

Research Brief – Status as an Adult Interdependent Partner

By Emily J. Koch

The law in Alberta regarding property division for common law partners has recently changed. Given the changes brought in by the *Family Law Act* it is important to understand at what point couples who are unmarried but living together become Adult Interdependent Partners (“AIP”) as defined by the *Adult Interdependent Relationships Act* (“AIRA”). A review of the case law is as follows.

In ***Re: Henschel Estate [2008] A.J. No. 769***, the Court took a bright line approach to the interpretation of s. 3 and s. 7 of the AIRA, and determined that someone could not be considered an AIP if they did not live with the party. The application arose when Mr. Henschel died, leaving an estate of approximately \$16 million. The Applicant was his girlfriend and companion. He left her \$10,000 in his will. She applied for AIP support from his estate. Their living situation prior to the death of the deceased was described as follows:

“Ms. McLeod deposed to an affidavit in which she admits that she and the deceased never shared a residence nor finances, nor bank accounts, nor any assets, nor household or vehicle expenses, nor did he give her money or vice versa. She states that for the last 13 years of his life they were companions, taking vacations by automobile together, with her sleeping at his home every weekend, with them eating together every other day, with her doing light housekeeping at his house, and cooking all the meals they shared together. She drove him to medical appointments during the last year of his life and provided physical care to him as he was housebound. She does not depose that she cannot support herself without financial assistance from the estate; she always has.”

The Court did not even consider the factors which may or may not have made the parties dependent on each other, as the fact that they never lived together was enough to halt the Application before the analysis got any further. The Court went on to state:

“I note that extending the financial consequences of the adult interdependent partnership to persons who have never cohabited and have not entered into an adult interdependent partnership agreement would dramatically change the legal landscape. Dating relationships, albeit ones which extend for more than a three-year period, could suddenly create financial claims that neither party anticipated. Adopting Ms. McLeod's interpretation of s. 3(1)(a) could have a chilling effect on persons developing or continuing supportive emotional relationships with others. That chill could create negative social consequences. It is highly unlikely that the

Legislature would have intended such a dramatic result without clearly stating so, both in its introduction to the legislation during debate and within the legislation itself.”

This case seems to make the law around if someone qualifies to be an AIP quite clear, however two subsequent cases distinguished themselves from *Henschel*.

In ***Martin v Riley, [2014] A.J. No. 1340*** the deceased, Mr. Riley, passed away after he and Ms. Martin had been in a relationship for 36 years. He did not include her in his will. Ms. Martin applied for AIP support and Mr. Riley’s estate opposed, stating she was not AIPs with Mr. Riley at the time of his death.

The parties had cohabited in the past for a period of 22 years. Then, in 1997, Mr. Riley built a house and began residing there without Ms. Martin for 5 -7 days per month. The evidence suggested that Mr. Riley stayed at this separate residence when he “needed a break” from Ms. Martin. Ms. Martin stated she did not go there because it did not accommodate her handicaps. The Court ultimately decided that although the parties did have two separate residences, Mr. Riley primarily resided with Ms. Martin and his occasional absences were not enough to claim that they did not live together. The parties were found to have been AIPs.

In ***Wright v Lemoine, [2017] A.J. No. 665*** the parties had separated and Ms. Wright was claiming AIP support from Mr. Lemoine. They had been together for about 4 years. Mr. Lemoine worked as pipeline foreman, meaning that he worked away from home for a week or two at a time. Mr. Lemoine contested that Ms. Wright was not entitled to AIP support because they had not lived together for three years and therefore were not AIPs. Ms. Wright stated that they did live together and that the fact that Mr. Lemoine was often not home due to work did not affect their status as AIPs. The Court agreed with Ms. Wright and deemed that the parties were AIPs, stating:

“I find that Ms. Wright and Mr. Lemoine formed the intention to cohabit in March 2012, when they began to look for a house to live in together, and certainly no later than April 2012, when the first trailer was purchased and readied for them to live in it. They began to live together no later than April 2012. While Mr. Lemoine took the trailer with him to his work sites to save money, the purpose of the trailer was to provide a home for the two of them. The periods apart, which arose from the nature of Mr. Lemoine’s unique work commitments and not the parties’ intention to live apart, did not interrupt the period of continuous cohabitation, which only ended when the parties separated on December 15, 2015.”

Wright also cites other case law arising from Alberta and BC where the issue of whether 2 parties truly lived together was in question. In most of these cited cases the facts were that the parties lived together for some period of time, and then there was a period of separation due to school, work, health, travel, a temporary disagreement in which the parties needed to take some space but remained committed to each other, etc.

In summary, while the law arising from *Henschel Estate* suggests that two parties must be living together to be considered AIPs, the Court has also allowed that special circumstances can exist (such as the parties retaining ownership of separate residences, or the parties spending significant time apart due to work obligations) without impacting the parties' status as AIPs. The determination of whether two parties can be considered AIPs remains a contextual analysis notwithstanding the clear definition contained within the AIRA.