

FAMILY COURT OF AUSTRALIA

MOBY & SCHULTER

[2010] FamCA 748

FAMILY LAW – DE FACTO RELATIONSHIPS – declaration that a de facto relationship existed

Family Law Act 1975 (Cth)

Roy v Sturgeon (1986) DFC 95-031

Simonis v Perpetual Trustee Co. Limited (1987) DFC 95-052

Light v Anderson (1992) DFC 95-120

Baker and Landon [2010] FMCAfam 280

APPLICANT:	Ms Moby
RESPONDENT:	Mr Schulter
FILE NUMBER:	MLC 10432 of 2009
DATE DELIVERED:	25 August 2010
PLACE DELIVERED:	Melbourne
PLACE HEARD:	Melbourne
JUDGMENT OF:	Mushin J
HEARING DATE:	27 & 28 January 2010, 14 & 15 April 2010

REPRESENTATION

COUNSEL FOR THE APPLICANT:	Mr Robinson
SOLICITOR FOR THE APPLICANT:	Adrian Abrahams Family Lawyers
COUNSEL FOR THE RESPONDENT:	Mr Hoult
SOLICITOR FOR THE RESPONDENT:	JH Legal Pty Ltd

IT IS DECLARED THAT

1. Pursuant to sections 90RD and 4AA of the *Family Law Act 1975* (Cth) a de facto relationship existed between the applicant and the respondent during the following periods:
 - (a) May 2002 to May 2004;
 - (b) August 2004 to December 2004;
 - (c) January 2005 to mid-June 2005;
 - (d) Late June 2005 to mid-December 2005;
 - (e) Late December 2005 to April 2007;
 - (f) Late June 2007 to mid-February 2008; and
 - (g) Mid-March 2008 to October 2009.
2. At all relevant times both parties were resident in the State of Victoria.

IT IS ORDERED THAT

3. That all extant applications be and are hereby otherwise referred to the docketed Registrar for the making of all orders and directions as may be necessary to prepare the matter for trial in accordance with the declaration made herein.
4. Liberty be reserved to either party to apply for any order consequent upon these orders.

IT IS CERTIFIED THAT

5. Pursuant to Rule 19.50 of the Family Law Rules 2004 this matter reasonably required the attendance of Counsel.

IT IS NOTED that publication of this judgment under the pseudonym *Moby & Schulter* is approved pursuant to s 121(9)(g) of the *Family Law Act 1975* (Cth)

FAMILY COURT OF AUSTRALIA AT MELBOURNE

FILE NUMBER: MLC 10432 of 2009

MS MOBY

Applicant

And

MR SCHULTER

Respondent

REASONS FOR JUDGMENT

INTRODUCTION

1. On 1 March 2009 amendments to the *Family Law Act 1975* (Cth) ("the Act") came into force pursuant to which jurisdiction was conferred on this Court and the Federal Magistrates Court with regard to financial matters between parties to a de facto relationship which has broken down. That jurisdiction defines a de facto relationship as being one in which –

... having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.
2. The legislation sets out a number of "circumstances" which a de facto relationship "may include". Those circumstances relate to –
 - the duration, nature and extent of any common residence;
 - any sexual relationship;
 - financial matters including ownership, use and acquisition of property;
 - the degree of mutual commitment to a shared life;
 - whether the relationship is registered under a prescribed law of a State or Territory;
 - the care and support of children; and
 - the reputation and public aspects of the relationship.
3. The parties to these proceedings seek a declaration as to whether a de facto relationship in accordance with the legislation existed between them at any time and if so for what period or periods. In the event that I were to declare that a de facto relationship did exist between them and came to an end on or

after 1 March 2009, the applications would proceed to a consideration of what, if any, alteration of property interests should be ordered between them. That would be by way of separate trial.

4. The applicant asserts that a de facto relationship existed between herself and the respondent between 2002 and approximately October 2009. The respondent asserts that no de facto relationship existed between himself and the applicant at any time. However, if I were to find against the respondent on that assertion, it is asserted in the alternative that any de facto relationship came to an end no later than February 2008 in circumstances described below.
5. Every aspect of the circumstances summarised above is in dispute, save for the fact that the parties agree that they were in a relationship of some kind between 2000 and 2009.

THE PARTIES

The applicant

6. The applicant is Ms Moby. She is aged 46 years. She describes her occupation as "Events and Home Duties". She has operated a business in event management for many years. That business is one of the relevant contentious issues in these proceedings.

The respondent

7. The respondent is Mr Schulter. He is aged 56 years. He is self-employed and describes his occupation as "Business Consultant".

CREDIBILITY

8. The parties disagree on nearly all of the important facts in these proceedings. Accordingly, it is necessary for me to make findings with respect to credibility. During the trial, both parties gave me cause for concern with regard to the reliability of their evidence. There is great antipathy between them and quite naturally, each of them sees the contentious facts through her or his own eyes. At times, that led to each of them exaggerating their respective versions.
9. However, the manner in which each of them gave their evidence was quite different. The applicant's evidence was generally consistent and given in an open and cooperative way. By contrast, the respondent often found it difficult to answer a question directly and was quite evasive at times.
10. On a number of occasions the parties were so diametrically opposed on crucial issues that I formed the view that not only was one of them clearly wrong but also, it was difficult to understand how such a degree of error could be a mistake rather than a deliberate misrepresentation of the facts. There are three issues which particularly stand out in that regard and which I will discuss in detail below. However, at this stage I note those issues as firstly, the proportion

of times, if any, during which the parties lived under the one roof, secondly, the events of February 2008 and thirdly, the respondent's involvement in the business referred to below.

11. I find that the applicant's evidence is to be preferred to that of the respondent, at least with regard to the three issues mentioned in the previous paragraph. Given the importance of those issues, I have formed the view that as a general proposition, at points at which the evidence of the applicant conflicts with the evidence of the respondent, I prefer the evidence of the applicant unless I find to the contrary. I will particularise those findings below.
12. A number of other witnesses gave evidence in these proceedings by way of corroboration of parts of the case of each of the parties. I will make findings with respect to the credibility of those witnesses in due course.

RELEVANT FACTS

March 2000 to May 2002

13. The parties met on 2 March 2000. They commenced a sexual relationship in April 2000.
14. At the time of their meeting, the applicant was living in rented premises. The respondent was living in a house that he had owned at N since 1993. His daughter by a previous relationship, L, lived with him at N, albeit not on a full time basis. The child is presently aged approximately 16 years. The respondent swore that he had shared the care of the child with her mother –

since 1995 and as of 2004 [the child] has been spending two weeks out of every four with me at my [N] home.

Other evidence of the respondent suggested that the child may not have commenced living with him on a fortnightly basis until 2005 or 2006 but nothing turns on that.

15. On 17 August 2001 a business was commenced under the name "Moby Events" ("the business"). The business is involved in the organisation of events and functions. The degree and nature of the parties' involvement in the business is one of the most contentious issues in this matter. I will make findings with regard to it under a separate heading below in which I will consider the parties' financial relationship. However, my findings with regard to the relationship, including the business, are to be read together with the entirety of the chronology in this matter.

May 2002 to July 2007

16. The applicant alleged that on 21 May 2002 she moved to live with the respondent in his home at N. She alleged that except for several separations referred to below, she lived at N on a full-time basis until she moved to live in a rental property in G in August 2007, also referred to below. She also alleged

that L lived there with them for two weeks out of every four and lived with her mother for the other two weeks.

17. The respondent's primary position on that issue was that he and the applicant did not live together at any time. He alleged that the applicant stayed with him overnight at N –

on very few occasions and only when [L] was staying with her mother.

In later oral evidence, the respondent swore that the applicant had stayed overnight with him –

a couple of times a week for some years.

In yet later oral evidence, the respondent reduced that to approximately –
half a day each week.

18. I prefer the evidence of the applicant to that of the respondent on the issue of whether the parties lived together at any time and if so, for what periods. The consistency of the applicant's evidence as opposed to the several versions of the evidence given by the respondent is the basis for that preference and constitutes part of the basis for my general finding of credibility against the respondent referred to above.
19. The applicant alleged that on 5 May 2004 she and the respondent had an argument, as a result of which the applicant moved out of the N property to a property which she rented at S. She alleged that they reconciled in August 2004 when the applicant returned to the N property. The applicant's lease on the S property was retained and the parties, occasionally together with L, used it as a holiday home.
20. Consistent with his fundamental position that the applicant had not lived with him at N at that time or at all, the respondent alleged that at the time the respondent moved to S, she had been living at the warehouse which she rented for the conduct of her business. The applicant accepted in oral evidence that she did occasionally stay overnight at the warehouse, but this was due to work pressures and commitments rather than because it was her place of residence. On the basis of my general finding with respect to credibility, I prefer the applicant's version of these facts.
21. Also in August 2004 the respondent went to the United States of America for business. The applicant deposed:

I redecorated the inside of his home including replacing damaged and/or broken furniture, with my own furniture or purchased items. I also replaced the crockery and cutlery, linen and towels and other items in the home as necessary.

22. The respondent denied that the applicant had lived in his property, redecorated it or moved furniture into it. He deposed that -

... on the contrary I say that [Ms Moby] used my absence as an opportunity to move some of the furniture out of the warehouse into my home, and thereafter she would telephone me to advise that she would be collecting one or other piece of furniture for a job. In effect [Ms Moby] used my home as another storage facility.

I prefer the evidence of the applicant to that of the respondent because of my general finding with respect to credibility above.

23. The applicant alleged that in December 2004 she and the respondent had another argument which resulted in her again moving from the N property to S. On the basis that the respondent denied that the applicant had ever lived at the N property, it is consistent that he should also deny that she moved out of it. Again, I prefer the applicant's evidence to that of the respondent for the same reason.
24. The applicant alleged that she and the respondent reconciled in January 2005 when she moved back to the N property. She swore that she remained living there with the respondent, with L living there for two weeks out of every four, until June 2005 when the parties again separated for a period of 14 days. They reconciled in late June 2005 and continued living at N until the end of December 2005 when the applicant again moved out for approximately 10 days. They reconciled again and lived at N until 16 April 2007 when they again separated.
25. The applicant alleged that the last separation referred to above was caused by the respondent having broken an agreement between them that he would move with her to another home which would be leased to enable the two of them to further their relationship together. She alleged that in breach of the agreement, the respondent had refused to sign the lease on the proposed new property. However the parties reconciled again in late June 2007 and remained living at N for the next few weeks.
26. The applicant's evidence of an alleged reconciliation in late June 2007 is corroborated by two e-mails written by the respondent to the applicant on 27 June 2007. The first of those is in the following terms:

Dear [Ms Moby],

My being aches for you - for your companionship.

