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## COHABITATION REQUIREMENT FOR ADULT INTERDEPENDENT PARTNERS: ABBOTT V. MAMDANI

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In the course of administering an estate, it is necessary to determine whether there is any surviving spouse or common-law partner (referred to in Alberta as an “adult interdependent partner,” or AIP) of the deceased. This determination may be straightforward, in cases where the deceased was legally married or had entered into an adult interdependent partner agreement pursuant to section 7 of the *Adult Interdependent Relationships Act*,<sup>7</sup> or where there is no dispute that the deceased had lived with another person in a relationship of interdependence for a continuous period of not less than three years, or in an interdependent relationship of some permanence, if there is a child of the relationship by birth or adoption.<sup>8</sup> However, where the facts are unclear or in dispute, a person who claims to be an AIP of the deceased but who had no AIP agreement and no children with the deceased has the onus of proving that the deceased lived in a relationship of interdependence with the person for at least three continuous years.<sup>9</sup> A recent decision of Justice M.R. Gaston of the Alberta Court of King’s Bench, *Abbott v. Mamdani*,<sup>10</sup> provides an excellent summary of the case law interpreting the first element of this

test—the requirement that the parties “lived together.”

In *Abbott*, the applicant (Ms. Abbott) and the respondent (Mr. Mamdani) maintained “an exclusive and committed relationship” for four years.<sup>11</sup> During that period, the parties maintained separate residences. Although Ms. Abbott often stayed with Mr. Mamdani at his home and occasionally hosted social gatherings there, she did not have access to Mr. Mamdani’s home when he was away, and neither party had any interest in nor any responsibility for maintaining the other’s residence. After the relationship ended, Ms. Abbott sought a declaration that she and Mr. Mamdani were AIPs on the basis that they “were an economic and domestic interdependent unit” and that they “lived together,” notwithstanding maintaining separate residences.” Mr. Mamdani opposed Ms. Abbott’s claim, arguing that the parties only ever had a “dating relationship, and he intentionally never ‘lived with’ Ms. Abbott because the relationship did not progress to the level of trust and long-term commitment necessary for the parties to move in together.”<sup>12</sup>

Justice Gaston reviewed the elements required to establish the existence of an AIP relationship, and ultimately dismissed Ms. Abbott’s claim on the basis that she had failed to prove both the existence of a relationship of interdependence and that the parties had lived together at all, let alone for the required three-year period. In reaching this conclusion, Justice Gaston referred

3 *Lam v. Law Estate*, supra note 1, at paragraph 51.

4 *Walker v. McDermitt*, [1931] SCR 94; 1930 CanLII 1.

5 *Tataryn v. Tataryn Estate*, [1994] 2 SCR 807, at 815-16.

6 *Lam v. Law Estate*, supra note 1, at paragraph 165.

7 *Adult Interdependent Relationships Act*, SA 2002, c. A-4.5 (“the Act”).

8 Section 3(1) of the Act.

9 Section 11 of the Act.

10 *Abbott v. Mamdani*, 2024 ABKB 342 (“Abbott”).

11 *Ibid.*, at paragraph 3.

12 *Ibid.*, at paragraphs 13-14.

to previous case law establishing that “living together” is a prerequisite for the creation of an AIP relationship and requires “cohabitation under the same roof.”<sup>13</sup> Justice Gaston acknowledged that the courts in a number of recent cases had found that an AIP relationship existed even though the parties did not meet a strict test of cohabitation, but she determined that this line of cases could be reconciled with the requirement of “living together” by adopting “a flexible approach [that] accommodates couples who mutually intended to live under the same roof but were prevented or interrupted from doing so by external circumstances.”<sup>14</sup>

In reaching this conclusion, Justice Gaston acknowledged that external circumstances may prevent a couple from living together when they would otherwise choose to do so and thereby qualify as AIPs, while reiterating the importance of upholding the general requirement of cohabitation set out in the Act, in order to give couples certainty in the legal ramifications of their relationships:

[E]xtending 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. ... 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.<sup>15</sup>

Abbott provides a restated test for determining whether one person has “lived with” another for the purpose of establishing an AIP relationship under the Act in the absence of an AIP agreement (and any children of the relationship). First, one must determine whether the parties lived together “in the same residence” for at least three continuous years. If they did not, one may then consider whether the parties had “a mutual intention to cohabit in the same residence for a continuous period which period was interrupted by external circumstances such as employment, academic, financial or health care obligations or requirements.”<sup>16</sup>

In cases such as Abbott, where cohabitation is not prevented by external circumstances but rather is simply not chosen by the parties, the prerequisite of “living together” cannot be established, and thus no AIP relationship can be found.

<sup>13</sup> Ibid., at paragraph 18. Justice Gaston’s analysis at paragraphs 18-22 cites *Henschel Estate*, 2008 ABQB 406, and *Nelson v. Balachandran*, 2015 ABCA 155.

<sup>14</sup> Abbott, at paragraph 24. Examples of cases involving such external circumstances are cited at paragraph 23.

<sup>15</sup> *Henschel Estate*, supra note 7, at paragraph 41, quoted in Abbott, supra note 1, at paragraph 24.

<sup>16</sup> Abbott, supra note 1, at paragraph 25.