

***And They Lived
Happily Ever After ...***



**rights and responsibilities
of common law partners**

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Nova Scotia Advisory Council on the Status of Women

The Nova Scotia Advisory Council on the Status of Women was established by provincial statute in 1977 to advise the Minister Responsible for the Status of Women and to bring forward the concerns of women in Nova Scotia.

Council works toward the inclusion of women who face barriers to full equality because of race, age, language, class, ethnicity, religion, disability, sexual orientation, or various forms of family status.

Council's work touches on all areas of women's lives, promoting economic equality, personal safety and freedom from violence, and improved health and well-being.

We are committed to voicing women's concerns to government and the community through policy research, information services, and community outreach.

Senior Citizens' Secretariat

The Secretariat serves as the coordinating body for senior citizens' affairs in Nova Scotia. Its mission is to facilitate and coordinate the planning and development of policies, programs, and services for seniors—a task it undertakes in partnership with government departments and in consultation with seniors. The Secretariat also functions as a resource and information centre on aging in Nova Scotia.

Legal Information Society of Nova Scotia

For 20 years, the Legal Information Society of Nova Scotia has been helping Nova Scotians better understand the law through enhanced access to legal information; providing information that allows them to solve legal problems; and giving them the tools to act on their rights and responsibilities.

Key services the Society provides are the Legal Information Line & Lawyer Referral Service (455-3135 or, toll-free, 1-800-665-9779); Dial-a-Law (902-420-1888); the Speakers Bureau; and a wide variety of publications.

For more information about the Legal Information Society of Nova Scotia and its activities visit www.legalinfo.org or call 902-454-2198.



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Some Laws That Affect Common Law Partners

Introduction

Many heterosexual couples live common law because they don't want the "strings" that go along with marriage, including perceived legal entanglements, or they may begin living common law with a view to marriage at a later date. Gay and lesbian couples, on the other hand, are currently unable to marry under Nova Scotia law. Many have chosen to enter into registered domestic partnerships, a formal arrangement. Others, however, opt to live common law. What many common law couples don't realize is that living common law does come with legal rights and obligations—some similar to and some very different from marriage.

This booklet highlights the legal rights and responsibilities of living common law. It explores the similarities and differences between common law relationships, registered domestic partnerships, and married relationships. It is intended for women and men of all ages and backgrounds, as they grapple with the present and plan for their future.

Living Common Law

Often, when two people decide to live together, they don't even think of it as "living common law." Indeed, legally speaking, couples are not common law partners or spouses the day that they begin to live together. They only become partners if they live together for a significant period, usually one or two years. Once a couple has lived together for the necessary length of time, they are considered common law partners from the date that they first moved in together.

In 1999, the Supreme Court of Canada confirmed that gay and lesbian couples could be common law partners.

All the laws discussed in this booklet apply equally to same-sex and opposite-sex common law couples unless otherwise noted.

Common law partners have many, but not all, of the same rights and responsibilities as married couples. In Nova Scotia, the laws relating to custody, access, child support, and spousal support are similar for common law and married couples. However, the laws relating to wills, estates, and dividing property after separation are very different.

Did You Know?

Both federal and provincial governments can make laws affecting common law couples.

You can be in a common law relationship according to one law and not in a common law relationship according to another. Each piece of legislation is different. This makes legal issues related to common law relationships complicated. There is a list of some laws that apply to common law couples at the back of this booklet, setting out how long two people must live together before they become common law partners. Generally, the longer couples live together, the more rights and responsibilities they have, though no amount of living together can turn a common law relationship into a marriage.

Even if your boyfriend or girlfriend stays over frequently, you are not in a common law relationship. In the eyes of the law, people behave as partners if they share finances, live together, and publicly treat each other as common law partners, for example, by introducing each other as partners, or declaring themselves a couple on their income tax returns.

You can still be common law partners even if sex is no longer a part of your relationship. As with marriage, sex is just one part of a relationship. The key is whether you treat each other as partners.

You can clarify your living arrangements by registering a domestic partnership or entering into a cohabitation agreement with your partner. Before signing anything, you should get legal advice.

Canada and Nova Scotia have *Human Rights Acts* that protect common law couples from discrimination based on family status. The *Canadian Charter of Rights and Freedoms* also guarantees equality to same-sex and opposite-sex common law partners. In some cases, common law partners have to fight in the courts to have their rights recognized.

When this booklet was printed, courts in Ontario and British Columbia had ruled that same-sex couples can marry in those provinces, and the federal government had referred a draft bill on same-sex marriages to the Supreme Court of Canada. Nova Scotia does not currently permit same-sex marriages, but you and your partner could travel to Ontario and British Columbia and marry there. The law in this area is changing rapidly, so you should check with a lawyer to learn how the most recent developments affect you.

If you marry your same-sex partner in Ontario or British Columbia, your marriage may not be recognized in other provinces or countries. The federal government will recognize your relationship as common law after you and your partner have lived together for one year. Other provinces may also recognize your relationship as common law, rather than married. Married gays and lesbians may have to make human rights complaints or bring court actions to force other provinces to recognize their marriages. The United States does not recognize same-sex marriages.

Same-sex and heterosexual common law couples and registered domestic partners can adopt children in Nova Scotia. The laws are similar to those involving married couples.



Common Law AND Legally Married?

Jan and her partner Alex have been living together for four years. They have a two-year-old son, James. Alex is separated from his first wife, but is still legally married. He's confident this means he and Jan are not in a common law relationship.

He's wrong. It is possible to be married and in a common law relationship at the same time. Only a few laws exclude the rights of common law partners if one partner is still married to someone else.

Registered Domestic Partnerships

In Nova Scotia, couples can also choose to become registered domestic partners. A registered domestic partnership offers opposite-sex and same-sex couples a form of relationship that has more of the same rights and obligations of marriage than a common law relationship.

People over 19 who are not already married or in an existing registered domestic partnership can become a registered domestic partner if both have been a resident of Nova Scotia for at least three months or own a home or land in the province. Both partners must sign a declaration on a form provided by the Vital Statistics office. The form must be signed in front of at least one witness (who also signs the form), and then the partners need to register the declaration with Nova Scotia's Vital Statistics office.

Registered domestic partners are treated the same as married couples, with some exceptions. For example, the federal government does not yet recognize registered domestic partnerships, though they will recognize partners as a common law couple once they have lived together for at least a year. Other provinces may also recognize registered domestic

partners as common law couples if they have lived together for the necessary length of time.

There are five key differences between a common law relationship and a registered domestic partnership:

- **The couple becomes partners the day they register their partnership.** Couples who choose to become registered domestic partners acquire all of their rights and responsibilities under Nova Scotia law (including survivor benefits and the rights to apply for spousal support and to inherit property) immediately after registering their partnership, just like married couples. There is no waiting period. Couples can even register before they begin to live together. Since the federal government does not recognize registered domestic partnerships, partners acquire rights and obligations under federal law only after they have lived together for at least a year.
- **In Nova Scotia, registered domestic partners are treated the same as married couples when they divide their property after separation.** Nova Scotia's *Matrimonial Property Act* applies to registered domestic partners. Both partners are entitled to a 50/50 division of assets brought into the partnership and acquired during the partnership (such as cash, RRSPs, vehicles, furniture, and homes) unless one partner can show that an equal division would be unfair. A court may also order one partner to be responsible for some or all of the partners' debts, even if the debts are in the name of the other partner. Both partners have the right to apply to the court for exclusive occupation of the family home after separation. However, if the partners leave Nova Scotia to live in another province, or if they own property outside Nova Scotia, different laws will apply based on the laws of the particular province, and they will need to have a co-habitation agreement to ensure that their property is divided the same way as a married couple.

- **Registered domestic partners will inherit their partner's property in Nova Scotia if the partner dies without a will.** If the partner who died has children or other dependents, the property will be shared with them. If the partners move away from Nova Scotia or own property outside of Nova Scotia, they will need to see a lawyer and make a will to ensure that their partner inherits their property.
- **One or both partners must take specific action to end the partnership if they separate.** In contrast, a common law relationship ends when one or both partners decide they no longer want to live as partners. No specific action is required. However, ending the relationship does not mean ending rights and responsibilities between partners.
- **Registered domestic partnerships are not recognized outside of Nova Scotia.** However, the federal government will recognize the partners as common law partners after they have lived together for 12 months, and other provinces may also recognize them as common law partners. Registered domestic partners who intend to move away from Nova Scotia should consult a lawyer to determine how the move will affect their rights.