When we connect I am energised, when we disconnect I am in pain and it kills me.

I need you and I need to know if you want to be with me.

If we commit to each other we can have our place. I want to be together with you. If we are together I have the strength to deal with everything. I just want to be able to come home to you.

Love, [Mr Schulter]

27. The second e-mail written on that day is in the following terms:

Dear [Ms Moby],

I am writing this quickly because I only have a few minutes.

I love you so deeply and I want to be with you. I know I can be the man you would like to be with. I feel I am that man with some things to fix up. Life is too short to miss out on what we can have and I want the togetherness you talk about – I want to have the synergy, the entrainment (sic) with you. You are my spiritual guide, my goddess who I adore.

I want to dissolve your mistrust in me that eats at you and hurts you and I will do whatever it takes.

I thought that for us to be together would only happen if you begged me to come back and now I feel I am begging for you to come back to me. I hope you don't think less of me for saying these things.

I want to our [sic] spirits to fly as one as they do when we are together in a timelessness and a healing that is not explainable.

I have to go now. You are beautiful, wonderful and I adore you and your spirit.

With all my love, [Mr Schulter]

July 2007 to February 2008

28. On 9 July 2007 the respondent leased a property at G in his own name. He gave the N property as his current address. The property was leased for a period of one year commencing on 10 July 2007.
29. In her affidavit of evidence in chief the applicant alleged that the respondent had leased the G property
- for us both to live in as "our new home".

In that context, she referred to the two e-mails from the respondent to her quoted above. She swore:

I agreed to return to cohabitate (sic) with the respondent in 'our home' in [G] when he promised to buy a home for us, to be purchased in our joint names and that we commence having children together. The respondent was also to complete a parenting agreement and financial settlement with his former partner.

30. It is common ground that the applicant moved from N to live in the G property on 15 August 2007 and remained living there until she was evicted in November 2009 in circumstances described below. The issue is for what, if any, time did the respondent live there with the applicant.
31. The applicant swore that the respondent commenced living with her at G in September 2007. She alleged that he lived there for two weeks out of every four and that he lived with his daughter at the N property in the other two weeks. The applicant alleged that the respondent redirected all his personal and business mail to the G property and also diverted his personal and business telephones to the landline of that property.
32. The applicant alleged, and I accept, that while she was living at the G property the respondent -

rang me from various landlines to the landline at the [G] home and frequently left me affectionate messages either in writing ... or on my mobile.

Two of those written messages are annexed to one of the applicant's affidavits.

33. The respondent swore that he never actually moved into the G property. He alleged that he usually stayed there with the applicant on one night each week and otherwise lived with his daughter at N. Importantly, the respondent alleged that he leased the G property for the applicant, albeit in his name, to enable her to move out of the N property and in order that he might assist her.
34. However, when it was put to him in cross-examination that the G property was leased because he and the applicant planned on living together for the rest of their lives, he swore:

That was the idea – no denial.

...

Never got there. I wanted it, [Ms Moby] wanted it, but it never got there.

...

That's why we got the house together – we wanted to make a go of it. It was the last ditched (sic) effort to have a go at putting – making a go of this relationship ...

35. The rent and all accounts for the utilities connected to the property were paid by the respondent. He continued those payments, apparently without default, until early 2009, at which time the rent fell into arrears in circumstances described below. I accept the applicant's evidence that at times that the respondent was living with her at G, he diverted his landline phone from the N property to his mobile phone. For example, the account for his landline phone

demonstrates that between 1 and 15 June 2009 every phone call to his landline telephone number was diverted to his mobile phone. Further, at significant times the respondent diverted his telephone to the landline telephone number of the G property.

36. In cross examination the respondent explained that he had diverted his landline phone to his mobile phone because it was school holidays and he had gone to the snow. The applicant swore that he was living at G for those two weeks. Because the school holidays did not commence until later in that month, I prefer the evidence of the applicant on this issue.
37. The parties' relationship continued comparatively uneventfully for the remainder of 2007 and into early 2008. However, the events of and surrounding Valentine's Day 2008 are of fundamental importance in my consideration of these applications. As I will describe below, the parties were involved in a series of major incidents which included significant physical violence. It was asserted on behalf of the applicant that subsequent to those events, she and the respondent reconciled their relationship which continued until October 2009. By contrast, it was submitted on behalf of the respondent that even if I were to find that a de facto relationship existed between himself and the applicant until February 2008 which is disputed, it came to an end no later than that time and was never reconciled.

February 2008

38. The events of February 2008 were initially raised by the respondent in his affidavit of evidence in chief. He swore:

5. That even if, for the period post 2000 a finding is made that the relationship between [Ms Moby] and I is characterised as de-facto, then I say that as a result of the confrontation between [Ms Moby] and I in February, 2008, (to which I refer at Clause 6.19), resulting in the termination of virtually all communication between us and an absence of any further involvement in each other's life, any de-facto relationship that may have been in existence as at that date was definitely ended and we have had no such relationship since then.

At Clause 6.19 the respondent swore:

...there was a very unpleasant confrontation between [Ms Moby] and I which resulted in me being so concerned for her state of mind that I reported the incident to the police and discussed my options with an acquaintance who works in the health industry.

The respondent did not refer to the issue again in that affidavit despite the above quote. Further, the respondent did not provide particulars of "the confrontation".

39. In a subsequent affidavit, the respondent swore as follows:

- c. That there was an incident on Valentine's Day on 14 February, 2008 which started when I told [Ms Moby] that I would be spending a couple of hours with [L]. [L] had been in Europe for a ski camp for 5 weeks and was only home for one week before she was going to China on a school trip for another 5 weeks. I just wanted to squeeze in some time with [L] before she went to the airport on the evening of Valentine's Day. I told [Ms Moby] that I would be at her house in [G] by about 6:30 p.m. after I had seen [L] off. When I arrived at her house, [Ms Moby] became hysterical and accused me of breaking our agreement and lying to her about the time I would pick her up to go to the cinema. [Ms Moby] slammed the backdoor to the [G] property so angrily that a pane of glass shattered. I left so that [Ms Moby] could calm down.
- d. Over the next few days, I went to the [G] house a number of times to check on [Ms Moby]. When I let myself into the house, I could not open the door to one of the rooms, because she had barricaded herself in by pushing furniture up against the door. [Ms Moby] refused to speak to me. On Saturday the 16th February when I again went to the house to check on her, she was still barricaded in the room but rather than being passive and inert, she became abusive, hysterical and starting smashing things against the door, and telling me to f'off. Because it was my name on the lease [I] was concerned about what damage she may be doing to the house, so I went to the police. The police were unwilling to get involved, so that was when, being so concerned about [Ms Moby's] mental health, I contacted my friend ... to see if she could suggest how I might deal with [Ms Moby].
- e. After this incident, I removed a few items of clothing that I had at the [G] property. The time that I spent at the [G] property diminished significantly, and I would go for weeks at a time and have no contact at all with [Ms Moby]. My only motivation for calling in to see her occasionally was to make sure that she was all right and that her health was stable. Further, my responsibility as the nominated tenant on the lease meant that I also needed to be sure that [Ms Moby] was well enough to maintain the property. I repeat, that if there was any suggestion that and I were a de facto relationship prior to February, 2008, that it was certainly ended at that time as we lead our own separate lives absolutely thereafter.

40. The applicant referred to these events in detail in her oral evidence. She swore that she had not mentioned them in her previous affidavits because she had "let it go". However, she gave considerable particulars of her allegations during that evidence. She swore that on 9 February 2008 the respondent had committed himself to spending time helping her "do things". L had been ringing him wanting him to spend time with her. The respondent was very agitated and had not wanted to answer the telephone. The respondent accused the applicant of stopping him from seeing his daughter. The applicant swore

that normally she would not have objected to his seeing L but there had been a commitment for this particular day. She alleged that she and the respondent were in the car and the respondent had become very aggressive and had started yelling and she “was getting frightened”. The applicant swore that she stated to the respondent that she did not want to argue and said that she would get out of the car if he continued yelling. The applicant got out of the car, shut the door and went around to the back of the car. She swore that the respondent then also got out of the car, “ran and punched me really hard between the shoulder blades” three times and that “I fell in the gutter”. The applicant swore that she was in shock and really frightened. She ran to the nearby park, past the rotunda to a cemetery or some tomb stones. The applicant said that when she had got to the park she kept moving to get away from the respondent who had followed her. She finally sat down near some of the tombstones and was “crying and in pain”. She yelled out to the respondent to get away from her but he came and tried to talk to her. She was on the ground at this stage. She swore that she had not done anymore because there were people around.

