted this arrangement because she agreed to sign a bare trust agreement in his favour but that she later refused to do so, asserting to their lawyer that they were in a common law relationship and there was no need. On August 10, 2021, the respondent wrote the following in an email to the parties' lawyer:

> We are still common law so everything is community property…In any case we're still together common law so I don't know what the issue would be or how there would be a trust?

[45] The respondent testified that, at the time, she and the claimant "were living separate lives", that she was "just exhausted" and wanted it all to end, and that she

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used the phrase “still common law” because neither of the parties had filed for divorce and she did not know what “common law” meant. She stated on cross-examination that two years had not yet passed since their separation in January 2020 and that, in her mind, the claimant could still make a property claim, hence they were still “common law”.

[46] The respondent could not explain a photograph she was shown during cross-examination of the claimant and her together on June 26, 2021, with their twin daughters at a school graduation.

[47] In October 2021, the respondent became pregnant with the claimant’s child. She had an abortion to end the pregnancy. The claimant testified that the respondent once again began drinking.

[48] The claimant testified that, in early November 2021, the respondent’s drinking was such that he moved out of the Hazell Road House into the Hazel Suite which had become vacant after Mr. Minor’s departure. The parties continued their sexual intimacy but the claimant testified that their relationship was “difficult”. The respondent testified that she gave into him and gave him money because she “couldn’t deal with the alternative”.

[49] The claimant testified that, in January 2022, their intimacy stopped, as did their communications. The respondent hired a nanny for their children.

[50] In June 2022, the respondent refinanced the Quebec Street Property and received net mortgage proceeds of $215,000. On cross-examination, she initially denied that she paid those proceeds to the claimant’s solicitor to cover several of the claimant’s business debts, but later conceded that she had done so after her examination for discovery transcript was put to her.

[51] On July 27, 2022, the claimant commenced this proceeding by way of a notice of family claim. He caused a certificate of pending litigation (“CPL1”) to be registered against title to the Hazell Road House.

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[52] On August 15, 2022, the respondent moved from the Hazell Road House to a rental house in West Kelowna (the "Bayview Court House").

[53] The claimant testified that, in mid-September 2022, the respondent asked him to reconcile with her. He began staying with her and the children at the Bayview Court House. The parties went hiking together on September 19, 2022. The family litigation was put in abeyance. The respondent denied that they reconciled in September 2022. She asserted that numerous photos dated in September 2022 and October 2022 of the parties and the children together were "virtually staged".

[54] In October 2022, a professional photographer took family portraits of the parties and the children, individually and together (the "Family Photos"). The respondent testified that the Family Photos were arranged by her and that the claimant infiltrated the session, uninvited.

[55] The claimant testified that, in November 2022, he and the respondent travelled to Vancouver with the children to attend a concert. He testified that he and the respondent shared one hotel room and the children shared a second room. The respondent testified that she and the claimant stayed in separate rooms, each with two of the children.

[56] In November 2022, the claimant made enquiries regarding the establishment of a medical and dental plan for him, the respondent, and the children. The respondent initially denied having had any knowledge of these enquiries. However, she admitted on cross-examination that, on December 13, 2022, she replied to a lengthy chain of email correspondence between the claimant and the provider of the plan, stating *inter alia*, that:

> Got it, thanks! WE HAVE 5 KIDS!!!!!

[57] When her email reply was put to her on cross-examination, she stated that she "just let [the claimant] do what [the claimant] does". She agreed that she never informed the plan provider that she and the claimant were separated but asserted the reason she had not done so was because she was "just busy working".

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[58] From November 25 to December 2, 2022, the respondent was in Mexico with a girlfriend, Sylvia Lee. The claimant remained at the Bayview Court House taking care of the children. There are numerous text messages from the claimant's cell phone that the claimant testified were exchanged by the parties while the respondent was in Mexico. These messages express the parties' ongoing love for each other. They also evidence that the respondent informed the claimant she was pregnant with their fifth child together. The text messages communicated their mutual thrill and excitement over this news. On cross-examination, the respondent asserted that these text messages were "AI"-generated, "not real", and were "made up". She also asserted that she did not know whether or not she had been pregnant. She did not produce any text messages from her own cell phone for that period to refute the claimant's testimony that the text message exchanges were genuine.

[59] The claimant testified that, while the respondent was in Mexico, the parties purchased a condo at Big White Ski Resort (the "Stoneridge Condo"). The transaction closed in December 2022. The Stoneridge Condo was registered in the respondent's name. The claimant testified that he discharged CPL1 registered against the Hazell Road House at the respondent's request because, in his mind, the parties had reconciled and the respondent had told him it was her intent to put the Hazell Road House into a family trust. The respondent did not dispute this evidence.

[60] The claimant testified that, when the respondent returned from Mexico, she was once again drinking heavily. He re-registered the certificate of pending litigation against the Hazell Road House ("CPL2").