Did You Know?

To register a domestic partnership, the Vital Statistics office will need the signed partnership declaration, plus proof of age and proof of residence or ownership of a home or land for both partners. If a partner is divorced or widowed, proof of the divorce or a death certificate for the former partner is also required. Partners can have only one Registered Domestic Partnership at a time.

Ending a Registered Domestic Partnership

Jeff and Vijay registered as domestic partners. They've been fighting a lot, and now Vijay wants to end the partnership.

Registered domestic partners cannot end their partnership with divorce, which is only for married couples. There are, however, four ways to end a registered domestic partnership:

- file a joint "Statement of Termination" with the Vital Statistics office;
- register a written, signed separation agreement with the Family Court or Supreme Court (Family Division) and file proof of registration with the Vital Statistics office; or
- file with the Vital Statistics office a sworn written statement from one or both partners that they have been separated for at least a year.
- A registered domestic partnership also ends if one of the partners marries someone else, with or without the knowledge of the other partner (the Vital Statistics office will require a copy of the marriage certificate).

Abuse

Some people experience abuse from their common law partner. Abuse can be physical, sexual, verbal, emotional, psychological, or financial. Some types of abuse are criminal offences.

Violence doesn't always end after separation. According to Statistics Canada, many partners report that violence stays the same or increases. For some, violence only starts after separation. Common law partners are at much higher risk to be killed by their partners than married spouses. Young women under 24 years of age are at the greatest risk. Aboriginal women are at higher risk of violence, and the violence is often more serious than violence committed against

non-Aboriginal women. The most dangerous time for all women is the first 12 months after separation. Nearly half of all women killed by their partners after separation are killed within the first two months after separation. More than three-quarters of women killed after separation are killed within one year of the separation. Many women killed by their partners did not believe they were at risk. If your partner is abusive, a women's shelter can help you make a safety plan. The vast majority of spousal violence victims are women, but men can also experience spousal violence. Men can seek assistance from the Universal Shelter Association.

Did You Know?

Nova Scotia has a new *Domestic Violence Intervention Act* that allows victims to apply for emergency protection orders lasting up to 30 days. The Act applies to all partners and former partners that have lived together as a couple or who have a child together, including same-sex couples. An emergency protection order can require your partner to have no contact with you and stay away from your home and work. It can give you exclusive occupation of your home and require your partner to move out. Other conditions, such as control over credit cards and car keys, are also possible. A justice of the peace will grant an emergency protection order if he or she is satisfied that domestic violence has occurred and that it is necessary to make the order right away. To apply, contact the police, victim services, a women's shelter, or apply on your own by calling 1-866-816-6555. Emergency protection orders are available 24 hours a day, 365 days a year, but between 9:00 pm and 9:00 am you must first contact police, victim services, or a women's shelter.

Help for Common Law Partners in Abusive Relationships

If you are being assaulted you can call 911 for immediate police response.

Women's shelters can provide counseling, help you create a safety plan, and give you and your children a place to stay:

| | |
|---------------------------------------|---|
| Adsum House (<i>Halifax</i>) | 423-4443 or 429-4443 |
| Autumn House (<i>Amherst</i>) | 667-1200 |
| Bryony House (<i>Halifax</i>) | 422-7650 |
| Cape Breton Transition House | 539-2945 or 1-800-563-2945 (<i>Sydney, Cape Breton and Victoria counties</i>) |
| CASA (Digby County) | 245-4789 |
| Chrysalis House | 679-1922 or 1-800-264-8682 (<i>Kentville, Kings and Annapolis counties, and parts of Hants County</i>) |
| Harbour House | 543-3999 or 1-888-543-3999 (<i>Bridgewater, Lunenburg and Queens counties</i>) |
| Juniper House | 742-8689 or 1-800-266-4087 (<i>Yarmouth, Digby and Shelburne counties</i>) |
| Leeside Society | 625-2444 or 1-800-565-3390 (<i>Richmond and Inverness counties</i>) |
| Mi'kmaq Family Treatment Centre | |
| <i>Millbrook</i> | 863-8483 or 1-800-565-4741 |
| <i>Waycobah</i> | 756-3440 or 1-800-565-3440 |
| Naomi Society | 863-3807 or weekends 867-4229 (<i>Antigonish County and parts of Guysborough County</i>) |
| Tearmann House | 752-0132 or 1-888-831-0330 (<i>New Glasgow, Pictou County, and parts of Antigonish and Guysborough counties</i>) |
| Third Place Transition House | |
| | 893-3232 or 1-800-565-HURT (4878) (<i>Truro, Colchester County, and parts of Hants County</i>) |

There are no shelters specifically for men who are abused, but the Universal Shelter Association (Halifax) 454-5459 may help and there are shelters for homeless men.

Victim Services (Nova Scotia Department of Justice):

Halifax Regional Municipality424-3307
toll free.....1-800-470-0773

*Kentville office service Annapolis, Digby, Hants, Kings, Lunenburg,
Queens, Shelburne, and Yarmouth counties:*
..... 679-6201
toll free.....1-800-565-1805

*New Glasgow office service Pictou, Guysborough, Antigonish,
Colchester, and Cumberland counties:*
.....755-7110
toll free.....1-800-565-7912

*Sydney office serving Cape Breton, Richmond, Inverness, and Victoria
counties:*
.....563-3655
toll free.....1-800-565-0071

The Halifax Regional Police (490-5300) and RCMP (865-6649) also have victim services programs. You do not have to report the abuse to police to use a victim services program. If there is a criminal charge, the abused partner may be able to participate in criminal injuries counseling, whether or not the charge ends with a conviction.

Seniors can also call the Senior Citizens Secretariat at:
.....424-4737 or 1-800-670-0065

The Nova Scotia Advisory Council on the Status of Women publishes a booklet called Making Changes: A Book for Women in Abusive Relationships. To order a free copy, call 1-800-565-8662 or visit the Council's website to download a copy: <http://www.gov.ns.ca/staw>

For a half-hour meeting with a lawyer costing \$20+HST call the Legal Information Society of Nova Scotia – Lawyer Referral Service/Legal Information Line: 902-455-3135 or 1-800-665-9779 toll free.

Property and Finances

Many common law partners are shocked to find out that they do not have the same rights as married couples when it comes to dividing their property after separation. When married couples and registered domestic partners separate, Nova Scotia's *Matrimonial Property Act* gives each spouse the right to share equally in all assets brought into the marriage or acquired during the marriage, with only a few exceptions. Assets are shared 50/50 unless one spouse can prove that an equal sharing would be unfair. But the *Matrimonial Property Act* does not apply to common law couples. Common law partners have no automatic right to an equal division of property when they separate.

Instead, each common law partner is entitled to keep whatever he or she brought into the relationship, purchased during the relationship, or is registered in his or her name. Each partner is also responsible for his or her own debts.

Depending on the circumstances, keeping property separate like this may be the fairest way for both partners. Generally, this is fair if both partners work outside the home, earn similar incomes, and have no children. If one partner works part-time or stays home to look after the house or children while the other partner earns income, it could be very unfair for the partner who earned the income to keep all (or most) of the assets. In this situation, one partner may make a claim against the other partner's property.

For common law partners, the only assets that the law presumes should be divided equally are assets that are owned jointly, like joint bank accounts or a home where both partners' names are on the deed. Joint assets may still be divided unequally if one of the partners can prove that an equal division would be unfair. Canada Pension Plan credits and employment pensions earned during the time the partners lived together can also be divided and are usually divided equally. Don't overlook the entitlement to share in a partner's

pension. If the relationship lasted many years, the pension could be worth more than the family home. This right to a share of a partner's pension can be affected if the partner is still married to someone else.

Walsh v. Bona

Walsh and Bona were a common law couple in Nova Scotia who ended their 10-year relationship in 1995. They had two children. When they separated, Walsh asked the court to divide their property 50/50 using the *Matrimonial Property Act*, the same as it would for married spouses. Walsh argued that it was discrimination to treat common law spouses differently. The case went all the way to the Supreme Court of Canada. In December 2002, the Supreme Court of Canada decided that it is not discrimination to exclude common law spouses from the *Nova Scotia Matrimonial Property Act*. The court held that the decision to marry—or not—is an intensely personal one, and courts should respect the partners' choice not to take on the obligations of marriage.