41. The applicant swore that on Valentine's Day the respondent "came home". She had been ready to go out to the Moonlight Cinema with him as she claimed they had previously agreed. The respondent had arrived late. There was an argument in the backyard where the respondent became very aggressive and grabbed her. She swore that she “...grabbed him back and I was trying to push him away and I ripped his t-shirt.” She said she had been "really frightened". She "screamed as loud as I could" and "ran and slammed the backdoor behind me and the glass broke". She swore that she "could have run onto the street but I didn't want anyone to know". As she ran through the house the applicant pushed papers and a cup off the table and a bottle against the wall. She then ran into one of the rooms and barricaded herself inside by pushing various objects up against the door. That had been the end of the physical altercation on that day.
42. The applicant swore that several days later she left her bedroom to go to the toilet. She did not realise that the respondent was in the house at the time. When the respondent saw her, he chased her. At one stage she was lying on a bed and he had sat on her with his knees on her chest and against her jaw. She claimed that the respondent had hit her and hurt her. He would not get off her body. He was verbally abusive. Subsequently, he left the house.
43. Early in the morning of 19 February 2008 the applicant sent the respondent a very lengthy e-mail which is an exhibit in these applications. It was submitted on behalf of both parties that the e-mail is of fundamental importance in this matter for very different reasons detailed below. I do not propose quoting it in its entirety because of its length. However, the following quotes in dot point form constitute a summary and provide the essence of its contents:

- I have lived by your promises and I have lived in hope ...that yes you will finish your relationship [with Ms J] so we can establish a relationship of our own.
- I think the REAL issue is the relationship with your daughter.
- You said that you love me and you wanted to make things work out. And on Saturday you hit me so hard in the back several times that it bleeds from my bowels ... You hit me harder than you have ever hit me before ...All I asked of you was too [sic] keep your agreement with me and you beat me for that.
- same with the relationship ... promises, one step. Quit. One more step quit.. You never follow through.. ... talk is cheap... you have made so many promises to me we will live together, we can have children, we can go on holidays together, whatever I like.. but you know what.. it never happens....its all bullshit You still haven't moved in.. 20 items of clothing a few shoes, some toiletries and \$60 Cd player from your home isn't it... everything is still there... its all not good enough. And promise's [sic] aren't either not without REAL ACTION.
- I've been hanging around waiting for you. . waiting on a promise, a promise that's never going to happen.....
- PS: you have come over and while I was asleep you woke me and came in to hurt me and abuse me, you hurt me sitting on my chest and pinning me down and [sic] abusing me and you wouldn't let me go even after I was constantly screaming for you to stop and you're hurting me. And you still continued when I was screaming for help. I have barricaded the door to protect myself. You have hurt me several times in the last week and you come over threatening and being aggressive, when I'm better I'll leave. Please don't do anything... I mean it..... If you do I will call the police.

44. In my view, the e-mail constitutes a contemporaneous corroboration of the applicant's version of the events of those few days. It is consistent with the applicant's *oral* evidence, particularly as to the seriousness of the respondent's behaviour towards her. To the extent that it refers to the respondent not having “moved in”, in the context of the totality of the evidence I see that as being a complaint that the respondent was not living with her on a full-time basis rather than at all.
45. By contrast, the respondent minimised the significance of these events in both his affidavit and oral evidence. The respondent admitted that he had hit the applicant on one occasion and otherwise, particularly in relation to having held her down with his knee, he asserted that he had been acting in self-defence.
46. In giving his oral evidence, the respondent showed no sympathy or empathy for the applicant and was somewhat detached and almost scornful in his affect. He

alleged that several days after the Valentines Day incident he had returned to the G property out of concern for the applicant's well-being. He had found the door to the applicant's room ajar. He entered the room and found her asleep on a day bed. He swore that the applicant woke up and started behaving violently and aggressively towards him and that he had acted in self-defence. The respondent also alleged that the applicant's behaviour had been at least erratic and he inferred that she was psychologically, or even psychiatrically, unstable.

47. In my view, the applicant's affect during the proceedings was far more appropriate and consistent than that of the respondent. I found the applicant's evidence to be entirely credible. Conversely, I was most concerned by the respondent's approach to these events. His attitude towards the applicant was patronising and quite unsympathetic. He asserted that a considerable proportion of his behaviour towards the applicant arose from his concern for her and that at times, particularly following these events, he had had sex with her out of "pity" for her.
48. Accordingly, I have a strong preference for the credibility of the applicant over that of the respondent and given the importance of these events, that preference is one of the elements of my general finding of credibility in favour of the applicant early in these reasons for judgement.
49. Counsel for the respondent sought to rely on the events of February 2008 as a forensic sword in the presentation of his client's case. His basic submission was that the totality of the evidence, and particularly the applicant's e-mail of 19 February 2008, conclusively demonstrated her actions in ending any relationship which might have then existed between the parties. While maintaining his submission that the parties' relationship cannot be regarded as a de facto relationship in accordance with the legislation at any time, even if the respondent did not succeed on that issue, he submitted that such relationship came to an end in February 2008 by virtue of those events.

Late February 2008 to October 2009

50. Contrary to the assertion by and on behalf of the respondent that any relationship between himself and the applicant had concluded no later than February 2008, the applicant alleged that the parties reconciled their relationship in approximately the middle of March 2008. She alleged that from that time, the respondent had resumed living with her at the G property for two weeks out of every four and otherwise lived in similar manner to that which she alleged had taken place since 2002.
51. The respondent's evidence contained several concessions which satisfy me that the applicant's evidence is to be preferred. He conceded that he and the applicant were "sleeping together once every couple of weeks" but that "it was just sex". He swore that he had continued a sexual relationship with the applicant because he "felt sorry" for her. It is common ground that he

continued to pay the rent on the G property and also continued to pay all the outgoings. He conceded that there was some benefit for him in the relationship at that time but that he "wasn't happy about it" and "didn't instigate it".

52. The respondent's continuation of paying the rent on the G property is significant. The original lease, commenced in July 2007, expired after 12 months. Despite its expiration in July 2008, the respondent continued to pay the rent for more than another year. Again, he asserted that he had done that because he felt sorry for the applicant and was concerned about her. He went further to claim that the applicant was not in good mental health and in those circumstances he was concerned about the property which was rented in his name and therefore ultimately his responsibility. He even continued to pay the rent following receipt by him of a letter of demand for arrears of rental on 23 February 2009.
53. It was only after July 2009 that the respondent demanded that the applicant vacate the property forthwith. Proceedings were commenced in the Victorian Civil Administrative Tribunal by the landlord which resulted in the applicant leaving the property on 4 November 2009. I find it difficult to reconcile the respondent's oral evidence of his antagonism towards the respondent, which at times appeared to descend to close to revulsion for her, with his continuation of the status quo regarding ongoing payment of expenses and the like.

October 2009

54. It is common ground that whatever the relationship between the parties may have been, it came to an end in October 2009. I accept that. The ultimate event was a letter written by the respondent to the applicant and left for her at the G property. It was dated 13 October 2009 and has become known in these proceedings as the "Dear John letter". The letter unequivocally stated the respondent's position that any relationship which he had with the applicant was at an end. Its contents are in part:

Dear [Ms Moby]

I am putting this in a letter because I know it couldn't happen in a discussion.

I can't do this anymore. We don't have a partnership relationship any more. I am not your partner, I don't want to be your partner.

55. The letter then detailed items of financial support which the respondent alleged he had given the applicant "for many years". It stated:

It's time you took responsibility for your self [sic]. I am not responsible for you.

The respondent wrote that he required the applicant to move out of the GG property by 2 November 2009 and suggested that she talk to two named friends

for support. He wrote that she would need to "start paying for the hire of the containers at the warehouse or return them" and that "any furniture or plants that you brought to my place that you want you can have back."

THE PARTIES' FINANCIAL RELATIONSHIP

56. As indicated earlier, I propose discussing the parties' financial relationship, including matters relating to the business, separately.

57. In her affidavit of evidence in chief, the applicant swore:

5. That on 17 August 2001 the respondent and I commenced the business "[Moby Events]" ("the business"). The business was started by agreement between us and for that purpose the respondent provided \$1000. The agreement between us was that the respondent was to manage the accounting side of the business and I was to manage the design and marketing side of the business of event designing. The respondent worked in the business off and on over the whole of our relationship and I worked full time in the business. Although I leased a warehouse in [M], at the request and urging of the respondent we leased a larger warehouse at [O], in my name. At the respondent's request I moved 70 loads of furniture and accessories from my smaller warehouse in [M] to the larger warehouse in [O] utilising 13 trucks, all hired at the same time for that purpose. Although the respondent stated that he would pay the full cost of moving expenses (including the hire of the removal's trucks etc) after the move was completed the respondent said that the money he provided was to be loan. This was not our original agreement. In any case, the respondent refused to honour our agreement by paying those expenses as they were incurred.

58. In response, the respondent swore as follows:

I deny that [Ms Moby] and I agreed to commence the business trading as "[Moby Events]" ("the business"). This venture was [Ms Moby's] alone, and my only involvement was as a sounding board and to lend her \$8,000 to assist with start up costs. This alone was to be repaid to me at an interest rate of 1% more than what it was costing me. I used a line of credit account in the name of [a company] to advance [Ms Moby] funds, and I have maintained a ledger of the repayments to [the company] by [Ms Moby], the last of which was in October, 2003. [Annexed]. ... This loan of \$1000 was never intended by me to be an investment in her business. I do not believe that [Ms Moby] intends to repay the amount outstanding.

59. The respondent made the following further points in an affidavit:

- he denied that he had "agreed to manage the accounting side the business";
- it is alleged his accounting involvement was to set up a computer file and "to structure a chart of accounts for appropriate reporting";

- the applicant engaged an accountant;
 - he had his own business commitments and "was never interested in being a partner or a part of the everyday running of [Ms Moby's] business";
 - he denied working in the business. "My involvement extended to only helping out on occasions to load trucks, drive and unload trucks when [Ms Moby] was in desperate need of assistance to get jobs completed. On a few occasions I also helped her compose letters."
 - The respondent denied urging the applicant "to lease larger premises or did I participate in that decision, which was entirely [Ms Moby's] decision alone";
 - he offered to "cover the costs" of the relocation "on the basis that [Ms Moby] would repay me." He loaned the applicant \$19,443 over a period of 18 days in November 2004.
60. The respondent explained his financial relationship with the applicant as follows:
- (f) That my actions show that I was prepared to assist [Ms Moby] through her financial difficulties, but never that I would support her in "our business" as it was never our business, and "our daily living expenses" were only hers as I was funding my own living expenses independently of [Ms Moby's]. In effect, I was funding two households without any contribution from [Ms Moby].
61. In reply, the applicant swore as follows:
- Whilst [Mr Schuler] was the primary financial provider during our de facto relationship I also made financial contributions when I was able. I considered that the food and other household items in the [G] home were ours jointly. I did not ask [Mr Schuler] to contribute towards our grocery and like accounts. During periods of economic downturn or when I was not able to work for medical reasons I would sell various pieces of second-hand furniture or personal possessions such as clothing to meet our ongoing financial obligations and commitments.
62. The mail for the business was sent to the N property from the very early days of the parties' relationship. It continued to be sent there until as late as August 2009. Further, an urgent order for provision of equipment for the business in December 2004 was required to be delivered to the business name at the N property. The order form is in the name of the applicant.
63. There is documentary evidence corroborating the respondent's involvement in the business. On 1 June 2006 a telephone company wrote to the respondent and the applicant as "T/A [Moby Events]" at the O address.
64. In late 2007 the respondent, using the N address, rented several trucks which, the evidence satisfies me, were for transporting equipment of the business. In

November 2007 the respondent's name appears as the contact person on an agreement for the hire of a container.

