

A Brief Overview of Bill 28, The Family Statutes Amendment Act, 2018

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About the Bill

Alberta Bill 28 will amend two provincial statutes, the Family Law Act and the Matrimonial Property Act. The Family Law Act will be changed to allow children 18 and older to qualify for child support if they are unable to live independently of their parents by reason of illness or disability. The Matrimonial Property Act will be renamed as the Family Property Act and be changed to: extend the property rights currently enjoyed by married spouses to couples qualifying as adult interdependent partners; allow both spouses and adult interdependent partners to make agreements about the valuation date of property; and, clarify the division of pensions. Related amendments will be made to the Employment Pensions Act, the Estate Administration Act and the Law of Property Act, and the Married Women's Act, legislation aimed at eliminating the disabilities of married women under the common law, will be repealed.

The bill was tabled in the legislature for first reading on 21 November 2018. To become law, the bill must pass second reading, the committee stage and third reading, and then receive royal assent. If the bill becomes law, section 9 of the bill provides that the portions relating to property rights will come into force on 1 January 2020. The portions relating to child support will come into force on the date of royal assent.

There are a number of dates relevant to the passage of Bill 28. The last day of the fall sitting of the Legislative Assembly is 6 December 2018. No dates have yet been set for the beginning of the spring sitting; should government fail to issue a sessional calendar to the contrary, the first day will be 11 February 2019. As well, the next provincial election must occur at some point prior to 31 May 2019.

The Family Law Act

Section 46 of the Family Law Act defines the term "child" for the purposes of child support obligations and entitlements. A "child" is a person under the age of 18, the provincial age of majority, or a person who is between age 18 and age 22 who is unable to withdraw from their parents care because they are a full-time student. The federal Divorce Act defines a similar term

more broadly. Under that act, a child over the age of majority may be entitled to support indefinitely where the child is “unable, by reason of illness, disability or other cause” to withdraw from their parents’ care.

As the Divorce Act only applies to married spouses, while the Family Law Act applies to all parents regardless of the nature of their relationships, the difference between the two statutes means that the children of unmarried parents are only entitled to receive child support after the age of 18 if they are in school full-time, not for any other reason, and that their entitlement ends at age 22, regardless of their status in school.

Under section 1 of Bill 28, section 46 of the Family Law Act will be amended to allow children age 18 and older to potentially qualify for child support where they are unable to withdraw from their parents’ care because of:

- a) full-time attendance at school;
- b) illness or disability; or,
- c) “other cause.”

There will be no prescribed age at which an entitlement to child support terminates.

The effect of this amendment will be to bring the Family Law Act in line with the Divorce Act and give the children of unmarried parents an entitlement to child support equivalent to that enjoyed by the children of married parents.

The Matrimonial Property Act

The Matrimonial Property Act provides the rules under which property is divided between married spouses who have separated. It does not apply to people leaving unmarried relationships, regardless of the nature or duration of those relationships.

Under section 2 of Bill 28, the Matrimonial Property Act will be renamed the Family Property Act and the rules for the division of property between married persons will apply, with small differences, to persons qualifying as adult interdependent partners under the Adult Interdependent Relationships Act. Under section 3(1) of this act, couples in romantic relationships become “adult interdependent partners” in one of two ways:

- a) by living with another person in a “relationship of interdependence” for at least three years, or for less time if the couple have had a child together; or,
- b) by signing an adult interdependent partner agreement, regardless of how long the couple have lived together.

It is important to note that under section 3(2) of the Adult Interdependent Relationships Act, people who are blood or adoptive relatives can also become adult interdependent partners by signing an adult interdependent partner agreement. The amendments proposed in Bill 28 do not discriminate between adult interdependent partners who are in a romantic relationship and those who are related to each other.

Definitions

Section 1 of the Matrimonial Property Act will be amended to provide that the terms “adult interdependent partner” and “relationship of interdependence” are defined as they are under the Adult Interdependent Relationships Act.

The term “matrimonial home” is replaced with “family home,” and defined as a property owned, leased or occupied by one or both spouses or adult interdependent partners.

Similar amendments will replace the word “matrimonial” with “family,” as in “family property order” rather than “matrimonial property order,” and add “or adult interdependent partner(s)” after the word “spouse(s),” in the definitions section and throughout the rest of the act.

Standing

A new section 5.1 will allow adult interdependent partners to apply for family property orders under conditions similar to those for married spouses under the existing section 5. They may apply if:

- a) they have become *former* adult interdependent partners;
- b) they are living separate and apart and a partner has or may transfer or gift property to a third party; or,
- c) they are living separate and apart and a partner is dissipating property.

