

# **Court of Queen's Bench of Alberta**

**Citation: Mitchell v Reykdal, 2021 ABQB 301**

**Date:** 20210419

**Docket:** FL03 55610

**Registry:** Edmonton

Between:

**Gwen Jan Mitchell**

Plaintiff

- and -

**David Anthony Reykdal**

Defendant

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**Memorandum of Decision  
of the  
Honourable Mr. Justice A. Loparco**

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**I. Introduction**

[1] David Reykdal (David) led a double life. He deceived both Gwen Mitchell (Gwen) and his wife Diane Reykdal (Diane) and their respective families about the exclusive nature of his relationship with each of them.

[2] While it may appear morally repugnant to many, this Court has no business passing judgment on David’s lifestyle choices. The narrow question before the Court is whether Gwen is his adult interdependent partner despite the fact that, during their relationship, David returned periodically to the matrimonial home where his wife and three sons lived.

**II. Background**

[3] For over 17 years, Gwen and David were romantically involved and Gwen lived in homes that David rented or purchased. However, during that same period of time, David was still married to Diane, whom he claims he lived with from their wedding date of September 3, 1988 until April 17, 2018 – nearly 30 years.

[4] In 1999, David met Gwen. After the first year of their courtship, Gwen and her daughter Natalie moved from Grande Prairie to Red Deer and lived in a home that David rented for them. Subsequently and over the course of the years that followed, Gwen and Natalie (and later just

Gwen) moved into increasingly higher-end homes owned by David, or a corporation controlled by him, in Edmonton and Las Vegas. David admits to staying overnight in the homes whenever he could but denies that he lived with Gwen.

[5] Gwen worked sporadically after the first couple of years together, but then gave up her full-time job to be a homemaker. She operated a few home-based businesses, which failed, and was never asked to pay any rent or contribute much to household expenses.

[6] During the entire courtship with Gwen, David was raising three boys in a matrimonial home in Red Deer. Gwen believed that David was separated from his wife, but that he had to return every second weekend to the matrimonial home in Red Deer as part of his parenting arrangement.

[7] David was able to maintain the secrecy of his affair with Gwen from Diane largely because his work in the oil and gas industry required him to be away for extended periods of time (he was a contract welder and then started a business that facilitates shutdowns for natural gas plants in Alberta). However, he somehow managed to be present in both the homes of Gwen and Diane for most key family events and holidays.

[8] The issues before this Court are twofold: whether Gwen has established that she is a dependent partner pursuant to the *Adult Interdependent Relationships Act*, SA 2002, c A-4.5 (*AIRA*); and, if so, whether she is entitled to Adult Support from David, who was married and claims he was living with his spouse during the relevant time.

[9] This is a novel case with little precedential guidance. When the legislation governing interdependent partner obligations was enacted, the intent was to ensure a dependant was properly supported after the termination of a relationship. However, the legislators appear not to have contemplated that certain married people might enter into a legitimate relationship of interdependence with another person without being truthful about the extent of their relationship with their spouse.

[10] While the logistics of living a double life for such a long period of time may appear to be infeasible, particularly when viewed through the lens of a traditional marriage, this exact situation presents itself before this Court. The crux of the question to be resolved is whether, despite the deceit, the legislation is a complete bar that would prohibit support to the unmarried partner.

### **III. Procedural Background**

[11] Gwen filed a Statement of Claim on March 26, 2018, claiming, *inter alia*, adult interdependent support and damages on a *quantum meruit* basis in relation to property and businesses acquired during an alleged common law relationship with David spanning more than 17 years - from August 2000 to November 24, 2017.

[12] On July 18, 2018, Justice Yungwirth ordered partner support payable to Gwen on an interim, without prejudice basis in the amount of \$5,000 per month, exclusive possession of the family home in Cameron Heights for a period of 6 months, after which time it was to be reviewed, and interim costs of \$25,000.

[13] On January 17, 2019, Justice Dunlop ordered Gwen to vacate the Cameron Heights home by January 31, 2019, and continued the partner support in the amount of \$5,000 for a period of six months. Gwen was permitted to use a vehicle, a Cadillac Escalade, until June 30, 2019.

[14] The interim amount of support was reduced to \$4,750 in case management by Order of Justice Lema.

[15] This trial took place from February 24-28, 2020, but due to the pandemic, it was adjourned by Master Order #1. It was ultimately rescheduled to continue on September 14-15, 2020. Unfortunately, the adjournment occurred when David was under cross-examination. Due to the lengthy adjournment, I exercised my discretion to relieve him of some of the restrictions so that he could communicate with his counsel for limited purposes.

[16] During the Court adjournment, David filed two court applications: first, seeking a stay of enforcement of support, which was dismissed with costs by Justice Fagnan; and second, seeking security for costs, which was dismissed with costs by Justice Friesen.

[17] Additionally, because David was required to quarantine for 14 days upon the return from a trip to Las Vegas, a further adjournment of the trial scheduled to proceed in September 2020 was required. I ordered him to pay thrown-away costs for causing the unnecessary delay. Certain critical remarks were made about David's conduct in the written endorsements related to these interlocutory applications.

[18] When David was asked in cross-examination about the reason for his applications, he became agitated, antagonistic and disrespectful to the Court and Gwen's counsel. It is clear that he feels aggrieved by his perception that the Court's decisions were based on lies.

[19] This trial continued on December 17<sup>th</sup> and 18<sup>th</sup>, 2020.

[20] At the time of trial, David was paying spousal support to Diane in the amount of \$10,000 per month and had accumulated over \$35,000 in arrears with MEP for the support owed to Gwen.

#### **IV. Issues**

[21] Pursuant to Orders by Lema J dated June 20, 2019, and October 24, 2019, this Court is being asked to resolve three questions:

- Whether Gwen has standing before the Court as an Adult Interdependent Partner;
- Whether Gwen has entitlement to Adult Interdependent Partner support; and,
- Whether there shall be any repayment of support paid by David.

#### **V. Position of the Parties**

[22] Gwen seeks partner support as a result of a common law relationship with David from August 2000 until November 24, 2017. During this time, she alleges they lived in a relationship of

interdependence in various residences, including, Lawrence Crescent in Red Deer (Red Deer Home), Bearspaw, Edmonton (Bearspaw Home), Blackburn Dr., Edmonton (Blackburn Home), Windermere, Edmonton (Windermere Home), a home in Las Vegas (Las Vegas Home), and at a home in Cameron Heights, Edmonton (Cameron Heights Home), where she was last living at the time of their breakup.

[23] David contends he was married to and living in a fully functioning marriage with Diane from March 1988 until 2018 when she discovered his extramarital affair. His position is that he purchased the homes that Gwen lived in as investment properties and allowed her to live in them so that he could have an affair with her.

[24] Consequently, he submits that since he was living with his spouse during the alleged period of cohabitation, Gwen's claim must fail because of section 5(2) of *AIRA*, which reads: "A married person cannot become an adult interdependent partner while living with his or her spouse."

[25] The issues rest on credibility findings: Did David live with his wife, Diane, during his relationship with Gwen? If so, was Gwen aware that David was married and living with his wife? Did David and Gwen have an interdependent relationship?

[26] The determination of these issues comes down to a finding of facts based on the credibility of the witnesses, which offer diametrically opposed views of the relationship, and some documentary evidence.

[27] In addition, legislative interpretation of section 5(2) is required to determine what is meant by "living with" a spouse and whether, when interpreting the purpose of *AIRA* as a whole, such a finding is a complete bar to adult support regardless of the nature of the interdependency.

## **VI. Brief Conclusion**

[28] The answers to the three questions before this Court are:

- a. Does Gwen have standing before the Court as an Adult Interdependent Partner? Yes, the facts establish a long-standing interdependent relationship with David over the course of 17 years. I also find David was separated from Diane for the entirety of that time.
- b. Is Gwen entitled to Adult Interdependent Partner support? Yes, Gwen is entitled to support.
- c. Should there be any repayment of support paid by the Defendant? No.

## **VII. History of Gwen and David's relationship**

### **a. The Parties**

[29] Gwen is currently 57 years of age and a member of the Sturgeon Lake Cree First Nation. She was raised on the reserve and exposed to many traumas during her upbringing, including being sent to a residential school and removed from her home as part of the Sixties' Scoop.

[30] Gwen was diagnosed with breast cancer and had a mastectomy in 2015. She currently resides on the Sturgeon Lake First Nation reserve with her sister. Her highest level of completed education is grade 12. She is currently taking courses towards a certificate in Human Resource Administration at the University of Alberta. Her only income is the adult interdependent partner support ordered by the Court, which is now \$4,750 per month. She does not own any property or significant assets and has a small amount of savings and an RSP.

[31] David provides turnaround services in the oilfield industry through his company, Tri-Energy Services (Tri-Energy). He currently lives in the Cameron Heights Home in Edmonton.

[32] At the time of the trial, he was separated from his wife, Diane, who filed a claim for divorce on January 17, 2019, after discovering his affair with Gwen. Her claim sought spousal support, child support and a division of matrimonial property. By the time of writing this decision, I am advised that David and Diane have resolved all their issues and entered into a Settlement Agreement.

### **b. Grande Prairie**

[33] Gwen and David met in August of 1999 in Grand Prairie; he was working as a contract welder through his company Duvian Industries (Duvian) and she was working for the public school district full-time in HR administration and payroll. Gwen's only daughter Natalie was 14 at the time and they were renting an apartment in Grande Prairie with her brother.

[34] When they first met, David had a two-week job in Grand Prairie and they saw each other every evening. A week later, he returned for another job. Gwen deposes that David returned to Red Deer after his job was complete but returned to visit when he could. As part of a read-in entered at trial, David admitted that at this time he told her that he was separated or in the midst of separating from his wife.

[35] The relationship became intimate after about one month and Gwen believed it was exclusive. The relationship continued in Grand Prairie for about one year, during which time Gwen contemplated moving to Red Deer. As Natalie was in school at the time, they waited until August 2000 to officially move.

### **c. Red Deer Home**

[36] Gwen testified that she and Natalie moved into a duplex David rented in Red Deer in the fall of 2000. Gwen also testified that the three of them moved their personal effects into the home and lived there for approximately one year. Gwen and David were both listed on the ATCO account for that property.

[37] During this time, Gwen and Natalie testified that David was home in the evenings, that he would do most of the cooking, and their routine included eating meals together, cleaning the home and doing laundry. Both stated that David would be away every second weekend - from Friday evening to Sunday evening - to see his boys. Gwen deposes that she was not involved in the lives of David's kids as she did not want to interfere or be seen as 'the other woman'.

[38] Natalie testified that she began calling David “dad” in this home. According to Gwen, Natalie respected and loved him throughout the period of their relationship.

[39] As Gwen was receiving Unemployment Insurance at the time, she was able to go to work with David in Crossfield. Gwen testified that she also assisted David with Duvian by teaching him to use a computer and print cheques, invoices, time sheets and other forms for the business. David agrees that Gwen helped him at his job in Crossfield and did some minor computer work, but denies she ever managed the payroll.

[40] Gwen eventually started working for Red Deer College in HR administration; her salary was used for expenses at the Red Deer Home.

[41] Gwen quickly introduced David to her siblings, parents, aunts, uncles, and extended family. She describes many visits with family along with celebrations of important events such as birthdays, graduation ceremonies and Christmas, all of which are exhibited by photographs.

[42] Gwen was not introduced to David’s family except for his youngest son Dawson, whom she met briefly in Red Deer when he was 2.5 years old. She met David’s oldest sister Diane on two occasions at her place of employment in Edmonton and Red Deer. She did not meet David’s only living parent, his mother, because David told her that his mom was racist against Indigenous people.

#### **d. Bearspaw Home**

[43] After one year in Red Deer, Gwen states that she moved to Edmonton with David and Natalie because a former supervisor offered her a job in Edmonton with Kasian Kennedy Architectural (Kasian) firm, where she worked for 1.5 years.

[44] After visiting Edmonton three or four times with David, she states that he purchased a house. Gwen testified that David hired a moving truck to transport their personal items to the new home, including his weights and guitars. Renovations were done on this home, including creating a more open concept, updating a fireplace, flooring and upgrading materials in the basement. Gwen deposes that they lived at the Bearspaw Home from 2001-2003. Natalie started grade 11 after they moved to Edmonton.