65. On 17 November 2007 a real estate agent wrote to the respondent by e-mail attaching a list of a number of possible properties for rental by the business. The respondent forwarded the document to the applicant. I infer that the respondent at least participated in the decision which was made to rent the M property. On 20 November 2007 the respondent received a facsimile message from the real estate agent addressed to him attaching an "Offer and Acceptance to Lease" for the business's M premises. The document was signed by the applicant.

CORROBORATIVE EVIDENCE

66. To this point I have only considered the relevant evidence of each of the parties. However, both parties called evidence to corroborate their respective versions of the facts. I now consider the evidence of each of those witnesses.

The applicant's corroborative evidence

Mrs IA

67. Mrs IA swore an affidavit of evidence in chief in which she deposed to having known the applicant since November 2004. She and her husband owned a business in O across the road from the applicant's business. Soon after she met the applicant she was introduced to the respondent "and started a business relationship with him". She alleged that she and her husband had been in that business relationship between June 2005 and March 2007.
68. In cross examination Mrs IA accepted that the first business invoice was not rendered until 2006. That concession contradicts the evidence referred to in the last sentence of the previous paragraph and causes me to question the reliability of Mrs IA's evidence.
69. Mrs IA deposed that early in her relationship with the applicant, the latter had spoken about her relationship with the respondent. In mid or late 2006 the parties had gone to Mrs IA's home for dinner. In her affidavit of evidence in chief Mrs IA swore that the respondent told her that "he was living with the applicant at [N] and would go on weekends to the property in [S]." Mrs IA did not go to either the N or the G property.
70. In cross-examination Mrs IA contradicted part of her evidence referred to in the previous paragraph. She swore that -
- ... they would stay together at his property and they would go down to [S] ... he didn't exactly go "oh I am living with [Ms Moby]".

Again, that contradiction creates a doubt with regard to the credibility of Mrs IA's evidence.

71. Mrs IA deposed that in November 2007 the respondent had gone to her home for a business meeting. She had a long discussion with him about the applicant and had told him -

... that he had "to get some balls" and to stand up to his former partner ... because she was controlling his life and therefore causing friction in his relationship with the Applicant. The respondent agreed with me and told me that he wanted to get a parenting agreement with [his former wife] so as to finalise care arrangements with his daughter ... and to concentrate on his future with the applicant.

72. The parties and the respondent's daughter went to the IAs' home at Christmas 2006. Mrs IA deposed that -

the parties seemed very much in love and looked like a family with [the respondent's daughter]."

73. The applicant and the respondent attended another party at the IAs' home on New Years Eve 2007/2008 at which the respondent was generally introduced to people as "[the applicant's] partner." Mrs IA observed the parties to be "very affectionate."

74. Mrs IA deposed that in January 2008 the respondent had told her that he would like to take the applicant away to Bali for a holiday in order that they could be "closer to each other".

He told me that he was in love with the applicant. I told him that if they were so in love they should get married as they had been together for long enough. He told me 'I would like to marry [Ms Moby], what more would I want from a woman who has stood by me for 8 years'. I remember the words very clearly.

75. Mrs IA deposed that the respondent had told her early in 2007 -

... that he wished to rent a property with the applicant with the intention to renovate the [N] property and to eventually either rent the [N] property or sell it.

The respondent also told Mrs IA that -

... the Applicant was making improvements to the [N] property such as landscaping, gardening and decorating the house with the Applicant's furniture. The Respondent would tell me that the Applicant was very talented and impressed by her creative flair. He told me that he helped her start the business as he was good with administrative matters.

76. Mrs IA swore that to her knowledge "the first time I had heard that the parties relationship was at an end" was in November 2009.

77. Mrs IA's evidence is potentially very important in corroborating the applicant's case. I find that her credibility is qualified by the contradictions referred to above. I accept that Mrs IA first met the applicant in 2004 as she alleged and retained that relationship until the present time. However, I am not persuaded that Mrs IA had any significant involvement with the respondent until approximately the time of the first invoice in 2006 or that she continued any relationship with him much beyond early 2008.
78. While I have expressed reservations with regard to Mrs IA's credibility, I accept the general import of her evidence that at a number of functions the parties held themselves out as having significantly more than a casual relationship of what might be described as boyfriend and girlfriend.

Ms ND

79. Ms ND swore that she had met the applicant at the applicant's store at a market in approximately August 2008. Ms ND was shopping there. They struck up a friendship. In February 2009 Ms ND moved from the Melbourne metropolitan area to live on the Mornington Peninsula. She swore that from February 2009 she stayed with the applicant at the G home overnight on approximately 2 nights per fortnight until October 2009. In the context of these applications that is an important period of time. In her oral evidence, Ms ND swore that she had stayed at the G property "once or twice a week" and later swore that it had been "maybe one night a week".
80. Ms ND first met the respondent in approximately February or early March 2009. Prior to that meeting, the applicant had told Ms ND that the respondent "was her partner". She deposed that she "frequently saw [Ms Moby] answer [Mr Schuler's] phone calls." While there is no evidence that she was able to hear that it was the respondent speaking on the other end of the phone, I accept the context of the evidence that it was the respondent.
81. Ms ND swore that she had "got on very well" with the respondent but when he was at the G home -

... I made a point of not staying over but going home to sleep in order to give them some privacy. On at least one occasion however in around July 2009 I stayed overnight at the [G] home while both [Ms Moby] and [Mr Schuler] were there. I saw that [Ms Moby] and [Mr Schuler] had a double bed and shared a bedroom at the [G] home and I notice that they were affectionate toward one another. On a number of occasions when I was visiting their home I saw them holding hands or kissing and cuddling up in front of me. [Mr Schuler] made it clear in his physical affection and behaviour that he was in a de-facto relationship with [Ms Moby]. I saw them out together and [Mr Schuler] talked to me about visiting friends, going to concerts and socialising generally with [Ms Moby]. He discussed their home finances and told me about arrangements to meet their living expenses.

82. Ms ND swore that when she had been at the G home between February 2009 and September 2009 she had seen the respondent there -

... on a number of occasions. On several occasions I took [Ms Moby] to [Mr Schuler's] other home office in [N] to print financial documents as [Mr Schuler] retained their business records there where his office was. On such occasions [Mr Schuler] always greeted [Ms Moby] affectionately.

Ms ND observed the parties to be affectionate towards each other as late as September 2009.

83. Ms ND observed the parties selling items at the market stall between March 2009 and July 2009. She saw the parties -

... together at least twice a week, if not more, both at their home in [G] or at the market when I went to the market to help [Ms Moby]. On those occasions when I saw [Mr Schuler] at the market he would often take some of the sales monies and to buy breakfast for himself and [Ms Moby]. He was always keen to check the takings. [Ms Moby] and [Mr Schuler] both told me that they used the takings from the sale of second-hand items to pay off various business debts and to live on. On those occasions when [Mr Schuler's] daughter [L] was staying over with him he would come to the market either later or very early in the morning to join [Ms Moby].

84. On one occasion in late July 2009 Ms ND stayed overnight at the G home. The respondent told her that he could not afford to repair his old car and that the applicant had "offered to sell some of her personal possessions to pay for the repairs." Ms ND slept in a bedroom next to the parties' bedroom and heard sounds of their making love. The respondent was there in the morning.

85. Ms ND swore that she and the parties had often had dinner at the G home. "On a number of occasions" the applicant had cooked a meal and "on other occasions" one or other party had bought take-away food to eat at the home. She swore:

During the day when I was present [Mr Schuler] often came back to the home or his office with morning coffee and toasted sandwiches for [Ms Moby].

86. Ms ND was contacted by the respondent at approximately midday on 9 October 2009. The respondent told her that "he had to end his relationship with [the applicant]" and asked her if she could be with the applicant to support her. He told her that "he would be leaving her a letter about ending their relationship." He said that the lease on the G home had come to an end and "... they had to leave the [G] home by early November 2009." Ms ND and the respondent had a very lengthy conversation which made it clear to Ms ND that the relationship between the parties was over from the respondent's point of view. Ms ND swore that she had been very surprised by that development.

87. The essence of the respondent's response to Ms ND's evidence was to deny virtually all of it. As I have already noted, his basic case is that on any view of the parties' relationship it did not exist from February 2008 and particularly during 2009. He denied that he and the applicant had had sex together on the night that Ms ND stayed at the G property.
88. Ms ND's evidence is potentially extremely important in these applications. I have already noted that in order for the applicant to have any prospect of succeeding, she must establish that a de facto relationship existed between herself and the respondent from the time of the commencement of the legislation on 1 March 2009. Ms ND's evidence covers the period from February 2009 until October 2009 which is why it makes it potentially so significant. Accordingly, I have considered the question of its credibility in some detail below.
89. There is some inconsistency in Ms ND's evidence which must be considered. Although Ms ND first met the applicant in approximately August 2008 at the market, she only met the respondent in late February or March 2009 which is when she moved to the Mornington Peninsula. From the time that she met the respondent she saw him working with the applicant at the market stall as found above.
90. There is also a variation in Ms ND's evidence with regard to the frequency with which she stayed overnight at the G property. Her oral evidence was not completely consistent with her affidavit evidence.
91. There is no evidence to suggest that Ms ND had a motive to give anything other than truthful evidence as she observed it. No submission was made to the contrary. Further, the respondent's absence from the market stall in the latter part of 2008 as referred to above does not, in my view, question Ms ND's credibility. The variation referred to in the previous paragraph is, in my view, corroborative of Ms ND's credibility rather than any lack of it. In this instance, that variation was an indication that Ms ND was attempting to be honest and open in her evidence.
92. I was most impressed with Ms ND in the way in which she gave her evidence. She gave no indication of animosity towards the respondent and was balanced and considered. Accordingly, I accept her evidence in its entirety and prefer it to that of the respondent.

