



# STILLMAN LLP'S



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Presenting Legal News, Views and Updates from  
**Stillman LLP**  
Barristers & Solicitors

### EDITOR'S NOTE

Should you have any questions, concerns or suggestions for future articles please contact John Hagg by phone at (780) 930-3648 or email at [jhagg@stillmanllp.com](mailto:jhagg@stillmanllp.com)

### SPECIAL ANNOUNCEMENT

**WE ARE MOVING!** Effective February 25, 2019, we will have a new office located at:

100 Sterling Business Centre  
17420 Stony Plain Road NW  
Edmonton, Alberta T5S 1K6

### Update to Alberta's Employment Standards Code

By Christopher Younker- Associate Lawyer

Alberta's Provincial Government has passed legislation to update the Employment Standards Code for 2018. The Employment Standards Code provides minimum standards of employment that apply to the majority of employees and employers in the Province, with the exception of those working in federally regulated industries. Although the Code carves out exceptions for workers in the industries such as forestry and farming, the Code applies to approximately 85% of employment relationships in Alberta.

The 2018 updates include extended compassionate care leave. Unpaid job protection has now been extended to 27 weeks, from the current 8 weeks, which now brings the Provincial legislation into alignment with the Federal Employment Insurance Benefits. Additionally, care giver status has been expanded to include non-primary caregivers. The notice requirements for an employee has somewhat been relaxed. Notice to an employer has been reduced to as soon as

reasonable from a period of 2 weeks. Similarly, the required notice for an employee who wishes to return to work after going on compassionate leave has been reduced from 2 weeks to 1 week.

The Code is also being updated to bring it into alignment with the Federal Employment Insurance guidelines with respect to maternity and parental leave. Unpaid job protection for maternity leave has now been extended from 15 to 16 weeks to account for the 1 week waiting time for Federal Employment Insurance Benefits. Additionally, unpaid job protection for parental leave has been extended to 62 weeks. The legislation has been modified to clarify that no maternity or paternity leave will apply if the pregnancy terminates more than 16 weeks before the due date. On the other hand, an employee whose pregnancy terminates within 16 weeks of the due date will still be eligible for maternity leave. In that situation leave will end either 16 weeks after the leave began or 6 weeks after the pregnancy is terminated.

The new amendments also revise or clarify portions of the Code related to termination and temporary layoffs. Employers are prohibited from forcing employees to use entitlements such as vacation or overtime during the termination notice period, unless agreed to by both parties. Requirements for providing termination notice to large groups of employees, unions and the Minister of Labour have been increased and scaled as follows:

- 52,000 employees : 8 weeks;
- 101-300 employees : 12 weeks; and
- 301+ employees : 16 weeks.

The ambiguity that previously allowed for the possibility of an indefinite temporary layoff has been eliminated by requiring layoffs to be limited to 60 days within a 120 day period. Layoffs can still be extended, however, if wages and benefits are paid and the employee agrees to the extended layoff period. Written notice of a temporary layoff to an employee is required and that notice must contain an effective date of temporary layoff as well as outline the applicable provisions of the Code. Some of these updates simply codify what was already established by previous judicial decisions by the Alberta Courts.



If you have any questions about these updates, please contact your lawyer at Stillman LLP to discuss.

### **Editor's Note**

Stillman LLP is pleased to welcome to the firm Olga Ross and Pierrette Caparelli. Olga and Pierrette will be working as legal assistants in our corporate commercial department. We are also pleased to welcome Christy Robinson who will be working as a legal assistant in our real estate department.

We are sad to say goodbye to Agnes Koryczan and Amanda Elsasser. Agnes and Amanda have moved on to their opportunity and we wish them the best of luck with her future.

### **Proposed Changes to the Matrimonial Property Act**

#### **By Sara Boulet, Articling Student**

On November 21, 2018 the Provincial government introduced Bill 28: the *Family Statutes Amendment Act*. While Bill 28 is proposing changes to multiple statutes in the area of family law, one of the most significant proposed changes would be the changes to the *Matrimonial Property Act*.

If Bill 28 is passed, the *Matrimonial Property Act* would be amended to the *Family Property Act* and would apply the same rules governing property division for married couples to common-law couples.

Currently, common-law partners are excluded from the *Matrimonial Property Act* and in order to make an Application in Court for property division, a partner must commence a lawsuit for unjust enrichment. These actions are unpredictable, and can be expensive and time-consuming. The changes proposed in Bill 28 will provide more certainty and should reduce some of the backlog in the Court system.

To qualify as Adult Interdependent Partners (common-law partners under the new Act), you must:

1. Live together in a relationship of interdependence for a continuous period of 3 years; or
2. Live together in a relation of interdependence of some permanence, if there is a child of the relationship; or
3. Enter into an Adult Interdependent Partner Agreement.

The *Adult Interdependent Relationships Act*, defines a "relationship of interdependence" as one where the parties share each other's lives, are emotionally committed to one another, and function as an economic and domestic unit. This means that parties not in a conjugal relationship can be found to be Adult Interdependent Partners.

Under the new *Family Property Act*, Adult Interdependent Partners would have a 2-year limitation period to file a claim, commencing

when the applicant partner first knew or ought to have known that they had become a Former Adult Interdependent Partner.