[61] In January 2023, the respondent was taken to the emergency department at the Kelowna General Hospital ("KGH") with severe vaginal bleeding. She stated that she had almost died. She was in the hospital for many days. She acknowledged that she could have had a miscarriage but claimed not to know for sure. In answer to a question from the Court, she did not deny that she could have been pregnant. The respondent's evidence on her examination for discovery less than four months

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earlier was that she had no recollection of this incident and denied having been pregnant. She refused to produce her KGH records in respect of her stay on that occasion despite a request by claimant's counsel during her examination for discovery that she do so. She testified that she "didn't want to disclose" the records. During her stay, the family celebrated the claimant's birthday in her hospital room, paid for by the respondent.

[62] The claimant testified that, in March 2023, while the family was at the Stoneridge Condo during spring break, the claimant returned to Kelowna alone because he was unable to tolerate the respondent's excessive drinking. The respondent denied that the claimant was with the family at the Stoneridge Condo on this occasion.

[63] On cross-examination, the respondent conceded that she had attended Alcoholics Anonymous meetings but denied that she was an alcoholic or that she ever had a drinking problem, asserting that she had not consumed any alcohol since the spring of 2023. She asserted that she "I didn't have a drinking problem" but rather, a "coping problem" and that she used alcohol as "a coping mechanism from time to time". She denied that she made purchases of liquor in Kelowna on her credit card during the period July 4 to 10, 2023, were made by her, insisting that she had been in New York during that time. She was asked by the Court to provide records of that trip. She returned after the court's lunch recess and confirmed that she did not leave for New York until July 13, 2023, and reluctantly conceded that it was possible she had made those liquor purchases.

[64] The claimant testified that, during the period September 2022 to June 2023, he lived primarily at the Bayview Court House with the respondent and the children but stayed at the Hazell Road House when the respondent drank to excess. The respondent testified that the claimant never lived with her at the Bayview Court House. The respondent testified that, during the period January 2020 to June 2023, the claimant was never present with the family for Christmas and never attended any of the children's birthday parties, graduation ceremonies, or school concerts. She

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testified that the claimant had no more than 40 to 50 nights with the children during this period, one child at a time. She testified that the photographs the claimant said were taken by him of various of these gatherings and events either could not be trusted or were taken by her.

[65] The claimant introduced extensive evidence of text messages exchanged and photographs taken by the parties during the period of January 2020 to June 2023. Many of those text messages were of a sexually intimate nature (including nude selfies the respondent took of herself and sent to the claimant). Some of these text messages professed the parties' ongoing love and affection for each other. Others were indicative of hostility and anger between them. The photographs depicted the parties and the children together on family outings and trips. The respondent testified that most of these text messages and photos were "fake".

[66] During the period January 2020 to June 2023, the respondent made numerous transfers of money from her bank account and from her personal real estate corporation ("PREC")'s bank account to the claimant. The claimant testified that he used these monies for family living expenses. The respondent testified that she gave him money whenever he asked for it and that she paid for everything.

[67] Some of the text messages exchanged by the parties in April 2023 evidence that the parties agreed to seek professional therapy to help them work through their issues, but the respondent was insistent that the claimant needed to stop moving in-and-out of the family home. The respondent advised the claimant that she intended to add his name to "all of the properties and accounts". On April 28, 2023, she wrote the following text message:

> Then please let's take some financial pressure off. I will put you on all properties and accounts but I cannot risk everything for another go around. It has been 9 full years of holding everything together for this family and these girls to give them a chance at life. I would rather you never work again than risk everything.

[68] In May 2023, the respondent sent a text message to the claimant stating that he was a terrific person and she thanked him for being so awesome.

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[69] The claimant testified that the respondent's heavy drinking did not stop and, by June 2023, it had reached the point where he decided to end their relationship permanently.

[70] In November 2023, the claimant arranged for his 2021 and 2022 income tax returns to be prepared by a tax expert at H&R Block. He testified that he was advised by the accountant that he needed to file his returns on the basis that he was "separated" during those years because, otherwise, the claims made by the respondent in her tax returns for those years were such that the parties would be audited and lose the ten-year retroactive Child Tax Benefit of $250,000 that had accrued.

[71] In his second Affidavit in this proceeding sworn on November 14, 2023, the claimant deposed that he and the respondent separated on June 28, 2021 and that, from September 2022 to July 2023, they successfully co-parented their children, with him driving over to the Bayview Court House every day to take care of the children and driving the respondent to work because she had lost her driver's licence. When asked on cross-examination to explain his evidence that the parties separated on June 28, 2021, he testified that, on that date, he had communicated to the respondent that he wanted to separate and did so, but that the respondent "begged" him to stay and that he returned a few days later. The respondent did not challenge this evidence.

Evidence of Additional Third-Party Witnesses

S.L.D.

[72] S.L.D. was the parties' next-door neighbour while they lived at the Doekson Road House. He testified that he interacted with the claimant and the respondent on many occasions, including attending a wedding they hosted at the Doekson Road House. He also visited the claimant after he, the respondent, and their children had moved to the Hazell Road House. S.L.D. testified that, from his observations, the claimant and respondent appeared to be a normal couple in a normal marriage-like relationship.

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M.S.P.

[73] M.S.P. testified that she met the parties in June 2015 when the respondent became a real estate agent at her brokerage firm. She described the respondent as "resourceful and determined". She quickly became friends with the parties and their children socially. The children referred to her in grandmotherly terms. She testified that, throughout her numerous and regular interactions, the claimant and the respondent presented as a couple and family.

