IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2019-404-001129
[2020] NZHC 666

BETWEEN	LILACH PAUL Applicant
AND	FIONA MEAD First Respondent
	BRETT PAUL Second Respondent

Hearing:	19 September 2019 Further submissions October-November 2019
Appearances:	N Taefi and J Grimmer for the Applicant P Fuscic and E M Burke for the First Respondent J Duckworth for the Second Respondent
Judgment:	31 March 2020

JUDGMENT OF HINTON J

This judgment was delivered by me on 31 March 2020 at 3.30 pm
pursuant to Rule 11.5 of the High Court Rules

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Registrar/Deputy Registrar

Counsel/Solicitors:
Nura Taefi, Barrister, Auckland
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[1] This case raises an interesting and contentious issue over whether the Property (Relationships) Act 1976 applies to a "polyamorous relationship".

[2] The point arises as a question of law referred to this Court by way of case stated by Judge Pidwell sitting in the Family Court at Waitakere as follows:[1]

> Does the Family Court have jurisdiction to determine the property rights of three persons in a contemporaneous polyamorous relationship under the Property (Relationships) Act 1976?[2]

[3] The two effective claimants appear to accept that the Property Relationships Act 1976 (the Act) does not provide for polyamorous relationships as such. They do not claim jurisdiction on that basis. Rather, they seek to break their three-way relationship down into contemporaneous qualifying relationships. I have therefore restated the question slightly as follows:

> Does the Family Court have jurisdiction under the Property (Relationships) Act 1976 to determine the property rights of three persons in a polyamorous relationship, either on the basis of that relationship or by dividing that relationship into dyadic parts?

Background

[4] The parties accept the following excellent summary of the facts by Judge Pidwell, to which I have added only in small part and where uncontentious.

[5] Lilach and Brett Paul were legally married in New Zealand on 28 February 1993. They have no children.

[6] In 1999, Lilach met Fiona Mead.

[7] In 2002, the three parties formed a polyamorous relationship.

[8] In November 2002[3] the parties moved into a four-hectare property in Kumeu which had just been purchased in Fiona's name for $533,000. She paid the deposit of

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1 Pursuant to s 13 of the Family Court Act 1980 and pt 21 of the High Court Rules 2016.

2 The phrase "polyamorous relationship" is not defined in the case stated. It has a potentially wider meaning, but given the facts of the case, I treat it as a relationship between three persons or more.

3 The Judge noted a date of March 2003 but the parties agree it was November 2002. Nothing turns on the date for present purposes.

$40,000. The parties describe the property as a farm. It had a QV of $2,175,000 in 2017. This is the property in dispute.

[9] For the next 15 years, the parties lived together at the Kumeu property. Their polyamorous relationship continued. For the most part they shared the same bed.

[10] Fiona practised as a veterinarian throughout the relationship. Brett established a paintball business on the property. Brett and Lilach had a lawn mowing business. Lilach also practised as an artist.

[11] Each party contributed to the household and to activities which occurred on the property (being general maintenance of the property and helping each other with their respective businesses). The parties differ as to what extent the contributions occurred.

[12] While the relationship between Lilach, Brett and Fiona was the primary relationship, there were other secondary relationships between each party and other individuals. Some of these secondary relationships were between one party and the secondary party, while others involved more than one party (again, either individually at different points of time or forming a secondary polyamorous relationship). At-least one of these secondary relationships appears to have lasted for three years.

[13] I think it helpful to add the following from Lilach's affidavit, which seems undisputed:

> For […] 15 years we were in a relationship and lived together at the property. We had an understanding that although we were free to love others, the relationship between the three of us was the main relationship. For the large majority of the relationship all three of us have been sharing the same room and same bed until about a year before our separation when I moved into the guest room.
>
> When we moved into the property Fiona, Brett and I committed to a shared life with each other. In particular, soon after we moved into the Property, we had a private ceremony during which Brett and I gave a third ring to Fiona. The ring was identical to the ring that Brett and I had with the exception of the stone in the middle and it was made by the same jeweller […] We all wore our rings throughout our 15 year relationship, but I did lose my ring about two years ago. The pictures [attached to the affidavit] show the ceremony and our rings.