Mr DE

93. Mr DE is a company director. He first met the respondent in 1989 when they were in business together in a company. Mr DE swore that he had been particularly supportive of the respondent during difficult times which the respondent had experienced arising out of the breakdown of another venture in which he had been involved. Mr DE also supported the respondent during the

breakdown of the respondent's relationship with L's mother. He described his relationship with the respondent as having been "a very close mate until about 1997". From 1997 their relationship went through a very difficult time over a dispute about money which the respondent maintained that Mr DE owed him. However, their relationship was re-established and Mr DE described them as having entered into a new business relationship with another couple in 2003.

94. Mr DE met the applicant "briefly in 2003" at the N property. At that time the respondent told him -

... that the applicant was the 'love of his life'. In 2004 the respondent and I discussed his troubles with [his former partner], his "extremely selfish" former partner. I tried to counsel him and told him to let go of his anger and to focus on his new relationship because it was making him so happy. He told me that he tried to do this but that the conflict between him and [his former partner] created many problems for his daughter [L] due to [his former partner] being unhappy about his relationship with the applicant.

95. Mr DE swore that he had been "good friends" with the applicant since March 2004.

I am supporting the applicant in these proceedings because I personally know of her and the respondent's relationship and I am extremely shocked that the respondent could deny a near 10 year relationship.

96. Mr DE swore to a number of conversations which he had had with the respondent with regard to the relationship between the parties. He knew that the parties commenced their relationship in early 2000. During a business trip which he had with the respondent in 2004 -

... the respondent often discussed his relationship with the applicant. He said that they met on the conference and had commenced an intimate relationship with each other shortly thereafter. He said that they had been boyfriend/girlfriend for 2 years before the applicant moved into his home and had been living there for approximately 2 years. The respondent would often talk to me about the difficulties he was having with [his previous partner] due to his intimate relationship and long-term plans with the applicant.

97. When the respondent and Mr DE returned from the business trip referred to in the previous paragraph -

... the applicant collected us from the airport and we went back to the [N] property. The parties were extremely affectionate towards one another and were obviously a couple. The respondent told me "this is [Ms Moby], my love". When I entered the property the interior of the [N] property changed. The furniture was new and different. The respondent made it clear that this was a result of the applicant's creative ability and that the applicant had spent money buying new household items for the home such as crockery, category, bed linen, towels, and accessories and furniture.

98. Mr DE swore that he -

... witnessed on multiple occasions the parties and [L] living together as a family from 2004.

... [T]he respondent told me that the applicant was living with him at the [N] property except for times when there was serious conflict with [his former partner] at which time he said that he and the applicant agreed that she would sleep in her warehouse.

... [I]n previous conversations I had with the respondent he told me that he was too scared to tell [his former partner] that he was living with the applicant.

... [T]he respondent told me that he hoped to marry the applicant once issues with [his former partner] improved. The respondent made it clear to me that his relationship with the applicant was intimate with long-term plans to "start a family that would include his daughter [L]".

99. Mr DE observed that the parties moved into the G property in 2007 which he understood was rented. The respondent told him that -

... he was planning to buy a house for himself and the applicant to live in. ... I know that the respondent was living there from 2007 to July 2009 when my partner ... and I visited the home. The respondent's clothes, shoes and personal items were in the property.

During his oral evidence Mr DE swore that he observed a wash bag belonging to the respondent in the bathroom of the G property. It was submitted that that indicated that the respondent only stayed at the property on a transient basis. In light of the other evidence on this topic, I do not accept that submission.

100. With regard to the business relationship between the parties, Mr DE swore:

That the respondent told me that he was involved in business with the applicant. On our trip to the USA in 2004 the respondent bragged about the [events] business he had with the applicant stating that he contributed \$1000 to start it up and that the applicant was extremely talented and hard-working and had some very high profile clients. He said that it was a good investment and it didn't have too much work. He said it had the potential to be a multi-million dollar business. I understand that the respondent did some of the administrative work for the business.

There is no evidence to establish the source of Mr DE's understanding referred to in the last sentence of that quotation. Accordingly I discount that sentence.

101. Again because of the potential importance of Mr DE's evidence, I must specifically consider his credibility. From the outset, Mr DE had a motive to give false evidence against the respondent. That arises from their falling out some years ago and the allegedly unsatisfied demand by the respondent against

Mr DE for payment of money arising out of a previous business relationship between them. However, Mr DE did not attempt to hide those former difficulties in their relationship. He swore to them at the first available opportunity. Otherwise, I did not detect any bias in his evidence other than that which arose out of his stated motivation for giving it. That motivation was his resentment that the respondent was denying facts which Mr DE believed to be correct. There is no doubt that Mr DE gave part of his evidence in favour of the applicant. However that does not, of itself, lead to a finding that the evidence is misleading or wrong. In my view, Mr DE maintained a reasonable balance in his evidence and I accept it in preference to the denials of the respondent for the same reasons as referred to earlier with regard to other witnesses.

Mr FA

102. Mr FA has known the applicant for 25 years. Mr FA lives in South Australia. In early 2009 he informed the applicant of a promotion in which he was involved with three other people from Los Angeles "and told her that I would be coming to Melbourne to promote the [venture]". He swore that the applicant had invited Mr FA and his colleagues to stay at the G property.

When we arrived with the other people the applicant picked us up from the airport and delivered us to the [G] home. The home was a large home with potentially five bedrooms.

That during my stay I was sitting in the back room with my colleague and friend [Mr PI] and the applicant entered the room with the respondent. She introduced the respondent as her partner

That the respondent sat next to me and told me that he wanted to "sign up" for the [product] as a distributor. I asked the respondent how long he had been in a relationship with the applicant for and he responded to me " 9 years". [Mr PI] said to the respondent "that's a long time".

That the respondent told me that he would not be staying at the [G] home that evening because he had his daughter [L] and would be staying "at the other house up the road". I asked the respondent why he didn't bring [L] to the [G] home and he responded that when [L] is in his care he stays at the other house but when [L] is in her mother's care he will stay at the [G] home. He stated to both [Mr PI] and I that he actually lives at the [G] home. [Mr PI] said to the respondent that his relationship with the applicant was none of his former partners business.

103. During cross-examination, Mr FA swore that he had only met the respondent on that one occasion which "might have been 30 minutes, an hour, an hour and a half". The potential importance of this evidence requires me to be cautious in determining its credibility. While I am not persuaded that I should discard it in

its entirety, I have formed the view that it is not appropriate for me to give it significant weight.

Mr PI

104. In his affidavit of evidence in chief Mr PI essentially corroborated Mr FA's evidence. Mr PI has also known the applicant for 25 years. However, the contact between Mr PI and the applicant has not been as regular as a relationship of that length might suggest. Mr PI has lived in California for approximately 17 years and lived in Australia for six months from October 2008. In his oral evidence Mr PI swore that he "thought" that the applicant and respondent "were a couple". He said that they "seemed like a couple".
105. Mr PI met the respondent for the first time on this occasion. He swore that he was with the respondent for "a little longer than an hour". In cross examination he agreed that he had not asked the applicant and the respondent whether they were "together".
106. I express the same caution with regard to Mr PI's evidence as I did with Mr FA's evidence. A first meeting with the respondent for approximately 1 hour is insufficient opportunity to form views on matters as personal and detailed as those to which both Mr FA and Mr PI have sworn.

The respondent's corroborative evidence

Mr RG

107. Mr RG lives next door to the G property. In his affidavit of evidence in chief he swore to having first met the applicant when she moved into that property "in mid-2007. I met [the respondent] shortly after and an easy friendship developed." While Mr RG was not aware that the lease for the G property was in the respondent's name -

... I can say from my observation that it was [the applicant] who lived at that address and [the respondent] appeared to only occasionally visit the property. I deduced that [the applicant] lived there alone and that [the respondent] spent very little time there and must have had a home of his own. I only observed [the applicant] working in the garden and maintaining the property generally. I did not observe that the property was used by [the applicant] and [the respondent] to entertain family or friends.

Whilst [the respondent] would occasionally be at the [G] property when [the applicant] first moved in, I observed that after early 2008, probably February 2008, I saw [the respondent's] car at [the applicant's] house only occasionally for several months and then not at all.
108. Mr RG swore that the applicant had asked him to assist her with gardening and domestic chores "a number of times" and it had not occurred to him to ask her why the respondent "was not assisting [her] with these domestic chores." On three occasions the applicant paid Mr RG for performing labouring work for

her in her business. He swore that she had told him that "it gets you out of the house", which he resented. On one occasion towards the end of 2008 he performed some work for her and she had told him that "she would pay me later." He was yet to receive that payment.

I am very annoyed that [the applicant] would take advantage of me like that for her own benefit. I do not believe that [the respondent] had any knowledge of these events until I told him.

109. In the last week of October 2009 the applicant told Mr RG "that she had to move out of her house" and asked him if she could -

... store some pot plants along the side of my house until the end of January, 2010. She said she would pay me to look after them and water them. I reminded her of the non-payment for my earlier services and that I would need payment up front to store the plants. [Ms Moby] said she couldn't discuss it and she didn't have time because she had people helping her move. Without my consent, or payment, the pot plants were moved into my yard, many of which are in very large and heavy pots, which take up the whole side alley of my home.

The next day, on 3 November, 2009, I returned home to find on my front veranda, some furniture, boxes and large heavy packages of project boards. There was a note left by [the applicant] [annexed].

110. The applicant did not respond to a letter written to her by Mr RG in response to her leaving the chattels referred to in the previous paragraph. Mr RG phoned the applicant a week later and she confirmed that she had received that letter and promised to ring him back in a couple of days. She failed to do that. Mr RG has had no communication at all with the applicant since that time.
111. Mr RG swore, with regard to his observations as to the nature of the relationship between the parties, as follows:

I have discussed these proceedings with [the respondent], and can say that from my observations in my capacity as the next door neighbour of [the applicant], that [the respondent] was no more than an infrequent visitor, and that clearly [the applicant] was the sole occupant of the [G] property. Further, that [the respondent's] visits to that property became even more infrequent after early 2008. I did not regard [the respondent] and [the applicant] as a couple, but that their relationship to me appeared to be more like casual friends.