[45] According to the Land Title Certificate, ownership of the Bearspaw Home, which was transferred in September 2001, is in David’s sole name. However, an exhibit entered at trial showed that a Telus bill dated September 2003, addressed to the Bearspaw Home, was in Gwen’s name. David states that this was for convenience sake only so that she could make payments on his behalf.

[46] In these early years, Gwen states that she and David began to socialize mostly with Natalie’s biological aunt Debbie Veroba and her husband Dan Veroba (Dan) who lived in Spruce Grove. She introduced Dan to David and they became fast friends who went into business together.

[47] Shortly before moving to the Bearspaw Home, on or about April 4, 2001, David incorporated a numbered company, 928002 Alberta Ltd., which ultimately became a partner in Tri-Energy, a company that was created with Dan and a third person, Joel.

[48] Gwen also states that she performed work for Tri-Energy, including creating the domain name, forms, tailgate meeting forms, timesheets, updating quality control manuals, working on shut-downs, audit control and tracking daily costs.

[49] After leaving Kasian, Gwen began working with Alberta Infrastructure in 2002 in HR administration; her salary was used for home and personal expenses.

[50] David states Gwen did not contribute to the home although she paid some utilities as she had a job at the time. In his view, the property was an investment that was close to Spruce Grove where Dan lived so it allowed him a northern base to stay at from time to time. He agrees that he allowed Gwen and Natalie lived there rent-free. Gwen had family stay for long periods of time, which he says he did not mind.

[51] David's wife did not know about this home; he admits that another purpose for purchasing it was that it allowed him to have affairs.

[52] David testified to extensive renovations including flooring, opening up a wall, painting, a fireplace, and putting up drywall in basement. He claims to have done these without Gwen's assistance.

[53] While living in this home, Gwen found what she describes as an engagement ring hidden in a bathroom cabinet. It was a platinum ring with a two-carat diamond. She told David she found it and that she would have preferred a gold band.

[54] Gwen wore this ring regularly until November 2017. She states that she found paperwork indicating it was worth \$24,000. The ring was altered in about 2008 when the two of them went to People's Jewellers together and David paid for the design changes Gwen wanted made to it. David does not deny this occurred, but insists that the ring was initially purchased for his wife Diane.

[55] Gwen testified that in the Bears paw Home, David's routine was to go to his office or out to a job with Dan. She approximates that 80% of time, David returned home in the evening and that he continued to be away every second weekend to be with his sons. At Christmastime, David would go home to Red Deer to be with his sons.

[56] Natalie corroborated her mother's evidence and stated that she took the basement suite and her mom and David took the master bedroom upstairs. She states that generally David left early in the morning, but would return about 6:30pm. Her aunt Corrine and two cousins came to live with them for a few months and that David had no issue with it. Later, her aunt Roxanne and son came to stay for a couple months. At one point, there were eight people in the home.

[57] Natalie's 18th birthday was celebrated at Bears paw. Her mom, David, and other relatives were there. She recalls the celebration being held one day prior to her birthday because David was leaving to see his kids for the weekend.

[58] Natalie graduated in 2002 while living at this home. Photos entered as exhibits along with her testimony demonstrate that David was present for the 'cap and gown' ceremony, the church mass, and the reception. Natalie states that she considered David a dad and wanted him in attendance for all of it.

[59] A letter addressed to both Gwen and David indicates that the Bearspaw Home sold in 2004.

#### **e. Blackburn Home**

[60] In October of 2003, Gwen testified that they moved to the Blackburn Home. It was a five-bedroom, three-level home with a three-car garage.

[61] The Blackburn Home was renovated with many upgrades, including a rock waterfall. She further testified that David moved in all his personal property and that there was distinctive black and white tile flooring in the garage that David wanted as he was collecting upscale cars by this point.

[62] The Land Title Certificate for the Blackburn Home shows it was transferred on October 4, 2003 and was solely held in David's name; the purchase price was \$275,000.

[63] A Telus bill dated September 25, 2004, indicates that Gwen was the account holder at the Blackburn Home. A Direct Energy bill for the residence dated January 11, 2008 shows both David and Gwen as account holders. Again, David's position is that he merely added Gwen's name on the accounts to allow her to make payments.

[64] During this time period, the parties had a joint bank account at ATB, which was opened on June 30, 2005. It was closed on March 13, 2018.

[65] Gwen began working with Alberta Solicitor General during her time in this home; her salary went towards paying household expenses and gifts. At this time, David was travelling to and from his office in Sylvan Lake for Tri-Energy. He had two welders still working for Duvian and Gwen states that she took care of the bookkeeping.

[66] David testified that this home was renovated to be flipped; he installed hardwood flooring, removed a hot tub, hired carpenters to install a water wall, changed cabinets, counters, and installed a rock wall. He states that Gwen was not involved in the renovations and did not contribute to the home. She did not pay utilities at this home and was never listed on insurance documents. He again insists the home was an investment that also allowed him to carry on an affair on the side.

[67] As David began buying and selling exotic cars, Gwen deposes that she convinced him to get a dealer license and she came up with the company name for this business - *We Be Cruisin*. David does not deny that she came up with the trade name. He states he obtained a license so he could purchase cars from a wholesale auction, which Gwen attended at times with him, but it was ultimately just a hobby. At most he bought two-three cars per year including a couple for Natalie. He agrees he purchased vehicles for members of Gwen's family.

[68] After graduation in 2002, Natalie attended the Faculty of Nursing at the University of Alberta and moved out temporarily with a boyfriend. The relationship did not end well and David and her mom intervened and helped her move into the Blackburn home.

[69] Natalie transferred to the nursing program in Grande Prairie in 2004-2005 and lived with her aunt Roxanne. She came back to Edmonton and visited on weekends.

[70] She testified that David and her mom bought her a car at age 19- it was an '89 Dodge Colt. David taught her to drive a manual transmission, which involved about five-six lessons with him. David also purchased a red Mercedes Compressor and a Chrysler 300 for her in the following years. After she graduated from Grant MacEwan in 2011, he bought a bigger vehicle for her that could accommodate a massage table and was reliable.

[71] Natalie met her current spouse Cody and had a baby named Cash on April 30, 2006. David came to visit a few hours after his birth at the hospital. Natalie identified photos of them at the Grey Nuns Hospital. She identified other photos with David at Cash's birthdays. After Cash was born, she states that she visited the Blackburn home three or four times per week. Natalie recalls that David was there many evenings, but was sometimes away working.

[72] Natalie testified that David was known as 'nimosôm' (grandpa in Cree), that she and her son lived in this home for about two years when she was separated from Cody, and that David and Cash wrestled all the time, played in the backyard, and went for car rides.

[73] Natalie states that David and her mom treated her to a trip to Las Vegas for her birthday during her time in this home. A number of people attended and they all stayed together for about one week. Natalie identified a number of photographs from this trip.

[74] In approximately 2010, while she was still living at the Blackburn home, Natalie obtained a sales license under David's company name and worked for him, cleaning, listing cars and sometimes picking them up.

[75] As exhibited in a photo, Natalie testified that she spent some summer days at Wabamun Lake. She identified photos of Cash in a boat David owned.

[76] Gwen lived at the Blackburn Home for about nine years. Gwen testified that the general routine continued: David was home almost every night and away every second weekend to see his boys; sometimes he packed a duffle bag expecting to be away for work, but mostly, he would come home in the evenings. There were other times that he would be away for a kid's sport tournament. Those trips would last about five days but did not occur often – approximately once every three months.

[77] While at the Blackburn Home, they owned and operated many vehicles. The insurance form completed for a Porsche was signed by Gwen and David, and Gwen is described as the spouse.

[78] Gwen worked until 2008. After this time, she started a number of home-based businesses, all of which failed.

#### **f. Las Vegas Home**

[79] David purchased a home in Las Vegas on October 29, 2009, for USD \$760,000 after house-hunting on about five prior trips with Gwen. Soon after, Gwen states they had a pool designed and built. David deposes that her involvement was to merely offer suggestions.

[80] Gwen however, states that she was very involved in the set up of the home. It was largely empty and they made many shopping trips to fill it. They drove a Porsche to Las Vegas together. Gwen states that other vehicles were brought to Las Vegas including four Shelby cars. David installed two car lifts to hold all of the vehicles in the garage.

[81] Gwen deposes that her diamond ring setting was redesigned in 2008 and that David proposed marriage to her with it in the Las Vegas Home. She states that they planned on having a wedding on 11/11/11; the exact date was memorable because she states that she was particular about numbers. The first wedding was planned for 08/08/08 and she felt 11/11/11 was the next best unique date. David does not deny that a wedding was planned for this date.

[82] Gwen obtained a Nevada Driver's Authorization Card with the Las Vegas Home address. David states that the Nevada card Gwen described as a driver's license was merely an identification card that allowed them to get local discounts.

[83] The parties had a joint bank account in Las Vegas which was opened Nov 12, 2009. Gwen states that both she and David maintained clothing at the Las Vegas Home.

[84] David's children did not visit the Las Vegas Home until 2016 when David's middle son Davis travelled there. At times he attended with his girlfriend Jackie and would stay with Gwen and David.

[85] David states that he often took other women to Las Vegas. He also travelled there with Dan often as he states that they both had girlfriends there.

#### **g. Windermere Home**

[86] After visiting show homes with Gwen, David made Vicky's Homes an offer to trade in his Blackburn Home for \$500,000 and pay the balance to purchase a new build in 2012.

[87] The Legal Title to the Windermere Home is in the name of 928002 Alberta Ltd. It was transferred on November 5, 2012, for \$1,900,000.

[88] In this home, Gwen testified that they roughly had the same routine. David had a few trips away for Lacrosse – to Toronto, Calgary, and the U.S.

[89] The Windermere Home had two walk-in closets- one for each of them – which Gwen states were full. They occupied this home for four-and-a-half years in total.

[90] In November 2012, Natalie gave birth to a second child, Annika. She reunited with and was living with Cody at the time. Her mom and David were in Las Vegas when Annika was born, but they returned about one week later to see her.

[91] Natalie continued to visit them at this house and states that her various aunts, and grandparents would also visit and stay there overnight. She identified many photos including Christmas, birthday celebrations and other gatherings, which included her immediate and extended family and David.

[92] One day she received a call from David who told her he had a surprise for Annika. There is a photo entered as an exhibit showing the delivery David made of a large playhouse with a company truck to her home.

[93] In response to the evidence that he gave Natalie's kids gifts, David states that it was just because he was a generous person and not because he treated them as family. He further states that the playhouse he gave her was purchased by the company at an auction and Dan (who was Natalie's uncle) agreed to buy one for Natalie's kids and another employee's kids.

[94] David states that Tri-Energy always bought all the employees' kids gifts at Christmas. They once bought a single mom, whom they did not know, a minivan. He also helped other women with whom he was having affairs; for two of them, he bought cars, and for others, he paid for their insurance and helped them with their finances.

[95] In describing her relationship with David, Natalie says that she saw him as her dad; he was there for all her big life moments and she went to him for advice. She states that David attended many family events at Sturgeon Lake, including her grandmother's funeral, her grandfather's birthday, golf tournaments, and weddings.

[96] Natalie testified that she hired a photographer to take photos of the family after her children were born. Professional photos were taken and included Gwen and David and Natalie's grandparents. Gwen states David willingly participated and got off work early so he could attend the session. Natalie also believed that David wanted to be there even though he denied it at trial.

[97] Natalie testified that the housekeeping over the years was mostly done by her mom, although David helped. They both shopped for groceries together. She stated that David liked to cook, and often cooked fancy meals. Her mom hired a cleaning service only after her mastectomy in 2015.

#### **h. Cameron Heights Home**

[98] In March 2016, Gwen moved to the Cameron Heights Home. David bought the lot for \$785,000 and a new home was built on it approximately one year later, which cost about \$1,500,000. The home was owned by 928002 Alberta Ltd. David testified that he decided to buy it because the market was doing well and he felt he could make a profit on the Windermere Home.

[99] David testified that Gwen was not involved in any of the dealings for this home although he admits she attended meetings with Vicky's Homes.

[100] The Direct Energy bill for this home was in Gwen and David's names.

[101] The grandchildren visited Gwen and David at this home. David would fish with Cash in the river behind the home.

[102] Gwen's father passed in October of 2017. David was one of six pallbearers, along with Gwen's relatives, as exhibited by a memorial leaflet.