[14] Lilach separated from Fiona and Brett in November 2017.

[15] Brett and Fiona subsequently separated in early 2018. Fiona remains living in the Kumeu property.

Procedural History

[16] On 15 February 2019 Lilach applied to the Family Court at Waitakere naming Fiona and Brett as respondents and seeking orders determining the parties' respective shares in relationship property. In her narrative affidavit of the same date, Lilach records that she had been in a de facto relationship with Fiona, Brett had been in a de facto relationship with Fiona, and the three of them were "in a committed relationship for more than 15 years". She records that they lived together in the Kumeu property, which was their family home, and indicates that she seeks a one-third share.

[17] On 11 March 2019 Fiona appeared under protest to object to the Family Court's jurisdiction on the basis that Lilach's application was founded on a relationship of three people and thus does not relate to a de facto relationship as defined by the Act.

[18] On 22 March 2019 Brett filed a notice of defence and also a cross-application for orders determining the parties' shares in the relationship property "arising as a consequence of the contemporaneous relationships" and for a declaration that the parties were in three contemporaneous qualifying relationships under the Act as follows:

(a) Brett and Lilach as husband and wife;

(b) Brett and Fiona as de facto partners; and

(c) Fiona and Lilach as de facto partners.

[19] On 29 March 2019 Lilach applied for orders setting aside Fiona's protest to jurisdiction on the grounds that the three parties were "in a relationship of 15 years duration" and the application relates to three 'triangular' contemporaneous relationships, being those described by Brett. Relying on ss 52A and 52B of the PRA,

DM v MP,[4] and *Chapman v P*,[5] the application records that the Family Court has jurisdiction to determine the division of relationship property "where there is more than one contemporaneous de facto relationship and/or marriage."

[20] By Minute dated 7 June 2019, Judge Pidwell referred the case to this Court by way of case stated, recording that she was not aware of any case law that assists on the issue. The Judge framed the question herself after the parties failed to agree on the specific terms of reference. She records that Lilach and Brett claim equal shares in the relationship property. However, it is now clear they each claim a one-third share and the subject of the claims is the Kumeu property.

Discussion

No claim can be made under the Act based on a polyamorous relationship per se

[21] It is clear on the face of the Act that parties cannot bring a proceeding based on a polyamorous relationship per se. That is not possible as a result of the definitions in the Act. Such a relationship does not 'qualify' under the Act.

[22] As noted, that position appears to be accepted by Lilach and Brett, who do not advance their claims on that basis. They instead rely, by way of analogy, on the application of the 'contemporaneous relationship' provisions of the Act, ss 52A and 52B. I consider the applicability or otherwise of these below.

[23] For completeness however, I first record that the relationships that do qualify under the Act are marriages, de facto relationships and civil unions, as defined. Each of these is plainly limited, for the purposes of the Act, to relationships between two people only.

[24] The definition of "marriage" in s 2 provides that "marriage" has the meaning given to it in s 2A. That is an inclusive definition provision only. The provision does not purport to define the concept of "marriage" in and of itself. But it supposes that marriage is a dyadic relationship; referring to a "married *couple*" and "*both* spouses".

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4 *DM v MP* [2012] NZHC 503, [2012] NZFLR 385.
5 *Chapman v P* (2009) 20 PRNZ 330 (HC).

This is consistent with the definition of "marriage" in s 2 of the Marriage Act 1955 (as amended) as "the union of *2 people*, regardless of their sex, sexual orientation, or gender identity" (emphasis added).

