

## PART 2 — FUNDAMENTAL RULES

### Division 1 — Meaning of Spouse, Effect of Adoption and Construction of Instruments

#### When a person is a spouse under this Act

(1) Unless subsection (2) applies, 2 persons are spouses of each other for the purposes of this Act if they were both alive immediately before a relevant time and

- (a) they were married to each other, or
- (b) they had lived with each other in a marriage-like relationship for at least 2 years.

(2) Two persons cease being spouses of each other for the purposes of this Act if,

- (a) in the case of a marriage, an event occurs that causes an interest in family property, as defined in Part 5 [*Property Division*] of the *Family Law Act*, to arise, or
- (b) in the case of a marriage-like relationship, one or both persons terminate the relationship.

(2.1) For the purposes of this Act, spouses are not considered to have separated if, within one year after separation,

- (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
- (b) they continue to live together for one or more periods, totalling at least 90 days.

(3) A relevant time for the purposes of subsection (1) is the date of death of one of the persons unless this Act specifies another time as the relevant time.

#### Effect of adoption

**3** (0.1) In this section, "pre-adoption parent" means a person who, before the adoption of a child, was the child's parent.

(1) Subject to this section, if the relationship of parent and child arising from the adoption of a child must be established at any generation in order to determine succession under this Act, the relationship is to be determined in accordance with the *Adoption Act* respecting the effect of adoption.

(2) Subject to subsection (3), if a child is adopted,

- (a) the child is not entitled to the estate of his or her pre-adoption parent except through the will of the pre-adoption parent, and
- (b) a pre-adoption parent of the child is not entitled to the estate of the child except through the will of the child.

(3) Adoption of a child by the spouse of a pre-adoption parent does not terminate the relationship of parent and child between the child and the pre-adoption parent for purposes of succession under this Act.

#### **Construction of instruments**

**4** (1) If this Act provides that a provision of this Act is subject to a contrary intention appearing in an instrument, that contrary intention must appear in the instrument or arise from a necessary implication of the instrument.

(2) Extrinsic evidence of testamentary intent, including a statement made by the will-maker, is not admissible to assist in the construction of a testamentary instrument unless

(a) a provision of the will is meaningless,

(b) a provision of the testamentary instrument is ambiguous

(i) on its face, or

(ii) in light of evidence, other than evidence of the will-maker's intention, demonstrating that the language used in the testamentary instrument is ambiguous having regard to surrounding circumstances, or

(c) extrinsic evidence is expressly permitted by this Act.