Under the new *Family Property Act*, all non-exempt property will be divided equally, so long as it is just and equitable to do so. Under the *Matrimonial Property Act*, property acquired prior to a marriage was exempt. Under the new *Family Property Act* property acquired prior to a marriage will only be exempt if the spouses were not Adult Interdependent Partners prior to the marriage. For Adult Interdependent Partners, property acquired prior to the relationship of interdependence will be exempt.

Adult Interdependent Partners who do not wish for the rules for property division under the new *Family Property Act* can enter into a Cohabitation Agreement to that effect which meets the requirements of the *Family Property Act*.

Any agreements entered into prior to the *Family Property Act* coming into force would continue to be enforceable so long as they met the requirements of the *Matrimonial Property Act*. A Cohabitation Agreement will become unenforceable after marriage unless the Agreement is clear that it was intended to continue to apply after the marriage.

As Bill 28 is currently drafted, a Cohabitation Agreement will be invalidated if the parties enter the agreement prior to meeting the requirements to be Adult Interdependent Partners. For parties who are cohabitating but do not have children, this would mean that they would have to wait 3 years before entering into a Cohabitation Agreement unless they also entered into an Adult Interdependent Partner Agreement.

The new *Family Property Act* will only apply to Adult Interdependent Partners who become Former Adult Interdependent Partners after the act comes into force. The *Matrimonial Property Act* will continue to apply to spouses who lived separate and apart and commenced an action before the *Family Property Act* comes into force, however, the parties can agree to proceed under the new legislation.

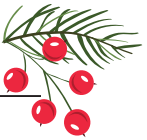
Bill 28 has passed the Second Reading and is now before Committee. If passed, the Bill is set to come into force on January 1, 2020.

If you have any questions, be sure to contact Stillman LLP to ensure that you properly comply with these new requirements.

### **Providing for Disabled Children after death: Recent changes to the Assured Income for the Severely Handicapped Act**

#### **By Katie Kenny- Associate Lawyer**

To the relief of many Albertan families with disabled children, the legislation providing income and other benefits to the severely handicapped, the Assured Income for the Severely Handicapped Act (the "AISH Act"), was amended in June of 2018. The amended AISH Act gives parents more freedom to ensure the future financial security of their disabled dependents with their estate plans.



The AISH program was established in 2002 to provide financial benefits to handicapped persons in Alberta. In order to qualify for AISH benefits, an individual must have a severe and permanent handicap that interferes with his or her ability to earn a livelihood, and the value of their non-exempt assets must fall below \$100,000.00. This qualification caused great concern to parents who planned to leave their assets to their disabled children in their wills, usually to be held in trust and administered by a trustee. It was not clear whether doing so would disentitle their children to AISH benefits. Prior to the June 2018 amendment, when an AISH client inherited assets via a trust, it was in the discretion of the Director of AISH to determine whether the trust assets disqualified the client, or should be considered exempt from the \$100,000.00 threshold.

The June 2018 amendment to the AISH Act provides greater clarity by specifically exempting trust assets in which the client has a beneficial interest from the \$100,000.00 threshold. The result is that parents and guardians of the severely handicap may leave a portion or the entirety of their estate to their child in trust, without worry that doing so will disqualify their child from AISH benefits. A provision was also added to account for unexpected windfalls, such as inheritances, that are paid to the disabled person directly. If funds are received by a disabled person, he or she has a 365 day window within which to transfer the funds to an exempt asset, such as a trust. Prior to the amendment, the individual would have been immediately disqualified from AISH.

Going forward, inheritances given to AISH clients will not immediately threaten their qualification for AISH benefits on the basis of the asset threshold. Parents should seek appropriate legal advice to ensure the inheritance is paid into a trust. In the event that the parent fails to do so, and the funds are inherited by the client directly, or the AISH client receives funds from another source, there is a fairly generous window within which the AISH client and their caregivers can take corrective action, to pay the funds into a trust to be managed by a trustee, in order to preserve AISH benefits.

But what about the funds paid out of the trust account to the individual? In addition to the asset threshold, the AISH Act includes income thresholds. Payments out of a trust account to the disabled person are not exempt from this threshold calculation. Trust payments made to the AISH client may reduce client's entitlement to financial benefits, and if the trustee chooses to pay income to the child above the income threshold, AISH benefits may become unavailable. Therefore, the provisions in the will of the parent establishing the trust should give trustees discretion to determine how and when trust funds are paid to the beneficiary.

As with any estate plan that includes a trust, it is important that the testator give serious thought to the person appointed trustee. This is especially so in the case of a trust that is likely to continue for many years. The trustee will need to manage the trust in light of the AISH rules in place at the relevant time, to preserve benefits to the greatest extent while considering the size of the trust and the long term best interest of the child.

*If you have a question about AISH benefits or your estate plan, please contact your lawyer at Stillman LLP.*

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*Stillman LLP is a general law firm formed in 1993 with emphasis on Civil Litigation, Corporate and Commercial matters, Real Estate, and Wills and Estates and Family Law. The firm represents clients throughout Alberta, and has also represented clients from British Columbia, Saskatchewan, Manitoba, Yukon, Northwest Territories, Ontario, Quebec and various jurisdictions in France, Ireland the United States.*

*The firm has a well established network of agents in Canada, including Vancouver, Vancouver Island, Calgary, Regina, Saskatoon, Winnipeg, Toronto and Montreal. Stillman LLP also has established affiliations with various law firms throughout the United States and Great Britain.*

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