[103] After David and her mom moved to the Cameron Heights home, Natalie recalls her mom helping with the design of the backyard landscaping. She further deposed that her mom and David often babysat her kids overnight and they would sleep in their bed. At the Cameron Heights Home, she also stayed overnight frequently, as would her grandparents and aunts.

[104] Natalie stayed at the Cameron Heights Home on her own at times; she shovelled or mowed grass when they were away and was not paid for her services.

### **i. The Break-up**

[105] Gwen and David's relationship ended in November of 2017. Gwen believes its demise was caused by a depression she suffered after being diagnosed with cancer in 2015, losing her mom, a nephew, then her dad. Gwen states that there was no argument; David merely asked her what vehicle she wanted and told her he would give her \$200,000. She describes being stunned. She said she wanted the Range Rover. He did not agree. She then told him she wanted half of what they built together- he swore at her and told her to get a lawyer.

[106] Gwen admits to having engaged in bizarre acts after the breakup: after David disabled the security system, she put Diane's photo on top of the security camera lenses; she left derogatory notes in the house; and, she created a strange display with the personal items that she found in an overnight bag in the garage, which appeared to belong to David's new girlfriend.

[107] Gwen insists that she only found out that David was still married after she commenced her own legal action through her lawyer. She claims she was in total disbelief and felt betrayed.

[108] After her mom called to tell her about the separation in November 2017, Natalie states that she did not discuss it with David. However, he came to her house before Christmas by himself and brought her kids Christmas presents. He told her that nothing would change- she could still call, that the kids were still his grandkids, and that he was sorry. She did not see him after this point and she did not reach out either.

[109] After the breakup, Gwen states she was told not to step foot in the Las Vegas Home and that he would call police if she did. He mailed her belongings to her from the Las Vegas Home.

[110] Gwen obtained a Court order for sole possession order of the Cameron Heights Home and partner support. Shortly after, Gwen testified that she saw an effigy hanging in a tree in the backyard. She described it as a life-sized doll that resembled her hanging by the neck. Gwen advises that she reported it to police, who told her that they could not find any fingerprints on it. Gwen states that this caused her extreme trauma and that she had to take antidepressants for about one-and-a-half years after this point.

[111] David states that since Gwen created a similar display in the garage, she also likely created the effigy in the yard and attempted to blame him. While none of this is particularly relevant to the questions before the court, David believes that it impugns Gwen's credibility.

[112] As there was a pending sale on the home, which was owned by the corporation, and Gwen would not leave the Cameron Heights Home, David filed an application to evict her, which was successful.

[113] The sale ultimately fell through and David states he is no longer selling the home, which he now lives in, because it would result in a loss at this time.

## **VIII. David's Routine**

### **a. Time spent with Gwen**

[114] Although the long-term relationship with Gwen is not denied, nor the fact that she lived in the various homes mentioned above, David vehemently disagrees that he lived with Gwen in a relationship of interdependency.

[115] David states he met Gwen in the fall of 1999 at a bar in Grand Prairie. He subsequently took her out for dinner and would visit her on random weekends whenever he could be Grande Prairie. He states he had multiple extramarital affairs throughout their time together and that she was not special. He also states that Gwen spent a significant amount of her time in Valleyview and that they were not together as much as she claims.

[116] His story is that he rented a duplex in Red Deer in the fall of 2000 because Gwen wanted to move and that he reluctantly agreed.

[117] David cannot recall how often he would visit the Red Deer home but concedes that he would do so whenever he could to make excuses with his family to get away. His children were eight, six, and two at the time. He denies that it was every night.

[118] David states he had a shutdown in Crossfield in the spring of 2001 and his company rented rooms in Airdrie. He admits that in the beginning of the affair, he would spend more time with Gwen than with his family, but that it changed after the Crossfield job ended.

[119] David states he purchased his first home in Edmonton in 2001 when Gwen started a job at Kasian, but that it was an investment property. He used the home as a base when working northern jobs - he states it was convenient to have for work and to permit the affair with Gwen to continue.

[120] From the years 2002-2006, David states that the shutdowns usually lasted one week, but at times extended longer, during which time he had no time off. For a big turnaround, he would work four-five weeks straight and be onsite full time. His best guess is that he was off for the weekends and that from April to October, he was only home one or two weekends per month.

[121] Additionally, he states that in the early years, his work consumed his time for 10-12 hours per day and he states he was not home a lot. He was busy with planning and approximately three big turnarounds in the first few years after Tri-Energy was created. Planning for turnarounds started 6-12 months in advance onsite.

[122] During this time from the end of 2008 through most of 2009, he rented a home in Airdrie. However, since the kids' games would be in the vicinity, he would sometimes be able to attend.

[123] Deb Veroba (Dan's wife) also confirmed David's evidence and testified that Tri-Energy rented a house in Airdrie at some point for a large shutdown job that lasted about two years. David, Dan, and their secretary Peggy lived there. She states that Dan stayed there overnight during the

week at that time and believes David had the same schedule. Dan would be home on weekends only.

[124] When Dan worked with Tri-Energy, Deb advised that the first few years were a lot more lenient than the years following. Dan would initially be home on weekends, but this ended as the years progressed and they were busier with shutdowns. She states their work season was typically spring and summer but that they started to pick up more work.

[125] David also states that in 2009 and 2010, his schedule would not have allowed him to be home for dinner as he worked 10-12 hour days and was stationed three hours away from Edmonton. In 2010, he states that he had a 17-day turnaround, which was the largest to date. Sometimes he would go from Strachen to Red Deer and see his boys but he generally slept in the rented home in Strachen with Dan. He states he occasionally went to Edmonton and stayed with Gwen.

[126] A document prepared by Tri-Energy listed the 2001-2019 shutdown history, duration, and location. David gave extensive evidence of the locations of the various shutdowns during the alleged timeframe of the relationship to demonstrate that most sites involved a long drive from where Gwen was living, refuting her evidence that he was home most evenings with her. He states he was generally onsite and stayed overnights in camp or a rental home/motel for a shutdown.

[127] David testified that he broke up with Gwen about five times and their relationship was tumultuous. In his words, it was just 'an easy, casual easy affair' and she was there when he needed her. While he spent time in his investment properties with Gwen, he spent more time with his family throughout the affair. However, he agrees that Gwen took care of the household tasks in those homes, including cleaning and laundry (including his laundry when he was there), and paid the bills. He further agrees he was most often in charge of the cooking and buying groceries when he was at the homes.

[128] While it is difficult to piece together a chronology of David's exact whereabouts throughout the 17-year relationship, his evidence paints a different picture than that presented by Gwen and Natalie. Overall, I find that it is unlikely he spent as much time at the homes as is claimed by Gwen and Natalie.

#### **b. Time spent with Diane and the boys**

[129] David has three children with Diane, who are aged 28, 25, and 23. He states he resided at the matrimonial home in Red Deer with his wife during the alleged time in question until their separation in April 2018.

[130] David describes family life as busy with his priorities in order of importance being family, work, and attending his kids' hockey and lacrosse events. He states their games usually occurred on weekends with practices five-six times per week; although he assisted when he could, due to his work schedule, he states that Diane mostly took the kids to their practices and games. All three boys played lacrosse and hockey as well as school sports.

[131] He concedes that family vacations were rare. The family went to Cancun, Mexico in 2002 and 2004. They bought a timeshare condominium in Cancun in 2002, but only used it once or

twice, renting it out the other years. He recalls spending time with the family on summer weekends at the lake, either Sylvan or Buffalo Lake, wakeboarding, waterskiing, and fishing, but advises that most of their holiday time was spent attending the boys' tournaments. He attended approximately five out-of-town tournaments per year with the family along with scouting tournaments in the U.S. as they got older.

[132] David states that he would speak to his wife regularly, with no gaps of more than three days, and that he spoke to his kids daily. He states he was home with his family in Red Deer for most special occasions. He admits that generally throughout their marriage, he was rarely ever home during the weekday evenings.

[133] Diane created family photo albums, which were entered as exhibits at trial. These included numerous photos of David with the family, including, professional family photos; as well, they included photos of Cancun vacations in 2002 and 2004, holidays, birthdays, tournaments, and the kids' graduations.

[134] The albums included annual Christmas letters authored by Diane. Some of the relevant portions are as follows:

- The 2009 newsletter states: *Dave was home for three days this year, which was awesome. He managed to get a couple of weeks this summer which was a first too... His job keeps him extremely busy with only getting home two weekends/month. Shutdowns even less.* David states this was a busy year with the Crossfield work. The reference to 'three days' home in the letter referred to the Christmas period.
- The 2010 Christmas letter states that *David was busy as ever and had a 2-week holiday in the summer in BC.*
- The 2013 letter describes David as *working endlessly but seems to like what he does. He managed to take a week off this summer...Due to work we only got to the cabin and water skiing for two hours this summer.* David believes he spent more time at the cabin and the reference to two hours in the newsletter was just the time they spent water-skiing
- The Christmas letter in 2015 states of David: *He is not home much, but now with the dip in the economy we are glad he has a job. One his days off (which are few and far between) he squeezes in the odd lacrosse game and some home renos.*

[135] An article from Okotoks Today 2011 included an interview of Diane and Dustin, who was quoted as saying that his parents were the driving force behind playing top level junior lacrosse and that "[m]y mom did a lot of volunteer work...dad works a lot, pays the bills, comes out to watch when he can."

[136] When he was at the matrimonial home in Red Deer, David and Diane both testified that they shared the same bedroom and were intimate.

[137] David described their household roles, stating that he would mow the lawn and shovel snow, with the boys helping as they got older, while his wife took care of the indoor household tasks. They shared the cooking.

[138] In the summer, he states that they enjoyed the firepit at the house as a family, played pool and watched movies. It was important to his wife that he was involved with her family and they often went to their farm and helped out. They would visit her sisters (one in Delburn, the other in Sylvan Lake), and attend special events, birthdays, Christmas, and Easter celebrations with them. His wife was involved with his family and had a good relationship with his mom. He has two sisters as well and the kids all played sports together. He states that both their families were well integrated and spent time together frequently.

[139] The Reykdal kids, now all adults, are doing well. David is proud of them and says he prioritized them, financially supporting their education. Two of the boys received athletic scholarships in the U.S., and the third child is completing a pipefitting apprenticeship with Tri-Energy in Red Deer.

[140] David states that he and Diane celebrated his wedding anniversaries with a low-key dinner. For their 25th anniversary, they went to Banff for four days.

[141] David did not have mail for the investment homes go to the matrimonial home in Red Deer because he wanted to keep them secret in order to continue his affairs.

[142] David agrees that he lied to Diane about his affair and whereabouts. He also admits that he lied to his sons, some of his employees, and to Gwen. As a result, David's credibility in this trial is an issue that I must consider.

[143] With respect to assessing credibility, "the Court can accept some, all or none of the testimony of any witnesses", however, "it is important to remember that the starting point is always that witnesses are presumed to be telling the truth and honouring their oath. (*R v S(RD)*, 1997 CanLII 324, para 131)": **1406444 Alberta Ltd v Taylor**, 2020 ABQB 356 at para 48.

### **c. Travel**

[144] Gwen produced a cross-border travel history, which was an undertaking requested of her. It documents her out of country trips between 2002 and 2019 but does not state the destination.

[145] She deposes that from 2002 until their separation, all but a couple of the trips were with David and were mostly to Las Vegas. This included 62 trips in total: eight trips in 2010; eight in 2011; seven in 2012; seven in 2013; eight in 2014; nine in 2015; 10 in 2016; five before separation in 2017. After 2009, Gwen states all the trips were to Las Vegas, where she travelled every month for one or two weeks with David.

[146] A mid-trial issue was raised about David's cross-border record. Gwen's counsel argued that David undertook to produce a cross-border travel document similar to the one Gwen produced (obtainable from the passport office) that would indicate the number of times he left the country since 2009. His first response to the request included an incorrect date range (January 1, 2018 to December 6, 2019) and he never fulfilled the undertaking.

[147] David testified at trial that he initiated a request for the cross-border travel record dating back to 2009. However, his counsel objected to any further questions and argued that it did not need to be produced. Her position was that the undertaking request was merely to provide records showing the number of times David went to the Nevada house since its purchase in 2009.

