

## Family

## Alberta court wrestles with Gordian knot of adult interdependent partner claim

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(April 29, 2021, 10:30 AM EDT) -- In a remarkable recent Alberta Court of Queen's Bench decision, *Mitchell v. Reykdal* 2021 ABQB 301, Justice Anna Loparco wrestles with a true Gordian knot in an adult interdependent partner claim.

### The complex facts

The plaintiff was in a 17-year relationship with the defendant, who she believed was in the process of divorcing his wife, and with whom she believed she was in an exclusive relationship. In fact, as it turned out, the defendant was leading a double life. The plaintiff did not know this — she believed the defendant left to take care of his three sons every second weekend as part of a parenting arrangement with his ex-wife.

After finding and then wearing an engagement ring she found in the house, and which the court later found the defendant intended to give to her, the plaintiff held herself out to their community as his fiancée. A wedding date was set. The defendant did not go to great lengths to keep their relationship a secret, taking the plaintiff to company parties and even introducing her to members of his family, including one of his sons.

The plaintiff was not regularly employed outside of the home after the first few years of the parties' relationship and, although she made some contributions to the businesses of the defendant, she largely devoted her energies as a homemaker and to the needs and welfare of the defendant and her child, thus functioning in a dependent, traditional role.

The plaintiff's child called the defendant "Dad," and he became integrated with her extended family, serving as a pallbearer at her father's funeral. The plaintiff and her daughter, and sometimes members of the plaintiff's extended family, lived with the defendant in a series of high-end homes, rent free, over the years. When the plaintiff's daughter herself had children, they called the defendant "Grandpa."

As it turned out, the defendant was married for nearly 30 years to a woman he had met in high school and who was raising his three sons, all of whom were heavily involved in hockey and lacrosse. The defendant's wife also acted within a traditional role. The wife accepted the defendant's fiction that he was so busy working that he could come home only every second weekend. The defendant was an independent service provider to the oil and gas industry.

While away, the defendant would speak to his wife by telephone every three days, and he was never away for more than three weeks at a time. When he did go home to his wife, the defendant attended 55 per cent to 60 per cent of the games of his three sons, and he and his wife shared a bedroom and had intimate relations.

Justice Loparco found that the wife was "blindsided" when she found out about her husband's long-term relationship with the plaintiff.

To make a complicated fact history even more complicated, the defendant apparently had affairs with

many other women, despite having what appeared to be committed relationships with both the plaintiff and his wife.

The defendant ended his relationship with the plaintiff after 17 years of living together, offering her a car and \$200,000. She consulted a lawyer and was shocked to learn that the defendant was still married.

The plaintiff brought a court action for support as an adult interdependent partner (AIP) and for damages in relation to property and businesses acquired during their relationship. In a series of court applications, the plaintiff was granted AIP support on an interim without prejudice basis.

### **Reasoning of Alberta Court of Queen's Bench**

The first issue before Justice Loparco was to assess whether the plaintiff had standing as an adult interdependent partner. She decided that, in view of the fact the defendant and plaintiff shared each other's lives, their emotional commitment to each other and because they functioned as an economic and domestic unit, the plaintiff had standing as an AIP.

Further, Justice Loparco found that the defendant had actually been separated from his wife for the entirety of the 17-year relationship with the plaintiff.

The Alberta *Adult Interdependent Relationships Act*, SA 2002, c. A-4.5 (AIRA) bars an AIP claim for support in certain circumstances, and states that a defendant cannot become an adult interdependent partner if he or she was a married person *living with* his or her spouse.

The defendant relied on this bar, and the issue before Justice Loparco therefore became whether the defendant was "living with" his wife over this period of time, so as to bar the claim, or whether he was in fact living with the plaintiff. In the result, and notwithstanding the defendant's legal marriage to his wife, Justice Loparco found that the defendant was *de facto* living with the plaintiff AIP, and her claim was not barred.

In the course of her analysis, Justice Loparco first noted that while the factual scenario might be repugnant to many, the court has no business in passing judgment on the defendant's lifestyle choices. The narrow question was whether the plaintiff was an adult interdependent partner notwithstanding that the defendant periodically returned to the matrimonial home where his wife and children lived.

Justice Loparco discounted case law from other jurisdictions given that it was a "novel case with little precedential guidance," noting that the "legislators appear not to have contemplated that certain married people might enter into a legitimate relationship of interdependence with another person without being truthful about the extent of their relationship with their spouse" (see para. 9).

Justice Loparco turned to Hansard for a statutory interpretation of the AIRA s. 5 bar and the general purpose of the Act. In the result, she held that the stipulation in the bar that the party must not be "living with" their spouse should be construed narrowly and as part of a comparative analysis.

It is a credit to our judicial system that "real life" facts, as complex as they can be, can be imported into judicial decision making in a way that respects both legislative history and jurisprudence. Justice Loparco underscored that the legislature in enacting the AIRA intended that marriage-like relationships produce certain responsibilities.

The purpose of the AIRA is to ensure those who create relationships of dependency remain responsible for taking care of the dependent individuals when the relationship breaks down. Further, the AIRA must be construed as remedial and be given a "fair, large and liberal construction and interpretation." We believe that Justice Loparco must be applauded for her rigorous analysis, which achieved a just result.

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