

Adult Interdependent Relationships

How is a common law relationship defined in Alberta?

The term “common law” is often used in everyday language to describe a couple that lives together, or has children together, but is not married. Alberta law used to make some allowance in certain situations for people in such relationships to be treated as if they were married. For example, under the Domestic Relations Act a person from a common law relationship could apply for spousal support when the relationship ended, provided the relationship had lasted at least three years, or there had been a shared child.

The law with regard to common law relationships in Alberta has now been changed with the introduction of the concept of adult interdependent relationships. The new law is set out in the *Adult Interdependent Relationships Act* that applies in Alberta from June 2003.

What is the significance of the new law?

The *Adult Interdependent Relationships Act* provides for legal recognition of the relationship between two people who are not married. In order for the relationship to be recognized by the law, the relationship must have certain characteristics that are set out in the law. The significance of a relationship being recognized as an adult interdependent relationship is the rights, benefits and responsibilities that will then arise under other laws. Those rights, benefits and responsibilities will be similar to, and in some cases, the same as, those extended to spouses who are married.

For example, the *Domestic Relations Act* will allow adult interdependent partners to apply for a support order where the relationship has broken down; an adult interdependent partner is now a dependent within the Family Relief Act, so that he or she can apply for relief from the terms of a will or intestacy where they consider that inadequate provision has been made for them.

There are many Alberta laws that have been amended following the *Adult Interdependent Relationships Act* coming into force. In any situation where there are rights and obligations granted to married spouses, it will be important to check to see what rights are also extended to adult interdependent partners.

Can same sex partners be adult interdependent partners under the *Adult Interdependent Relationships Act*?

Yes, provided that the relationship fulfills the requirements of the Act. That is, the couple must have:

- Lived with each other in a relation of interdependence for at least three years continuously; or
- Lived with each other in a relation of interdependence which is of some permanence, and there is a child by birth or adoption; or
- Made an adult interdependent partner agreement with each other

What is an adult interdependent relationship?

The *Adult Interdependent Relationships Act* provides a two-step test to determine if such a relationship exists. It must be established that you are an adult interdependent partner on the basis of how long you have been together, whether you have a child or whether you have a formal agreement together. Then it must be established that your relationship is interdependent based on a number of suggested factors and the nature of the relationship as a whole.

In order to be considered an adult interdependent partner of another person, you must have met one

of the following conditions:

- Lived with that person in a relation of interdependence for at least three years continuously; or
- Lived with that person in a relation of interdependence which is of some permanence and there is a child by birth or adoption; or
- Made an adult interdependent partner agreement with the other person.

The *Adult Interdependent Relationships Act* defines an adult interdependent relationship as a relationship outside of marriage where two people:

- Share one another's lives;
- Are emotionally committed to one another;
- Function as an economic and domestic unit.

I am in a relationship with another adult and we have not made an adult interdependent partner agreement. Does this mean that we are not adult interdependent parties?

Not necessarily. Making an agreement is one way in which it will be determined that a valid adult interdependent situation exists. It is also possible that even without an agreement your conduct will show that you are sharing each other's lives, are emotionally committed to each other, and function as an economic and domestic unit. You must also have lived with the other person in a relation of interdependence for at least three years continuously, or lived with that person in a relation of interdependence which is of some permanence and there is a child by birth or adoption.

I made an adult interdependent partner agreement with someone, but now we are no longer together. I do not want to be a party to the agreement anymore. Do I have to do anything formal to signify that the agreement is over?

It is possible for you to formally indicate in another written agreement with your former partner that the interdependent relationship is over, that you intend to live separate and apart and that there is no possibility of reconciliation. Making such an agreement, would be the most clear way to signify the end of the relationship.

Other ways in which an interdependent relationship will be treated as ended will be as follows:

You live separate and apart for one year, and one or both of you intends that the adult interdependent relationship is over;

You marry each other, or one of you marries a third person;

Where an adult interdependent partner has lived with their partner for three years or, has lived with the partner for a time of some permanence and they have a child by birth or adoption, the relationship will be seen as ended if one partner makes an adult interdependent partner agreement with a third person.