[148] Upon my review of the questioning transcript, I concluded that the objection raised to producing the document was unsubstantiated. While the exact wording of the undertaking did not ask for a cross-border report, a review of the entire transcript on that point made it clear that this was the document, understood by both counsel, to be the subject of the request. It was also the same document that Gwen was asked to produce as an undertaking. In addition, the undertaking response remained unfulfilled at the time of trial.

[149] Although the lack of compliance with an undertaking ought to have been raised by Gwen's counsel in an interlocutory application, since David testified at trial to the fact that he made the request for the cross-border report, I ordered him to search his mail and produce it if it was located. This undertaking to the Court was ongoing up to the release of my decision but no such document was produced.

[150] At trial, David prepared a hand-written list of his departures from Canada since 2009 based on his memory. It showed that most years, he travelled to Las Vegas two to five times, a few times a year with Gwen. In addition, a read-in entered at trial confirms that he travelled to the Dominican Republic in 2007 with Gwen for a wedding and on two occasions to Cancun, Mexico (two weeks in 2005 and one week in 2008).

[151] Finally, I draw an adverse inference from David's inability or refusal to provide the cross-border travel history. He testified that he requested it. It is a document easily obtained from the passport office (Gwen obtained her report as part of an undertaking), and could have been obtained before trial. As noted above, I found the objection raised to producing it to be unfounded. This would have been a relevant and material document that was within his power to obtain with minimal effort. In any event, even if his technical reading of the undertaking request did not require that it be produced, he nevertheless did not respond to the undertaking request correctly and did nothing to correct the problem other than handwrite a list of trips from his memory at trial.

## **IX. Financial affairs**

[152] Gwen states that her relationship with David was one of interdependence as they shared one another's lives and together built significant wealth from humble beginnings in a rented duplex in Red Deer.

[153] In terms of Gwen's contribution to David's businesses, she claims that she performed work for Tri-Energy including creating a domain name, tailgate meeting forms, picking up vehicles he would purchase for the company, working shutdowns with her brothers, and that she convinced him to get an ADESA license so he could buy vehicles. She admits being paid for some work onsite but not the work she did at home, including creating tailgate meeting forms, Quality Control manuals updating, and timesheets.

[154] Gwen states that initially when the joint bank account was created, she used it to pay for utilities in the homes. She states that David put in approximately \$300,000 in the account over the years, which she also used for her living expenses, dinners out, and gambling.

[155] In respect of his financial affairs, David states that he had a joint account with his wife and together they ran Duvian since the late 80s. She inherited land and assets from parents, which she managed independently of him. It included land, oil revenues, and farm leases. He mainly looked after the business properties and investments. Together they looked after their rental properties.

[156] Through the 1980s and 90s, David describes his occupation as a business owner in contract welding and construction. Duvian was registered as a corporation on February 14, 1994, and ceased operations in 2005/2006. The directors and shareholders were listed as himself and his wife, each with 50% of the shares.

[157] David is the sole director and shareholder of 928002 Alberta Ltd., incorporated on April 4, 2001, which holds 50% of the shares in Tri-Energy and 50% of the shares in another company that pays management fees, and buys and sells vehicles and holds rental properties.

[158] The directors of Tri-Energy are David and Dan, who also holds 50% of the shares through his corporation, Total Promotions. Together, they operate a business that includes construction, maintenance, shutdowns, and scaffolding.

[159] Diane is not a shareholder in David's numbered company even though she was shareholder in Duvian. David states that this was because she was bothered with contacts and questions related to Duvian so he decided not to include her in this new company. He states that he advised her of this decision, which she denies.

[160] Diane confirmed that they owned Duvian and that she was a shareholder and director. She had signing authority for the company, sometimes borrowing money from it, and she managed their household bills. However, she deposes that she was not aware that Duvian ceased operations in about 2005 until this litigation. She believed the numbered company was in fact Duvian and that it continued to operate.

[161] David adduced evidence that showed his name and his wife's name on various documents, including purchases and sales of properties throughout their marriage, mortgages, tax assessments, loans, property, auto and life insurance, utility statements for the matrimonial home, a joint RRSP, appliance purchase invoice, and RESP, which Diane confirmed. In particular, they had life insurance policies in place naming each other as beneficiaries. David's T1 General Tax Returns listed his status as married with his address being the Red Deer matrimonial home until his separation.

[162] Diane confirmed that they always prepared their tax returns together indicating they were married and taking advantage of income splitting. They had two joint bank accounts and she had a separate one with Servus to deal with the rental income from the farm that she inherited.

[163] Diane confirmed they also owned two rental properties, and when Davis went to school in New Brunswick, they purchased a house that he could live in.

[164] David states that all the homes Gwen lived in were investment properties that his wife was unaware of. He took other women to those properties when Gwen would visit family in Valleyview, although he admits that Gwen did not know this.

[165] Gwen concedes that she filed her tax returns as 'single' each year, even after the separation for the years they were still together (note that she had to file retroactive tax returns for some of the years). Her evidence is that she filed as 'single' on David's advice prior to their separation. She admits that after separation, the retroactive returns including ones for years she claims to be with David were prepared by an accountant and that she signed the declaration stating that the tax return information was accurate.

[166] Gwen advises that she did not work after taking an initial period of time off to help her niece in hospital in 2008 and that this decision was made with David's blessing. Gwen attempted a number of home-based businesses, including a ladies' fashion business, a fashion jewelry business and a coffee weight-loss supplement business. This occurred in the homes she resided in since 2008 except for the Cameron Heights Home.

[167] In response to the allegation that Gwen worked for his companies, David agrees that she did some simple bookkeeping work for Duvian and his numbered company, approximately one hour per week from 2003 to 2009, and an hour of work per month setting up spreadsheets and invoices based on timesheets for Duvian. He states that after Duvian was wound up in 2005-2006, she would not have been preparing invoices. In 2006, she was hired by his company and paid for secretarial services lasting about six months. For the work onsite during shutdowns, she was paid by Tri-Energy between 2010-2017, which amounted to a total of 34 days.

[168] David states that Gwen started a home-based online clothing business, Calais Girls, which she financed with the \$80,000 in funds received when she sold her house in Valleyview. He did not share in those funds and in addition, he advanced a loan in the approximate amount of \$68,000, which remained on the corporate books as a debt owed to him. He insists that he expected to be re-paid, which Gwen denies. He states that she had her own source of funds and did not share any of her money with him.

[169] Gwen states that the residential school settlement of \$10,000 she received was used on home expenses that benefited both her and David. Although she did not contribute financially to the homes or insist that her name be on title, she felt she contributed through her moral support, purchase of household items, and maintenance of the homes.

[170] David agrees that he helped Natalie, both financially and with personal issues, but he did not see her as a daughter.

[171] Since Natalie helped him a lot around the homes and with his business, he compensated her with various cars. The first one was a cheap vehicle that he traded in and upgraded. He felt she deserved it because she helped with home chores and was a single mom. He did not pay for her education.

[172] Tri-Energy became more prosperous and sponsored curling and golf tournaments on the Sturgeon Lake Cree Nation. David states that he often sponsored events generally in the community and that the sponsorship of Gwen's family members was not special.

## **X. Knowledge of David's Marital Status**

[173] Gwen deposes that she first found out that David was still married in her lawyer's office post-separation. When they initially met, she was told and believed David was separated and in the process of divorcing his wife.

[174] Gwen admitted that she viewed Diane's page years later and noted that her status was "married". Gwen states that she asked David why this was the case and he said that his ex-wife did not know how to operate a computer. She also asked David to show her his divorce papers but that he said they were in a safety deposit box. She did not do anything further to confirm the divorce as she says she trusted him.

[175] David states that Gwen once asked why she was not on the Land Titles for the homes. David deposes clearly advising her that it was because he was married.

[176] He insists that Gwen knew he was married and pressured him to leave his wife. She saw newspaper clippings of a death announcement that listed him as Diane's spouse and articles about his kids in the paper, which identified him and his spouse as a couple. As a result, he states that he had several arguments with Gwen about the fact that he would not leave his wife.

[177] David states Gwen was obsessed with marriage, having previously been engaged four times, but that he was clear with her that it would never happen with him.

[178] With respect to the alleged engagement ring, David denies ever proposing marriage to her. He states that she found the ring and she just started wearing it. He did not stop her from doing so because it made her happy.

[179] David was presented with his wife's affidavit dated June 4, 2018, which states he was separated from wife for period of time. He distinguishes this as a period of time he had an argument with her and went away to work but denies any legal separation.

[180] When asked why he engaged with Gwen's family so extensively if it was just an affair, David states that he simply went along because it was convenient, fun, and Gwen was persuasive.

### **a. Ms. Veroba**

[181] Deb testified at trial, largely corroborating Gwen's evidence of her relationship with David. Deb met Gwen in Valleyview in 1978 when Gwen was dating her brother Patrick, who is Natalie's biological father. She was married to Dan and reconnected with Gwen in 2000. Dan and David were introduced through the two women.

[182] Deb confirmed that she often socialized with Gwen and David, celebrating birthdays, going out to dinner, home shows, and to the casino. Her understanding was that David was getting divorced or was divorced. This was based on her impression that he and Gwen were a couple and shared a home.

[183] Deb testified to several social events with Gwen and David, including company Christmas parties where they attended as a couple. When Natalie graduated in 2002, she attended with David,

Gwen and her brother Pat. Gwen and David attended her daughter Tenille's wedding in Penticton in 2006.

[184] In particular, Deb testified to a meeting that occurred between the two couples at their Spruce Grove home, prior to the start of the business venture. At this juncture, Dan and David did not know each other that well, but they had many visits at this residence and they got along. She states that David asked her and Gwen whether they wanted 25% ownership of the new business. Her evidence was that they didn't feel it was necessary as they were already in a relationship with Dan and David.

[185] After her separation from Dan in 2012, Deb did not visit David and Gwen. She states she understood that they were engaged and that Gwen wore an engagement ring. She confirms that Natalie called David her dad, and that he was a doting father and grandfather to her children.

[186] Deb admitted on cross-examination that she was not close with Gwen and was mostly occupied raising her kids and with her U-Pick business. However, her view was that they were a couple and lived together.

[187] Overall, I found Ms. Veroba's testimony to be credible and straightforward; she was consistent in her responses on cross-examination and gave clear answers. She does not appear to have any alliance with either party and largely confirmed David's work schedule. Even though she was examined in chief by Gwen's counsel, it is clear she is not close with Gwen, which makes her testimony more credible.

[188] While her cross-examination attempted to focus on her dislike or resentment of David's role in her own marriage breakup, I did not get the sense she had any animosity towards him personally. She admitted meddling in the business when she should not have, but I don't believe her testimony has been tainted as a result.

[189] I found her evidence to be helpful. It is clear she did not really know much about Gwen and David's relationship or future plans; however, she had a clear impression that they held themselves out as a couple with colleagues and that they hosted her and Dan at their homes as though they were a couple. In particular, she had the impression that David was divorced or divorcing. Given that she had no knowledge that he had a wife, even though she was married to his business partner and best-friend, I infer that David did not make it widely known that he was still married.

[190] David was surprised that Deb testified that she did not know he was married since he states that Dan met his wife. He discounts her evidence as he believes she disliked him and because he says that Gwen only befriended Deb after their affair ended. Dan was expected to be a witness, but ultimately did not testify.

#### **b. Diane Reykdal**

[191] As difficult as it was, David's wife Diane testified at trial. I found her evidence to be honest, frank, and sincere. It was clear to me that she was blind-sided by David's long-term affair with Gwen.

[192] Diane met David when she was in grade 10. They dated for a total of eight years before getting married. Most of their time during their courtship and marriage was spent apart – only seeing each other on the weekends. She attended the University of Alberta while David apprenticed as a welder after college in Red Deer.

[193] Once she became a teacher, Diane moved to Red Deer and married David on September 3, 1988. After having children, Diane continued to work on a part-time basis but ultimately resigned to dedicate her life to the family. David was working as a welder at the time of marriage and his typical schedule was to work away for 10 days and be home every second weekend for four days. She states that their social life after children was focused on their sports.

[194] Diane confirmed that the family only had two tropical holidays, the last being to Cancun in 2004. The boys were all heavily involved in hockey and lacrosse and had at least nine practices per week between them. She volunteered for all their sports and did almost all of the driving. David participated when he could as a timekeeper at games.

[195] She describes the typical weekday school day as hectic. Often, she would be awake by 5:00am as the kids had morning practices at least once or twice per week before school. They also had other activities such as music, band, and swimming lessons.