A new section 1.1 will define how adult interdependent partners become former adult interdependent partners:

- a) by signing an agreement that evidences their intention to live separate and apart;
- b) by living separate and apart for at least one year;
- c) by a partner marrying a third party or entering into an adult interdependent partner agreement with a third party; or,
- d) by obtaining a declaration of irreconcilability under section 83 of the Family Law Act.

A new section 3.1 will impose residency requirements on adult interdependent partners applying for family property orders similar to those imposed on married spouses under the existing section 3.

Time limits

The needlessly complex rules about the timing of applications for family property orders necessitated by the needlessly complex conditions precedent for such applications are extended to adult interdependent partners under a new section 6.1.

The running of the time limits for adult interdependent partners will be tied to “the date the applicant first knew, or in the circumstances ought to have known, that the applicant had become a former adult interdependent partner.”

Exempted property

The provisions of section 7(2)(c) regarding the exemption of property acquired before marriage from division between spouses will be extended to also exempt property acquired before the beginning of adult interdependent partnerships, including for couples who subsequently marry. Three categories of property are therefore exempted:

- a) property acquired before marriage, for couples who weren't in a “relationship of interdependence with each other” before they married;
- b) property acquired before the “relationship of interdependence” began, for couples in such a relationship before they married; and,
- c) property acquired before the “relationship of interdependence” began, for couples who became adult interdependent partners.

The term “relationship of interdependence” is defined in section 1(f) of the Adult Interdependent Relationships Act as

... a relationship outside marriage in which any [two] persons

- (i) share one another's lives,
- (ii) are emotionally committed to one another, and
- (iii) function as an economic and domestic unit

and includes people in romantic interdependent relationships as well as people who are relatives by blood or adoption.

Valuation dates

Section 7(2) of the Matrimonial Property Act will be amended to allow people to make agreements about the valuation date of property, failing which the valuation date will be the date of trial.

The date for determining the market value of property exempted from division will be adjusted to reflect the changes to section 7(2)(c), in a new subsection (2.2):

- a) for couples who weren't in a "relationship of interdependence with each other" before they married, the valuation date will be the date of marriage or the date the property was acquired, whichever is later;
- b) for couples in relationship of interdependence before they married, the date will be the date the relationship of interdependence began or the date the property was acquired, whichever is later; and,
- c) for couples who became adult interdependent partners, the date will be the date the relationship of interdependence began or the date the property was acquired, whichever is later.

Division of property

A number of subsections in sections 7 and 8 of the Matrimonial Property Act will be changed and duplicated to adapt the existing provisions to the circumstances of married couples living in relationships of interdependence before marriage and adult interdependent partners. None of the changes and duplications appear on first reading to alter the essential scheme of the act.

Death of party

Sections 11, 12, 13, 14 and 15 of the current act regarding the effect of death on applications for family property orders will be changed to also apply to adult interdependent relationships and surviving adult interdependent partners.

Family home

Part 2 of the act regarding the occupancy, possession and use of the family home will be changed to also apply to adult interdependent partners without altering the essential scheme of the act.

Regulatory powers

Section 32 of the Matrimonial Property Act will be changed to expand the power of government to issue regulations for the implementation of the bill and to “remedy any confusion, difficulty, inconsistency or impossibility” resulting from the transition between the two regimes.

Application of legislation

Important transitional rules are set out at sections 39 and 40 of the bill. The current legislation will continue to apply to married spouses, prior to 1 January 2020, if:

- a) the spouses are divorced;
- b) the spouses’ marriage has been annulled;
- c) the spouses have obtained a judicial separation; or,
- d) the spouses have obtained a declaration of irreconcilability.

For other spouses, the act as amended will apply upon its coming into force.

Where litigation under the current act is underway prior to 1 January 2020, the spouses may agree to apply the amended act. The current act will otherwise continue to apply.

With respect to adult interdependent partners, the amended act will only apply to those becoming former adult interdependent partners on or after 1 January 2020.

Other Statutes

The Employment Pensions Plan Act

Under section 3 of Bill 28, this act will be changed so that Division 4, concerning the division of pensions on marriage breakdown and pursuant to matrimonial property orders, will apply to the breakdown of adult interdependent partnerships and family property orders. These changes will come into force on 1 January 2020.

The Estate Administration Act

Under section 4 of the bill, this act will be changed to require personal representatives to provide a personal representative’s notice and applications for grants to adult interdependent partners as well as spouses. These changes will come into force on 1 January 2020.

The Law of Property Act

Under section 5 of the bill, the portions of this act relating to the court's power to stay proceedings for the partition and sale of the matrimonial home will be changed to the terminology proposed in the bill. These changes will come into force on 1 January 2020.

The Married Women's Act

Under section 8 of the bill, this legislation will be repealed on the date the Family Statutes Amendment Act, 2018 receives royal assent.