WHEN DOES A RELATIONSHIP QUALIFY AS AN ADULT INTERDEPENDENT RELATIONSHIP?

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The *Adult Interdependent Relationships Act* ("AIRA"), which came into force in 2003, is the core piece of legislation helping to establish rights and responsibilities of partners living in a non-marital relationship. Section 3 of the AIRA sets out the requirements that must be met for parties to qualify as Adult Interdependent Partners ("AIPs"). Once the requirements are met, entitlements and obligations arising under other legislation – for example, in relation to partner support, testamentary matters, dependents' relief, or most recently, property division – become applicable to the parties. Under those schemes, the rights available to AIPs mirror the rights available to married couples.

However, determining whether a relationship meets the criteria to qualify for any of the above entitlements is highly fact-specific and can be challenging to predict. While it is possible for individuals to enter into an agreement stipulating themselves to be AIPs, in the absence of an agreement, the relationship must meet the alternative criteria of s. 3 of the AIRA – meaning that the spouse seeking the benefits of AIP status must demonstrate that they have "lived with" the other spouse in a "relationship of interdependence" for a continuous period of not less than 3 years, or in a relationship of some permanence if there is a child of the relationship.

Alberta case law has wrestled with the terms "lived with" and "relationship of interdependence". Some trends have emerged which may help separating couples evaluate whether AIP status, and the rights that flow from it, apply in their case.

General Principles

A relationship of interdependence is defined in s. 1(1)(f) of the AIRA as a relationship outside marriage in which any two persons i) share in another's lives, ii) are emotionally committed to one another, and iii) function as an economic and domestic unit.

In determining whether the parties have functioned as an economic and domestic unit, s. 1(2) of the AIRA mandates that all the circumstances of the relationship must be considered including:

(a) whether or not the persons have a conjugal relationship;
(b) the degree of exclusivity of the relationship;
(c) the conduct and habits of the persons in respect of household activities and living arrangements;
(d) the degree to which the persons hold themselves out to others as an economic and domestic unit;
(e) the degree to which the persons formalize their legal obligations, intentions and responsibilities toward one another;
(f) the extent to which direct and indirect contributions have been made by either person to the other or to their mutual well-being;
(g) the degree of financial dependence or interdependence and any arrangements for financial support between the persons;
(h) the care and support of children;
(i) the ownership, use and acquisition of property.

A leading case in interpreting the provisions of the AIRA is ***Henschel Estate (Re)***, 2008 ABQB 406, which took an arguably restrictive approach, specifically with respect to what constitutes living together as required by s.

3(1)(a)(i). Bielby J found s. 3(1) imposes three mandatory prerequisites in order to find an adult interdependent partnership: the parties must live together in the same residence, they must enjoy a relationship of interdependence, and the relationship must continue for not less than three years (paras 1, 22). The factors relevant to whether the relationship is one of interdependence found in sections 1(1)(f) and 1(2) are not relevant to a determination of whether the parties "lived together" as required by s. 3(1)(a)(i) (paras 23-24). Bielby J found the legislature intended adult interdependent partners to extend only to persons who have lived together "under the same roof" (para 45).

Henschel did not cite the earlier case of ***Wright-Watts v. Watts***, 2005 ABQB 708, which found an adult interdependent relationship can exist even in the absence of a shared residence. It also did not address the acknowledgement by the Supreme Court of Canada, in ***Hodge v. Canada (Minister of Human Resources Development***, 2004 SCC 65, [2004] SCJ No 60), that:

> [42] cohabitation is not synonymous with co-residence. Two people can cohabit even though they do not live under the same roof and, conversely, they may not be cohabiting in the relevant sense even if they are living under the same roof.

In ***Hodge***, the Supreme Court further found that periods of physical separation do not necessarily end a common law relationship if there was a mutual intention to continue (para 42).

Wright-Watts, at paras 15 and 17, accepted that the AIRA provides "some guidance" in determining whether the parties are in an adult interdependent relationship, but also affirmed the list of factors often referred to as the ***Molodowich*** factors, which are:

1. Shelter:

(a) Did the parties live under the same roof?
(b) What were the sleeping arrangements?
(c) Did anyone else occupy or share the available accommodation?

2. Sexual and Personal Behaviour:

(a) Did the parties have sexual relations? If not, why not?
(b) Did they maintain an attitude of fidelity to each other?
(c) What were their feelings toward each other?
(d) Did they communicate on a personal level?
(e) Did they eat their meals together?
(f) What, if anything, did they do to assist each other with problems or during illness?
(g) Did they buy gifts for each other on special occasions?

3. Services:

What was the conduct and habit of the parties in relation to:

(a) preparation of meals;
(b) washing and mending clothes;

(c) shopping;
(d) household maintenance; and
(e) any other domestic services?