Even if you did not make an adult interdependent partner agreement for the time when you were together, you can still make a written agreement to signify that the adult interdependent relationship is over.

Once the adult interdependent relationship is ended in any of the above ways, you become former adult interdependent partners.

I was living with a partner in an adult interdependent relationship for five years. I wanted to end the relationship, but my partner did not. We split up for three months and then I agreed to try to live together again. We tried living together for eight weeks but have now split up again. Do I now have to wait for a year from the eight weeks for the partnership to be formally considered as ended?

No. You can still count the year of being separate and apart from the time when you first split up. If you get back together for any period up to 90 days for the purpose of reconciliation, that period is not counted in the calculation of one year of living apart. If you were together for more than 90 days, you would have to start the calculation of one year after that time.

You could also ask your partner if he or she is willing to sign a written agreement that the adult interdependent relationship is over. In that way you do not have to wait for a year to pass.

I have lived with a partner for eight years, but I want to end the relationship. I cannot yet afford to move out of the house we own together, but we live separately in the house. My partner does not want the relationship to end and is being difficult about dealing with dividing up the house or selling it. There is no possibility of a written agreement ending the relationship being signed. In these circumstances, how can I fulfill the requirement that we live separate and apart for one year in order for the adult interdependent partnership to be over?

The *Adult Interdependent Relationships Act* provides that just because one partner does not intend to live separate and apart, that does not interrupt the year period of living separately and apart. In any dispute over this matter, your partner would have to establish that you did in fact live as partners for one year even though you wanted to separate. The onus of proof would be on your partner to show that the adult interdependent relationship existed throughout this period. It would therefore be important for you to ensure that your lives are as separate as possible, even whilst living in the same house. For example, you should have separate financial arrangements, provide no benefits to each other and not have sexual relations.

I have been in a relationship and living with someone since 1994. As the *Adult Interdependent Relationships Act* did not become effective until June 2003, does this mean that I cannot claim to have been in adult interdependent relationship until June 2003?

No. The Act applies to adult interdependent relationships that existed before the act came into force.

I have two close personal relationships that I would like to formalise under the *Adult Interdependent Relationships Act*. Can I do this?

No. The Act provides that a person can only have one adult interdependent partner at a time.

My mother passed away twelve years ago and my father has been living with someone else for ten years. I know my father made a will right after my mother passed away. My father's second partner is younger than him and has children from a former relationship. My siblings and I are concerned that the will my father made will no longer be valid. Is this right?

The *Adult Interdependent Relationships Act* amended the *Wills Act* so that an adult interdependent partner agreement revokes or cancels out a will in the same way that marriage does, unless the will states that it is made in anticipation of making an adult interdependent partner agreement. This means that unless the person making the will acknowledges in the will that an adult interdependent partner agreement is about to be entered into, the will is void.

The law only relates to situations where an adult interdependent partner agreement has been made and does not apply to the situation where an adult interdependent relationship is implied after the couple has been together over three years, or has a child in a shorter term, permanent relationship. It is possible that the fact the law applies to one kind of adult interdependent relationship and not to the other, will be challenged in future court proceedings.

I made an Enduring Power of Attorney some years ago that was witnessed by my friend Tom. Since that time Tom and I have become adult interdependent partners. A friend of mine mentioned that my Power of Attorney may not be valid. Is that right?

Yes. An Enduring Power of Attorney is a document that states how you would like your property to be dealt with if you become incapable of looking after it yourself. In particular you give someone called the Attorney, the power to look after the property.

The *Adult Interdependent Relationships Act* has amended the *Power of Attorney Act* to provide that an adult interdependent partner cannot witness a power of attorney in the same way that a spouse cannot. There is no provision for documents created before the amendments came into effect and the presumption is that it applies to all powers of attorney whenever they were made.

You should therefore make a new power of attorney witnessed by someone other than your adult interdependent partner. The same is true for personal directives (or living wills) made under the *Personal Directives Act*.

The information contained herein is provided as information only as the law of Adult Interdependent Partnerships is continuously being redefined by the Courts. Please consult a lawyer for proper legal advice.