112. In cross examination Mr RG conceded that he was not particularly fond of the applicant. He agreed that she had "diddled him of money and left plants up the side of the house". She also left furniture and boxes on his veranda without his permission and agreed that the respondent had asked him to give evidence in support of his case. Importantly, Mr RG agreed that he could not say for sure when the respondent had been at the G property and conceded that he could

have come to the property when Mr RG was either inside his own home or not home. Mr RG swore that he saw the respondent half a dozen times when the applicant first moved in and had last seen him at the house in "early 08 January/February".

113. There is a contradiction in Mr RG's evidence. In his affidavit of evidence in chief he swore that after February 2008 the respondent's attendances at the G property became more "infrequent". In his oral evidence he swore that he had last seen him there in "maybe January/February 08 ... I am fairly certain".
114. The potential corroborative value of Mr RG's evidence to the respondent's case is significant. Once again, it is necessary to evaluate it carefully. As with the evidence of Mr DE given against the respondent, Mr RG may be seen to have a motive for giving evidence against the applicant. He is resentful of her because he alleges she owes him money and is angry that she left chattels at his house without his permission or payment and has failed to collect them.
115. Mr RG may well have good reason to resent the applicant's behaviour referred to in the previous paragraph. However, unlike Mr DE, Mr RG has allowed his evidence to be tainted by his resentment of the applicant. That causes me to be wary of his evidence. Further, even on the respondent's evidence, the respondent has been to the G property on many occasions since February 2008. The corroboration provided by Ms ND established that proposition to a high degree of probability. Also, Mr RG contradicted his own evidence in chief. Accordingly, at its highest I find that Mr RG's evidence is unreliable.

Mr KN

116. Mr KN deposed that he had been a close friend of the respondent for in excess of 40 years. He had seen less of the respondent in the past 10 years because the respondent had -

... had his daughter [L] to look after and I was a full-time carer for my mother until her death in November, 2008. Since my mother's death I have seen a lot more of [the respondent].

...

I am aware that [the respondent] plays a significant role in the care of his daughter [L], and that she lives with him for 2 weeks out of every 4, and at other times as needed. At [the respondent's] 50th birthday, [the applicant] was in attendance, but as a friend and not as a partner. [L] was also at [the respondent's] 50th birthday, but I did not observe any indication of a closeness between them. I do not recall any event where [the respondent] was accompanied by both [the applicant] and [L] and where they presented as a family. I was aware that [the respondent's] relationship with [the applicant] was difficult because [the applicant] was unwilling to accept his daughter [L], and was not interested in having a relationship with [L].

After [the respondent's] 50th birthday in 2003 I did not see [the applicant] again until January, 2008 when I was invited to dinner at [the applicant's] house by [the respondent].

117. To the extent that Mr KN has had an opportunity to observe the relationship between the parties, his evidence assists the respondent. On the basis of other evidence, I find that his opportunity to make such observation has been limited and accordingly the assistance which he gives to the respondent's case is also limited.
118. Mr KN also gave very brief oral evidence which, without criticism, did not add to his affidavit evidence.

Mr AS

119. Mr AS has known the respondent since 1990 and he considers the respondent to be one of his "closest friends". The respondent has confided in him "... on matters about difficulties he was having his relationship with [the applicant]." Mr AS knew that the respondent had lived with his daughter at N –

... for two weeks of every four, and sometimes more. I am aware that [the respondent] has stayed overnight with [the applicant] at the various residences she has lived in and that [the applicant] has spent some overnight at [the respondent's] [N] home.

Mr AS and his wife also stayed at the S property in 2006.

Apart from these times, my wife and I rarely socialised with [the parties] as ordinary couples do.

120. Mr AS swore that he was aware that the parties had "an intention of moving in together." However, until a conversation which he had with the respondent in approximately April 2008 he "was unaware ... that [the parties] had not been living together." He explained that what he intended to convey was that he was aware of their intention to live together and was surprised that they had not acted on it.
121. Mr AS's evidence is significant both for what it says and what it does not say. The fact that he did not know until approximately April 2008 that the parties were not living together questions the frequency with which he observed their relationship. As such a long-standing and close friend of the respondent, I do not understand how he might have come to the belief that the parties apparently intended to live together, given that his close friend has always been adamant that there was never such an intention and that on the respondent's assertion, the parties did not live together at any time.
122. I find that Mr AS is a credible witness.

Overview of the corroborative evidence

123. The applicant's corroborative evidence spans the periods from 2003 to July 2009 (Mr DE), November 2004 to January 2008 or potentially November 2009 when she was told that the parties' relationship at an end (Mrs IA but subject to the reservations expressed above) and August 2008 to October 2009 (Ms ND). For the purpose of this consideration, I ignore the evidence of Mr FA and Mr PI as being of insufficient weight for reasons set out above.
124. The respondent's corroborative evidence spans the periods from mid-2007 to October 2009 (Mr RG), 2003 to January 2008 (Mr KN) and specifically 2006 until approximately April 2008 (Mr AS).
125. As a general statement, there is a significant difference in the corroborative evidence of each of the parties. The evidence on behalf of the applicant establishes positive observations by the various witnesses as to the nature of the parties' relationship during various periods. The evidence on behalf of the respondent is mainly negative. In particular, there is a surprising lack of evidence on behalf of the respondent which might establish his actual living arrangements for periods both when he was living with his daughter as well as living apart from her but not living with the applicant. If the respondent's evidence were a correct portrayal of his living arrangements between 2002 and 2009, I would have expected some corroboration of that. Alternatively, if during periods the respondent was living apart from both his daughter and the applicant he was actually living alone without any social contact which might have otherwise provided him with corroboration, it is reasonable to expect that he would have given evidence to establish that. His evidence does not enable me to develop an understanding of his lifestyle which might have excluded the applicant.

THE LEGISLATION AND CASE LAW

The power to make a declaration with regard to the existence of a de facto relationship

126. The applicant's Initiating Application in these proceedings seeks an alteration of property interests pursuant to the provisions Part VIIIAB of the Act. However, the parties agreed that the question of whether they had been in a de facto relationship in accordance with the legislation should be determined as a preliminary matter. That is the subject of this hearing and these reasons for judgement.
127. The power to make a declaration referred to in the last paragraph is contained in section 90RD of the Act. Subsection (1) empowers me to declare -

... that a de facto relationship existed, or never existed, between those 2 persons.

To the extent that it is relevant to this application, subsection (2) empowers me to declare, amongst other things -

- the period, or periods, of the de facto relationship;
- when a de facto relationship ended; and
- where each of the parties to the de facto relationship was ordinarily resident during the de facto relationship.

128. In due course I will determine the questions of whether there was a de facto relationship between the parties, its period or periods and if there was a de facto relationship, when it ended. The significance of those two matters, contained in the first two bullet points in the previous paragraph, first relate to the requirement of a relationship having endured for at least two years before financial orders can be made and secondly, the requirement for the relationship to have existed at least until 1 March 2009 which was the date of the commencement of the legislation.
129. The third bullet point is relevant to the geographical requirement in section 90RG of the Act. The Court must be satisfied that one or both of the parties was resident within "a participating jurisdiction" before being empowered to make an order for maintenance, whether urgent or otherwise, in favour of a party to the proceedings. While I am not considering making an order for maintenance, this matter has been conducted on the basis that at all relevant times both parties have been resident in the State of Victoria which is "a participating jurisdiction".

The definition

130. Section 4AA of the Act details the definition of a "de facto relationship" and includes a number of criteria which the Court may consider in determining whether such a relationship exists between two people. There are two preliminary requirements. The first of those is that the parties to the relationship may not be "legally married to each other". The second is that the parties must not be "related by family". These applications have been conducted on the basis that neither party is disqualified by either of those requirements.
131. Having eliminated both of the preliminary requirements, the definition of two people being in a "de facto relationship" provides that -
- ... having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.
132. Sub-section 4AA(2) of the Act ("the subsection") contains a number of matters which may be considered in a determination of whether two people are, or have been, in a de facto relationship. It is in the following terms:

4AA(2) Those circumstances may include any or all of the following:

- (a) the duration of the relationship;
- (b) the nature and extent of their common residence;
- (c) whether a sexual relationship exists;
- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
- (e) the ownership, use and acquisition of their property;
- (f) the degree of mutual commitment to a shared life;
- (g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;
- (h) the care and support of children;
- (i) the reputation and public aspects of the relationship.

133. The section provides that it is not necessary to make any particular finding with regard to any of the matters listed in the subsection in order to establish that there is, or is not, a de facto relationship between the parties (s-s4AA(3)). I am entitled (s-s4AA(4)) -

... to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

134. It is not necessary for a de facto relationship to be an exclusive relationship. One or both parties may be legally married or in another de facto relationship while being in the de facto relationship which is the subject of the proceedings. Further, the parties to a de facto relationship may be heterosexual or of the same sex. (s-s4AA(5))

Case law

135. There are a number of appellate and first instance decisions which consider similar legislation in other jurisdictions. I now turn to an examination of the relevant case law.

136. The authorities suggest that it is appropriate to consider the definition as a whole. In *Roy v Sturgeon* (1986) DFC 95-031, Powell J considered a similar definition and held (p 75,364):

With respect, it seems to me that to attempt to dissect the phrase "living together as a husband and wife on a bona fide domestic basis" into discrete "elements", and then to test the facts of a particular case by reference to a set of a priori rules in order to establish whether a particular "element" is, or is not, present, is to ignore the fact that just as human personalities and needs vary markedly, so, too, will the various aspects of their relationship

which lead one to hold that a man and woman are living together as husband and wife on a bona fide domestic basis vary from case to case.

137. Likewise, in *Simonis v Perpetual Trustee Co. Limited* (1987) DFC 95-052, Kearney J agreed with the approach of Powell J referred to in the previous paragraph and held (p 75,589):

I consider that the expression under consideration constitutes a single composite expression of a comprehensive notion or concept, and therefore has to be approached by considering the expression as a whole and not in several parts.