4. Social:

(a) Did they participate together or separately in neighbourhood and community activities?
(b) What was the relationship and conduct of each of them toward members of their respective families and how did such families behave towards the parties?

5. Societal:

What was the attitude and conduct of the community toward each of them and as a couple?

6. Support (economic):

(a) What were the financial arrangements between the parties regarding the provision of or contribution toward the necessaries of life (food, clothing, shelter, recreation, etc.)?
(b) What were the arrangements concerning the acquisition and ownership of property?
(c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

7. Children:

What was the attitude and conduct of the parties concerning children?

It is not necessary for every factor in s. 1(2) of the AIRA to be present to find the parties were in an economic and domestic unit; a global analysis of the factors is appropriate (***McKee v. Mitchell***, 2021 ABQB 132 at para 21). No one factor is determinative (***Ross v. Doehl***, 2021 ABQB 1020 at para 6, affirmed 2022 ABCA 407).

In ***McKee***, at para 33, Loparco J. found the parties' intentions, how they spent their free time, how they conducted themselves as a couple, and their plans for the future were all relevant in determining the parties' period of cohabitation.

More recent case law in Alberta has adopted the same general approach as laid out in ***Henschel*** but with more nuance to allow for the complexities and variation in modern day relationships. See for example ***Wright v. Lemoine***, 2017 ABQB 395:

> [46] Given the many ways parties may structure their living arrangements, it is important to take a flexible approach and to consider the intentions of the parties in determining whether they have cohabited for the requisite period of time in order that the purpose of the AIRA is met. […]

Jones J in ***Ross*** called for flexibility in determining whether parties lived together in a conjugal relationship, since "[g]iven the variety of relationships and living arrangements, a mechanical bright line test is not possible" (para 9).

The case law, such as ***Wright***, has also distinguished ***Henschel*** on the basis that in that case, the parties had never lived under the same roof. In ***Wright***, Nixon J also explained:

> [48] Justice Bielby's decision must be understood in the context of the particular facts of that case. She was concerned that interpreting the AIRA too broadly would result in parties being liable to provide financial support when they did not intend such a consequence. The underlying reason for her decision is not violated by a flexible approach and focus on the parties' intentions in the context of the purpose of the AIRA.

In ***Rockey v. Hartwell***, 2016 ABQB 438 at para 110, Campbell J, held that the fact that the parties maintained separate residences does not necessarily preclude a finding they cohabited in a relationship of interdependence. The intention of the parties is relevant to not only when a relationship has ended but also to when it began (Wright at para 42). Little J in Cavanagh v. Corlett, 2019 ABQB 316 at para 25, found that the "lived together" requirement in the AIRA does not mean "occupying the same space at the same time all the time".

In ***Ross***, Jones J found the term "lived together" ambiguous as it does not account for the varied reasons parties might choose or be required to occupy separate residences, thus emphasizing a requirement to analyze the particular circumstances of the parties (para 49). Further, Jones J noted that, "[i]nconsistent and unpredictable living arrangements are not necessarily antithetical to a committed relationship", citing parental responsibilities and work requirements as examples of reasons why parties might not live together but still be in a committed relationship (para 66).

In a more recent case decided by Jones J, ***Kendall v. Somers-Barnes***, 2023 ABKB 249, he once again suggested that the term "lived with" must be approached with caution, since "[r]easonable people can disagree about what living with someone means" (para 18). Jones J suggested that it would be "arbitrary" to define what "lived with" means when "the drafters of the AIRA did not see fit to do so" (para 18). He further noted that context is important as "the requirement to live with the other person for three continuous years means nothing without consideration of the circumstances of the particular couple" (para 19). Jones J concluded that the parties' living arrangements is one factor in determining whether they functioned as an economic and domestic unit but cohabitation is not a condition precedent to a finding of an adult interdependent relationship (para 20). The issue is not whether the parties cohabited but whether, "the arrangement between them manifested interdependence and how long that arrangement existed" (para 20).

Very recently, Gaston J in ***Abbott v. Mamdani***, 2024 ABKB 342 at para 24, found that the test and policy considerations outlined in ***Henschel*** still stand. Gaston J suggested they can be reconciled with more recent decisions by using a flexible approach in assessing whether the parties lived together.

Brief periods of separation or cooling off periods do not necessarily bring a period of cohabitation to an end (***Prykhodko v. Anderson***, 2021 ABQB 192 at para 88; ***Ross*** at para 8; ***Wright*** at para 37). Separations that are acrimonious and where the parties see the relationship as at an end will likely be found to interrupt the period of cohabitation (***Wright***, para 38). "Context" is a significant determining factor (***Prykhodko***, para 88). In ***Prykhodko***, Gates J reviewed case law that found an eight-month gap where the parties resided in separate cities was sufficient to interrupt a continuous period of cohabitation, while a five-day period where one party moved out of the shared residence was not (paras 86-87).