[74] M.S.P. testified that, early on in their relationship, the respondent told her that the claimant was physically and verbally abusive towards her and that she and the children lived in fear of him. She testified that she took the respondent to see a counsellor regarding this revelation but that the respondent was "completely unresponsive" and was not interested in participating in the session. M.S.P. testified that everything she witnessed was inconsistent with the assertions the respondent had made. She never saw any evidence of abuse or of the children being afraid of their father. To the contrary, she testified that the children always seemed to adore the claimant.

[75] M.S.P. testified that there were incidents where the respondent was suspected of drinking on the job and she was disciplined. She corroborated the incident in February 2020 when, after a phone call from the claimant, she attended at a residence where the respondent was drunk and attempting to leave in her car. She testified that, thereafter, her relationship with the respondent deteriorated and became strained.

[76] M.S.P. corroborated the claimant's evidence that he and the respondent attended her son's wedding in October 2020. M.S.P. also testified that she witnessed the parties behaving as a couple at a summer camp acting production for one of their children in the summer of 2020 or 2021. M.S.P. also testified that she attended a barbecue hosted by the parties at their home in the spring of 2021. M.S.P. testified that she did not detect any unease or tension between the claimant and the respondent on any of these occasions.

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Ken Laloge

[77] Mr. Laloge was a Certified Professional Accountant with the accounting firm Crowe MacKay in Kelowna. He retired in March 2024. He testified that, on May 11, 2021, he met with the claimant and the respondent in his office to discuss his retainer for the parties' tax return preparation and tax planning, as well as for the respondent's PREC. Mr. Laloge testified that the respondent had a particularly good year in 2020 and was facing a significant tax liability. He testified that the parties were anxious to find ways to minimize the family taxation. He testified that the respondent provided him with signed Canada Revenue Agency authorizations and a retainer letter on June 3, 2021, but that on June 9, 2021, she advised his firm that she had retained another accounting firm, MNP LLP, instead ("MNP"). Mr. Laloge testified that, from his interactions with the claimant and the respondent, all indications were that they were "partners". The respondent did not dispute this evidence.

Brian Posthumus

[78] At all material times, Mr. Posthumus was a tax partner at MNP. He testified that his firm was retained by the respondent in June 2021 to prepare and file the respondent's and the claimant's tax returns for 2020. He testified that all information for both returns, including that the parties were in a common law relationship, was provided by the respondent, which was not unusual in family situations. Based on the information provided by the respondent, both returns declared that the claimant and the respondent were common law partners. The respondent did not dispute this evidence.

Michelle Dyson

[79] Ms. Dyson met the respondent through their respective children in 2018. She testified that, during the period 2019 to 2023, she interacted with the respondent frequently and with the claimant "sometimes", mostly while the children were living at the Doekson Road House. She testified that she and her children did not spend as much time with the respondent and her children while they lived at the Hazell Road

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House, but they increased their visits to the respondent's home after she moved to the Bayview Court House. She testified that she took the Family Photos and that the claimant showed up "at some point". She never took photos of the claimant and respondent together alone.

[80] She testified that she rarely saw the claimant at the Doekson Road House, the Hazell Road House, or the Bayview Court House. She also testified that she rarely saw the claimant when she was dropping off or picking up the parties' children at school. She testified that, from her observations, she never saw any indication that the parties were a couple.

Lydia Peters

[81] Lydia Peters was hired by the respondent as the children's nanny during the period January 2022 to mid-November 2022. She testified that she worked in that capacity at the Hazell Road House part-time, Tuesdays to Fridays, from approximately 3 p.m. until the early evening when the respondent returned home, as well as the occasional weekend days. Her duties included picking the children up at school and taking them to their various activities, as well as playing games and doing crafts with them. She testified that she began to feel like part of the family.

[82] Ms. Peters testified that she did not cross paths with the claimant and believes she only met him once in passing at the Hazell Road House. She testified that the respondent referred to the claimant as her "ex-husband" and told her that their relationship had been "dramatic and volatile".

[83] Ms. Peters testified that, on one occasion, she observed bruises on the side of the respondent's leg that ran up to her torso. She testified that the respondent "expressed to [her] what was going on". Ms. Peters did not elaborate during her testimony but stated that she knew that the incident causing the respondent's injuries occurred with the claimant. She testified that she became concerned about the respondent's safety. She testified that the claimant never showed any signs of alcohol consumption in her presence.

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[84] On cross-examination, Ms. Peters agreed that she never witnessed what had caused the respondent's bruising she had seen and that her testimony was based entirely on her assessments of her interactions with the respondent and what the respondent had told her.

Whitney Walker

[85] Ms. Walker worked with the respondent in the same realty office commencing in 2021. In the spring of 2022, her daughter and the parties' twin daughters became friends and had playdates at the Hazell Road House once or twice a week every second week.

[86] Ms. Walker testified that in the five to ten times that she visited the Hazell Road House prior to the respondent moving in mid-August 2022, she never saw the claimant in the main house and understood that he was living in the Hazell Suite. She testified that she never observed the claimant and the respondent as a couple.

P.P.