Property Issues When One or Both Partners are Mi'kmaq

People living on a reserve have fewer rights regarding their home when a common law relationship ends than do people living off-reserve. Under the *Indian Act*, band members have a right to occupy reserve land, but the land belongs to the federal Crown. On some reserves, land is managed by the band and occupied through tradition or custom. The occupancy is not registered in the Reserve Land Register and is not officially recognized under the *Indian Act*. Other reserves issue Certificates of Possession that are registered in the Indian and Northern Affairs Canada's Reserve Land Register and are officially recognized under the *Indian Act*.

Although women have the right to hold Certificates of Possession for their homes, these certificates tend to be held by men. If they choose to do so, holders of Certificates of Possession can transfer the certificate to another member of the band or to the band, with the approval of the Minister of Indian Affairs and Northern Development.

The *Indian Act* does not contain any reference to what should happen to the home if a relationship ends. Traditionally, the band council will give the home to the person who is taking care of the children if this person is Mi'kmaq and the relationship has been of some length.

Courts cannot change who holds a Certificate of Possession and cannot order that one partner be allowed to live in the home while the other must move out. The court can order one partner to pay money to the other to compensate for a share of the value of the home, or other assets on a reserve, but these orders can be difficult to enforce. If domestic violence has occurred, a judge can grant a no-contact order under the *Criminal Code* but cannot specifically order an abusive partner to leave the home if the Certificate of Possession is in the abusive partner's name.

Did You Know?

If you put unpaid or underpaid work or money into the family, you can make a claim against your partner's assets for a fair share after separation, based on the work you did or money you contributed. Equal sharing is not a given as it is for married couples and registered domestic partners. If you can prove that you made a significant contribution to your partner's property, by homemaking or child-rearing, improving the property, or contributing money, a court could award you some money or a share of your partner's property. Lawyers call this type of claim a claim for "constructive trust" or "unjust enrichment."

Partners who had very long relationships or who had a traditional relationship, where one partner stayed home full- or part-time to look after the home and children while the other partner worked at a career, may be entitled to a 50/50 share of each other's assets just as if they'd been married. More minor contributions may justify a smaller share, such as 25%, or 10% or 5%.

Common law partners who live together for the necessary length of time (one or two years) have an automatic right to share in each other's Canada Pension Plan credits and employment pensions. The law gives this right without requiring a partner to prove he or she made a contribution to the relationship. The contribution is presumed, just as it is for married couples. Registered domestic partners are treated as common law partners once they have lived together for one year.

If you inherit money, it remains yours if you and your partner separate, as long as you keep it separate from family or jointly owned assets. Your partner does not have a right to share your inheritance. If the inheritance is used to purchase joint assets or is put into a joint account, it may become difficult to determine which funds were part of the inheritance, and a court could order that you share the jointly owned portion with your partner.

Some common law partners who own their homes ask a new partner to sign a lease before moving in, because they believe this will protect them from having to share the value of the home with their partner if the relationship ends. This is not a safe way to protect your assets, as a court may disregard the lease and find that you and your partner were spouses, not landlord and tenant, and that your partner is entitled to a share of the value built up in your home since you moved in together. If your partner is moving into your home, you should see a lawyer about a cohabitation agreement.

If you're buying a house together, you will need to decide what you want to happen to the house if you later decide to separate or if one of you dies.

Do you want to share any profits equally? If one partner made a bigger down payment, should that partner own a greater percentage of the house, or just get the full contribution back if the home is sold? Do you want your partner to inherit your share of the house if you die, or do you want to leave it to someone else, such as a family member? Talk to your lawyer about your options.

Their First House

Jan and Alex are buying their first house—a fixer-upper in a neighbourhood with lots of children for their two year old son, James, to play with. Their lawyer asked them if they want to “take title” as joint tenants or tenants in common, or if one of them was buying the property alone. They knew they wanted to buy their home together, but didn't understand how they could still be tenants when they were buying the house.

Their lawyer explained that when two or more people buy a home or land together, they are listed on the deed to the property as “tenants,” even though they own the home. There are two types of tenancies when people own property: joint tenants, and tenants in common. Joint tenants own the home together, and if one dies, the other automatically inherits the whole property. Most married couples buy their home as joint tenants. Tenants in common each own a half share of the house. If one dies, that share goes into the dead person's estate and can be left to whomever that person wishes. The other person's share remains with them. Most business partners own property as tenants in common.

Alex and Jan decided they wanted to make sure that the other inherited the house if one of them died. “We want to be joint tenants,” Alex said. Jan agreed.

If you separate and your partner won't agree to sell the house and you don't have enough money to buy another one, you can negotiate on your own or with a mediator or lawyer. If that doesn't work, you can apply to the Nova Scotia Supreme Court using a law called the *Partition Act*. This law allows a judge to order that jointly owned property be sold and the money divided between the owners.

You may not be entitled to remain in your home if you separate. Married spouses and registered domestic partners have more rights than common law partners do in this regard. The law does not give common law partners a right to remain in their home after separation. Legally, the home belongs to the person who owns the home or whose name is on the lease, and that partner has the right to ask the other partner to leave. There are only two exceptions. First, if there has been domestic violence, you can apply for an emergency protection order allowing you to remain in the house for up to 30 days. Second, if you lived together for at least two years and you receive spousal support, you can also ask the court to give you "exclusive occupation" of your home, even if the home is in your partner's name. The best way to ensure that your partner cannot kick you out is to put your name on the deed or the lease. You should also talk with a lawyer about whether you have a claim against the value of the property.

If your partner kicks you out and changes the locks and will not agree to let you back into the home to get your things, you have several options. One option is to call the police, explain your problem, and ask to have an officer come with you to get your things. If that doesn't work, you can file a claim in Small Claims Court seeking the return of your things. If the value is over \$10,000, you have to make your claim in Supreme Court. You can still apply for exclusive occupation of your house, even after you leave, but you must have lived together for at least two years and you must also successfully apply for spousal support. If you left because of

domestic violence, you can apply for an emergency protection order allowing you to stay in the home and requiring your partner to move out for up to 30 days.

If the car is in your name, you can take it with you. If the car is owned jointly in both names, either partner can take the car. If the car is registered in your partner's name, you should obtain your partner's written consent before taking it. If you are leaving because of domestic violence, you can apply for an emergency protection order that allows you to use your partner's car for up to 30 days.

Indebted

Manuel and Lydia have been living together for 10 years. Lydia just discovered Manuel racked up an \$8,000 debt on his credit card. He told Lydia she's responsible for helping him pay off the debt.

She isn't. Unless Lydia has co-signed on the credit card, she is not responsible for Manuel's debt. Common law partners are each responsible for their own debts, unless they have co-signed. When common law couples apply for credit, the bank may ask them to co-sign just because they are partners. Think very carefully before agreeing to this.

Common law partners who separate and both want custody of a pet can apply to the Supreme Court or Small Claims Court to resolve the dispute. A court might treat your pet like property and order that one person gets to keep the pet, but courts have also ordered that separated partners share the pet, with each partner having the pet for two to four weeks at a time. Before you go to court, consider trying mediation to solve this dispute. See the "Mediation" section of this booklet for more information.

When you apply for a student loan, your partner's income is taken into account for Canada Student Loans, since the federal government considers people to be spouses after living together for one year. For a Nova Scotia Student Loan, you are considered common law partners if you filed your last tax returns as common law partners, if you live together and have a child together, or if you have a registered domestic partnership. If your parents are separated or divorced and one of them pays child support to help you with your education, your decision to live common law can affect this child support payment. A court may no longer consider you dependent on your parents if you are living with a spouse or partner. If so, the court will order that your parent is no longer required to pay child support for you. Some parents continue to provide financial support voluntarily; others do not.

Pensions

Registered Retirement Savings Plans (RRSPs)

Married couples, common law couples, and registered domestic partners can make tax-free contributions to each other's registered retirement savings plans (RRSPs). Common law partners and registered domestic partners must have lived together for at least 12 months to qualify. If partners separate, they can transfer money tax-free from one partner's RRSP to the other partner's as part of their property division if they choose to do so.

RRSPs allow the owner to name a beneficiary, someone who will get the money when the owner dies. Naming a partner as beneficiary is the safest way to ensure that the money in an RRSP will go to that person. Naming a beneficiary also means that the RRSP goes directly to that person when the RRSP owner dies, which can save probate fees and taxes. This is a complicated issue, so you may want to talk to an estate planner.