[25] "Civil union" is similarly defined and limited to two people.[6]

[26] The definition of de facto partner and de facto relationship is similarly dyadic in effect. A person is a person's de facto partner "if they have a de facto relationship with *each other*",[7] and a de facto relationship is "a relationship between *two persons*" both aged eighteen years or older, "*who live together as a couple*"[8] (emphasis added), and are not married to, or in a civil union with, one another.[9]

[27] Plainly, more than two people cannot be married to each other, and, at least for the purposes of the Act, more than two people cannot form a qualifying de facto relationship. That would be even more so here, where two members of the polyamorous relationship are married. The definition of a de facto relationship excludes persons who are married to each other. So, such people could not form part of a single qualifying de facto relationship also comprised of one or more others.

Separate concurrent claims

[28] As noted above, Lilach and Brett's respective cases rest on the Court being able to divide the polyamorous relationship into three parts and consider concurrent claims in respect of each.

[29] In this instance, while Lilach and Brett each plead there were three separate relationships, which conceptually would involve three separate claims, there are only two. Lilach and Brett, although a married couple who would have a qualifying relationship,[10] make no claim against each other.

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6 See s 2AB of the Property (Relationships) Act 1976 and also s 4(1) of the Civil Union Act 2004, which provides that "*two people* … may enter into a civil union under this Act …".

7 Property (Relationships) Act 1975, s 2C. See also the definition, materially similar for present purposes, given in s 29A(1) of the Interpretation Act 1999.

8 As to which, see Property (Relationships) Act 1976, ss 2D(1) and (2).

9 Section 2D(1). For convenience I do not refer further to civil unions.

10 Because of the more limited definition of marriage noted above.

[30] Lilach and Brett say the Court can find that each of them was in a de facto relationship with Fiona.

[31] That however is still not ostensibly the case because of the definition of "de facto relationship". As set out earlier, a de facto relationship under the Act requires two persons to be living together *as a couple*. While s 2D of the Act sets out factors that may be relevant to that inquiry, the fundamental question the Court must answer is not whether a given relationship exhibits any or all of those indicia, but whether the parties lived together *as a couple*. On their own clear evidence and on the basis of the case stated, neither Lilach nor Brett was living with Fiona "as a couple". Each was living with her as part of a threesome (or sometimes more). While the requirement to be living together "as a couple" does not preclude another person living with the couple, nor one of the couple living with a third person, it does in my view exclude a scenario where all three are participating in the very relationship at issue. That is not living together *as a couple*.

[32] I note that if the "couple" requirement could be circumvented in this case in the proposed manner that would have to similarly apply to a "foursome" or more. There would be no logical limit to the numbers who could be involved in the overlying polyamorous relationship.

[33] Lilach and Brett rely heavily by analogy on ss 52A and 52B of the Act. They say these provisions recognise that there may be "more than one contemporaneous de facto relationship" for purposes of the Act, which supports the approach they have adopted here. There is no doubt as to the basic proposition, though interestingly such contemporaneous relationships seem to have been found to qualify on very few occasions.[11]

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[11] *Chapman v P*, above n 5, appears to be the only case in which contemporaneous qualifying relationships have been found to have existed. It involved a dispute over a will between a wife and de facto partner of the deceased. In *DM v MP*, above n 4, Miller J, while declining to find the claimed contemporaneous de facto relationship existed on the facts, recognised that such relationships could exist. See also *Ngavaevae v Harrison* [2017] NZHC 2788 and *Scott v Scragg* [2006] NZFLR 1076 (Full Bench HC), where on the facts of each case the possibility of two qualifying contemporaneous relationships having existed was accepted, but no ruling on that point was required. In none of these cases was ss 52A or 52B applied.

