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Excluding Mere Intimate Relationships: The Alberta Court of Appeal Interprets the *Protection Against Family Violence Act*

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Case Commented On: *Lenz v Sculptoreanu*, 2016 ABCA 111 (CanLII)

The *Protection Against Family Violence Act*, RSA 2000, c P-27 (*PAFVA*) allows "family members" to obtain emergency protection orders (EPOs) on an *ex parte* basis, in circumstances where "family violence" has occurred, the claimant "has reason to believe that the respondent will continue or resume carrying out family violence", and "by reason of seriousness or urgency, the order should be granted to provide for the immediate protection of the claimant and other family members who reside with the claimant" (section 2). In the context of intimate relationships, "family member" is defined to mean "persons who are or have been married to one another, who are or have been adult interdependent partners of one another or who are residing or have resided together in an intimate relationship." Family member also includes those who are "parents of one or more children, regardless of their marital status or whether they have lived together at any time" (section 1(1)(d)).

In *Lenz v Sculptoreanu*, 2016 ABCA 111 (CanLII), the Alberta Court of Appeal (Justices Rowbotham, Wakeling and Schutz) made a "comprehensive consideration of the language used in the legislation, the scheme of the legislation, and its objects", and concluded that this definition does not include persons who have been involved in an intimate relationship without residing together and do not fall within the definition of "adult interdependent partner" in the *Adult Interdependent Relationships Act*, SA 2002, c A-4.5*"* (at para 4).

Facts and Issue on Appeal

Tia Maria Lenz was the recipient of an EPO, but she did not appear at the Court of Queen's Bench hearing to consider confirmation of the EPO under section 3 of the *PAFVA* nor at the appeal. The Court of Appeal therefore based its decision on the evidence of the appellant, Amon Sculptoreanu. According to his evidence, he and Lenz were in a non-exclusive dating relationship for about 3 years, from 2012 to 2015. They have no children together, maintained separate residences during their relationship, and did not live together apart from some overnight stays. When the relationship first began, Lenz was married to another man, with whom she resided for the first 6 to 8 months of her relationship with Sculptoreanu. She eventually moved in with her sister. Lenz and Sculptoreanu each worked and individually supported themselves and they did not share expenses or bank accounts. Their relationship broke down in June 2015 because of Sculptoreanu's relationships with other women. Lenz contacted the RCMP alleging that Sculptoreanu made threats against her and her property. A Justice of the Peace granted an *ex parte* EPO against Sculptoreanu under the *PAFVA*, which was confirmed by Mr. Justice G.A. Verville of the Court of Queen's Bench on July 15, 2015, for one year. Sculptoreanu's appeal to the Alberta Court of Appeal raised the issue of whether the EPO was improperly granted and confirmed because he was not a "family member" to Lenz.

The Court of Appeal's Decision

After noting that the interpretation of a statute is reviewable on the standard of correctness (at para 13), the Court of Appeal set out the definition of "family member" from the *PAFVA* (noted above), and the definition of "relationship of interdependence" from the *Adult Interdependent Relationships Act:*

> **1(1)** In this Act, . . .
>
> (f) "relationship of interdependence" means a relationship outside marriage in which any 2 persons
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> (i) share one another's lives,
>
> (ii) are emotionally committed to one another, and
>
> (iii) function as an economic and domestic unit.

Under the section 3 of the *Adult Interdependent Relationships Act,* a person is the "adult interdependent partner" of another person if, *inter alia*, "the person has lived with the other person in a relationship of interdependence for a continuous period of not less than 3 years." Moreover, under section 5(2), "A married person cannot become an adult interdependent partner while living with his or her spouse."

Turning to the interpretation of these provisions, the Court noted that "Words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of [the Legislature]"" (at para 16, citing *Re Rizzo & Rizzo Shoes Ltd*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 21). Finding that the term "adult interdependent partner" was intended to have the same meaning under the *PAFVA* as it has under the *Adult Interdependent Relationships Act,* the Court held that the evidence did not establish that the parties met the definition – they did not "function as an economic and domestic unit" for a continuous period of more than 3 years (see the factors in section 1(2) of the *Adult Interdependent Relationships Act*), and Lenz was simultaneously living with her spouse for part of that period, contrary to section 5(2) (at paras 18-19).

As for the definition of "family member" in the *PAFVA*, the Court indicated that in its view, "A plain reading of … the definition suggests that being in an intimate adult relationship with someone without also "residing" together during that relationship, is insufficient for qualification as "family members"" (at para 21). "Residing" is not defined in the *PAFVA,* but dictionary definitions establish that "reside" means "To dwell permanently or continuously: have a settled abode for a time: have one's residence or domicile" (*Webster's Third New International Dictionary of the English Language, Unabridged*) or to "have one's home, dwell permanently" (*Canadian Oxford Dictionary,* 2d ed) (at para 23). Neither does the *PAFVA* define "intimate relationship", but the Court indicated that for the purposes of the Act it could be taken to mean a sexual relationship (at para 24, citing *ND v WS*, 2000 ABQB 313 (CanLII) at para 20). The Court also cited *Siwiec v Hlewka*, 2005 ABQB 684 (CanLII) for the point that "The Legislature intended EPOs to be an extraordinary remedy reserved for situations of imminent familial domestic violence" (at para 28), noting that persons in dating relationships had access to common law restraining orders in appropriate circumstances (at para 26).