[196] Diane recounted that at Christmastime, David would usually be home for three to five days. He never missed a Christmas, family birthday, or special occasion. Some birthdays were spent away at tournaments together. Diane confirms they celebrated their anniversary each year and on their 25th, they went to Banff.

[197] The family bought and built a cabin at Wood Buffalo Lake with another family in 2009 or 2010. The other couple contributed most of the sweat equity but David installed the hardwood flooring. Diane states they did not spend a lot of time there in the summer because of conflicts with lacrosse tournaments. During the summer, she states that they spent about 7-10 days a year there.

[198] During the period 2000-2018, Diane deposes that she spoke to David every second to third day on the phone or by text.

[199] When David was working at a project near their house, he returned to the home in the evening. At a minimum, he was home every second weekend and was never away for more than three weeks straight.

[200] Diane deposes that their status quo never changed and throughout their entire 38 years together, they never separated. She believed they always held themselves out as married in the community and notes that the lacrosse and hockey community is a tight-knit community.

[201] During his time back home, David went to the kids' games; Diane estimated that he attended 55-60% of games, while she attended 85-90%.

[202] She knew about Tri-Energy Services but only met Dan once, even though she knew him to be David's best friend. She did not find this odd because she states that they basically lived separate

lives in the sense that David worked and provided for the family and she ran the household. With three children, her schedule was full.

[203] Diane confirmed she created the photo albums entered as exhibits and authored the Christmas letters. In one of the albums, she left a sticky note that read ‘life of lies, family holidays just a lie’.

[204] She agrees that she left that note for David after he asked her for the albums to be used in this case.

[205] Diane confirmed that she had no knowledge of David’s affair with Gwen, nor did she know about the various other homes he purchased in his own name or the company’s name. She also had no knowledge of the vehicle purchases through the company “We Be Cruisin”.

[206] Diane states that she was more or less a single parent. She ran the household and performed 75-80% of the child-rearing work. David did what he could when he had time off.

### **c. Lisa Grant**

[207] Lisa Grant is David’s sister. She was heavily involved in the lacrosse community, serving on the executive board for many years. Her two kids played lacrosse through the years with David’s kids.

[208] Lisa deposes that she did not believe that Diane and David were ever separated as they held themselves out as a couple. All family events continued throughout the relevant period of time.

[209] She was very familiar with an oilfield service worker’s schedule as her dad and husband worked in the industry. She deposes that it involves long periods away from home, which could be two to three months at a time. She confirms that living with this schedule while raising kids was the norm for her and Diane.

## **XI. Analysis**

[210] The first issue I must address is whether Gwen has standing before this Court as an Adult Interdependent Partner (AP<sup>1</sup>) under the *AIRA*. This inquiry involves a determination of whether Gwen meets the criteria for an AP, assuming that David was not married and living with his spouse.

[211] The second issue will be to determine whether Gwen’s entitlement as an AP is barred by virtue of section 5 of the *AIRA*. Under this issue, I must determine how to interpret s 5 and decide, on the facts before me, whether David was “living with” his wife, Diane.

[212] My conclusions are as follows. I find that Gwen does have standing before this Court as an AP because 1) her relationship with David satisfies the test as laid out in the *AIRA*; 2) in light of the *AIRA*’s text, statutory context, and purpose, I need to interpret “living with” in s 5 remedially;

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<sup>1</sup> I have chosen not to use the more common acronym AIP.

and, 3) I find as a fact that David was not “living with” Diane for the purposes of s 5 of the *AIRA* during his relationship with Gwen.

### **Issue 1. Does Gwen have standing as an Adult Interdependent Partner?**

#### ***Test for Adult Interdependent Partner***

[213] The onus of proof to establish the existence of an AP relationship in this case rests with Gwen. Section 11 of the *AIRA* reads:

A person who alleges in a court proceeding that the person is in or was in an adult interdependent relationship has the onus of proving the existence of the relationship.

[214] The framework for assessing whether a person is an AP is the *AIRA* itself (see e.g. *Corlett v Cavanagh*, 2019 ABQB 316 at paras 14-15 (*Corlett*); *Desnoyers Estate v Desnoyers*, 2020 ABQB 120 at paras 30-32 (*Desnoyers Estate*)). To determine whether a person is an AP under the *AIRA*, the following criteria must be satisfied.

[215] Two people must be in a “relationship of interdependence” outside marriage (*AIRA*, s 1(f)) and must have lived with each other in this “relationship of interdependence” for a continuous period of not less than three years (*AIRA*, s 3(1)). A “relationship of interdependence” is defined as a relationship outside marriage where any two people 1) share one another’s lives, 2) are emotionally committed to one another, and 3) function as an economic and domestic unit (*AIRA*, s 1(f)).

[216] Section 1(2) of the *AIRA* mandates that “all the circumstances of the relationship must be taken into account” to determine whether the third criterion is met. This section also sets out a non-exhaustive list of factors to assist in the analysis:

- whether or not the persons have a conjugal relationship;
- the degree of exclusivity of the relationship;
- the conduct and habits of the persons in respect of household activities and living arrangements;
- the degree to which the persons hold themselves out to others as an economic and domestic unit;
- the degree to which the persons formalize their legal obligations, intentions and responsibilities toward one another;
- the extent to which direct and indirect contributions have been made by either person to the other or to their mutual well-being;
- the degree of financial dependence or interdependence and any arrangements for financial support between the persons;
- the care and support of children;
- the ownership, use, and acquisition of property.

[217] This Court has held that the nine factors in s 1(2) are “merely guideposts, not preconditions” for establishing AP support (*Rockey v Hartwell*, 2016 ABQB 438 at para 236). As per the instructions in the legislation itself, a Court must assess “all the circumstances of the

relationship” to determine whether the “economic and domestic unit” criterion is met. As such, these factors are “to be viewed holistically, with no factor given more weight than another” (*Rockey* at para 236). In addition, “[n]o one factor is determinative of the relationship’s characterization” (*Rockey* at para 236).

***Application to the facts: Gwen is an AP, assuming no s 5 bar***

[218] Assuming David was not married and living with Diane during his relationship with Gwen, Gwen would be David’s AP because they shared each other’s lives, were emotionally committed to one another, and functioned as an economic and domestic unit. I conclude they lived this way continuously, for at least three consecutive years.

**Section 1(f)(i): share lives**

[219] After the first year of their courtship, Gwen moved with Natalie to live in a Red Deer duplex that was located approximately four kilometers from David’s matrimonial home.

[220] I find as a fact that Gwen and Natalie lived at the Red Deer duplex for approximately one year with David. He admits to being there as much as he could be (more than at his matrimonial home) and that Gwen accompanied him to his job in Crossfield. I accept that David could not have been home every evening, contrary to what Gwen and Natalie testified to, but I find that they were home together most of his free evenings and every second weekend – that is, when (according to David’s representations to Gwen) David’s work and other parenting obligations allowed.

[221] Gwen and David shared the Master bedroom and David had his clothing and personal effects at the home. I conclude that this was the practice at all the homes Gwen and Natalie lived in with David. I also find that in the subsequent homes, although his overall time at home in the evenings diminished, David spent more time with Gwen than with Diane and the boys.

[222] David and Gwen also vacationed together frequently. Despite David’s attempt to minimize his trips with Gwen, and suggest he had many other trips that he took without her, he admits travelling with her for the bulk of her trips. That would represent a significant number of trips, particularly in light of the fact that his last holiday (not connected to a tournament) with Diane and his sons was in 2004.

[223] Gwen was also involved in the selection of many of the houses she and David planned to live in, and with their renovations, even if she did not put in much of her own elbow grease.

[224] David and Gwen spent many holidays and important occasions together, including Gwen’s family events, funerals, birthdays, Christmastime (in part) and Natalie’s graduation. Gwen describes many visits with family in Sturgeon Lake and Edmonton, all of which are exhibited by photographs. He also attended several weddings with her, including ones in the Dominican Republic and Penticton. I find it significant that he was a pallbearer for her father’s funeral along with her other relatives.

[225] David supported Gwen and her daughter with lavish gifts and trips, free accommodation for her and other family members, money, and so on. David was not just generous with Natalie; it is clear he treated her like his daughter. He counselled her, stepped in to protect her, taught her key

life skills, surprised her with a trip to Las Vegas for her 25th birthday, and purchased various vehicles for her. David also regularly purchased gifts for Natalie's kids, whom he treated as his own grandkids.

[226] In terms of how they held themselves out to the public, I also find it significant that Gwen and David had a joint email (gwenDavid@shaw.ca) – used by both of them over the course of 15 years in total.

### **Section 1(f)(ii): emotional commitment**

[227] Gwen and David were emotionally committed to one another long-term and attended public functions together.

[228] I do not find David's testimony that the diamond ring was purchased for his wife as credible. It was being stored and found in the home he lived in with Gwen; when she found it, he allowed her to believe it was meant for her; years later, he went with her to a jeweler to change the setting and he paid for the costs; and, he never objected to her wearing it publicly, even at his work events.

[229] David explained that he replaced the ring that he intended for his wife with another one with three diamonds; Diane did not corroborate this story. She testified that she did not receive any diamond rings during their marriage; instead, she once received a classic family ring with three stones representing her sons that she asked for one Christmas.

[230] In light of the credibility of the disputed facts, I conclude that David intended to give Gwen the 2-carat diamond ring, which is typically seen as an engagement ring, as a symbol of his long-term commitment to her.

### **Section 1(f)(iii): economic and domestic unit**

#### ***i. Whether or not they have a conjugal relationship***

[231] Gwen and David had a conjugal relationship that began soon after they met, and continued throughout. As I mentioned above, when Gwen and Natalie moved with David into the Red Deer duplex, Gwen and David occupied the Master bedroom. This arrangement was consistent throughout Gwen's relationship with David, in all the homes they lived in together for nearly 17 years.

#### ***ii. The degree of exclusivity of the relationship***

[232] I find Gwen credible on her testimony that she sincerely believed that her relationship with David was exclusive. David admitted that when he met Gwen, he told her that his marriage was 'on the rocks' and he was separated or in the process of separating.

[233] Gwen believed that as part of his parenting agreement, he would return to the matrimonial home every second weekend, which is entirely consistent with Diane's evidence of the time he actually spent there.

[234] He allowed Gwen to be introduced publicly as his girlfriend at many events – weddings, funerals, family gatherings, and work functions. In particular, he took Gwen to at least four Tri-Energy Christmas parties; his wife attended none of them even though they were held in Red Deer.

[235] I also reject David's testimony that Gwen knew he had multiple girlfriends that he took to his homes and that she was one of many. He provided no evidence of these other women (except at the end of the relationship) or the fact that Gwen was aware that he was unfaithful. I find that he led her to believe that they were exclusive.

[236] Even if David had other girlfriends, as in *Corlett*, allegations of infidelity under this factor may not be sufficient to find that the relationship was an open relationship and therefore not intended to be characterized as an adult interdependent partnership (at para 19). In addition, this factor is simply one factor among many; it is not weightier than the other factors and it alone is not dispositive (*Rockey* at para 236).

[237] David emphasizes that it was a casual an on-again, off-again relationship. He deposes that they broke up five times. However, even if true, it appears that those breakups lasted days to weeks at most, and each time he allowed her to return without condition. I do not find them significant enough to establish a break in the continuity of the relationship.

[238] I conclude that Gwen lived in the homes full time and that all her personal belongings were stored there along with many of David's. Although Gwen left for periods of time to visit her family in Valleyview or to travel, in light of all the facts, I do not find that this constitutes a break in the interdependent nature of the relationship established with David.

[239] I reject David's testimony that Gwen knew he was married and living with his wife even though, at one point, Gwen looked at Diane's Facebook status and saw that she listed herself as married. I do not necessarily think that Gwen believed that David was officially divorced. Gwen also asked to see documents proving the divorce, but when David said they were locked away in a safety deposit box, she never pressed the issue further. I find she likely just turned a blind eye to whether he was officially divorced.

[240] Nevertheless, this does not prove that Gwen knew they were still living together. I conclude that Gwen sincerely believed that David left Diane, was separated, and in the process of divorcing Diane. I will deal with the issue of whether David was in fact still living with Diane as part of the analysis of the second issue.