[34] Sections 52A and 52B address the priority of competing claims where there are contemporaneous relationships: either a marriage and a de facto relationship or two de facto relationships, respectively. The sections are in substantively identical terms. Section 52B is the relevant provision here and I set it out in full:

> **52B Priority of claims where 2 de facto relationships**
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> (1) This section applies in respect of relationship property if—
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> (a) competing claims are made for property orders in respect of that property but in relation to different de facto relationships; and
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> (b) there is insufficient property to satisfy the property orders made under this Act.
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> (2) If this section applies, the relationship property is to be divided as follows:
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> (a) if the de facto relationships are successive, then in accordance with the chronological order of the de facto relationships:
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> (b) if the de facto relationships were at some time contemporaneous, then,—
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> (i) to the extent possible, the property orders must be satisfied from the property that is attributable to each de facto relationship; and
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> (ii) to the extent that it is not possible to attribute all or any of the property to either de facto relationship, the property is to be divided in accordance with the contribution of each de facto relationship to the acquisition of the property.

[35] The plain language of s 52B (and s 52A) does not suggest that it would apply to *three* contemporaneous relationships, which is the position alleged here (albeit there happens to be no claim arising out of one of them).

[36] A more significant difficulty in the applicants' placing reliance on ss 52A and 52B is that these sections do not expand the scope of the Act. Rather they recognise the potential for conflicting claims arising out of the 2002 extension of the Act to de facto relationships and attempt to resolve that conflict. Beforehand the Act applied only to married couples. It is of course unlawful to be married to two people at once, so the possibility of competing claims under the Act did not arise. Extension of the law to de facto relationships opened up that potential. But the key point is that ss 52A

and 52B still purport only to establish priority between competing claims where there are *two* discrete *qualifying* relationships.

[37] Leaving to one side the fact there are three relationships here, the question remains whether the relationships at issue are "qualifying" under the Act. For the reasons identified previously, on the face of it, those pleaded here are not.

[38] I also consider it relevant that while ss 52A and 52B are recognised as troublesome, they would, as discussed below, almost invariably produce a result discordant with the Act if applied to a deconstructed polyamorous relationship.

[39] There have been a number of cases which have considered these provisions. None, or at-least no reported decisions, seem to have resulted in the provisions being applied. I suspect this is largely because of the difficulty in establishing a qualifying second relationship. As Sargisson AJ, reviewing these cases in *Ngavaevae v Harrison*, noted:[12]

> It would be fair to say that to establish a contemporaneous de facto relationship is likely to be difficult in practice. On my reading of recent authorities, assumptions of exclusivity still linger on in judicial interpretations of a 'qualifying relationship.

[40] Because such claims have generally foundered at the second relationship point, the question of how ss 52A and 52B actually operate has not been addressed by the Courts. Both academics,[13] and the Law Commission, also having identified no examples of application of these provisions, have expressed concerns as to how they would work:[14]

> […] the draft provisions on which sections 52A and 52B are based were developed in the context of succession law. They were not designed to be inserted into the PRA or to apply to situations involving three (surviving) people. As a result, several problems arise when applying sections 52A and 52B within the PRA framework […]

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12 *Ngavaevae v Harrison*, above n 11, at [50].

13 Mark Henaghan "Multiple Relationships on Death" in N Peart, M Briggs, and M Henaghan (eds) *Relationship Property on Death* (Thomson Brookers, Wellington, 2004) 347 at 353.

14 Law Commission *Review of the Property Relationships Act 1976 | Te Arotake i te Property (Relationships) Act 1976* (NZLC, R143, 2019) at [7.45].

[41] The acknowledged difficulties with application of these provisions do not encourage a broad interpretation of the Act in reliance on them, even if it were available.

[42] Ms Taefi says that, in this particular case, while the Court can draw on 52B for jurisdiction, it would not be necessary to actually apply the section because Lilach and Brett are only claiming one-third each. They have adjusted their case to fit as it were. There would be no need to prioritise the claims because there would be sufficient property to meet the orders as sought, in terms of s 52B(1).

[43] However, that approach is not accepted by Fiona and in any event the Court would have to apply the provisions of the Act, not some broad notion of what might be fair.