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The discussion below outlines how these principles have been applied to a variety of living arrangements.

Examples from the Case Law

In ***Wright-Watts***, the parties were engaged for four years prior to their marriage. During that time, the parties maintained separate residences but stayed over at each other's places on an intermittent basis. The parties' finances were not mixed and they shared no joint accounts or property. They socialized as a couple but there was no evidence their friends or relatives recognized them as a domestic unit. In the circumstances, McMahon J found the parties were involved in a "serious and intimate relationship" but not a common law union or adult interdependent partnership (para 23). The wife's constructive trust claim based on the parties' pre-marriage relationship was dismissed.

Similarly, the wife in ***Behiels v. McCarthy***, 2010 ABQB 281 made a constructive trust claim based on the parties' pre-marriage relationship, which had transitioned through several arrangements, and included time when they maintained separate residences, time when they shared a residence, and a four-month separation. Manderscheid J noted that the existence of a common law relationship is "highly dependent on the context of the circumstances and nature of the interactions" between the parties involved (para 21). Manderscheid J concluded that while the parties dated and were intimate but kept separate residences, the evidence fell short of establishing a common law relationship.

The second pre-marriage period, during which the parties resided together at the husband's property, represented a fundamental shift in the relationship as the property became their "true shared home, not a 'residence of convenience'" (para 32) and also corresponded to the couple's financial integration as the wife was added to the husband's credit card and line of credit, and social integration. During the second pre-marriage period, the parties were considered in a common law relationship.

Finally, with respect to the third pre-marriage period, that occurred after the four-month separation, when the parties once again maintained separate residences, Manderscheid J concluded the parties' relationship demonstrated an intention to establish a marriage but not a common-law partnership. Therefore, the wife's unjust enrichment claim only pertained to the second pre-marriage period when the parties had a common law relationship.

In ***Gauthier v. Gauthier***, 2013 ABQB 566, the husband sought a property division that included the period during which the parties cohabited together prior to their marriage. The parties agreed they started dating in August 2003. The husband alleged he started staying overnight at the wife's home in the fall of 2003 and had fully moved in by January 2004. The wife alleged the husband only began moving his possessions into her home in the summer of 2004 and started living with her on a full-time basis in March 2005, after the husband sold his home. The parties' finances were not integrated during the pre-marriage period. The parties became engaged in August 2004.

Relying on ***Behiels*** and ***Wright-Watts***, and the ***Molodowich*** factors, Lee J concluded that the parties' pre-marriage relationship, while an intimate, courting relationship, did not rise to the level of a common-law relationship. Noting the Supreme Court of Canada's guidance to respect the parties' choice in how they organize their affairs, Lee J found it was, "not unusual for parties to be involved in [a] prolonged, intimate, courting relationship of this type that was never intended to become a common-law relationship" (para 27). There was a lack of evidence to quantify the amount of time the husband spent at the wife's home during the pre-marriage period. Evidence of the husband's shifting from his home to the wife's home in addition to the fact the husband claimed his home as his primary residence for tax purposes led to the logical conclusion that the parties were only occasionally sharing accommodation.

In ***Wen v. Li***, 2014 ABQB 195, the parties agreed that their common law relationship ended in December 2004 but disputed when it began. Li submitted their relationship spanned from 1999 to 2004, while Wen submitted it only began in 2003, when he formally divorced his previous wife. The court accepted Li's submission, finding the parties' relationship exhibited the factors set out in ***Wright-Watts*** as well as falling within the definitions of an "adult interdependent partner" and a "relationship of interdependence" under the AIRA. The fact Wen was not divorced when he started to live with Li did not change the nature of their relationship. Nor did the fact the parties designated themselves as single on their tax returns detract from a finding they were in a common law relationship as it was only one factor, compared to the other factors that overwhelmingly supported a finding they were in a common law relationship between 1999 and 2004.

In ***Turpin v Miller***, 2024 ABCA 397, the Court found the appellant and the testator had ceased to be adult interdependent partners ("AIPs") prior to the testator's death, and consequently all bequests and powers bestowed on her in the will were deemed revoked, pursuant to s. 25 of the *Wills and Successions Act*. The appellant deposed that she believed the parties were continuing to work on their relationship, but had elected to live in separate households for safety reasons because they had a volatile relationship and were both dealing with addiction issues. The Court observed that it was not necessary to conclude that both the appellant and testator intended to end the adult interdependent relationship; it was sufficient if the testator believed the relationship had ended. Evidence that the deceased had commenced a new relationship and had plans to move in with his new partner indicated he had that belief.