[87] The respondent's daughter, P.P., testified that the claimant was not "a very active father" and was not present for birthdays or Christmases, although he would "randomly decide to play father". She testified that the claimant and respondent argued a lot. She recalled many occasions when she heard the parties fighting in the master bedroom with the door closed. She testified that when the claimant and the respondent were arguing, she often hid with her sisters in her bedroom because she was afraid. She testified that, although she never witnessed any physical violence, she saw the aftermath when the claimant would storm from the bedroom out of the house and the respondent would say she needed time to collect herself. She testified that, on one occasion, the respondent was gasping for air. When P.P. noticed bruises, the respondent told her that they were caused by her having been "clumsy".

[88] P.P. testified that when the family was living at the Snowpines House, the claimant and respondent stayed in separate bedrooms. She testified that, when they

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were living at the Doekson Road House, the claimant "was kinda living with [them]", left a lot, and returned "intermittently". She testified that the claimant was absent anywhere from "a week or two to months on end". She testified that when the family was living at the Hazell Road House, the claimant stayed in the Hazell Suite and would have other women coming and going. She testified that the claimant never lived at the Bayview Court House.

[89] P.P. testified that, on one occasion, the claimant shoved her and she called the police.

[90] P.P. testified that when her sisters and the respondent moved to the Bayview Court House, she remained at the Hazell Road House because she was working full time and the commute was more convenient for her. She testified that the claimant was also living there "technically". She worked the night shift and slept during the day and, as a consequence, did not see the claimant very often.

[91] P.P. testified that, from her perspective, the respondent's consumption of alcohol was "episodic" and that she only recalls a few instances when she was actively using alcohol. She testified that the respondent would try to hide her drinking and that her use of alcohol was enough for P.P. to be concerned.

[92] P.P. agreed on cross-examination that Mr. Minor lived in the Hazell Suite with a woman that could have been his wife, but did not recall them having meals with her family in the main house at the Hazell Road House. She vaguely recalled attending the wedding at the Doekson Road House but did not recall attending M.S.P.'s son's wedding. P.P. also acknowledged that she understood the parties' relationship ended permanently in August 2022 when the respondent moved to the Bayview Court House.

[93] P.P. lived in France from early March to the end of May 2023.

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Anthony Kobler

[94] Mr. Kobler lives in Australia. In December 2016, he and his wife purchased a vacation home at Big White. The respondent was their realtor in respect of that transaction. Since then, with the exception of the winter of 2020 to 2021 due to the COVID-19 pandemic, he has spent approximately three months each winter at Big White.

[95] Mr. Kobler testified that he and his wife became friends with the respondent and the children and engaged in several interactions with them over the years since, including skiing, dinners, and other forms of socializing, both at Big White and in Kelowna. He testified that the claimant was present on a few of these occasions but that, from his observations, the respondent was the primary caregiver for the children and that P.P. provided her with tremendous support. He testified that he never discussed with the respondent the status of her relationship with the claimant but, by January 2023, he had formed the view that the parties were no longer cohabiting.

Michelle Dupuis

[96] Ms. Dupuis worked with the respondent at her real estate office for approximately one year commencing in 2017. She and the respondent became friends and have since stayed in touch. She described the parties' relationship as "toxic" and said that they were "separated" in 2019.

[97] Ms. Dupuis conceded on cross-examination that she disliked the claimant and was afraid of him as a result of an incident when he "was in [her] face threatening [her] and screaming and yelling" in the presence of the children.

Sylvia Lee

[98] Over the years, Ms. Lee and her husband have purchased and sold several homes in the Kelowna area. The respondent was their realtor. They own the Bayview Court House and rented it to the respondent commencing mid-August, 2022, when the respondent and her children moved in. At that time, Ms. Lee met the

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claimant and assumed he and the respondent were together. Ms. Lee testified that no one said anything to the contrary, though she said that the respondent had never explicitly mentioned that they were together.

[99] Ms. Lee testified that she saw the claimant picking up and dropping off the children at the Bayview Court House from time to time, but never saw any evidence that he was living there. She agreed that he did stay there with the children when she and the respondent were in Mexico in November and December 2022. She testified that she understood the claimant and the respondent were separated and co-parenting from September 2022 to March 2023.

[100] Ms. Lee testified that she never saw the respondent drinking alcohol.

C.D.

[101] C.D. is the respondent's mother. She described what she knew of the parties' relationship as "difficult". She heard a lot of shouting between them over the years.

[102] C.D. testified that, in 2007, she and her husband were living in China and the respondent travelled there to visit them. She testified that a few days later, the claimant showed up. He did not stay with them, but rather, in a nearby hotel. C.D. testified that the parties left China together a few days later. She testified that, after they had left, she obtained from the hotel a copy of the registration document that had been used for the claimant's hotel stay. She identified the document as being the claimant's fake Mexican passport. She admitted on cross-examination that she had no knowledge of who had provided the passport to the hotel.

[103] C.D. testified that she overheard a shouting match between the parties from behind closed bedroom doors when they were living in the Quebec Street Property. She testified that, afterwards, she saw some hair and blood on the pillowcase and some bruising on the respondent's arm. She also testified that the claimant had threatened her and her family with harm if they disclosed any of his criminal activities. C.D. testified that she was afraid of the claimant.