[44] On my view of the application of s 52B, it would lead to a result materially different to that claimed. As might be expected where the relationship is in reality polyamorous, there would be only one family home, in this case the Kumeu property. Each of Lilach and Brett would have to bring or be treated as bringing a separate proceeding. Applying the presumption of equal division, the Court would likely order in each proceeding that each partner was entitled to 50 per cent each. That would mean that Fiona was entitled in total to 100 per cent (50 per cent in each case) and Brett and Lilach 50 per cent each. There would be insufficient property to satisfy the orders in terms of s 52B(1)(b), and the home could not be said to be "attributable" to either de facto relationship in particular in terms of s 52B(2)(b)(i), whatever meaning is given to that word. Therefore, under s 52B(2)(b)(ii) the property would have to be divided in accordance with the contribution of each de facto relationship to the acquisition of the property. If each de facto relationship is assumed to have contributed equally, and it is difficult to see how it would not be given Fiona is a member of both relationships, that would result in Fiona's receiving 50 per cent and Lilach and Brett 25 per cent each.

[45] This is materially different to Lilach and Brett's claimed 33 per cent shares, and is materially at odds with the general policy of the Act that couples share the family home equally. Yet, that outcome would likely be standard in respect of a

polyamorous relationship. Because the property pool in respect of each dyadic relationship will likely be the same, the same unequal outcome will likely result in respect of all types of relationship property.

[46] Ms Taefi submits these difficulties could be circumvented by consolidation of proceedings, but that is procedural only. The Court would still have to consider each case separately. The outcome would be unchanged.

[47] These problems do not arise to the same extent with couples in contemporaneous qualifying relationships, who, living together as a couple, would generally be living in separate homes, which would therefore be "attributable" to each relationship, such that division would fit better with the scheme of the Act. There could still be cases, as Ms Taefi argues, which have a result similar to the present. She gave the example of one partner spending lengthy periods overseas and in their absence a third person moving in with the partner at home and living with them as a couple. She gave another example of a live-in caretaker having a long-term relationship with one or other of the partners living in a house. These cases would however be extremely rare.

[48] In my view the likely outcome of the division process in a case such as the present speaks strongly against expanding the application of the Act by analogy to s 52B, rather than in favour of it.

Academic and other commentary on polyamory and the Act

[49] Ms Taefi referred me to academic commentary which suggests that a polyamorous relationship can be approached in the way the claimants argue. However, I have not found any of the commentary to be of particular assistance. Counsel for Brett referred me in particular to Professor Henaghan's discussion of the treatment of multiple relationships on death, in relation to which the Professor suggests:[15]

> A gap in the definition of a de facto relationship is the situation where three people live together in a "ménage à trois". This is not literally living together as a "couple". It is living together as a "threesome". Such relationships are

[15] Henaghan, above n 13, at 360.

> not common, but they do create a problem in terms of the Act. The most likely practical classification for such relationships is to treat them as two contemporaneous relationships.

[50] It is clear from the brevity of this passage that these are thoughts in passing. While an intuitive response to the "problem in the Act" is to divide relationships into dyadic couples, this does not bear close scrutiny for the reasons given above. Furthermore, I do not consider it clear the Professor had in mind a case such as the present. He refers to a "threesome", but also to treating that relationship as "two contemporaneous relationships", when dividing a threesome into its dyadic elements produces three couples, as noted above. It is possible that by "threesome" and "ménage à trois" the Professor was referring to a case like the example of the live-in caretaker described above, where reference to two contemporaneous relationships is apt.

[51] I note that the Law Commission, in their recent review of the Act, stated that it does not apply to relationships between three or more people. Lilach and Brett's argument is of course more nuanced, but the Commission refers to the same fundamental considerations I noted at the outset of this judgment, and which also apply to the constituent relationships under s 52B:[16]

> The PRA is premised on the notion of "coupledom".[17] It applies only to marriages, civil unions and de facto relationships that are intimate relationships between two people. The PRA does not apply to intimate relationships between three or more people (multi-partner relationships).