In ***Rockey***, between 2006 and 2011, Rockey spent her weekdays in Calgary while attending school and spent most weekends and school breaks, except for one summer and one December, in Sylvan Lake with Hartwell. During that time, the parties were intimate, ate together, bought each other gifts, and spent their free time together. Rockey kept some of her personal belongings in the Sylvan Lake home, purchased some groceries and assisted with some household duties. The parties were seen by friends and family to be a couple. In 2011,

Rockey moved to Sylvan Lake on a permanent basis. Campbell J. concluded the parties' separation while Rockey attended school did not affect the continuation of their relationship and that they had lived together continuously from 2006.

In ***Wright v. Lemoine***, the parties agreed they began a conjugal relationship in the fall of 2011, which ended in December 2015. However, Lemoine denied they were adult interdependent partners as they were not an economic and domestic unit and had not lived together for a continuous period of not less than three years. Lemoine regularly traveled for his job. When not with Lemoine in his trailer or in a hotel, Wright lived at her mother's home, which was the address she declared on her tax returns and where she kept her possessions. The longest stretch of time the parties did not see each other was 26 days.

Nixon J concluded that, "[t]he AIRA is not so inflexible that it cannot include the type of living arrangements that occurred here" (para 48). The parties' periods of separation, arising from the nature of Lemoine's work "and not the parties' intention to live apart" did not interrupt their period of continuous cohabitation (para 49). Considering the factors listed in s. 1(2) of the AIRA, the parties had functioned as an economic and domestic unit and were in a relationship of interdependence from at least April 2012, when Lemoine purchased his trailer, to December 2015 (para 66).

In ***Cavanagh v. Corlett***, 2019 ABQB 316, Cavanagh claimed unjust enrichment and partner support following an 18-year relationship with Corlett. Corlett denied they were adult interdependent partners. Cavanagh worked for Corlett's resort in Jasper. Corlett divided his time between Vancouver and Jasper. The parties vacationed together and cohabited when Corlett was in Jasper. Little J accepted the evidence established the parties functioned as an economic and domestic unit. Cavanagh's evidence regarding the parties' living arrangements was accepted over Corlett's attempts to minimize the time they spent together. Noting that Cavanagh had no permanent residence other than a house owned by Corlett's company, Little J concluded the parties had lived together for a continuous period of not less than three years.

In ***McKee***, McKee claimed the parties had cohabited since 2002, while Mitchell claimed they only began cohabiting in 2005. The parties began dating in 2002 in Ontario. Mitchell moved to Alberta in 2003 after receiving an attractive job offer that the parties discussed and agreed she should accept. McKee maintained a residence in Ontario and frequently travelled between Alberta and Ontario between 2003 and 2005 when she moved to Alberta fulltime. Loparco J found that despite the fact the parties kept their financial affairs separate and McKee's maintenance of an Ontario residence until 2005, the parties had continuously cohabited from 2003 to 2016 (para 31). Evidence (listed at para 32) that supported that conclusion included that the parties were discussing marriage by the summer of 2003, McKee's efforts to build her business in Alberta, many of McKee's possessions were moved to Alberta when Mitchell moved there, and several documents from 2003 named McKee as Mitchell's beneficiary and declared her as her common law partner.

In ***Abbott***, paras 30-33, the parties maintained separate residences throughout their relationship. Abbott did not have independent access to Mamdani's home. Gaston J found it was clear, through the parties' communications, that the parties did not have a mutual intention to cohabit. While they discussed living together, that progression in their relationship never occurred. There were no external factors that had prevented them from cohabiting; they simply had not agreed to cohabit. Travelling together did not equate to living together.

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Finally, in ***Cazabon v. Cazabon***, 2024 ABKB 606, the parties disputed how long they had lived together prior to their 2015 marriage. The wife claimed their relationship began in 2009 when she moved in with the husband. The husband acknowledged the parties slept under the same roof in the same bed since 2009 but claimed they were only friends with benefits until 2013. Documentary evidence showed the husband's residence was the wife's address from 2009. The parties acquired a puppy in 2009 and went on several trips together as a couple starting in 2010. The husband had provided gifts to the wife. The parties posted on social media about their relationship. Witnesses testified the parties had held themselves out as a couple. They made each other the beneficiary of certain policies in 2009 and 2010. Gill J concluded the parties began to cohabit in 2009. Because the parties separated prior to 2020, the amendments to the Family Property Act did not apply; however, the wife made a claim for unjust enrichment for the time the parties' cohabited prior to marriage.

Conclusion

As can be seen by the case law described above, the individual circumstances of a couple's relationship are highly relevant to the determination of whether they were in an adult interdependent partnership or merely dating. The trend has been toward taking a flexible approach, with an understanding that parties govern their relationship and living arrangements in a variety of ways for a variety of reasons. Thus, living under the same roof is not necessarily determinative of whether the parties were in a relationship of interdependence. Likewise, brief periods of separation or cooling off periods, will not necessarily interrupt a period of cohabitation. The context and circumstances of the couple in question are key to making a determination in any given case.