138. The approaches of both Powell J and Kearney J quoted above were adopted by the Court of Appeal of the Supreme Court of New South Wales in *Light v Anderson* (1992) DFC 95-120.
139. While I respectfully agree with the approach of their Honours, before the definition may be considered as constituting "a single composite expression of a comprehensive notion or concept", there are two specific elements of that definition which require individual consideration. The first of those is the concept of "a couple". For the purposes of the definition, "a couple" is constituted by two people, whether of the same or opposite sexes.
140. The second specific element is the concept of "living together". In my view, if a couple do not live together at any time, they cannot be seen as being in a de facto relationship. However, the concept of "living together" does not import any concept of proportion of time. In particular, it does not require that a couple live together on a full-time basis. On the basis that one or both members of the couple may also be legally married or in another de facto relationship at the same time as they are in the subject relationship, it must follow that it is feasible that the subject relationship might involve the parties living together for no more than half of the time of that relationship. Further, there is nothing to suggest that it must be even as much as half of the time.
141. Subject to the above, the question of whether the parties were in a de facto relationship must be considered on a case-by-case basis without circumscribing any particular factor.
142. Reithmuller FM took a similar approach to section 4AA in *Baker & Landon*, [2010] FMCAfam 280, with which I also respectfully agree.

THE PRESENT APPLICATION

143. As stated above the applicant seeks an alteration of property interests pursuant to the provisions of Part VIIIAB of the Act. She has not particularised the final orders sought by her further, pending full and frank disclosure by the respondent and the production and exchange of documents relevant to the

issues in dispute under that Part. The respondent resists that application and any application for spousal maintenance. He seeks a declaration pursuant to section 90RD that a de facto relationship never existed between the parties. By definition, a de facto relationship which had ceased to exist prior to the commencement of the legislation cannot be a de facto relationship for the purpose of that legislation.

CIRCUMSTANCES OF THE PARTIES' RELATIONSHIP

144. I have quoted subsection 4AA(2) above. I now turn to an examination of the circumstances of the parties' relationship, taking into account the various matters contained in the subsection together with any other matter which I consider relevant.

The duration of the parties' relationship

145. As I have already found, the parties met in March 2000. Accordingly, their relationship commenced on that date. The applicant moved out of the G property in early November 2009 but as I have previously found, it was common ground that however described, any relationship between them came to an end in October 2009 with what has been described as the "Dear John letter". Therefore, the parties were in a relationship together for approximately 9 1/2 years. That is a finding of duration and not of the nature or quality of the relationship. In due course, I will also consider the significance, if any, of the applicant's evidence with regard to the parties' separations.

The nature and extent of the parties' common residence

146. I treat the words "common residence" as they appear in the subsection as "living together". I have already noted the importance of this circumstance as it appears in the definition. There is a vast discrepancy in the evidence of the parties and their respective corroborative witnesses. The applicant's evidence was of the parties living together at first full time and then for two weeks out of every four weeks while acknowledging that there were at least several separations between them during which time they did not live together. The period during which the applicant lived at S rather than at N together with the period of approximately 5 weeks from the events of February 2008 were the most notable of those separations.
147. The respondent sought to draw a distinction between the concepts of "living together" and the applicant having "stayed" with him overnight. In my view in this matter the distinction between the concepts is a term of art rather than a reality. I have already found a preference for the applicant's evidence over that of the respondent. Accordingly, I find that subject to the separations to which the applicant swore, the parties spent the night under the one roof together -
- while living at N essentially full time; and

- on an average of two weeks out of every four between approximately March 2008 and at least July 2009 while living at G. To the extent that the definition incorporates the concept of "living together", I find that the parties lived together during those periods of time.

Existence of a sexual relationship

148. I am satisfied on the evidence of both parties that a sexual relationship existed between them which commenced in April 2000 and continued until approximately September 2009. Ms ND's evidence corroborated the continuation of a sexual relationship between the parties in 2009. In oral evidence which did not assist the respondent's credibility, he referred to the parties' sexual relationship, particularly in 2009, as "just sex".

Financial dependence, interdependence and arrangements for financial support

149. Putting the respondent's case at its highest, the respondent provided financial support to the applicant and involved himself in the business as follows:

- loans of \$1,000 and \$8,000 at the time of the setting up of the business;
- covering the costs of the relocation of the business and making a loan of \$19,443 over a period of 18 days in November 2004;
- locating and leasing the G property;
- paying the lease on the G property in the sum of \$2,124 per month and all outgoings thereon from July 2007 until its termination in mid or late 2009;
- loans to move the business from M to O and back again;
- leasing trucks for the transport of equipment of the business;
- in November 2007 being involved in the hire of a container for the business and paying \$180 a month for rental of 2 containers at the warehouse; and
- providing a loan to the applicant to enable her to go to Paris for a party.

150. The best view of the applicant's case results in the addition of the following further financial interrelationship:

- In or about mid 2009 the applicant sold "pieces of clothing and other personal items in order to raise sufficient funds to meet the costs of repair to [the respondent's car]". Ms ND deposes to the applicant having offered to sell personal possessions to pay for the repairs;
- The evidence of Ms ND that the parties would work at the market together and told her that "they used the takings from the sale of second hand items to pay off various business debts and to live on";

- When the applicant's business was not bringing in sufficient money she "would sell various pieces of second hand furniture or personal possessions such as clothing to meet our ongoing financial obligations and commitments";
- That the applicant helped the respondent redecorate the N property and "gave him lump sums of money to pay his expenses from time to time".
- That the respondent purchased investment properties during the relationship and the applicant assisted with "interior design issues and re-development issues" and advised him on "furnishing and presenting the property for sale". That the respondent "regularly" sought the applicant's opinion regarding these investments; and
- The respondent purchased furniture and paraphernalia to furnish the G home.

Ownership, use and acquisition of property

151. The parties did not own any significant property together during their relationship. The respondent owned at least the N property at all relevant times. However, there has been significant mutual use of property. The applicant provided significant amounts of chattels to furnish the respondent's N property. Those chattels were very significantly beyond the furniture and like property owned and used by the business. The applicant made very substantial use of the N property and in doing so, made significant contributions to its improvement.
152. The respondent leased the G property from July 2007 until October 2009. The parties jointly used that property at times other than during periods of estrangement, for two weeks out of every four. Both parties also used the contents of that property during those times.

The parties' degree of mutual commitment to a shared life

153. The applicant was committed to herself and the respondent sharing their life together from April 2002 until October 2009. Further, she regarded the respondent as also having committed himself to a shared life. That was despite the fact that they had had at least several periods of separation during which the concept of a mutual commitment to a shared life was undoubtedly questioned by her. In particular, that questioning included the events of February 2008.
154. The respondent denied any commitment to a shared life from his point of view. He asserted that the applicant had no reason to believe that he had made any such commitment. He swore that the parties' relationship "never got beyond a part-time boyfriend/girlfriend relationship ...". However, at least two events are contrary to that assertion.

155. As I have found above, on 27 June 2007 the respondent wrote two e-mails (quoted above) to the applicant declaring his feelings for her. Shortly after that time the respondent leased the G property in his name. The timing of those e-mails and the leasing of the property lead to a strong inference that the lease was for the purpose of the parties living their lives together. At one point in his evidence, when asked if he had rented the G property so that he and the applicant could have a house together that was not his house, he answered "partly yes". In addition, he swore that he intended them to live together at G but that he never ended up moving in. On the best view of the evidence for the respondent, that corroborates the applicant's assertion of a mutual intention.
156. Having leased the G property, the respondent continued to pay the rental, not just for the 12 month period of the lease but for more than 12 months after its expiration. The first period of 12 months incorporated the events of February 2008 at which time, on the respondent's evidence, any relationship between the parties came to an end if it had existed prior to that. If that last proposition were correct, it is improbable that the respondent would have continued the lease payments beyond July 2008. His evidence that he continued to make those payments together with other outgoings because he "felt sorry" for the applicant and was concerned about what she might do to the property is contrary to his evidence of the nature of his relationship with her as he described it.
157. The applicant's evidence in this regard is corroborated by the evidence of Ms ND who swore that the parties would often kiss and cuddle, being affectionate to each other in front of her as late as September 2009. Her evidence that the respondent would often bring coffee and toasted sandwiches for the applicant in the mornings suggests a more intimate and enduring relationship. When coupled with her evidence that she would not stay at G over night when the respondent was there so as to give the parties some privacy, it is difficult to contemplate a picture of a relationship based solely on sex. That is corroborated by the evidence of Mr DE who swore that he witnessed that the parties had an affectionate relationship and that the respondent had told him that they shared an intimate relationship with long-term plans, including starting a family. Mrs IA also gave evidence of having witnessed an affectionate relationship between the parties
158. Further, while the applicant's evidence provides some understanding of parts of the parties' lives together, the respondent's evidence does not provide any assistance to enable an understanding of his lifestyle, other than the fact that he spent two weeks out of every four living with his daughter at N. I have no concept of his activities, friendships or the like to give a picture of the time that he claims he was living apart from the applicant.

Reputation and public aspects of the relationship

159. The reputation and public aspects of the relationship of the parties is also to be found in the corroborative evidence of Ms ND, who swore to the parties trading together at the markets and that she had otherwise seen them out together –
- and [the respondent] talked to me about visiting friends, going to concerts and socialising generally with [the applicant].
160. Mrs IA's evidence was that the parties attended various social events together at her home including New Years Eve celebrations. The evidence of Mr AS that he and his wife had stayed at the S property, coupled with his evidence that he understood it to be the intention of the parties to live together, also adds to the public aspect of their relationship.

Other circumstances

161. The parties' relationship was not registered under a prescribed law and there is no child of the relationship. There is no other relevant circumstance.