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[104] C.D. testified that the respondent left Vancouver unannounced in 2010 and that she did not hear from her until four years later when she received a phone call from the respondent who told her she was in Mexico and that the claimant had abandoned her and the children. C.D. testified that she immediately flew to Mexico and helped the respondent and the children return to Canada. She testified that the claimant returned to Vancouver a few months later and that the parties reconciled.

[105] C.D. testified that the respondent told her in December 2019 that she "couldn't bear it anymore" and "had to get away". She testified that she understood that the parties separated at the beginning of January 2020 and never reconciled.

[106] C.D. testified that, during the period January 2020 to December 2023, she visited the respondent and the children approximately four times each year and never saw any sign that the claimant was living in any of the respondent's homes. On cross-examination, it became clear that C.D. was confused over what house the respondent was living in during those visits. It also became clear that she had an intense dislike of the claimant and an overwhelming concern for the respondent.

J.D.

[107] J.D. is the respondent's brother. He testified that, in 2020, he spent Christmas in Kelowna with the respondent and the children and that the claimant was not present at the home at any time during his visit. On cross-examination, he was shown a video (the "Christmas 2020 Video") which he acknowledged depicted the twins opening gifts in the respondent's home on that occasion. He also acknowledged that a male voice which could easily be heard on the video was that of the claimant. However, he continued to deny that the claimant had been present, asserting that the Christmas 2020 Video must have been edited.

[108] J.D. testified that the parties separated in January 2020 and that he never witnessed any interaction between them after that date. He testified that he stayed with the respondent and the children at the Hazell Road House from March to early September in 2021. He denied that Mr. Minor was living in the Hazell Suite during that period or ever meeting him. He testified that the claimant lived in the Hazell

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Suite for a week or two at a time and that when the respondent gave him the money that he demanded, he would leave.

Micheal King

[109] Until 2024, Mr. King and his wife lived in Southern Oregon. They purchased a condo at Big White in 2016 and, until 2024 when they moved to Big White permanently, they spent several weeks during Christmases, Spring Breaks, and the summer months there. The respondent was their realtor for the purchase of their second Big White condo. They became friends of the respondent and the children.

[110] Mr. King testified that, although he met the claimant several times over the years, he was never close to him and described him more of an acquaintance. He testified that, after approximately 2019, although the respondent and the children were at Big White, he rarely saw the claimant there with them. He testified that the last time he saw the claimant at Big White was in December 2022 when the claimant dropped the girls at the respondent's condo.

[111] Mr. King testified that he never saw the respondent drinking excessively and never saw her drinking at all since 2021.

The Rule in *Browne v. Dunn*

[112] The rule in *Browne v. Dunn* (1893), 6 R 67, 1893 CanLII 65 requires that counsel put a matter to a witness involving the witness personally if counsel is going to present contradictory evidence later, or is going to impeach the witness' credibility: *R. v. Lyttle*, 2004 SCC 5 at para. 64. Though it is not necessary to cross-examine upon minor details in the evidence, a witness should be provided with an opportunity to give evidence on "matters of substance" that will be contradicted: *R. v. Giroux,* 2006 210 O.A.C. 50, 2006 CanLII 10736 (O.N.C.A.) at para. 46. The purpose of the rule is to ensure that parties and witnesses are treated fairly; it is not a general or absolute rule: *Lyttle* at para. 65; *R. v. Palmer,* [1980] 1 S.C.R. 759, 1979 CanLII 8 at 781. The rule also has exceptions: *R. v. Clark*, 2015 ABCA 160 at para. 7.

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[113] A trial judge has a number of remedies available when the rule has been breached. One is taking into account the failure to cross-examine in assessing the witness' credibility, and another is granting leave to call witnesses in reply: *R. v. McNeill* (2000), 131 O.A.C. 346, 2000 CanLII 4897 (O.N.C.A.) at para. 49; *R. v. Marshall* (2005), 201 O.A.C. 154, 2005 CanLII 30051 (O.N.C.A.) at paras. 54–55, leave to SCC ref'd,31375 (14 September 2006); *R. v. Kwandahor-Mensah*, 2006 ABCA 59 at para. 15.

[114] The evidence elicited by counsel for the respondent from the witnesses called as part of her case was rife with instances, too numerous to mention, where matters of substance regarding the claimant's credibility were elicited without having been put to him. In my view, the rule in *Browne v. Dunn* was engaged. Respondent's counsel conceded the point. However, on the last day of evidence at trial, he asserted that the problem could easily be remedied by the claimant being recalled to testify at the end of the respondent's case. Indeed, he purported to serve a subpoena on the claimant as he sat in the courtroom the previous afternoon. He did not serve a Form F49 (a notice of intention to call adverse party as a witness) as required by Rule 14-7(21) of the *Supreme Court Family Rules,* B.C. Reg. 152/2025.

[115] I dismissed the respondent's application for an order that the claimant be recalled to testify. My assessment of the breaches, together with evidence that had been presented by the parties, was such that the breaches would not significantly impact the fairness of the trial. I ruled that the appropriate remedy was to consider the breaches in the context of assessing credibility and the weight to be given to the testimony in question.

