



ALBERTA
JUSTICE AND SOLICITOR GENERAL

*Office of the Minister
MLA, Calgary - Buffalo*

JAN 21 2019

AR 31446

Sarah Dargatz
sarah@latitudefamilylaw.com

Dear Sarah Dargatz:

Thank you for your e-mail expressing your overall satisfaction with Bill 28, and your concern that Bill 28 does not include a change to the date of valuation of family property.

As your message notes, the Alberta Law Reform Institute recommends changing the valuation date to the date of separation. This recommendation received general support from lawyers during early roundtable discussions conducted in Edmonton.

I also received input recommending against changing the date of valuation to the date of separation. I want to share with you some of the concerns that were raised:

1. Except in falling markets, changing the valuation date to the date of separation would effectively place the onus on the non-title holding party, generally the more vulnerable party, to advance the litigation and remove any incentive on the title holder to do so. The title holder is often better positioned to bear this onus.
2. Property would not be valued in the same market that it is divided in. In rising markets, if property is valued at separation but not divided until trial, non-title holders would struggle to obtain replacement property (for example a house) in current market conditions. Conversely, in falling markets, title holders would struggle to provide half of the separation date value of property to non-title holders on the date of trial.
3. Changing the valuation date by legislative amendment would change the law established by *Hodgson v Hodgson*, 2005 ABCA 13, and the certainty that goes with it. It would also call into question the interpretation of related sections which support the finding that property is to be valued at the date of trial, and create internal conflict within the *MPA*. Additionally, there would likely be further litigation around when the parties actually separated.
4. In almost all cases, the parties will want to have a current valuation of the property at issue in any event to inform their discussions. Separation date valuations can be more challenging and costly to obtain.
5. Changing the valuation date alone will not completely address the issue of overlapping claims. In order to foreclose overlapping claims, the pool of property that is subject to

424 Legislature Building, Edmonton, Alberta T5K2B6 Canada Telephone 780-427-2339 Fax 780-422-6621
130, 1177 - 11 Avenue SW, Calgary, Alberta T2R1K9 Canada Telephone 403-244-7737 Fax 780-541-9106

division in each relationship would need to be changed. This would be a fundamental shift, and impact on a number of provisions within the *Act*. I appreciate the need for certainty and predictability in resolving overlapping claims, but also note the importance of the court being able to do justice having regard to the factors set out in section 8 on the specific facts of individual cases.

There are reasonable arguments on both sides of the valuation date debate and this was a difficult decision to make. The current amendments extend property division rights to adult interdependent partners. The new rules are largely based on the rules that apply to married spouses, to the degree possible. Changing the valuation date to the date of separation would have spill over implications for how the rest of the *Family Property Act* operates and goes beyond the scope of extending property division rights to adult interdependent partners.

I do appreciate you providing your feedback. We will continue to follow this issue as we monitor judicial consideration of the *Family Property Act* moving forward.

Thank you for your participation in the consultations on the Alberta Law Reform Institute's recommendations, your feedback is appreciated. Thank you also for your continued interest in the advancement of the law in this area and contacting me with your concerns.

Sincerely,



Kathleen Ganley

Minister of Justice and Solicitor General