If no beneficiary is named, the money goes into the dead partner's estate and will be divided according to the provisions of the partner's will. If there is no valid will, then Nova Scotia's *Intestate Succession Act* applies. This law sets out who will inherit property when someone dies without a valid will. Common law partners are excluded and inherit nothing, so it is very important to make a will and to name a beneficiary for your RRSP.

If your partner died without a will, you may be able to make a claim against your partner's estate for the work or money you put into your partner's property and the relationship. Speak to a lawyer as soon as possible.

Employer Pensions

You may be entitled to receive a share of your partner's pension if you separate or to a survivor's pension if your partner dies. Some pensions are governed by federal law and some by provincial law—depending on your partner's employer.

The *Pension Benefits Act* of Nova Scotia applies to people who work in a provincially regulated company such as a local manufacturing plant. Under this law, common law partners (including same-sex partners) and registered domestic partners are entitled to receive a share of their partner's pension benefits after separation if they have lived together for at least two years and neither partner is legally married to someone else.

The federal *Pension Benefits Division Act* applies to individuals who work in a federally regulated company such as a bank. Under this law, common law partners and registered domestic partners are entitled to receive a share of their partner's pension benefits after separation if they lived together for at least one year. Married and common law partners cannot apply for a division of benefits until they have been separated for at least a year and must provide a written, signed separation agreement or court order. Once a pension is divided, the partner no longer qualifies for a survivor benefit. The *Pension*

Benefits Division Act was amended to include same-sex couples, but the amendment is not yet in force.

There are other laws that govern pension benefits. For specific information about a pension, call the employer and ask to speak to the pension plan administrator.

The Canada Pension Plan

The Canada Pension Plan allows married and common law couples (including same-sex partners) to share their pensions if they wish. Partners only pay income tax on their portion of the pension, so this can be an effective way to minimize taxes.

The Canada Pension Plan recognizes common law couples, including registered domestic partners, if they have lived together for at least 12 months.

Canada Pension Plan Credit Splitting

The Canada Pension Plan (CPP) recognizes that in a common law relationship both partners share in the building of their assets. Among these are CPP pension credits. The Canada Pension Plan keeps a record of your “pensionable” earnings and the contributions you make over the years. These become your Canada Pension Plan pension credits.

When a marriage or common law relationship ends, the pension credits a couple built up during the years they lived together can be divided equally between them. This division is called “credit splitting.” Generally, the credits of the lower-earning partner are increased and the credits of the higher-earning partner are reduced by the same amount. The longer the partners were together, and the bigger the difference between their earnings while they were together, the greater the exchange of credits. Credits can be split even if one partner did not pay into the Canada Pension Plan.

Pension credit splitting became available to common law partners on January 1, 1987, and to same-sex partners on

July 31, 2000. Partners who separated after these dates can apply for a credit split within four years of the separation date, or within three years of the date of death if the partner died.

To apply for a credit split, contact Human Resources Development Canada at 1-800-277-9914 or for TDD/TTY devices call 1-800-255-4786.

Canada Pension Plan Survivor Benefits

A survivor benefit is a payment or series of payments made to the partner of a person who died. Survivor benefits are available through company pensions and the Canada Pension Plan. Survivor benefits are now available to common law couples.

A CPP survivor’s pension is paid to the deceased partner’s common law partner at the time of death, if enough contributions to the plan were made. CPP also provides a one-time death benefit and a children’s benefit for dependent children. To confirm entitlement to CPP survivor benefits, call 1-800-277-9914; TDD/TTY device users can call 1-800-255-4786. To avoid losing benefits, the surviving partner should apply as soon as possible after their partner’s death. CPP makes back payments for only 11 months.

CPP recognized same-sex couples on July 31, 2000, and now pays survivor benefits to same-sex partners but only where the person’s partner died on or after January 1, 1998.

The amount the surviving partner will receive depends on:

- how much, and for how long, the deceased partner paid into the plan;
- the partner’s age at death; and
- whether the surviving partner also receives a CPP disability or retirement pension.

Partners who are already receiving a CPP disability pension will have that pension combined with their survivor’s

pension in one monthly payment. The maximum combined survivor/disability amount may be less than the total of both benefits.

Court Challenges

Until 2002, common law partners who were already separated when one partner died were denied CPP survivor benefits, but separated married spouses were not. In June 2002, the Federal Court of Appeal decided that this was unconstitutional and ordered the federal government to provide survivor benefits to common law partners on the same basis as separated married partners.

Same-sex partners excluded from receiving survivor benefits because their partners died before January 1, 1998, have sued the federal government. They are seeking benefits for all same-sex partners whose spouses died after April 17, 1985, when the equality guarantees in Canada's *Charter of Rights and Freedoms* came into effect. When this booklet was printed, the trial in the Ontario Superior Court was ongoing.

Canada Pension Plan Death Benefits

The Canada Pension Plan death benefit is a one-time, lump-sum payment made to the estate of the partner who has died. If there is no estate, the person responsible for the funeral expenses, the surviving common law partner, or the next of kin may be eligible, in that order. The maximum benefit is \$2500.

Canada Pension Plan Disability

Usually in order to qualify for a disability pension from the Canada Pension Plan, a person must have worked for four of the last six years. For complete information, see <www.hrdc-drhc.gc.ca/isp/cpp/disabi_e.shtm>.

It is important to note that common law couples can apply for a split of these benefits. For more detailed information, contact Human Resources Development Canada and ask for the CPP booklet *Credit Splitting Upon Divorce or Separation*.

Old Age Security

Under the *Old Age Security Act* common law couples, including same-sex couples, have the same benefits and obligations as married couples as long as they have been living together for at least a year. People over 65 are eligible for a pension if they meet Canadian residency requirements. If one partner has died, the surviving partner may be eligible for a survivor allowance. For more information about pensions call Human Resources Development Canada (HRDC) toll free at 1-800-277-9914.

Inheriting Property

Married spouses and registered domestic partners automatically inherit each other's property if the spouse or partner dies without a will, though the law may require that they share the estate with children or other dependents. Common law partners do not automatically inherit each other's property in situations where one partner dies without a will. To ensure that the family property goes to the surviving partner, each partner must have a will. Partners can also make sure the survivor inherits by having a trust, by owning property jointly, and by naming the partner as beneficiary on RRSPs, life insurance, and other benefits; but these are things partners should do in addition to each having a will, not instead of having a will. Lawyers, accountants, and estate planners can help with estate planning. Registered domestic partners who own property outside Nova Scotia will need to make wills to ensure that all of their property is distributed as they wish.

If a common law partner is still legally married or in a registered domestic partnership with someone else when the partner dies, it can affect the partner's estate. The previous partner (and children, if any) can make a claim against the estate, if they are left in need. If there is no will, the previous married spouse or registered domestic partner and any children may inherit most or all of the estate, and the common law partner may be excluded entirely.

Even if a common law partner leaves a will that benefits the other common law partner, a previous spouse or registered domestic partner may be able to contest the will if the spouse or any dependent children are left in need.

Did You Know?

A cohabitation agreement can protect assets when partners move in together. Anyone who has significant assets before moving in with a partner (including widows and widowers) should consider a cohabitation agreement.

Each of you should make a will or review your will with your own lawyer. You will each need to decide who will be the beneficiary of any life insurance, RRSPs, and investments. You will also need to decide if you want to support each other financially if one of you becomes ill, or if you separate. What if one of you dies? Do you want your partner to be able to remain in your home for as long as the need is there, and then leave the home to your children? Or do you want your children to have the house right away, even if your partner has to move out after the funeral? Do you want your partner to receive a survivor's pension? A lawyer can help you answer all of these questions and prepare the necessary paperwork.

If a common law partner has a will—regardless of when the will was written—the courts will follow the wishes expressed in that will, even if it predates the common law relationship. Wills should be reviewed every time a

person's relationship status changes or whenever they have a new dependent. While a later marriage generally invalidates a will, a later registered domestic partnership or common law relationship does not. Even divorce does not revoke a will.

If your common law partner died with an old will that excludes you, you can make a claim against your partner's estate for the time, money, and effort you put into the home and other property in your partner's name.

Cause for Concern?

Sandy and Arnold have lived together for 25 years. Arnold had a heart attack. He does not have a will. Sandy is afraid she will not be able to provide for herself if Arnold dies.