***iii. The conduct and habits of the people in respect of household activities and living arrangements***

[241] At the beginning of their relationship – that is, in the Red Deer duplex – David was home most evenings and every second weekend. The parties cooked and ate meals together on a daily basis. They also cleaned the home and did laundry for the three occupants of the home. This routine continued in the subsequent homes, although I conclude that he spent less time with Gwen as his work commitments increased.

***iv. The degree to which they hold themselves out to others as an economic and domestic unit***

[242] Gwen and David held themselves out to others as an economic and domestic unit. Gwen held her and David out as a couple to her family at many events, as stated above.

[243] As I also previously noted, I find it significant that David was a pallbearer at Gwen's father's funeral in Sturgeon Lake along with her cousins and a son-in-law. While he was alive, David attended an important birthday celebration for him and admits to the fact that he knew him personally.

[244] Deb also saw Gwen and David as a couple. Deb's perception of David and Gwen's relationship is crucial because the assessment under this factor is (at least in part) based on how friends and family perceive the two people and their relationship (*Rockey* at para 234).

[245] On one hand, David held Gwen and himself out to others as a couple when in certain environments. On the other hand, he held himself out as a couple with his wife in others.

[246] David did not introduce Gwen to his extended family, aside from David's oldest sister. This means that David held himself out as a couple with both his wife and with Gwen in separate circumstances. While this factor alone is not determinative, I still find that David did hold himself out as a couple with Gwen, and since this analysis under the *AIRA* is focused on Gwen and not Diane, it weighs in favour of finding that he had an adult interdependent partnership with Gwen.

**v. *The degree to which the persons formalize their legal obligations, intentions and responsibilities toward one another***

[247] As in *Corlett*, the parties did not have a written agreement respecting their personal relationship. They did not formalize their legal obligations, intentions, and responsibilities towards each other in a certain sense. David did not adopt Natalie, they did not enter into a written adult interdependent agreement, she was not listed on his health benefits, and they did not own any investments together. Gwen also agrees she has been engaged five times, including to David. David insists on this last point, although I do not find it relevant in this analysis.

[248] According to his evidence, David formalized his legal obligations, intentions, and responsibilities towards his wife, not Gwen. David provided evidence that showed his name and his wife's name on various documents, including purchases and sales of properties throughout their marriage, mortgages, tax assessments, loans, property, auto and life insurance, utility statements for the matrimonial home, a joint RRSP, appliance purchase invoice, and RESP. In particular, they had life insurance policies in place naming each other as beneficiaries. David's T1 General Tax Returns listed his status as married to Diane, with whom he split his income, and he listed his address as the Red Deer matrimonial home until his separation.

[249] The facts point to economic ties with both Diane and Gwen, raising a particular quandary in this case. However, the fact that he had more substantial ties with Diane does not negate the fact that he also created financial interdependence with Gwen. Again, the analysis of this section is focused on Gwen's standing.

**vi. *The extent to which direct and indirect contributions have been made by either to the other or to their mutual well-being***

[250] Gwen and David supported each other in numerous ways throughout their relationship, including keeping each other company, socializing together, and enjoying life together. David was involved with Gwen's daughter and her children, Gwen's extended family, and he provided financial and companion support to Gwen as well.

[251] I find that Gwen quit her job in Grand Prairie and moved to Red Deer on David's invitation, after which, she worked full-time in subsequent years, but then mostly stayed home and supported him. I find Gwen is credible in her testimony that after she took time off work to care for a sick relative, David supported her decision not to return to work full-time as he would support her.

[252] I conclude that Gwen kept the homes they lived in together- she shopped for groceries and other household items, cleaned, and did the laundry. She was able to attend events and travel with David extensively, and at times, supported him in his work by traveling with him to job sites and performing some administrative tasks, even if limited, over the years.

[253] Gwen and David also cared for each other and their health as a couple. When they first moved to Edmonton, Gwen found a family doctor and dentist for both of them. Gwen states that she made and went to all appointments with David. She deposes that she took him to the hospital and cared for him after a cosmetic surgery in 2011, which resulted in emergency cauterization. David admits that she accompanied him to some medical appointments and that they would attend together to get Botox injections.

***vii. The degree of financial dependence or interdependence and any arrangements for financial support between the people***

[254] Overall, Gwen was financially dependent on David. He paid for all Gwen's expenses, helped raise her daughter, paid for many of her expenses, and loaned money to Gwen's business. He was also a support for her family, including her grandchildren and parents.

[255] Gwen also contributed financially to their lives and the homes, albeit in relatively limited ways throughout the relationship. For instance, while in Red Deer, Gwen used part of her salary to pay for the cost of utilities at the Red Deer Home. In Edmonton, while she worked at various jobs, she contributed towards paying household expenses.

[256] I also find as a fact that she assisted with Duvian and Tri-Energy, even if I am unable to conclude the extent of her paid versus unpaid work. David concedes that at least some of it was unpaid.

[257] However, I find that since 2008 and despite operating some home-based businesses, Gwen was mostly financially dependent on David. I reject his argument that she was self-sufficient throughout. The evidence is that she attempted some business ventures, which he financially contributed to, and which failed. He did not ever ask her to contribute to expenses or pay rent at the various homes.

[258] While it is true that David did not co-mingle his investments with Gwen, he set up joint accounts for her to use freely and he spent money lavishly on her. They each maintained their own investments, but they contributed to each other's lives in other ways.

[259] I note that David was not entirely financially interdependent with Diane either - she only knew of some of his investments. She did not know of his high-valued homes and vehicles; she did not know that Duvian ceased operations; she had limited to no information about Tri-Energy (she was not a shareholder even though she was a shareholder in Duvian). Gwen, on the other hand, based on her evidence, had substantial knowledge of David's business dealings.

*viii. The care and support of children*

[260] David and Gwen were both involved in the care and support of Natalie and Natalie's children, though Gwen was not involved with David's other children from his marriage. David was a father-figure for Natalie, providing her counsel and advice over the years and stepping in to protect her from harm.

[261] In the Red Deer duplex, Natalie started calling David "dad" and over the years, sent him Father's Day cards. David was present for Natalie's and her children's birthdays, special family occasions, and her graduation. David purchased a number of vehicles for her.

[262] David had a particularly close relationship with Natalie's son Cash. Cash lived with Gwen and David for two years while Natalie went to school. Cash learned to call David nimosôm-pronounced in Court as "moosum" - which is Grandpa in the Cree language.

[263] Gwen admits having limited exposure to David's family; she met his sister on two occasions in 2010, and his sons Dawson and Davis. However, she was part of Davis' engagement celebration. Davis often would visit Cameron Heights home, and they went bowling and spent time in Las Vegas together.

*ix. The ownership, use, and acquisition of property*

[264] David owned the bulk of the property, including the various properties that David and Gwen lived in throughout the relationship.

[265] However, Gwen was listed as a contact on various correspondence for the purchase of homes and for utilities. While she may have been listed on the utility bills for convenience to pay bills in his absence, she was listed as a contact with real estate agents and developers and attended with him to view the homes. She also had liberal access to their joint bank accounts in Edmonton and Las Vegas and was listed as a spouse on the vehicle insurance form for at least the Porche that David owned.

[266] Gwen had liberal use of the properties. She lived with David and Natalie and, often, some of her extended family.

**Three-year prerequisite**

[267] Finally, I must determine whether Gwen and David lived with each other for a continuous period of not less than three consecutive years. I note that "lived with" for the purpose of s 3(a)(i) of the AIRA does not require "occupying the same space at the same time all the time" (*Corlett* at para 25; see also *Wright v Lemoine*, 2017 ABQB 395 at paras 18-20 (*Wright*)). Rather, it is about

a “mutual intention to continue” the relationship and the “intimacy of the parties’ overall relationship” (*Corlett* at paras 25-26).

[268] Gwen and David had the above routines, with some variations depending on his work schedule. I conclude that David and Gwen “lived with” each other generally, beginning with the arrangements that in the Red Deer duplex and continuing on until they broke up – a period of over 17 years. This finding is consistent with that in *Corlett*, where Justice Little found that the couple had lived together for a continuous three-year period even though the facts were more tenuous than are present here in respect of Gwen and David’s relationship.

## **Issue 2: Is Gwen’s entitlement to support barred because of s 5 of the AIRA?**

[269] Gwen is not barred from receiving AP support from David by virtue of s 5 of the *AIRA* because, given my interpretation of s 5, David was not living with his wife, Diane. The interpretation of “living with” in s 5 must be consistent with the statutory context and remedial purpose of the *AIRA*.

*How to interpret “living with” in s 5*

### **A prefatory note**

[270] Section 5 of the *AIRA* provides:

- (1) A person cannot at any one time have more than one adult interdependent partner.
- (2) A married person cannot become an adult interdependent partner while living with his or her spouse.

[271] I must interpret s 5 of the *AIRA* to determine whether Gwen is statutorily barred by s 5 from being in an AP with David. This means that first and foremost I must rely on the modern principle of statutory interpretation, which states: “the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21 (*Rizzo*) and *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26).

[272] In this case, relying on the modern principle to interpret the *AIRA* means I cannot rely on case law from other provinces interpreting “living with” in the context of a “conjugal relationship.” This is because the cases I have canvassed on the issue interpret specific pieces of legislation in those provinces, and as such, while persuasive in similar situations with similar legislation in Alberta, they are not determinative. I must interpret the specific legislation before me and apply it to these highly unusual facts.

[273] Specifically, these cases provide limited guidance in the case at bar for three reasons. First, the *AIRA* is unique in Canada (see John Fisher, “*Outlaws or In-laws?: Successes and Challenges in the Struggle for LGBT Equality*” (2004) 49 McGill LJ 1183 at 1188; Alberta, Legislative Assembly, *Alberta Hansard*, 25<sup>th</sup> Leg, 2<sup>nd</sup> Sess (19 November 2002) at 1390), so it is difficult and potentially problematic to import other case law definitions without diligently examining the idiosyncrasies of Alberta’s own legislation.

[274] Second, the factual scenario at hand is also highly distinct. This is a one-of-a-kind factual situation with little to no precedential guidance. I have surveyed the several other “double lives” cases from across Canada, but none deal with the distinctive Alberta legislation that applies here (see e.g. *Nowell v Town Estate* (1997), 35 OR (3d) 415, 1997 CanLII 14545 (CA) (*Nowell*); *Anderson v Anderson* (1994) 50 ACWS (3d) 273, 1994 CanLII 18224 (Ont SC) (*Anderson*); *Boughton v Widner Estate*, 2021 BCSC 325 (*Boughton*)).

[275] *Nowell* dealt with unjust enrichment in estate litigation. The “double lives” issue in *Anderson* was about determining when the husband and wife separated, an analysis which considered the fact that there was an extra-marital affair. *Anderson* did not deal with support obligations or property for the woman involved in the extra-marital relationship with the husband.

[276] *Boughton* is more on point as the plaintiff in that case was the long-term marriage-like partner who tried to claim a share in Mr. Widner’s estate by arguing that she was his spouse for the purpose of British Columbia’s *Wills, Estates and Succession Act* (SBC 2009, c 13), even though he was still married at the time of his death. However, in *Boughton*, the Court had relatively clear legislative history guidance on point in relation to the relevant legislation, which I do not have at my disposal here.

[277] Finally, the term “living with” in s 5 of the *AIRA* plays a very different role in the case at bar than in the other cases across Canada interpreting “living with” or its equivalent. In those cases, Courts adopted a broad interpretation of the term to give effect to the remedial nature of the relevant legislation – that is, to receive spousal support or a share of the deceased’s estate as a “common law spouse” (see e.g. *Climans v Latner*, 2020 ONCA 554; *Naegels v Robillard*, 2019 ONSC 2662; *Austin v Goerz*, 2007 BCCA 586; *Boyd v Foster*, 2019 BCSC 901; *Coombes Estate (Re)*, 2015 BCSC 2050).

[278] However, s 5 of the *AIRA* presupposes that a person can only *live* with one person for the purpose of assessing entitlement to support.

[279] Here, (as I discuss below in greater detail) the remedial aspect of the *AIRA* and the *AIRA*’s clear boundaries about the kind of relationships that can be recognized under this legislation are most effectively served in this situation if I construe “living with” in s 5 more narrowly, as part of a comparative analysis. Therefore, both the factual situation and the corresponding interpretive task before me is distinct from those dealt with by other Canadian Courts in other cases interpreting “living with” provisions and their equivalents.