The argument for liberal interpretation and reform

[52] Whether the Act should be "premised on the notion of 'coupledom'" is of course another matter. In this regard, the Law Commission observed that:[18]

> Multi-partner relationships may share many of the hallmarks of a qualifying relationship, such as common residence, raising children together, financial dependence or interdependence, ownership, use and acquisition of property, mutual commitment to a shared life and the performance of household duties. Excluding multi-partner relationships that are functionally similar to qualifying relationships from the PRA may therefore be difficult to justify.

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16 Above n 14 at [7.62].

17 Citing Margaret Briggs "Outside the Square Relationships" (Paper Presented to New Zealand Law Society PRA Intensive, October 2016) at 135.

18 Above n 14 at [7.65], [7.72], and [7.73].

> […]
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> Two members of the public [who made submissions to the Commission] described diverse relationship and family structures that differ from the traditional couple structure and nuclear family. They felt that, as diverse structures become more common, legal recognition and rights need to be available. They noted that the current law strongly favours the 'primary' couple who may be married or in a civil union and largely excludes any secondary partners who may still contribute significantly to the family. One person noted that the current law provides for multiple relationships but that these tend to be interpreted as illicit 'cheating' relationships when the reality can be more consensual and nuanced than that.
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> […]
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> A broader theme from Community Law's submission was that the polyamorous community wanted a clear way to have their relationships recognised by the law when they desired those relationships to be recognised.

[53] Appealing to similar sentiments, counsel for both Lilach and Brett submit that the Act ought to be interpreted liberally, referring inter alia to Sargisson AJ's observation that:[19]

> The Act is social legislation: it reflects, or at least should reflect, contemporary social mores. The Act, and its judicial interpretation, must therefore be responsive to developments in social mores. In that regard, these are interesting times. The Law Commission observes that "relationships are now much more diverse and this diversification is expected to continue". In fact, 'unorthodox' relationships are more often than not the ones that end up under the judicial microscope.
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> […]
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> […] at least in principle, the Act makes room for situations such as we find in this case, which the court must be careful not to down play in favour of personal bias.

[54] Sargisson AJ's comments were made in respect of the limited application to date, as noted above, of the contemporaneous relationship provisions because of apparent judicial reluctance to find the second relationship to be qualifying. I agree that the Act is a liberal piece of legislation and should be interpreted in a way that achieves its liberal purpose. In this respect, I acknowledge that the Act was amended in 2002 to broaden significantly the range of qualifying relationships and that a number

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19 *Ngavaevae v Harrison*, above n 11, at [45], citing Law Commission, above n 14, at [4.23]. See also *Ngavaevae* at [56].

of different relationships are now encompassed by the Act in addition to the married couples to whom it used to exclusively relate.

[55] Those who have decided to live in polyamorous relationships have an understandable desire, as indicated by the submissions received by the Law Commission, and by this case, for the clarity that recognition of their relationships within the statutory scheme might offer. As also emerges, at least some submitters believed that would offer their relationships a degree of legitimacy in the eyes of society at large which they currently do not possess. As the Commission identified, excluding multi-partner relationships that are functionally similar to qualifying relationships (and in this case of longer duration than many) may be difficult to justify.[20]

[56] Nonetheless, Parliament has premised the Act on the notion of coupledom, as the scheme of the Act makes clear. Whether this is difficult to justify as a matter of policy is a matter for Parliament. Statutory interpretation must always have regard to the text and scheme of the Act in question.[21]

[57] Reform of the sort required by this case cannot be accomplished through the Courts. While many relationships are complex, polyamorous relationships are likely to be even more so. As the Commission has noted:[22]

> There are […] a number of practical considerations that would need to be addressed if a property regime were to be extended to multi-partner relationships. Policy would need to be developed on which relationships should be captured, whether the regime should be opt in or opt out and what the property entitlements should be. Careful consideration would also need to be given to the implications of recognising multi-partner relationships for other areas of the law.
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> The PRA is premised on an intimate relationship between two people, and we consider that this should also be the premise of the new Act. Extending the