She should be concerned. If Arnold dies, any property in Sandy's name would remain with her, and any property they owned together as "joint tenants" would go to Sandy as the survivor. Any property they owned as "tenants in common" would be divided, with Sandy's share going to her and Arnold's share going to his estate. With no will, Nova Scotia's *Intestate Succession Act* governs Arnold's estate. It excludes common law partners, but recognizes married spouses and registered domestic partners, children, parents, brothers and sisters, nieces and nephews, in that order.

However, Sandy may have a claim against Arnold's estate for the time, money, and effort she put into the relationship and any property Arnold has. If her claim is successful, she will receive her share first, after legal fees and court costs, and whatever is left over would be distributed to Arnold's relatives according to the *Intestate Succession Act*.

Shared and Separate Property

When a couple moves in together, they should discuss how they will deal with their property during their relationship and if they separate. Some couples will want to share everything; some will want to keep everything separate, and others may want some combination of the two. If both partners feel the same way, they can take steps to make sure their property will be divided the way they want if they ever separate. If they don't agree, they will need to talk further. Many partners find out only after separating that they felt very differently about sharing their property all along. Often, the partner who was the higher income earner, or the partner with more property, may not want to share and may not recognize the value of the other partner's contributions to the relationship.

Here are some general tips for couples who want to share their property and for those who want to keep it separate. Doing some or all of these things will not guarantee that property will be divided as planned. Partners who are concerned about their rights and responsibilities in their common law relationship should see a lawyer. A lawyer can give advice about their specific situations and help ensure that rights are protected. The most effective protection is to hire a lawyer to prepare a cohabitation agreement. Cohabitation agreements are discussed in more detail in another section of this booklet.

If You Want To Share Your Property Equally

- Consider marrying or registering as domestic partners.
- Sign a co-habitation agreement, prepared by a lawyer, agreeing to share your property equally and treating each other as if you were married. Be sure to get independent legal advice first. That is, each partner should review the agreement with a lawyer before deciding whether to sign it. You should each have your own lawyer.

- Combine your finances, and use joint chequing and savings accounts.
- List your common law partner on your tax return.
- Whenever you buy property, put it in both names.
- If you buy a home together, do so as “joint tenants” so that the surviving partner will inherit the home if one partner dies.
- Buy all property with a financial contribution from both partners. Contribute equally if possible.
- You may decide to have joint debts and to co-sign loans for each other.
- Make a will so that your partner will inherit your property.
- List your partner as your beneficiary of your life insurance and your RRSP.
- Put your partner on your benefit plan through work.
- Refer to yourselves as partners in your community and to friends and family members.

If You Want To Keep Your Property Separate

- Think carefully about moving in together.
- Do not marry or register as domestic partners unless you first sign a marriage contract or cohabitation agreement.
- Sign a cohabitation agreement agreeing to keep your property separate. Ask your lawyer whether it is in your best interests to give up your right and obligation to receive or pay spousal support. Be sure to get independent legal advice before you sign anything. Once you have a cohabitation agreement, make sure to follow it. Review it yearly.

- Think carefully before having children together.
- Keep all of your finances strictly separate. Do not open any joint accounts.
- Share household expenses equally, and make sure that you keep monthly records showing that you each paid half of the expenses. If one person pays the other at the end of the month to make things equal, make sure the payment is by cheque and keep copies of the cancelled cheques.
- Rent a home together rather than buying a home.
- If you buy a home together, do so as “tenants in common” so that you can leave your share of the home to someone other than your partner if you die. Contribute equally to the down payment, mortgage, expenses, and maintenance. If your contribution is unequal, make sure you have a written agreement about what you will do if you separate or if one of you dies.
- If only one partner owns the home, you will need a cohabitation agreement.
- Do not make any joint purchases. Have one person buy the sofa and the other buy the kitchen table.
- Do not have any joint debts and do not co-sign any loans for your partner.
- Do not lend your partner money unless you have an agreement in writing to repay it.
- If you own a business, pay your partner a fair wage for any work done to benefit your business. Keep records of all payments.
- Review your will, RRSP, and life insurance and make sure you name a beneficiary who will get your money when you die.

- Do not casually refer to each other as “spouses” or “partners” in your community or to your friends and family unless you both feel your relationship has some permanence.

Taxes

Common law couples are treated the same as married couples where taxes are concerned. For these purposes, the federal government and province of Nova Scotia consider two people of either sex to be common law partners once they have lived together as a couple for 12 months. Couples who have lived with each other for less than 12 months but have a child together are also considered common law partners. Registered domestic partners qualify as common law partners once they have lived together for 12 months. There are tax advantages and disadvantages to being a common law partner.

One of the disadvantages is that partners who have a child from a previous relationship can no longer claim the “eligible dependent” deduction on their tax return. Another disadvantage is that they may no longer qualify for the HST credit or child tax benefit, once the partner’s income is considered.

There are also many tax benefits to being a common law partner. Partners become entitled to survivor’s pensions through the Canada Pension Plan and employment pensions. They can make tax-free contributions to each other’s RRSPs. If they separate, they can share their CPP credits and transfer money tax-free from one partner’s RRSP to the other’s as part of their property division.

Couples who meet the Canada Customs and Revenue Agency’s (CCRA) definition of common law partners cannot opt-out and have the CCRA consider them as single people. If a couple in a common law relationship does not declare their common law status on their income tax returns, it could

cause problems in the future. If one partner received a tax benefit or HST credit when the partner was not entitled to do so, the partner could be ordered to pay back the full amount received. In some circumstances, the CCRA might even consider it fraud. If a partner dies, the other partner will have difficulty getting a CPP survivor's pension. If they separate, the CCRA may not allow them to split CPP credits or may deny a request to transfer money tax-free from one partner's RRSP to the other's RRSP.

Did You Know?

Common law partners do not have to file joint tax returns. In Canada, every taxpayer must file separately. However, common law partners should check off the marital status box marked "Common Law" on the income tax form. This allows the government to recognize the partners as a common law couple and provide them with the benefits to which common law partners are entitled.

If you receive periodic spousal support from an ex-partner, whether your ex-partner pays on time or not, you must claim this support as income, and your partner can deduct it on his or her tax return. Periodic support is support that is supposed to be paid on a regular basis, usually monthly, based on a written agreement or court order. If you received a lump sum for spousal support (just one payment), then you do not declare it as income, and your ex-partner does not deduct it. If you receive child support, you do not declare it as income, and your ex-partner does not deduct the payments. The only exception to this is if your written child support agreement is dated before April 30, 1997. If your agreement is dated before April 30, 1997, and has not been varied since then, you must declare the child support and your ex-partner may deduct the support from income. The rules are complicated. If you are not sure how to fill out your tax return, call the Canada Customs and Revenue Agency.

Your ex-partner cannot take a tax deduction for spousal support paid if he or she is behind in child support payments. Spousal support paid is deductible (and declarable) only if all child support payable for current and previous years is fully paid.

For more information, visit the Canada Customs and Revenue Agency online at <www.ccra-adrc.gc.ca> or call them at 1-800-959-8281.

Agreements

Common law couples can make agreements before, during, and after their relationship in which they decide together how they will deal with property and spousal support. All agreements should be in writing, signed, and dated by both partners and by an adult witness (over the age of 19) who watched the partners sign the agreement. (Two witnesses can sign if the partners do not sign the agreement together.) Each partner should get independent legal advice. That is, they should review the agreement with a lawyer before deciding whether to sign it. Doing all of these things helps to make sure the agreement is valid and will stand up in court.

Agreements made before or during a common law relationship are called "cohabitation agreements." Agreements made before a marriage are called "prenuptial agreements" or "marriage contracts." In all these types of agreements, couples can decide in advance how they will deal with their property during their relationship and after separation. They can also decide how they want to deal with spousal support if they separate. Agreements made after separation are called "separation agreements." They can deal with the same issues as cohabitation agreements, plus custody, access, and child support for any children in the family.

Did You Know?

All common law partners should consider having a cohabitation agreement. These agreements are especially important where one partner has significantly more assets or debts than the other, if one partner owns a home but the other does not, if the partners have (or will have) very different incomes, or if one partner plans to stay home full- or part-time with children. If you and your partner think that you may marry in the future, you will need to decide if you want your cohabitation agreement to become a marriage contract or if you want it to end when you marry.

It is a myth that cohabitation agreements are only for couples that don't trust each other. Agreements make sure both partners are thinking the same way about all their major financial matters. You cannot assume that you both feel the same way, nor can you assume that your partner will keep verbal promises made during the relationship if it ends.