### **Statutory context and purpose of the AIRA**

[280] As mentioned above, I must interpret s 5 of the *AIRA* in light of its “entire context... [and its] grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo* at para 21).

[281] With this statutory and factual context in mind, “living with” in s 5 must be interpreted narrowly and comparatively. That is, in this type of “double lives” situation, a person like David can only have one relationship for the purpose of the *AIRA*. My conclusion is based on two observations about the legislative intent behind the *AIRA*: the kind of relationships that the *AIRA* was designed to recognize and the purpose of recognizing those relationships.

## Nature and Purpose of the AP relationship

### *The application of the AIRA is restricted to marriage-like relationships*

[282] The text, statutory context, and purpose of the *AIRA* indicate that the Legislature intended to recognize relationships between two people that are marriage-like. As mentioned above, this intention is evidenced in the *AIRA*'s preamble as well as in the restrictions defining the AP relationship, as articulated by sections 1, 5 and 7.

[283] The preamble mentions the importance of traditional understandings of marriage in Alberta and states that the *AIRA* is intended to “define a legal context for the nature of those interdependent relationships [outside marriage] and to set out the applicability of Alberta laws to them.”

[284] Section 1(2) lists factors to consider in determining whether two people are APs and mirrors the characteristics of a marriage-like relationship: the presence of a conjugal relationship; how exclusive the relationship is; and the degree to which the parties rely on and direct their lives towards each other (as determined in the above analysis). However, ss 5 and 7 explicitly restrict one's ability to have a legally recognized marriage-like relationship with more than one person.

[285] The purpose of the *AIRA* as elucidated by the *AIRA*'s legislative history also supports this intention. The Hansard debates on the *AIRA* indicate that the Legislature enacted the *AIRA* and its accompanying amendments to respond to several Court cases which demanded that Alberta extend the same benefits to married and same-sex couples (see Alberta, Legislative Assembly, *Alberta Hansard*, 25<sup>th</sup> Leg, 2<sup>nd</sup> Sess (7 May 2002) at 1193; Alberta, Legislative Assembly, *Alberta Hansard*, 25<sup>th</sup> Leg, 2<sup>nd</sup> Sess (8 May 2002) at 1235, 1245; Alberta, Legislative Assembly, *Alberta Hansard*, 25<sup>th</sup> Leg, 2<sup>nd</sup> Sess (19 November 2002) at 1388 (*19 November Hansard*)). Since equality for same-sex couples was the goal and marriage was the barrier, the new legally recognized relationship had to be similar to state-recognized marriage. This interpretation is consistent with Canada's *Criminal Code* provisions prohibiting polygamy.

[286] Further, the Hansard debates show that the members were concerned about how to sufficiently describe the boundaries of the AP concept and what kind of relationships these obligations and benefits should apply to.

[287] The responsible minister, Minister of Justice and Attorney General David Hancock (as he then was), explicitly stated in response to these concerns that the *AIRA* only applies and ought to apply to people “who have that close and intense personal relationship that creates that special bond between the parties and the economic, financial, and emotional interdependence that would normally be associated with a marriage or common-law relationship as we now know them” (*19 November Hansard* at 1388).

[288] These concerns were addressed in part by an amendment to the Bill recommended by the Canadian Bar Association (CBA) to prevent frivolous lawsuits, which became ss 8 and 9 (see Alberta, Legislative Assembly, *Alberta Hansard*, 25<sup>th</sup> Leg, 2<sup>nd</sup> Sess (27 November 2002) at 1600-1601). The CBA expressed concerns to Minister Hancock that people would claim that another person was their AP just so that they could get support from them, even if the two people did not have a marriage-like relationship. These concerns reinforce the purpose of the *AIRA* as expressed by the text itself – that the Legislature intended the AP concept to be marriage-like.

[289] Interestingly, Minister Hancock, during second reading on November 27, 2002, stated that “living together” is a very clear term (at 1608-09):

The member does raise a good question with respect to people who are in a relationship but who are living separate and apart ... I think we understand that at law, and the body of law around that is, I think, evident enough to deal with those situations. It could be a situation that we may have to watch and see whether there needs to be a tinkering with the act to make sure that that’s clear, but I think there’s a good understanding of who lives together and who doesn’t live together. You know, the student who goes away to university is not considered to have left home, necessarily. I think the law is clear enough on those particular parts. (emphasis added)

[290] Minister Hancock’s comment about having “to watch and see whether there needs to be a tinkering with the act to make sure that that’s clear” is prophetic.

**Marriage-like relationships produce certain responsibilities**

[291] The Legislature appears to have defined the AP relationship in this limited way because of the kind of obligations that a “marriage or common-law” relationship (to use Minister Hancock’s words) gives rise to. One set of obligations is AP support, as outlined by ss 46(a), 57(2)(b)(ii), and 58 of the *Family Law Act*, SA 2003, c F-4.5. These obligations were intended to form part of the “emotional and financial responsibilities” that people in committed relationships owe to each other when the relationship breaks down (*19 November Hansard* at 1388). As Minister Hancock stated in the Hansard debates, the purpose of the *AIRA* is as follows:

Committed relationships of all kinds can create financial interdependencies. Government does not create these relationships; people do. But it is our duty to ensure that our laws help Albertans address the emotional and financial responsibilities which are created through those relationships and which then have to be taken care of when those relationships break down (*19 November Hansard* at 1388).

[292] He also said, in the same sitting:

[I]f you do engage in responsibilities, if you create dependencies by way of your relationship with someone else or if you submerge your assets with someone else’s assets so that you become dependent on them, then this law presumes... that one ought to be responsible for the dependencies that they create. That is the gist and substance of Bill 30-2 [the *AIRA*] (*19 November Hansard* at 1388).

[293] Thus, the text, statutory context, and purpose of the *AIRA* strongly suggest that the legislation was intended to create obligations similar to those for marriage relationships. The special obligations owed to the other person arise from the nature of the relationship – the extent of interdependence on another person, as marked by exclusivity.

[294] This interpretation is consistent with Justice Mah’s recent ruling on how to interpret the *AIRA* in *Desnoyers Estate*, where in light of s 10 of Alberta’s *Interpretation Act*, RSA 2000, c I-

8, he held that the *AIRA* must be construed as remedial and given “the fair, large and liberal construction and interpretation that best ensures the attainment of its objects” (at para 49). In addition, Justice Mah held that one of the legislative purposes of the *AIRA* is “to prevent financial hardship in cases where one person is financially dependent on another, and that dependency ends through separation or death” (at para 50).

### **Implications for interpreting s 5 of the *AIRA***

[295] The nature and purpose of the AP relationship derived from the statutory context and legislative intention of the *AIRA* supports the finding that I should interpret “living with” in this type of factual situation narrowly and comparatively. The text, statutory context and purpose of the *AIRA* indicates that AP relationships should be restricted to marriage-like – that is, exclusive – relationships that have particular characteristics. The legislation’s statutory context and purpose also suggests that these types of relationships should be legally recognized when they occur so that the parties can responsibly fulfill their obligations to each other upon death or separation – obligations that arise because of the unique quality of the relationship.

[296] I must make sense of and reconcile the *AIRA*’s (apparently competing) purposes and give effect to the *AIRA*’s remedial purpose. To do so, I interpret “living with” in s 5 to mean that a person can only be living with one person in a marriage or AP-like relationship at a time.

[297] This means that where a party has effectively “lived with” two individuals separately for a period of time that would otherwise qualify them as an AP, and one of those individuals is the person’s spouse, I must conduct a comparative analysis to determine who the party was de facto living with. Here, I find that David was primarily living with Gwen, and therefore, for the purpose of s 5, was not living with his wife.

[298] For the reasons that follow, I find that David chose to live with Gwen, and so was therefore not living with his wife for the purpose of s 5.

*What does ‘living with’ mean for the purposes of ARIA?*

[299] The historical case law that interprets what ‘living together in a conjugal relationship’ means is not particularly helpful (*see M v H*, [1999] 2 SCR 3; *Molodowich v Penttinen* (1980), 17 RFL (2d) 376, 1980 CanLII 1537 (Ont SC) (*Molodowich*); *Greaves v Greaves* (2004), 4 RFL (6<sup>th</sup>) 1, 2004 CanLII 25489 (Ont SC) (*Greaves*)). These cases set out a number of factors that characterize traditional relationships, such as: shelter and sleeping arrangements; sexual and personal behaviour; sharing of household duties; social activities engaged in; financial arrangements; intention, attitude, and withdrawal of one spouse from the matrimonial obligations; and, child-rearing.

[300] The analysis in those cases focused on the strength of the relationship between two people for the purpose of assessing whether benefits arising from the union should be awarded. For example, in *Molodowich*, the Court had to determine whether unmarried individuals were “spouses” for support purposes. In *Greaves*, the Court was asked to determine a valuation date in family law proceedings where the parties had separated and later reconciled.

[301] That assessment does not fit squarely with the analysis needed in this case, particularly given the fact that two of the parties involved were deceived into believing in the exclusive nature of their relationship. Hence, it is more complex and nuanced.

[302] The purpose of the *AIRA* remains the same in this situation, namely, to ensure those who engage in responsibilities and create relationships of dependencies, remain responsible for taking care of the dependent individuals when the relationship breaks down.

[303] In this situation, where both women were misled into believing that their relationship was exclusive, I find that it would be superficial to merely place the traditional factors on a scale and weigh them only in favour of the married partner. As noted above, this is a situation in which there were two interdependencies created, and in light of the legislation, it is necessary to take a comparative approach that considers the realities of David's work-life and allocation of free time over an extended period of time. In my view, approaching this in any other way would be to treat an unmarried partner differently than the married partner without justification.

[304] The Supreme Court of Canada has ruled that while cohabitation is a constituent element of a common law relationship, it is not synonymous with co-residence. Depending on the circumstances, two people may be found to be cohabiting even though they do not live under the same roof; conversely, two people may be found not to be cohabiting, even though they are living under the same roof (*Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65 at para 42).

[305] The fact of one party maintaining a separate residence does not preclude a finding that the parties are cohabiting in a relationship of interdependence. Maintaining separate residences does not necessarily mean that an adult interdependent relationship has not continued (*Tait v Westphal*, 2013 ABQB 668 at para 20).

[306] Moreover, there is no requirement that "lived with" for the purposes of s 3(a)(i) of the *AIRA* means occupying the same space at the same time all the time (*Wright* at paras 29- 49 and *Corlett* at paras 25-27). Recently, the Ontario Court of Appeal held that parties were spouses even though they maintained separate homes throughout the course of their relationship and never merged their finances. It stated at para 58 that "...there are many cases in which Courts have found cohabitation where the parties stayed together only intermittently" (*Climans v. Latner*, 2020 ONCA 554 (CanLII)).

***Analysis: Was David living with his wife for the purpose of s 5?***

[307] Due to the nature of his work in the oilfield services industry, David did not "reside" in the traditional sense of the word in either the matrimonial home or the many homes he purchased and allowed Gwen to live in.

[308] However, he did make routine decisions about where to spend his time, invest his emotional energy, and whom to vacation with. When, on these points, I compare David's treatment of Gwen with his treatment of Diane, I find that David was emotionally connected to and spending most of his available time with Gwen, and not with Diane. He was visiting the matrimonial home infrequently and on a periodic basis (approximately 4 days per month, with some occasional week-night visits and brief holiday time). Therefore, I find that he was not living with his wife for the purpose of s 5.

[309] David began living with Gwen instead of his wife when he chose to spend his evenings and alternating weekends with Gwen in a duplex that he rented in Red Deer. This duplex was located only *four kilometers* from his matrimonial home in Red Deer where Diane was living with his three young sons. Instead of going to this home with Diane and the boys, he admits that he would make excuses and ‘slip up to see [Gwen]’ any chance he got.

[310] Moreover, according to Diane and Lisa’s testimony, David continued to spend roughly every second weekend at the matrimonial home and at times would be away for a three-week stretch of time. This was not contradicted by David, and it also matches Gwen’s story. However, based on the evidence, David had much more time to give to his family than he actually did. This case is unique for the very reason that he did not change the usual practice known to his family throughout the marriage. However, what is telling and evidenced by photographs, is that when he had a choice of where to spend his time, it was almost always with Gwen.

[311] Going home to Diane and the boys was an obligation that he met infrequently. Aside from the twice monthly visits, limited time on holiday days or in the summer, an occasional drive to meet the family at a sporting event, and travel for the kids’ tournaments, he chose to reside and travel with Gwen when he was not away working.

