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Family Property Act

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From *Kerr* to Eternity: An Overview of the New *Family Property Act* in Alberta

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FROM KERR TO ETERNITY: AN OVERVIEW OF A NEW FAMILY LEGISLATION IN ALBERTA

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The *Family Statutes Amendment Act*¹ passed in December of 2018. The taking effect was delayed for a year – until January 1, 2020 so that we could all study up, learn the new law, spread the word and so on. In typical fashion, we have all left it until this fall to really figure it out

The aim of the new *Family Property Act* [“FPA”] (formerly, the *Matrimonial Property Act*)² is to bring couples who are living together, but who are not married, under the same property sharing scheme as married couples. Unlike married couples, however, it doesn’t apply to common-law families on day one. The amendments to the FPA have removed, for some families, the nebulous and unintuitive unjust enrichment backdrop, but have also created new questions for us to wrestle with.

PARTIES THAT QUALIFY UNDER THE *FAMILY PROPERTY ACT*

Married Couples

In the case of a marriage, setting aside the transition issue addressed below, if you are married, your property will be divided under the new *Family Property Act*.

Qualifying as an Adult Interdependent Partner

The more significant change comes for Adult Interdependent Partners. The changes to the legislation here are very definition driven. Most of the relevant definitions are contained in the *Adult Interdependent Relationships Act*³ [“AIRA”]. It bears repeating that the term “common-law” is meaningless here. That term may have import under other legislation, like the *Income Tax Act* for example, but when we are discussing who may qualify under this legislation, the term is irrelevant.

Section 3 of the AIRA defines Adult Interdependent Partners [“AIPs”] as:

- Two people who have lived together in a relationship of interdependence:
 - For a continuous period of at least 3 years; or
 - Of some permanence and the two people have a child together by birth or adoption; or
 - The two people have entered into an agreement to be AIPs in accordance with the regulations.

* With thanks to Catherine Fitzgerald and Heidi MacIntosh of Moe Hannah LLP

¹ S.A. 2018 c.18, s.2 (not in force)

² S.A. 2000 cM-8

³ S.A. 2002 c. A-4.5