In conclusion, the Court of Appeal stated that the *PAFVA*:

> was designed and intended to address one subset of abusive relationships – violence among prescribed family members – whereas common law restraining orders are available for broader forms of abusive relationships. The *Act* is a specially designed instrument that seriously abridges the liberty of persons, and its application should be restricted to its intended familial context (at para 30).

The appeal was therefore allowed and the EPO was revoked. The Court emphasized that in doing so, "we make no findings as to whether the facts of this case merited some form of protection order", and "expressly do not find that Ms. Lenz acted in a frivolous or vexatious manner" contrary to section 13 of the *PAFVA* (at para 39). It declined to make an order for costs, noting its agreement with the decision of Justice C.M. Jones in *Denis v Palmer*, 2016 ABQB 54 (CanLII), that "it is not reasonable for this Court to use its discretion to order costs to effect such a penalty where the Legislature has not, to date, seen fit to do so." (at para 42). Furthermore:

> The objectives of the *Act* are set out in its preamble and are to prevent family violence and protect vulnerable victims by providing an immediate period of safety in their own home. These objectives are pressing in our society and outweigh other considerations relating to costs, including the appellant's success on appeal.
>
> We do not consider it appropriate to create any impediment which would cause vulnerable victims to avoid seeking an EPO when they are at immediate risk of family violence, merely for fear that they may later have to pay adverse costs (at paras 45-46).

Commentary

To begin with the Court's decision on costs, it is a welcome affirmation of Justice Jones' ruling in *Denis v Palmer,* which I blogged on here. If the Legislature does see fit to review this matter, I trust that it will keep in mind the objectives of the *PAFVA* and the importance of not creating barriers to its use.

As for the Court's interpretation of "family member", this is not an unreasonable reading of the *PAFVA*. In fact, in a report I wrote with colleagues reviewing the *PAFVA* in 2005, we recommended that the Act be amended to explicitly include "intimate and family relationships where the parties have not resided together" (see Leslie Tutty, Jennifer Koshan, Deborah Jesso, & Kendra Nixon, *Alberta's Protection Against Family Violence Act: A summative evaluation* (Calgary: RESOLVE Alberta, 2005) at 31). This recommendation was based on a comparison of the *PAFVA* with similar legislation in other jurisdictions, feedback we received from stakeholder interviews, and statistics on the high rate of violence in these relationships. Although a number of our other recommendations were adopted and resulted in amendments to the *PAFVA* (e.g. on the definition of "family violence"), the definition of "family member" was not broadened as we recommended. More recently, a similar recommendation to extend the *PAFVA* to include dating relationships was made in Lana Wells et al, *How Public Policy and Legislation Can Support the Prevention of Domestic Violence in Alberta* (Calgary: Shift: The Project to End Domestic Violence, 2012) at 39 (disclosure: I was part of the peer review panel for this report).

The *PAFVA*'s narrow focus on "family members" differs from civil protection legislation in some other provinces and territories. Manitoba's *Domestic Violence and Stalking Act*, CCSM c D93, defines "domestic violence" to include acts or omissions committed by persons in dating relationships, whether or not they have ever lived together (section 2(1))(d)). Nunavut's Family Abuse Intervention Act, SNu 2006, c 18, covers violence in "intimate relationships", which are defined to include relationships "between two persons, whether or not they have ever lived together, who are or were dating each other, and whose lives are or were enmeshed to the extent that the actions of one affect or affected the actions or life of the other" (section 2(3)). In other provinces, civil protection legislation continues to be restricted to intimate relationships where the parties have resided together (see e.g. British Columbia's *Family Law Act*, SBC 2011, c 25, Part 9 — Protection from Family Violence, which applies to "family members" (section 1); Saskatchewan's *Victims of Domestic Violence Act*, SS 1994, c V-6.02 and Nova Scotia's *Domestic Violence Intervention Act*, SNS 2001, c 29, which apply to "cohabitants").

The Court of Appeal noted that persons who are in intimate relationships but do not reside together can apply for common law restraining orders where they are not covered by the protection order legislation in their jurisdiction; they also may apply for peace bonds under the *Criminal Code*, RSC 1985, c C-46, section 810. These remedies are often much more challenging to obtain, however. It was the barriers to seeking other remedies that led to Alberta and some other provinces and territories to enact civil protection order legislation allowing for *ex parte* EPO applications, which can be brought by persons other than the victims in some circumstances (see e.g. Alberta Law Reform Institute, *Domestic Abuse: Toward An Effective Legal Response* (ALRI, 1995)). Although the Court of Appeal opined that this kind of legislation "seriously abridges the liberty of persons" subject to civil protection orders, it should also be noted that these orders must be reviewed by a higher court within a certain period of time, and can be revoked where inappropriately made in the first instance (see e.g. *PAFVA* section 3). This type of scheme was upheld as a reasonable limit on respondents' liberty under the *Charter* in *Baril v Obelnicki*, 2007 MBCA 40 (CanLII)).

Alberta's ruling New Democrats have shown a willingness to extend protections for victims of intimate violence, for example in the recent *Residential Tenancies (Safer Spaces for Victims of Domestic Violence) Amendment Act, 2015* (and see ABlawg commentary on that Bill here). In light of the Court of Appeal's decision in *Lenz v Sculptoreanu*, it is time for the government to re-consider whether it should amend the *PAFVA* to include intimate relationships where the parties have not resided together.