Credibility and Reliability

[116] Assessing credibility is not a science. It is difficult to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile their evidence against the backdrop of documentary and other *viva voce* testimony: *R. v. Gagnon*, 2006 SCC 17 at para. 20. A trial judge is entitled to draw inferences based on common sense, logic,

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and human experience, provided those inferences are rooted in the evidence: *R. v. Kruk*, 2024 SCC 7 at paras. 71–72.

[117] Ultimately, the court's assessment of the credibility of a witness's testimony turns on whether the evidence is in 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: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 187, aff'd 2012 BCCA 296, leave to SCC ref'd, 35006 (7 March 2013).

[118] Often in family disputes, the parties' respective presentations of the purported facts are inconsistent. In this case, the presentations by the two sides could not have been more at odds. The court was required to parse through a morass of evidentiary minutia elicited from the 18 witnesses, each with their own subjective view of the state of the parties' relationship over time. Accordingly, an analysis of the credibility and reliability of each of the witnesses is necessary.

The Claimant

[119] I found the claimant's testimony to be somewhat confused and unintelligible at times. There were aspects of his evidence that I did not believe, particularly his denial that he had ever been physically or emotionally abusive of the respondent and his attempts to portray himself as a devoted father who was always around. However, overall, I found his evidence regarding the parties' ongoing relationship accorded more closely with the evidentiary record as a whole than did that of the respondent. Although he occasionally became combative during his cross-examination, his credibility was not meaningfully impugned. I prefer his evidence over that of the respondent.

The Respondent

[120] My assessment of the respondent is that the descriptions of her provided by the claimant and M.S.P. are apt. I adopt their words in finding that she presented as a controlling, manipulative, resourceful, and determined woman. In her quest to achieve her desired outcome, her evidence-in-chief ranged from rambling, rapid fire,

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incoherent, verbosity rife with unsubstantiated hearsay and speculation to emotional, garbled sobs of despair. To the extent I was able to discern an intelligible thread of locution, it contradicted virtually every aspect of the evidence of the witnesses called by the claimant and conflicted with her own text messages and photographs. She discounted the sexually explicit text messages and photographs that were put to her as fake or the outcome of her "trying to play nice", "trying to pacify the situation", and "feeding [the claimant's] ego". In doing so, she took the unsolicited opportunity to put forward her case that she would not have done such things if she and the claimant were actually living together. She went further, stating: "I gave him money and had intimacy with him from time to time - so what". Similarly, she discounted the significance of the Family Photos by stating: "We were co-parenting - so what".

[121] On cross-examination, the respondent's demeanour changed markedly, from playing the victim and seemingly incapable of controlling her emotions to self-assured, argumentative, contrarian, and difficult. She repeatedly refused to answer straightforward questions, some of which were obvious, and instead launched into lengthy irrational diatribes about the claimant, his counsel, and the stress of the proceeding. On occasions when she perceived it suited her, the respondent answered directly and assertively. On other occasions, she attempted to divert attention from the obvious by launching into lengthy speeches interspersed with hysterical sobbing.

[122] During her evidence-in-chief, the respondent testified to specific months and years as to when her relationship with the claimant began, yet, during her examination for discovery less than four months earlier, she deposed that she was unable to recall any of those dates. Her evidence regarding her times in various Latin American countries between 2005 and 2007 was incomprehensible and made little sense. When incriminating documents were put to her—such as the proceeds from her refinancing of the Quebec Street Property, the filing of income tax returns, and her emails and text messages with the claimant after January 2020, stating that the parties were in a common law relationship and that they loved each other—she responded with lengthy, absurd, and rambling discourses of how she has been

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victimized by the claimant. In the face of the numerous exhibits suggestive of an ongoing marriage-like, albeit troubled, relationship between January 2020 and June 2023, the respondent did not produce a single document to the contrary.

[123] I reject as nonsense the respondent's assertions that the text message exchanges between her and the claimant were fake and fabricated. Indeed, at the end of her cross-examination, she relented and accepted that she had sent at least some of the loving text messages and nude selfies of her to the claimant between January 2020 and June 2023.

[124] The respondent denied that she was an alcoholic or ever had a drinking problem, yet the evidence is to the contrary, including charge card records showing liquor purchases throughout the parties' relationship and two police-imposed immediate roadside driving prohibitions.

[125] The respondent testified that she had never applied for life insurance, yet, admitted her signature was on a life insurance application form completed in January 2020. She testified that she never had any knowledge of or involvement in the claimant's enquiries into medical and dental coverage for the parties and their children, yet her December 13, 2022, email makes it plain that she knew of it. Her explanation that she "was busy working" and "just let the claimant do what the claimant does" defies common sense.

[126] The respondent was not a good witness. I am unable to ascribe much, if any, veracity to her evidence and give it little, if any, probative value to the extent it contradicts the evidence of the claimant.

S.L.D., Mr. Minor, Mr. Posthumus, Mr. Laloge, M.S.P., Ms. Walker, Mr. Kobler, Mr. Menzies, Ms. Lee and Mr. King

[127] S.L.D., Mr. Minor, Mr. Posthumus, Mr. Laloge, M.S.P., Ms. Walker, Mr. Kobler, Mr. Menzies, Ms. Lee, and Mr. King were all excellent witnesses. I have no hesitation accepting their respective testimony in its entirety.