DISCUSSION

162. I now turn to a consideration of the relevant circumstances of the parties' relationship and the determination of whether those circumstances constitute a de facto relationship in accordance with the legislation. I commence that consideration by taking an overview of the legislation.
163. In my view, it is inappropriate to try to draw parallels between marriage and a de facto relationship as contemplated by the legislation. Marriage is celebrated in accordance with a formal process prescribed by legislation (*Marriage Act 1961*) and is proven by a Certificate issued pursuant to that legislation. In contrast, a de facto relationship may be evidenced by registration pursuant to the laws of some State jurisdictions but that is not a necessity and is not relevant in this matter. The Court's jurisdiction to determine an application for alteration of property interests between two people who are or have been married to each other is based on the formality of marriage including the Certificate.
164. There are other significant differences between a marriage and a de facto relationship for the purpose of the legislation. A marriage can only be between a man and a woman. The legislation includes a de facto relationship between two people of the same sex. It is a criminal offence for a person to be a party to two marriages simultaneously. The legislation enables a person to be in two de facto relationships or one or more de facto relationships and a marriage simultaneously. While the legislation includes "the degree of mutual commitment to a shared life" as one of the relevant circumstances, sometimes referred to in the context of marriage as "*consortium vitae*", there is no

requirement that there be such a commitment in order for a de facto relationship to exist.

165. The essential question which I am required to determine in this matter is whether the parties' relationship was a de facto relationship for the purpose of the legislation. If I determine that question in the affirmative, I am effectively determining that the Court has jurisdiction to determine an application for alteration of property interests and maintenance between the parties to these proceedings.
166. The absence of any formal requirement such as a marriage ceremony evidenced by a Certificate leads to the concept that a de facto relationship is, for the purpose of the legislation, diverse. In my view, the whole structure of the legislation confirms that view. Part of that diversity is incorporated in the discussion above. Further confirmation of that diversity is to be found in the proposition that a broad definition of de facto relationship may be attended by one or more of the circumstances referred to in the section but does not necessarily require a finding of the existence of any single circumstance or for that matter, any circumstance at all.
167. Once the parties to the proceedings are found to be a couple who have lived together which I have now found, the issue becomes one of whether that was on a genuine domestic basis. The concept of "genuine domestic basis" must not be seen as a term of art but rather, it must be given its ordinary meaning. It includes the concept of diversity of relationships discussed above.
168. The parties' relationship may be seen as having gone through a number of different phases. The facts applicable to each of those phases may be seen as having a different bearing on the essential issue of whether the parties were in a de facto relationship. Accordingly, it is appropriate to consider the facts of the parties' relationship in those different phases and then step back and take an overview of the entirety of the facts.
169. It is common ground that between the commencement of the parties' relationship in 2000 and May 2002 when the applicant moved into the respondent's N property, the parties did not live together. Shortly after they met, they established a sexual relationship which continued until October 2009. In August 2001, the parties established a business relationship as detailed above. It was not submitted on behalf of the applicant that the parties were in a de facto relationship at that time. I find that the parties were not in a de facto relationship during that time.
170. On the basis of my previous findings, the applicant moved into the respondent's N home in May 2002. The applicant lived in that property with the respondent on a full-time basis. The respondent's daughter lived with them for two out of every four weeks and lived with her mother at other times. Both parties continued their involvement in the business with the applicant making a larger

contribution in that regard. The respondent was the primary financial provider. The applicant's financial position was inferior to that of the respondent but she made contributions to the household when she was able to. The applicant provided a significant proportion of the furniture and household necessities for the N property from her business. The fact that they were from the business and therefore were changed over from time to time does not derogate from the fact that she provided them.

171. From as early as 2003 the respondent spoke of the applicant as being the "love of his life" and, in accordance with the evidence of Mr DE, regarded his relationship with her as being significantly more than casual. By mid or late 2006 Mrs IA observed the parties' relationship which she described at approximately that time as their being "very affectionate toward one another". The nature of that relationship continued in the observation of Mrs IA at a number of social functions over the next few years.
172. Between May 2002 and July 2007 the parties separated on a number of occasions as follows:
 - 5 May 2004 to August 2004;
 - December 2004 to January 2005;
 - approximately 14 days in June 2005;
 - approximately 10 days in December 2005; and
 - 16 April 2007 to late June 2007.

Those separations total approximately 6 months over a period of a little more than five years, during a 9½ year relationship.

173. I am satisfied that the major reason for the parties' separations was the applicant's dissatisfaction with the respondent's inability to divest himself of the pressures being placed on him, principally by his former partner but also by his daughter. It is the applicant's evidence that the respondent's former partner disapproved of his relationship with her and threatened to seek sole care of their daughter. That is corroborated by the evidence of Mr DE and Ms ND.
174. Nevertheless, it cannot be said that the parties' relationship continued as a "de facto relationship" in accordance with the legislation during the periods of separation. They did not live together, they had no mutual intention as contemplated by the legislation and their sexual relationship ceased.
175. My observation of the respondent and the way in which he gave his evidence confirmed his inability referred to in the previous paragraph. In my view, the respondent wanted to commit himself to his life with the applicant but was unable to make a total commitment because of the emotional blackmail of him by his daughter's mother.

176. Accordingly, I conclude that in the period between May 2002 and July 2007 the parties' relationship is to be characterised as a de facto relationship in accordance with the legislation, save for the periods of separation detailed above. They lived together on a full-time basis, subject to the separations, each contributing to the other's life domestically sexually, financially and socially in circumstances which, in my view, amount to a genuine domestic basis in accordance with the intent of that term in the legislation.
177. In my view, the parties' relationship became stronger from July 2007 than it had been from May 2002, as evidenced by the two e-mails of 25 June 2007. Those e-mails were followed by the renting of the G property. That sequence of events alone establishes that the respondent intended to further his relationship with the applicant. He accepted the applicant's wish to live in a property other than where he lived with his daughter. The respondent's intentions with regard to his relationship with the applicant were further affirmed by his payment of the rental and all the other outgoings on the G property.
178. Between July 2007 and February 2008 the parties continued their relationship as in the previous period as is corroborated by the evidence detailed above. Their respective activities in the business also continued as did the pattern of financial contributions to living and like expenses. The only difference between their relationship for this period as compared with prior to July 2007 was the reduction of living together from full-time to two weeks out of four. However, that is explained by the respondent's obligations to his daughter. As a result, in my view the nature of the parties' relationship was not diminished. Accordingly, I find that for that period the parties' relationship is also to be characterised as being a de facto relationship in accordance with the legislation.
179. I now turn to a consideration of the period between February 2008 and the agreed final separation of the parties in October 2009. This is the most controversial period of the parties' relationship and is crucial to the question of whether the Court has jurisdiction to consider financial matters arising out of its breakdown. In that context, the events of February 2008 are fundamental. As previously noted, it was contended on behalf of the respondent that if there had been a de facto relationship until that time, as a result of those events the parties' relationship came to an end. I turn to an examination of that proposition.
180. As a result of my finding that the applicant's evidence is to be preferred to that of the respondent in respect of the events of February 2008, I find that the respondent perpetrated very serious family violence against the applicant which had a profoundly negative effect on her, physically, emotionally and psychologically. The applicant was very seriously adversely affected by the respondent's actions.

181. However, my experience in this jurisdiction persuades me that events of that kind, no matter how serious, do not inevitably bring the relationship to an end. As with all aspects of this matter, it is necessary to consider the entirety of the facts of the relationship. In my view, those facts establish a significantly different picture to that which is sought to be painted by and on behalf of the respondent.
182. There are a number of facts which contradict the respondent's contention that the relationship came to an end with the events of February 2008. In the first place, the respondent continued to pay the rents and other outgoings on the G property for approximately 18 months thereafter. The original lease, entered into by the respondent for a period of 12 months in July 2007, expired in July 2008. Despite his assertion that the relationship came to an end five months prior to the expiration of the lease, he continued to pay the rent and outgoings for at least many months after that expiration and certainly into 2009. The evidence establishes that there were arrears of rental from February 2009. The respondent alleged that he continued to make those payments because he felt sorry for the applicant and was concerned that she may act inappropriately against the property which was leased in his name. I do not accept that explanation. My observation of the respondent leads me to finding that if the relationship between them was as bad as he contended, his feelings of sorrow would have been overcome by his obvious need to extricate himself from it. Furthermore, there was no evidence to support of the contention that the applicant was of such a fragile mental state that she would act against the property or that she had done so in the past.
183. However, the contradictions in the respondent's assertions go beyond the fact of ongoing financial support. In this regard, the evidence of both Ms ND and Mr DE is vital. It establishes that the parties continued to live together at the G property and held themselves out as being in a relationship at least similar to that which had existed between them prior to February 2008. Accordingly, as serious as the events of that time were, for reasons which do not matter, the parties reconciled in March 2008 and remained in their relationship until their final separation in October 2009. In accordance with my previous findings the parties' relationship between February 2008 and October 2009 is also to be characterised as a de facto relationship in accordance with the legislation.
184. Finally, I have considered the question of whether the totality of the parties' de facto relationship should be divided into individual periods of time because of the various separations which took place between them. Section 90RD(2)(a) of the Act empowers me to make a declaration as to -
- (a) the period, or periods, of the de facto relationship for the purposes of ...

making any order as to maintenance or alteration of property interests between the parties. For those purposes, the legislation provides that such an order may only be made

90SB ... if the court is satisfied -

(a) that the period, or the total of the periods, of the de facto relationship is at least two years

185. Accordingly, the Court has jurisdiction to determine an application for alteration of property interests or maintenance made by a party to a de facto relationship if that relationship continued for a total period of at least two years. Obviously, that period must include the time commencing on 1 March 2009 on which date the legislation came into effect.

CONCLUSION

186. I will declare the following:

- in accordance with the legislation, a de facto relationship existed between the applicant and the respondent in the periods:
 - May 2002 to May 2004;
 - August 2004 to December 2004;
 - January 2005 to mid-June 2005;
 - Late June 2005 to mid-December 2005;
 - Late December 2005 to April 2007; and
 - Late June 2007 to mid-February 2008; and
 - Mid-March 2008 to October 2009; and
- at all relevant times both parties were resident in the State of Victoria.

187. Otherwise, the Initiating Applications will be referred to a Registrar for the making of orders and directions to prepare them for trial in accordance with those declarations.

I certify that the preceding one hundred and eighty-seven (187) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Mushin

Associate:

Date: 25 August 2010