You can change a cohabitation agreement if you both agree to do so in writing and sign and date the new agreement in the presence of an adult witness. You should both get independent legal advice first. Once it is signed, if you want to change the agreement and your partner doesn't, you are probably stuck, since both of you have to agree to any changes.

Common law couples that separate cannot use the same lawyer. It is a conflict of interest for one lawyer to represent both partners. Each partner needs his or her own lawyer. You should avoid using the same lawyer as your partner if you are making a cohabitation or separation agreement.

The best way to find a good family law lawyer is to get a referral from a satisfied client. Ask friends, family members, and co-workers if they know of anyone they would recommend. If they do not know anyone, you can find a family law lawyer by looking in the Yellow Pages under

Lawyers (there is a separate section for family law), or by calling the Legal Information Society of Nova Scotia's Lawyer Referral Service at (902) 455-3135, 1-800-665-9779, or e-mailing them at <questions@legalinfo.org>. Most lawyers charge between \$90 and \$250 an hour, but you can see a lawyer for an initial 30-minute appointment for as little as \$20+HST through the Lawyer Referral Service. Unless your situation is complicated, you should be able to get independent legal advice on an agreement drafted by your partner's lawyer for a few hundred dollars. Negotiating a separation agreement or cohabitation agreement will cost significantly more. Ask about fees when you meet with your lawyer.

You should get "full financial disclosure" before you decide whether to sign an agreement. Full financial disclosure means the partners provide each other with all relevant information about their assets, debts, and finances in the form of a sworn statement with attached copies of all of the relevant paperwork, such as account statements, property assessments and appraisals, credit card statements, loans, and recent tax returns. When you have full financial disclosure, you know exactly what you and your partner own, what you each owe, and what your yearly incomes are. Knowing this information will help you decide whether an agreement is fair or not. You should always have full financial disclosure before deciding whether to sign an agreement. Your lawyer can help you with this. If you sign an agreement without getting full financial disclosure and you later discover that your partner did not tell you about all of his or her assets or debts, it can be difficult to re-open the agreement to make it fair to both of you.

Courts seldom interfere with cohabitation and separation agreements, unless an agreement is very unfair to one partner, and the partner did not get independent legal advice before signing it. Courts may also interfere with an agreement if a partner was dishonest about assets, debts, income, or circumstances. If you signed an agreement you now feel is unfair, you should speak to a lawyer as soon as possible.



Mediation

Partners who have difficulty negotiating a cohabitation or separation agreement should consider seeking the help of a mediator. A mediator has special training in helping people communicate about their differences. Mediators must be neutral, meaning that they don't favour one partner over the other. Mediators do not tell people what to do or make decisions for them. A mediator helps partners focus on reaching an agreement that deals with all of their major concerns.

Did You Know?

Most common law partners could benefit from mediation after they separate if they are having difficulty reaching an agreement. Going to court is expensive, and you might get a decision that neither partner is happy with. When mediation works, it can save time and money, while helping partners create an agreement that is better for them and their children than going to court. If you cannot reach agreement in mediation, you can still go to court. Mediation is usually confidential; so no one can tell the judge what was said if the mediation doesn't work.

Mediation is not for everyone. It works only if both partners respect each other and really want to reach an agreement. If your partner is dishonest or has ever abused you or your children physically, sexually, emotionally, psychologically, verbally, or financially, then you should not agree to mediation. You should also avoid mediation if your partner made all of the decisions in your relationship or if you don't feel that you could stand up for yourself. Mediation is always voluntary, meaning that both partners must consent to it. You should not consent to mediation if it makes you uncomfortable.

If you use a mediator, you still need lawyers. Mediators do not give legal advice. Even if your mediator is also a lawyer, each of you should have your own lawyer. You will

need to meet with your lawyer before the mediation to get information about how the law applies to your situation and for advice as to what would be fair. You may have questions for your lawyer as the mediation continues. If you reach agreement, you should ask to review the agreement with your lawyer before you decide whether to make it final.

To find a mediator you can ask friends or family for a referral or check the Yellow Pages under "Mediation – Services." Family Mediation Nova Scotia has a list of mediators on their website at <www.fmns.ca>. You can also write to Family Mediation Nova Scotia, PO Box 8901, Station A, Halifax, NS B3K 5M6. Referrals are also available through Family Mediation Canada at <www.fmc.ca> or at (519) 585-3118. The Family Courts and Supreme Court Family Division maintain a list of mediators, and the Small Claims Court now has a pilot mediation project in Halifax. If you are referred to mediation by the court, each partner pays a fee based on income; mediation is free to low-income earners.

Collaborative Family Law

Separating from a partner is hard, and the process of reaching an agreement about custody, access, support, and property division can cause bad feelings that last for years. Collaborative family law is designed to help people reach agreement in a way that is less stressful and harmful to everyone involved.

Partners who want to use this approach will both need to find lawyers who have taken special training in this area. The partners and lawyers then work together as a team, sharing all relevant information. The goal is to reach the agreement that best meets the needs of the partners and their children while minimizing conflict. In fact, both partners must promise not to go to court or even threaten to go to court. If one partner decides to go to court after all, then both must find new lawyers and start again from the beginning.

Did You Know?

Collaborative family law is not for everyone. As with mediation, if your partner is dishonest or has ever abused you or your children in any way, then collaborative family law is probably not for you.

You can find a collaborative family lawyer in the Yellow Pages or by visiting the Collaborative Lawyers of Nova Scotia website for more information and a list of members. The website is located at <www.collaborativefamilylawyers.ca>.

Courts

Six different courts in Nova Scotia handle issues arising from common law relationships. Which court you go to depends on where you live and what issues you need the court to decide. Here is a list of the courts and a description of the kinds of cases they hear:

Family Court

This court hears applications for custody, access, child support, and spousal support. The court can hear applications for peace bonds but cannot deal with division of property. The Family Court operates in all areas except where there is a Supreme Court Family Division. (see below)

Supreme Court

This court deals with dividing the property of common law partners who cannot agree on how to divide their property themselves. This court also decides serious criminal cases involving domestic violence, including murder.

Supreme Court (Family Division)

This court, located only in Halifax, Port Hawkesbury, and Sydney, can deal with all family law issues, but this court is available only if one or both partners live within the court's area.

Court of Appeal

This court hears only appeals. Few family law cases reach this court.

Small Claims Court

This court can deal with cases up to a value of \$10,000 but cannot deal with any claim involving land or ownership of a home. As of February 1, 2003, Residential Tenancies Appeals are heard in the Small Claims Court.

Provincial Court

This court decides most criminal cases involving domestic violence as well as peace bonds. If you are a victim of domestic violence, you can apply for an emergency protection order here.

Nova Scotia also has Bankruptcy Court and Probate Court and many boards that can affect common law partners, such as the Residential Tenancies Board. If you are not sure which court you need, call the Family Court closest to you. The number is in the blue pages of your phone book. For more information about Nova Scotia's courts or about representing yourself in court, visit <www.courts.ns.ca>.

Health

Medical Consent

In most cases, doctors and other medical personnel must get permission before they begin any treatment. At times, patients will not be able to give consent, such as when a medical emergency leaves them unconscious. In such cases, a common law partner can give consent after two years of living together. If there is a registered domestic partnership, consent can be given without the required living-together period. Usually you will not be asked for proof of your marital status.



In addition, under the *Medical Consent Act* of Nova Scotia, anyone over 19 can appoint someone to give consent for them should they be unable to consent to treatment. The appointment must be made while mentally competent, it must be in writing, and it must be signed and witnessed. The witness should not be the person who is being appointed. After the consent is signed, the person appointed can consent on the patient's behalf only if the patient is unable to do so. The appointment remains in force until it is cancelled or a court says it is no longer valid. This Act allows partners to appoint each other to give consent even before they have lived together for two years or to appoint someone other than a partner to make these decisions.

Many people worry about being kept alive by the use of prolonged treatment and mechanical life support systems. If this is a concern, partners should discuss their wishes with each other, their doctors, their families, and nursing staff. Partners can also put their wishes in living wills.

Did You Know?