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Michelle Dyson

[128] Ms. Dyson gave her evidence in an honest manner. However, it was largely based on hearsay and conjecture. It also appeared to have been somewhat tainted by what had been told by her children and the respondent. I find that I am unable to give it much weight.

Lydia Peters

[129] Ms. Peters was also a good witness who gave her evidence in an honest manner. However, her evidence was general in nature and I also find that it was tainted by both what she had been told by the respondent, her intense regard for the respondent, and her perceived plight as a single mother. Ms. Peters' observations of the respondent's bruising took place when the parties are *ad idem* that they were living separate and apart. She did not provide any specific evidence as to the parties' relationship between mid-September and mid-November 2022, during which time the claimant testified that the parties had reconciled. I find that I am unable to give Ms. Peters' evidence much weight.

P.P.

[130] P.P. was a witness who did her best to provide a truthful narrative but, as can be expected given her age at the time of the events in question, her evidence was vague, uncertain, and generalized, based largely on the impression the events left on her. Some of her evidence appeared overly rehearsed and scripted. Nevertheless, I accept her evidence regarding the claimant's limited parental role and engagement with the family as a father to the extent it was based on her personal experience.

Michell Dupuis

[131] I found Ms. Dupuis' evidence to have been rehearsed and gratuitous. It was overly partisan and lacked impartiality. She was plainly a staunch advocate for the respondent. I do not give Ms. Dupuis' evidence any weight.

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C.D.

[132] I found C.D.'s testimony to be more of an impassioned plea for her daughter and her perceived plight than a recitation of relevant events as she recalled them. Her evidence as to the timing of her visits to the respondent's various homes in Kelowna was confused and obviously reconstructed from her bank records as opposed to her personal recollection. Her testimony regarding when the parties separated was obviously rehearsed to corroborate the respondent's narrative.

[133] A mother's natural inclination to protect and advocate for a daughter is understandable. However, C.D.'s sensational appeal to the Court at the end of her evidence to find for the respondent was overdramatic. In my view, it confirmed her impartiality as a witness. I give her evidence little weight.

J.D.

[134] I am unable to reconcile J.D.'s testimony, in which he acknowledged that the claimant's voice can be heard on the Christmas 2020 Video, with his assertion that the claimant was not at the Doekson Road House that day. I was given no logical basis for his belief that the Christmas 2020 Video had been edited. Unfortunately, this evidence tarnished J.D.'s reliability as a witness. I give his evidence little weight.

Analysis

[135] Section 3(4) of the *FLA* provides the following guidance on what constitutes a "separation" between parties in a marriage-like relationship:

> (4) For the purposes of this Act,
>
> (a) spouses may be separated despite continuing to live in the same residence, and
>
> (b) the court may consider, as evidence of separation,
>
> i. communication, by one spouse to the other spouse, of an intention to separate permanently, and
>
> ii. an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

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[136] Section 83 of the *FLA* provides that:

> **Interpretation**
>
> 83 (1) […] spouses are not considered to have separated if, within one year after separation,
>
> (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
>
> (b) they continue to live together for one or more periods totalling at least 90 day.

[137] The intention to separate need not be mutual, as is reflected in the language of s. 3(4) of the *FLA* and confirmed in the case law: *Nearing v. Sauer*, 2015 BCSC 58 at para. 54; *Ishebabi v. Temu*, 2015 BCSC 1321 at para. 38; *Surrett v. Butkiewicz*, 2018 BCSC 2194 at para. 11; *S.A.H. v. I.B.L.*, 2018 BCSC 544 at para. 52. It is not necessary for the parties to agree on their date of separation in order to be considered separated for purposes of the *FLA*. As Justice Fleming (as she then was) pointed out in *Nearing*, more is required:

> [54] It is clear that a meeting of the minds on the intention to separate is not required. A physical separation, combined with one party's intention to live separate and apart, is sufficient: *Dhillon v. Dhillon*, [1998] B.C.J. No. 823 (C.A.). Based on the evidence, I am satisfied that the claimant formed the intention to live separate and apart from the respondent well before he left the home in August 2009. This however does not end the matter. The case law also requires that the spouse who wishes to separate take action consistent with that intention.

[138] When undertaking an analysis of whether parties are in a marriage-like relationship, the Court must examine the relationship as a whole and in light of the diversity of spousal relationships that exist in today's society. The precise definitions of the past are no longer valid in our changing world: *Coad v. Lariviere*, 2022 BCCA 222 at para. 127. Marriage-like relationships are no longer defined by financial dependence, sexual relationships, or the mingling of property and finances. Every relationship is unique. In assessing whether parties have separated, a checklist is not appropriate. Our Court of Appeal in *Coad* at para. 127 approved the following observation of the Saskatchewan Court of Queens Bench in *Yakiwchuk v. Oaks*, 2003 SKQB 124 at para. 10:

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> [10] Spousal relationships are many and varied. Individuals in spousal relationships, whether they are married or not, structure their relationships differently. […]. Some people are affectionate and demonstrative. They show their feelings for their "spouse" by holding hands, touching and kissing in public. Other individuals are not demonstrative and do not engage in public displays of affection. Some "spouses" do everything together - others do nothing together. Some "spouses" vacation together and some spend their holidays apart. […]

[139] The analysis must remain flexible and holistic, reflecting the unique circumstances of the particular relationship: *Ernst v. Carmichael*, 2019 BCSC 68 at para. 14; *Gupta v. Kumar*, 2022 BCSC 860 at para. 104, aff'd 2023 BCCA 106; *Der Woon v. Zadorozny*, 2020 BCCA 95 at paras. 9–10; *A.T.H. v. W.D.G.*, 2025 BCSC 1302 at para. 166.