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20 I record, for completeness, that the claimants also advanced an argument, as I understand it, that this distinction discriminates between polyamorous and monogamous couples on the prohibited grounds of family status, as described in s 21(1)(l)(iii) of the Human Rights Act 1993, and that an interpretation consistent with that Act's prohibition on discrimination on that ground should be preferred. As I identify, there is a forcible policy argument that distinction should not be drawn. However, inconsistency with the policy of the Human Rights Act 1993 is not, without more, a basis for departing from the clear effect of the statutory scheme and language of the Property (Relationships) Act 1976.

21 *Shark Experience Ltd v Pauamac5 Inc* [2019] NZSC 111 at [28].

22 Above n 14 at [7.75].

> regime to multi-partner relationships would be a fundamental shift in policy and should be considered within a broader context involving more extensive consultation about how family law should recognise and provide for adult relationships that do not fit the mould of an intimate relationship between two people.

Conclusion

[58] For all of the above reasons, not only does the Act on its face not apply to a polyamorous relationship such as the parties', but it would be unworkable to stretch the legislation to 'fit' this case.

[59] This issue having arisen by way of a question of law referred to this Court, I am required to remit the matter to the officer who stated the case together with the opinion of the Court.[23] I answer the restated question of law as follows:

> The Family Court does not have jurisdiction to determine the property rights of three persons in a polyamorous relationship under the Property (Relationships) Act 1976, nor does it have jurisdiction to do so by dividing the polyamorous relationship into dyadic parts.

[60] The position will be different if as a matter of fact more than two people are cohabiting but can properly be described as living together as couples. That is not the case in a polyamorous relationship in the sense used here.

[61] I conclude by saying that the claimants here are not without remedy. The issues between them can be addressed at equity.[24] Most of the evidence filed, acknowledging it is incomplete, would be relevant in that context. It will be a matter for the Judge hearing the case, but in my view it would be appropriate to pay regard to the principles expressed in the Act, such that judge-made law properly develops in response to the guidance offered by statute law.[25] After all, as noted above, the relationship here has many of the hallmarks of a qualifying relationship, albeit, fatally in terms of the

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23 High Court Rules 2016, r 21.14.

24 See *Lankow v Rose* [1995] 1 NZLR 277 (CA); and, for a more recent application of the same, *Judd v Hawkes Bay Trustee Company Ltd* [2016] NZCA 397. See, for a recent discussion of that case and its "aftermath", Emily Stannard and Helen Cull "*Lankow v Rose* and its aftermath" (2019) 3 NZWLJ 93.

25 See generally *South Pacific Manufacturing Co Ltd v New Zealand Security Consultants and Investigations Ltd* [1992] 2 NZLR 282 (CA) at 298; *T v Regional Intellectual Care Agency* [2007] NZAR 643 (CA) at [10]; and *O'Hagan v Body Corporate 189855* [2010] 3 NZLR 445 (CA) at [99].

application of the Act, one between three persons. Development of the law informed by the principles of the Act may help those in polyamorous relationships and afford them some clarity as to their property arrangements pending any future legislative review.

Costs

[62] Fiona having succeeded, and costs generally following the event,[26] she would normally be entitled to an award of costs. However, I have no doubt proceedings between the parties will be ongoing. I have already said much of the affidavit evidence will remain relevant. Also, having reference to Potter J's approach in *The Komtek II*, I take the view that this case is in the nature of a test case insofar as, even though this is an ordinary proceeding between private parties, it has involved novel issues of the sort generally associated with test cases.[27]

[63] I have decided therefore to reserve costs. The parties have leave to apply following final determination of the issues between them.

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[26] High Court Rules 2016, r 14.2(1)(a).

[27] *International Factors Marine (Singapore) Pte Ltd v The Ship "Komtek II"* [1998] 2 NZLR 108, 11 PRNZ 466 (HC).