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ADULT INTERDEPENDENT RELATIONSHIPS AND ESTATES

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In 2003, Alberta's *Adult Interdependent Relationships Act*, SA 2002, cA-4.5 ("*AIRA*") came into effect, making adult interdependent relationships available to both same-sex and opposite-sex couples in the province. The purpose of the *AIRA* was to provide legal recognition to relationships of interdependence between two people who are not married, in certain circumstances. The *AIRA* has had a significant impact on many areas of law in Alberta, including estate litigation.

The test for determining who qualifies as an adult interdependent partner ("AIP") comes from section 3(1) of the *AIRA*. According to section 3(1), there are two ways in which a person can become the adult independent partner of another person, which include: (1) the person has lived with the other person in a "relationship of interdependence" for a continuous period of not less than 3 years, or of some permanence if there are children of the relationship (by birth or adoption), or (2) the person has entered into an adult interdependent partner agreement with the other person that complies with the requirements set out in the *AIRA*. A "relationship of interdependence" is defined in sections 1 and 2 of the *AIRA* as a relationship outside marriage in which any two persons share one another's lives, are emotionally committed to one another and function as an economic and domestic unit. When making a determination of whether two persons function as an economic and domestic unit, the Court will take several factors into consideration, including whether or not the persons have a conjugal relationship, the degree of exclusivity of the relationship, and the conduct and habits of the persons in respect to household activities and living arrangements. The finding of a relationship of interdependence is highly contextual and fact-specific. Typically, a one year separation is required to terminate an existing AIP relationship.

Claims

There are several potential claims that an AIP could make against the estate of their deceased partner. Whenever an individual dies without a valid will or where their will does not distribute all of their assets, the *Wills and Succession Act*, SA 2010, c W-12.2 ("*WSA*") determines the distribution of the assets of the estate. According to section 60 and 61 of the *WSA*, if an

individual dies intestate leaving a surviving adult interdependent partner but no children (or children who are also the children of the surviving adult interdependent partner), the entirety of the intestate estate goes to the surviving adult interdependent partner. If an individual dies intestate leaving children who are not also the children of a surviving adult interdependent partner, the surviving adult interdependent partner is entitled to the greater of the prescribed amount, which is currently \$150,000, or 50% of the net value of the intestate estate.

Conversely, if an AIP believes that they have not been adequately provided for in the will of their adult interdependent partner, the AIP is entitled to make a claim for maintenance and support from the estate under section 88 of the *WSA*. In making an award for maintenance and support of an AIP of a deceased, the Court will consider the following factors, as enumerated at section 93 of the *WSA*:

- (a) the nature and duration of the relationship between the family member and the deceased,
- (b) the age and health of the family member,
- (c) the family member's capacity to contribute to his or her own support, including any entitlement to support from another person,
- (d) any legal obligation of the deceased or the deceased's estate to support any family member,
- (e) the deceased's reasons for making or not making dispositions of property to the family member, including any written statement signed by the deceased in regard to the matter,
- (f) any relevant agreement or waiver made between the deceased and the family member,
- (g) the size, nature and distribution of
 - (i) the deceased's estate, and
 - (ii) any property or benefit that a family member or other person is entitled to receive by reason of the deceased's death,
 - (h) any property that the deceased, during life, placed in trust in favour of a person or transferred to a person, whether under an agreement or order or as a gift or otherwise, and
 - (i) any property or benefit that an individual is entitled to receive under the [Matrimonial Property Act](#), the [Dower Act](#) or Division 1 of this Part by reason of the deceased's death,

and may consider any other matter the Court considers relevant.

Case Law

Essentially, the Court will consider all relevant circumstances in determining the appropriate quantum for an award. The following chart summarizes awards granted to AIPs or common law spouses in recent maintenance and support claims (also known as dependent's relief claims) in Alberta and British Columbia:

Case	Duration of Cohabitation	Value of Estate	Nature of Relationship	Award	% of Estate
<i>Tait v Westphal</i> , 2013 ABQB 668	9 Years	\$431,353	Marriage-like relationship; parties held themselves out to be spouses and functioned as economic and domestic unit; parties shared finances, maintained 2 residences but lived together; from 2005 onward, applicant spent most of her time caring for her ill partner.	\$91,420	21%
<i>Koma v Tomich Estate</i> , 2011 ABCA 186	26 Years	\$535,000	Long-term marriage-like relationship, deceased referred to applicant as his common-law spouse in his will, which left applicant 50% interest in deceased's home, plus 21% of residue of estate. Will upheld.	50% interest home (\$175,000) plus \$39,447	40%
<i>Kiernan v Stach Estate</i> , 2009 ABQB 150	13 Years	\$230,000	Parties cohabited for 13 years and held themselves out as a married couple; had separate finances; did not get married as it would have result of reducing parties' pension benefits. Applicant was granted life estate in home but was required to pay property taxes, utilities, and 30% of mortgage.	Life estate in home	N/A
<i>Griese v Syvret</i> , 2013 BCSC 1601	30 Years	\$375,729	Parties cohabited for 30 years in marriage-like relationship and owned a hobby farm together; parties shared household chores and expenses.	\$150,000	40%
<i>Mawdsley v Meshen</i> , 2012 BCCA 91	18 Years	\$10,500,000	Long term cohabitation where parties agreed to keep finances separate; the deceased's family business and assets were built with no assistance from applicant; Applicant was 82 with sufficient income and had no children; Court found that award of \$280,000 would satisfy any moral obligation the deceased owed to applicant	\$280,000	2.7%

<i>Picketts v Hall Estate</i> , 2009 BCCA 329	21 Years	\$18,000,000	21 year cohabitation and common law relationship; applicant gave up employment when she began relationship with deceased; deceased reneged on his promise to applicant but promised to always provide for her as his wife; deceased referred to applicant as "friend" in his will.	\$5,075,000	28%
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It is clear from the case law that adult interdependent partners are entitled to some quantum of support from their deceased partner's estates. A review of the most recent case law confirms the contextual and fact-specific approach that the Court seems to take when determining claims of this nature. The most important factors that seem to contribute to an increased quantum include the length and nature of the relationship, the size of the estate, the ability of the surviving partner to contribute to their own support, and whether the surviving partner contributed to the assets of the estate or cared for the deceased partner through a period of sickness or incapacity.

Conclusion

In Alberta, the proclamation of the *AIRA* has created significant changes to the rights and obligations that arise through participation in an adult interdependent relationship, both in family law and in a wills and estates context. An individual who leaves their AIP out of their will, or fails to adequately provide for their AIP in their will, takes a substantial risk that their AIP will contest their will and ultimately receive a larger share of their estate (whilst potentially subjecting executors, other beneficiaries, etc. to time consuming and expensive litigation). It is imperative for lawyers to discuss with their clients how the laws regarding adult interdependent relationships will impact their particular situations and discuss preparing an estate plan that fairly implements the clients' intentions and contemplates their specific circumstances.