[140] Ascertaining when spouses have separated for the purposes of the *FLA* requires a careful and objective analysis of the realities of the relationship, social and other habits, and practices and living arrangements over time. The dynamics of each relationship can be such that no one factor will be determinative. At the very least, there must be a withdrawal by one or both spouses from the matrimonial obligation with the intent of destroying the matrimonial consortium or of repudiating the marital relationship. The Court must have regard to the true intent of the parties as opposed to their stated intent, such as the method in which they have filed their income tax returns: *Oswell v. Oswell*, 74 O.R. (2d) 15, 1990 CanLII 6747 (O.N.S.C.) at para. 11, aff'd 12 O.R. (3d) 95, 1992 CanLII 7741 (O.N.C.A.). Put another way, a common-law relationship ends when one of the parties regards it as ended and, through his or her conduct, demonstrates in a convincing manner that this state of mind is final: *J.J.G. v. K.M.A.*, 2009 BCSC 1056 at para. 38; *L.T.F. v. R.B.F.*, 2023 BCSC 834 at para. 81; *Gosbjorn v. Hadley*, 2008 BCSC 219 at para. 142. The analysis is highly fact-specific: *Verbonac v. Thompson*, 2025 BCSC 96 at paras. 210 and 212.

[141] Parties who separate but then resume their marriage-like relationship within a year will not be considered to have separated for the purposes of the *FLA*: *Lussier v. Ritchie*, 2023 BCSC 1817 at para. 36.

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[142] There is no question that the parties' relationship was unique and by no means resembled the stereotypical spousal relationship. It can fairly be characterized from the beginning as strained, dysfunctional, and replete with discord and repeated on-again, off-again cohabitation. At times it was tumultuous, chaotic, and fraught with aggressive and hostile behaviour on the part of both parties, exacerbated by either or both of the claimant's aggressive conduct and the respondent's drinking habits.

[143] However, the question to be decided is not whether the parties' relationship was healthy. Rather, the question pertains to when their relationship ended for the purposes of the *FLA*. The respondent's position appears to conflate dysfunction with dissolution.

[144] Despite the dysfunction, there was ongoing and overarching expressions of love and affection as well as intense sexual intimacy between the parties after December 2019. At no time prior to June 2023 did either of the parties communicate to the other an intention to separate permanently, nor did either of them take any compelling action demonstrating such an intent. The respondent's assertions that the parties separated in January 2020 are overtaken by the reality of her own conduct after that time. The parties continued in an intimate relationship and the respondent became pregnant twice. They travelled to a concert in Vancouver with the children as a family. They remained financially aligned and took steps consistent with financial and tax planning as a family unit. The respondent held out to others that she and the claimant were in a common law relationship.

[145] The conduct of the respondent after January 2020 simply cannot be ignored. It defies common sense that a woman who claims to have finally escaped a lengthy abusive relationship would conduct herself as the respondent did thereafter. Her statements that she and the claimant "are a power couple" and that they "need to make family decisions" are telling of an ongoing intention to remain in the relationship.

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[146] There is no evidence that any of the electronic communications, videos, or photographs were tampered with, falsified, or are anything other than authentic. Indeed, Ms. Lee confirmed the authenticity of the Mexico photographs. The photos showing the parties together both alone and with the children after January 2020, the numerous text messages sent by the respondent to the claimant after January 2020, the family tax planning efforts, the life insurance and family medical/dental applications, and the numerous ongoing money transfers from the respondent to the claimant are the converse of either party having an intention to end the relationship, let alone having acted on such an intention. The parties' intermittent separate living arrangements are not dispositive in this case given that the parties slept in separate bedrooms even while living at the Snowpines House when the respondent acknowledges they were not separated.

[147] Mr. Menzies' evidence that he met with the parties and discussed with them the options that might be available for them when purchasing the Doekson Road House reflects continuing joint planning and is also inconsistent with a finalized separation in January 2020.

[148] The convenience of how the respondent's contention that the parties separated in January 2020 aligns neatly with a limitation defence also can not be ignored.

[149] Considering the evidence as a whole, I am satisfied, on the balance of probabilities, that neither of the parties acted on an intention to terminate their marriage-like relationship in January 2020. I accept that the parties separated from January 2022 until mid-September 2022 when, despite the difficulties in their relationship, they reconciled and resumed their dysfunctional relationship as it had been prior to January 2022. I find that, despite the claimant's frequent absences from the homes where the respondent and the children were living, he did not communicate and ultimately act on an intention to terminate the relationship until June 2023.

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Conclusion

[150] The date of the parties' separation is June 2023.

Costs

[151] Subject to any submissions the parties wish to make, the claimant is entitled to his costs of the trial, at Scale B.

"G.C. Weatherill J."

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