A living will is a document that says how a person wishes to be treated should illness or accident prevent them from giving instructions to a doctor. Living wills commonly address what a person wants doctors and family to do if they no longer have any quality of life and cannot consent to withdrawing treatment. Living wills are also called "advance health care directives." Before signing a living will it is a good idea to talk to a doctor about the various medical terms and procedures and to a lawyer. It is also important to make sure your family knows and understands your wishes. **Living wills provide a strong statement of your wishes, but they are not legally binding in Nova Scotia.** Patients cannot ensure that their wishes will be carried out. Common law partners and registered domestic partners cannot give consent for organ and tissue transplantation in the event

their spouse or partner dies even if the partner has power under the *Medical Consent Act*. The *Human Tissue Consent Act* defines "spouse" as being legally married.

Having a donor card is an indication of your wishes, but the hospital still needs consent before taking any organs.

A Lost Chance to Save Lives

Mary's common law partner of 15 years was involved in a terrible car accident. Earl was rushed to the hospital but died in the operating room. Mary knew that organ donation was important to Earl and authorized the hospital to make the necessary arrangements. The nurse told her she did not have the legal right to make this decision, his adult children did.

They could not agree and decided not to donate his organs.

Custody and Access

Different custody and access laws apply to married and unmarried parents, but the end result is the same: courts make custody and access decisions based on the child's best interests. The law governing custody, access, spousal support, and child support for common law parents and registered domestic partners in Nova Scotia is called the *Maintenance and Custody Act*.

Custody determines which parent a child will live with most of the time and which parent is entitled to make decisions about the child. Generally, the court wants to keep the children's lives as similar as possible after the separation, so the children often continue to live with the parent who had the most responsibility for them during the relationship. This parent is called the "primary caregiver."

Four Different Types of Custody

Sole custody

Children live with one parent who is entitled to make all decisions about the children. The children usually continue to see the other parent during access visits.

Joint custody

Parents share responsibility and decision making in relation to the children. The children still usually live with one parent most of the time.

Shared custody

Children spend almost equal time with both parents, who make decisions about the children together.

Split custody

Each parent has at least one child living mostly with them.

Access

Access refers to the child's right to visit and spend time with the other parent and includes anything from a short visit to staying with the other parent for weeks or even months at a time. Parents almost always have access unless there is strong proof that it would not be in the children's best interests. If parents get along well, they might agree to access "at reasonable times and on reasonable notice," which leaves things as open as possible. If they had difficulty reaching agreement, they may choose to set up a detailed access schedule. Access is usually unsupervised, but if there is a risk of harm to the children, access can be supervised by a parent, family member, friend, or professional.

Most separating parents eventually agree on custody and access. A written agreement that is signed and witnessed can be registered with the Family Court or Supreme Court Family Division and be enforced like a court order. If the parents

cannot agree, they can try mediation or collaborative family law, or they can go to court and let a judge decide.

Canada's *Divorce Act* is currently under review, and the words "custody and access" may change to "parental responsibility." While the *Divorce Act* does not apply to common law couples or registered domestic partners, if family law changes significantly for married couples, the provinces may decide to change the law for common law couples and registered domestic partners as well.

Custody, Access, and Abuse

It is illegal and harmful to a child to be repeatedly exposed to domestic violence. Child-protection workers may remove a child from a home because of ongoing domestic violence. Partner abuse harms children even if the children are not directly abused themselves. Studies show that 80–90% of children know about the violence. Often, they believe it is their fault. Children who grow up in homes where one parent abuses the other can grow up believing that abuse is normal. Boys may grow up to abuse their partners. Girls may choose partners who abuse them. If your partner is hurting you, it is hurting your children, too.

When there are children, the abused partner may have ongoing contact with the abusive partner during access exchanges. Courts rarely deny a parent access to the children based solely on domestic violence, but there are ways to make this access safer. A lawyer or women's shelter can help.

In cases where the abuse was directed against the children as well as a partner, the court may conclude that it is not in the children's best interests to see the parent who abuses them, at least until that parent has received treatment.



Did You Know?

Before leaving Canada with children, all parents should get a written letter of permission from the other parent unless both will be travelling with the children at all times. Customs officials are concerned about preventing one parent from kidnapping children, so they may ask many questions and not permit your children to leave Canada if they have concerns. You should bring along a certified copy of your custody order (if any) and a letter of permission from the other parent. The letter should be signed and dated and should show that the other parent knows where the children are going, when they will be back, and confirm that the other parent consents to the children going on the trip. It is also a good idea for the letter to state that the parent travelling with the children can make medical decisions for them while they are away. The letter should be notarized by a lawyer. This means that the parent who is not traveling with the children should take the letter to a lawyer and follow the lawyer's instructions for signing it. The fee for notarizing a document is usually about \$20–\$40.

Custody, Access, and Child Support Issues for Mi'kmaq and African Nova Scotian Parents

Nova Scotia courts decide custody and access issues for all children in the province, including Mi'kmaq and African Nova Scotian children. Courts base their decisions on the best interests of the child. Courts recognize that it is in a child's best interest to experience all aspects of the child's cultural and ethnic heritage and take this into account when deciding custody and access cases.

However, because of the *Indian Act*, it can be extremely difficult for members of one band to collect child support from members of other bands and for non-Mi'kmaq parents

to collect child support from people living on reserves. An employee's wages can be garnisheed if they are employed and paid off-reserve.

Indian Affairs and Northern Development has released a booklet entitled *After Marriage Breakdown: Information on the On-Reserve Matrimonial Home*, which provides information about the on-reserve matrimonial home when a marriage or common law relationship breaks down. Copies of the booklet can be obtained from Indian and Northern Affairs Canada, Women's Issues and Gender Equality at phone: (819) 953-9857/ fax: (819) 953-9987/e-mail: <DumaisC@ainc-inac.gc.ca>.

Did You Know?

Both parents have a right to appeal a judge's decision on custody, access, and financial support, but the appeal must be made within 30 days of the date of the decision or order. You should speak to a lawyer as soon as possible. You can also contact your local Family Court or Supreme Court Family Division for more information.

Custody, access, child support, and spousal support orders can be varied by a court if there has been a significant change in circumstances. Property is only divided once. Children grow out of custody and access arrangements the same way they outgrow clothing and toys. Infants that are breastfeeding may only be able to be away from their mothers for a few hours at a time. Some toddlers enjoy overnight visits with the non-custodial parent; others are not ready. School-age children do best with a predictable routine and the knowledge they will get to spend regular time with both parents. Teenagers may want to make their own arrangements to see the non-custodial parent.

Support

Child Support

All children are entitled to financial support from both parents if the parents can afford to pay support. This responsibility exists no matter what relationship the parents had with each other, and it continues until the child is no longer dependent. Usually this happens by age 19, but support may be paid longer if the child is a full-time student or has an illness or disability.

The amount of support is based on Nova Scotia's *Child Support Guidelines*, which are virtually identical to the federal *Child Support Guidelines* that apply to divorcing parents. Guidelines make the calculation of child support predictable and consistent. The amount of support is based on the number of children in the family and the income of the parent paying support. The income of the parent who has custody is not taken into account, except in certain limited circumstances.

The guidelines include detailed tables setting out child support for parents with incomes of up to \$150,000 per year. This amount is called the "basic" or "table" amount of support. It can be increased to include sharing of special expenses like child care, health-related expenses, private school or other educational expenses, university and college expenses, and expenses for certain extra-curricular activities. Support can also be decreased if it would cause undue hardship to the paying parent. However, very few parents qualify for a reduction in child support based on hardship.

Sample Child Support Amounts Based on the Paying Parent's Income

| Yearly Income | One Child | Two Children | Three Children |
|------------------|--------------|-----------------|-------------------|
| \$10000 | \$101 | \$115 | \$128 |
| \$20000 | \$159 | \$283 | \$382 |
| \$30000 | \$260 | \$438 | \$576 |
| \$40000 | \$334 | \$554 | \$730 |
| \$50000 | \$415 | \$679 | \$891 |
| \$75000 | \$602 | \$971 | \$1267 |
| \$100000 | \$774 | \$1241 | \$1614 |

Special rules apply to parents with shared custody (where both have the child at least 40% of the time), parents with split custody (where each parent has at least one of the children living with them), paying parents with incomes over \$150,000 per year, and parents who agree in writing on a different amount that still meets all of the child's needs.

As with custody and access issues, if parents agree on an amount of child support, they can sign a written agreement and register it with the court or ask the court for a "consent order" to formalize the amount. If they cannot agree, they can apply to the court to decide. The basic amount of child support is usually adjusted once a year, based on the paying parent's income for the previous year. If there is any other significant change in circumstances or if the parents cannot agree on the amount, either parent can apply to the court to set a new amount of support.