[312] On the evidence in this case, I conclude that David was emotionally committed to a relationship with Gwen long-term, and therefore was no longer “living with” his wife. His returns to the matrimonial home were merely part of maintaining the family pretense for the purpose of raising the boys and perhaps avoiding the disadvantages and hardship of a divorce.

[313] Although David contends that the status quo in his marriage never changed and that he therefore continued living with his wife, I find that for the purposes of *AIRA*, what he did with his non-working time prior to meeting Gwen is not particularly relevant to the narrow and comparative analysis necessary in this case. What is relevant is how he chose to allocate his non-working time between the homes once she was in the picture.

[314] Moreover, although I do not believe that the parties were ever formally engaged to be married as Gwen states, I believe it was discussed many times and that Gwen was pressuring Dave to commit to a wedding. I do not need to find that there was a formal engagement; I find there was a long-term commitment that was symbolized by outward appearances. For instance, David allowed Gwen to wear the diamond ring since about 2001 because it made her happy. It was a diamond ring with a large solitaire surrounded by smaller diamonds, commonly associated with an engagement. In around 2008, David accompanied her to the jeweller and even paid to have it changed at her request.

[315] David also admits as part of a read-in at trial that they discussed marriage and agreed to a tentative date of 11/11/11 for a wedding in Las Vegas. Nevertheless, David continues to insist that Gwen just found the ring in the home she was living in and kept it. He offered no plausible explanation for the purchase of the ring and the subsequent treatment of it.

[316] It did not make sense for David to integrate Gwen into his family as he, for whatever reason, was not prepared to divorce Diane. Nevertheless, he did not want to let Gwen go either. I

infer that allowing her to wear the diamond ring was a way to appease her into believing that one day they would marry.

[317] I conclude that David's testimony about his level of commitment to Diane versus Gwen is disingenuous. The reality as gleaned from the facts in this case is that David was dishonest, lying to his wife of 30 years about his commitment to her and his whereabouts and lying to Gwen about the exclusive nature of their relationship.

[318] Given the number of times he attended events with Gwen and her family, even taking Gwen to company Christmas parties, it appears he was indifferent about whether Diane would find out about Gwen. He admits that many people, including family members, knew about his relationship with Gwen.

[319] David also introduced Gwen to his sister on two occasions and allowed his middle son (and his son's girlfriend) to vacation with him and Gwen on two occasions in Las Vegas. Gwen was present at their engagement celebration. This is telling that he was prepared for his relationship to be public, even to his own family.

[320] I find David did not have any intention of continuing an exclusive relationship with Diane after he met Gwen.

[321] Additional facts that have swayed my decision in favour of finding that David was living with Gwen and not Diane include the treatment of Natalie and her kids: Natalie called David "dad"; David purchased various vehicles for her; he taught Natalie how to drive a manual transmission vehicle; he attended special events such as graduation; treated her and her friends to a vacation to Las Vegas for her 25<sup>th</sup> birthday; and often stepped in as a father figure when she was in trouble. David was also at the hospital when Natalie gave birth to her first child, visited her second baby soon after he returned from a trip to Las Vegas with Gwen, and visited Natalie and the children at their home frequently, spoiling them with gifts; he allowed Natalie's children to call him moosom.

[322] David convinced his wife, as is evident from her annual family newsletters, that his work kept him away from home a large percentage of the time, that vacations rarely happened because he was too occupied with plant shutdowns, and that he only had time to attend sporting events for his sons. Given the evidence of his time spent with Gwen, this was untrue.

[323] Further, I conclude that David was integrated into Gwen's extended family, as noted above with respect to Natalie and her kids, but also with Gwen's parents, who visited frequently.

[324] David attempts now to retrospectively deny the seriousness of his relationship with Gwen. Although they did not co-mingle most of their financial affairs, this is only one factor in the analysis. The evidence points overwhelmingly in favour of his intention to build an interdependent life with Gwen.

[325] Although he had a number of financial interdependencies created with his wife and he would pop in and out of the home for special occasions, even at times sleeping in the same bedroom with her, I find that he was not living with her since at least around the time he met Gwen.

[326] In the end, David cannot avoid the application of the *AIRA* on the basis that he is married and claims to be living with Diane. There is no dispute that he was still married, but my assessment of the evidence points to the finding that he was not living with her for the purpose of s. 5.

[327] David argues, relying on *Alberta (Aboriginal Affairs and Northern Development) v Cunningham*, 2011 SCC 37 (*Cunningham*), that the *AIRA* is ameliorative legislation. In *Cunningham*, the Supreme Court of Canada was asked to determine whether the *Metis Settlements Act*, RSA 2000, c M-14, violated particular sections of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (the *Charter*). The Supreme Court discussed section 15 of the Charter, specifically section 15(2) which allows for ameliorative programs. The Court noted, at para 40:

...It is unavoidable that ameliorative programs, in seeking to help one group, necessarily exclude others.

[328] David argues that the *AIRA* gives standing to unmarried couples but puts limits on this standing, for example, a person can only have one AP at a time, and no AP is possible if the person is married and living with their spouse. David argues that the *AIRA* did not address the situation of a person having multiple relationships at one time and says that ameliorative legislation cannot fix all disadvantaged groups in all aspects.

[329] Whether or not the *AIRA* is ameliorative legislation, which I will not comment on, I have found that David was *not* married and living with his spouse, and so, according to the definitions in the *AIRA*, David could be, and was, in an AP relationship with Gwen.

[330] Further, David argues that, since s 5(2) of the *AIRA* allows for a person to have only one AP at a time, Gwen could not be his AP, since Diane was his AP. The preamble of the *AIRA* explicitly precludes a married spouse from being an AP. Indeed, as discussed earlier, the entire *purpose* of the *AIRA* was to ensure that marriage was kept separate from all other kinds of interdependent relationships. The Preamble reads:

WHEREAS marriage is an institution that has traditional religious, social and cultural meaning for many Albertans; and

WHEREAS the Legislature of Alberta affirms that a spouse is a person who is married; and

WHEREAS there are Albertans in interdependent relationships outside marriage; and

WHEREAS it is appropriate to define a legal context for the nature of those interdependent relationships and to set out the applicability of Alberta laws to them;

[331] The language of the *AIRA* confirms that Diane was David's spouse. Since I have found that David did not live with his spouse, he could, and did, have an AP, namely Gwen.

#### *Alternative argument regarding the s 5 bar*

[332] In the event that I am wrong about my analysis above, I find that Gwen is still entitled to AP support under the *AIRA* as an AP because Gwen believed, in good faith, that she was in a

marriage-like relationship with David. She otherwise was in an AP relationship with David and would have been entitled to those protections on relational breakdown, if David had not successfully deceived Gwen about the true nature of his relational status.

[333] A plain text reading of s 5 in its statutory context suggests that Gwen is not entitled to AP support under the *AIRA*. Section 5 states that a “married person cannot become an adult interdependent partner while living with his or her spouse.” This restriction on who can be an AP is also supported by the *AIRA*’s preamble and sections 1(2) and 7(2) of the *AIRA*. Under this interpretation, David was not eligible to become Gwen’s AP since he was married to his wife, Diane, and living with her at the time that he had an AP-type relationship with Gwen.

[334] But this reading of the *AIRA* does not sufficiently address the complexity of the facts of this case and the legislative intent behind the *AIRA*. The history and rationale for both 1) the parameters in sections 5, 1 and 7, and 2) the *AIRA* as a whole indicate that, notwithstanding the s 5 bar, Gwen should be entitled to AP support under the *AIRA*. In short, this is because:

1. The Legislature intended to recognize relationships that are marriage-like and require that people in these marriage-like relationships fulfill special obligations to each other;
2. Gwen believed, in good faith, that she was in a marriage-like relationship with David – and in substance, (except for the unfaithfulness that David concealed from her) she was. The only reason Gwen lived in what was otherwise an invalid AP relationship was because of David’s deception;
3. Therefore, Gwen’s perception and lived reality of her relationships with David falls within the kind of relationship that the Legislature intended the *AIRA* to recognize.

[335] The text, statutory context, and purpose of the *AIRA* that I discussed above support these conclusions.

[336] David represented to Gwen that he was available to enter into what is, on the facts, a valid AP relationship, and Gwen, after inquiring about his separated status, believed him and relied on what he said. Functionally, from Gwen’s lived reality, her and David were in the kind of relationship contemplated by the *AIRA*. David was the only one who knew that the relationship was not in fact exclusive, and that his wife believed he was living with her. Because David deceived Gwen and Gwen relied on the legitimacy of their relationship, David is Gwen’s AP and should therefore be subject to these same protections and support obligations.

### ***Cautionary note***

[337] I will note here that my interpretation and application of the *AIRA* in this alternative argument does *not* extend to situations where: 1) a person enters into an AP-like relationship with someone where one or both parties to the relationship either already have a valid AP or are already married and living with their spouse; and 2) neither party has deceived the other into thinking that they are in a valid AP relationship.

[338] That situation is clearly anticipated by the *AIRA* and runs afoul the key purposes of the legislation that I canvassed above. Essentially, this means that if Gwen *knew* that David was in

fact still married and living with his wife or already had an AP, her standing as an AP and entitlement to support would fail. But because I find as a fact that she in good faith believed that her relationship with David was marriage-like and exclusive, and she otherwise had an AP-like relationship with David, I conclude that she is an AP under the *AIRA* and is accordingly entitled to support.

## **XII. Conclusion**

[339] Section 5(2) of the *AIRA* prevents a person from being an AP if the defendant was married *and* living with his spouse. The definition of ‘living with’ is broader than merely co-habiting under the same roof. Contemporary relationships take many forms and the law must take into account a broader set of factors.

[340] Due to the nature of his work in the oilfield services industry, David did not “reside” in the traditional sense of the word in either the matrimonial home or the many homes he purchased where Gwen lived.

[341] The modern approach requires an analysis of the global factors of the relationship, including whether the spouses were emotionally committed to one another’s lives, where they consistently spent their free time, how they held themselves out, whether they integrated their day-to-day lives and financial affairs, and whether they relied on each other for support. No one factor is determinative.

[342] This case shows that in certain situations, a person may have multiple interdependent relationships. It is also clear that the current legislation does not adequately reflect the full spectrum of legitimate AP relationships created within the changing societal landscape and deserving of protection pursuant to the principles of *AIRA*.

[343] On the evidence in this case, I conclude that David preponderantly committed his time and effort to his relationship with Gwen and therefore was no longer “living with” his wife after he rented the home in Red Deer and allowed Gwen and Natalie to move in.

[344] Moreover, David permitted Gwen to be largely and increasingly over time, financially dependent on him, especially after 2008 when Gwen was no longer employed full time. David permitted Gwen and her family members to live in the many homes he owned, which he purchased without the knowledge of his wife.

[345] In David’s words, he would try to see Gwen “any chance he could”. This was much more than an affair; the fact that he permitted the relationship to continue for over 17 years, freely allowing Gwen to live expense-free in nice homes and paying for a lifestyle that included many big-ticket vehicles, all-expenses paid trips abroad, attendances together at parties, casinos, BBQs, lake outings, and special events and weddings all while his wife carried on mostly as a single mom, exposes his true loyalties and where he was spending most of the money and free time he had.

[346] He denigrates Gwen’s lifestyle now, characterizing her as a mere fling who was lazy, unmotivated and a gold-digger; however, it is clear from the evidence that he enjoyed her companionship, support, and the lifestyle she offered for nearly 17 ½ years, during which time he

integrated her into the business that he built after she introduced him to Dan. He was also fully integrated with her family, acting as both a father and moosum.

[347] I conclude that Gwen was aware that David was married but that she had a reasonable belief that he was separated from his wife and intended to divorce her. She therefore had a basis for relying on his financial support over the years. Being married is not a bar to a finding that a person also has an adult interdependent partnership with another person.

[348] In summary, Gwen is an AP and her standing as such is not barred on account of David being married and maintaining the status quo at the matrimonial home throughout the duration of their relationship. On the unique facts of this case, I believe it would be unjust to conclude otherwise.

Heard on the 24-28<sup>th</sup> day of February and 14-15<sup>th</sup> days of December 2020.

Dated at the City of Edmonton, Alberta this 19<sup>th</sup> day of April 2021.

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**A. Loparco**

**J.C.Q.B.A.**

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