To find out exactly how much child support is required, parents need to know the paying parent's total income for

the previous year and must have a copy of the *Child Support Guidelines*, including the Nova Scotia table showing the amounts awarded for each income level. To order a free copy of the guidelines, call 1-888-373-2222 or 1-800-665-9779. The guidelines are also on the Internet at www.canada.justice.gc.ca/en/ps/sup/pub/aguide.html.

Did You Know?

Once there is a child support agreement or court order, missed payments are still owed to the custodial parent. Support owing is called “arrears.” Even bankruptcy doesn’t erase this debt, but a court can forgive all or part of the arrears if the parent had a very good reason for being unable to pay.

A parent’s current financial circumstances are taken into account with respect to child support payments. If you lose your job or suffer a financial setback, support can be adjusted to reflect your reduced ability to pay support. If you received severance pay, you may be required to pay some of it for child support. You must apply to the court for any changes. Speak to a lawyer to find out more about your rights and obligations.

Child support can be reduced if the paying parent would suffer undue hardship by paying the full amount. If any of these circumstances apply to you, you may be entitled to pay reduced child support:

- You have a high level of debt that was reasonably incurred to earn a living or support the family before the separation.
- You have “unusually high expenses” in relation to access.

- You have a legal duty under a court order, judgment, or written separation agreement to support another person, including another dependent child or someone who cannot obtain food, clothing, or shelter due to an illness or disability.

You must also prove that you will have a lower standard of living than the other parent and children if the child support is not reduced.

Remember that it is not okay to reduce the child support you pay or to stop paying support without the other parent’s agreement or a court order.

If your common law partner pays support for children or a previous partner, your income may—or may not—be relevant in determining the amount of support.

Generally, child support is based on the paying parent’s income alone. A new common law partner’s income is irrelevant. However, if your partner makes a claim to reduce child support due to undue hardship, your income is relevant because the court considers the standards of living in both parents’ homes. Your income is also relevant if your partner applies for or pays spousal support. The law does not require you to help pay for your partner’s ex, but will take into account that your partner’s living expenses will decrease when you and your partner begin to share living expenses. This may mean that your partner has more ability to pay spousal support.



Step-parents: Rights and Responsibilities

Lydia and Manuel live with Lydia's nine-year-old daughter from a previous relationship. Manuel has been Tamara's stepfather since she was three. When Lydia and Manuel separated, Manuel told Lydia that he had no financial responsibility for Tamara since he isn't her biological father.

This is an incorrect—and potentially costly—assumption. Same-sex and opposite-sex step-parents who take a parental role with their partner's child may have responsibilities to the child after the relationship ends. A court may order that the step-parent be permitted to continue to visit with the child (if this is in the child's best interests), and the step-parent may be ordered to pay child support. If the child's biological parent already pays support, the court could order the step-parent to contribute, based on income. If the child's biological parent does not pay support, the step-parent may be required to pay the full amount. However, not all step-parents acquire these rights and responsibilities. The court assesses each situation based on the parental role the parent played in the child's life.

Spousal Support

Common law partners who have lived together for more than two years have the right to apply for spousal support. Married couples and registered domestic partners acquire this right immediately. Spousal support is financial support provided by one partner to the other after a relationship ends. Ex-common law partners, like married spouses, have a responsibility to provide financial support to their former partners if needed.

If the partners cannot agree, the person seeking support may apply to the court for a spousal support order. Support for common law partners is granted based on Nova Scotia's *Maintenance and Custody Act*. However, there are no guidelines for spousal support except previous cases with similar facts, so

the amount of support awarded, how and when it should be paid, and for how long, are based on a consideration of such things as each partner's income and financial needs, their respective abilities to earn money, their ages, the length of the relationship, who is taking care of the children (if any), and the physical or mental health or disability of the partners.

Not every partner who seeks support will receive it, even if the partners' incomes and assets are unequal. Even where partners are successful in obtaining support, they are required to make efforts to become self-sufficient. Support may be reduced if the partner receiving support unreasonably draws out the need for it. If it appears that a partner will need support for only a limited period of time (for example, to find a job or go back to school to retrain), a spousal support order can provide for support to end on a certain date or when a certain event happens, such as graduation, finding a job, or remarriage. Partners should be careful not to agree to an end to support unless they are certain they will no longer need support after that date, since it can be difficult or impossible to regain spousal support, even if circumstances worsen.

Spousal support orders can be varied by agreement or by the court if there is a significant change in circumstances relating to one partner's need for support or the other partner's ability to pay. Changes can be made in the amount of support (up or down), how often it is paid, when it is paid, or whether it will be paid at all.

Did You Know?

If you and your ex-partner agree to a change in spousal or child support, you should register your agreement with the Family Court or Supreme Court Family Division or have the court issue a consent order. If you do not, it could be difficult to prove that you had an agreement if your ex-partner wants to return to the amount of support in the earlier order. If you and your ex-partner agree on an amount

that is less than the *Child Support Guidelines* provide, then the court may require you to justify your agreement and may decline to accept it.

Paying What's Owed

Karen's former common law partner Wayne was ordered by the court to pay spousal support of \$450 per month until she found a full-time job. Last month, he told her she wasn't trying hard enough and stopped paying support to Karen.

What Wayne did was illegal. Spousal support cannot be varied by one partner without the agreement of the other partner or an order of the court. If support is not paid, help with collecting the support can be obtained from the provincial Maintenance Enforcement Program. For more information call 1-800-357-9248 or see the next section on Maintenance Enforcement.

The Maintenance Enforcement Program (MEP)

Since 1995, when a Nova Scotia court orders spousal or child support, both spouses are automatically enrolled in the Maintenance Enforcement Program unless they agree in writing to opt out. Spouses who sign written agreements that are not registered with the court or who have support orders from other provinces must take steps if they want to enrol in the MEP.

The Maintenance Enforcement Program can help people collect spousal and child support owing to them. The *Maintenance Enforcement Act* sets out what steps can be taken in Nova Scotia if a person does not pay the support ordered. A person's wages can be garnisheed, that is, an employer may be ordered by the court to take a percentage of the person's wage directly out of his or her pay. In extreme cases, a person's property may be seized and sold to pay a support order, or his or her driver's

licence can be suspended. According to the *Garnishment, Attachment and Pension Diversion Act*, a federal law, money owing for support can also be deducted from a person's income tax refunds, employment insurance benefits, old age security payments, and other federal government payments.

Did You Know?

The Maintenance Enforcement Program is especially useful for parents who do not want to have any contact because of abuse, parents who find that they often argue about child support, and parents whose former partners frequently pay late, do not pay the full amount, or do not pay at all. The drawback to the program is that parents are not allowed to take steps to enforce their child support order while enrolled in the program—only the program can enforce the support order. Another drawback is that parents may get the support cheques a few days late every month. If support is paid on time and in full every month, and the parents can get along reasonably well, they probably don't need the Maintenance Enforcement Program. The program is always available if one parent decides to enrol later.

It is illegal for an employer to discriminate against you just because your pay is being garnisheed to pay support. It is also illegal to refuse to hire someone whose wages would be garnisheed.

It is an offence to fail to provide financial information requested by the Maintenance Enforcement Program or to provide false or incomplete information. The penalty is a fine of up to \$2000, up to six months in jail—or both.

Social Assistance

In 2002, Nova Scotia's Department of Community Services replaced the social assistance and family benefits programs with one program called the Employment Support and Income Assistance Program. For more information about the new program, visit www.gov.ns.ca/coms/files/esia.asp.

Living with someone can affect entitlement to benefits under the program. Nova Scotia's Department of Community Services considers two people to be common law partners if they live together in a marriage-like relationship for any length of time.

Did You Know?

If you receive social assistance and begin living with a boyfriend or girlfriend, you must report this change to your caseworker. The worker will look at both partners' financial situations and re-assess eligibility for assistance based on your new circumstances. If you do not report the change, you could be required to repay some or all of the assistance you received since living together. It is a criminal offence to purposely provide false information or to withhold information that could change your social assistance benefits. People who do this can be charged with fraud and be ordered to pay back the benefits they were not eligible to receive.

If you disagree with a decision about your social assistance, you must appeal within 30 days of the date of the decision.

Social assistance payments are reduced by the amount of child or spousal support the other partner has been ordered to pay, whether the support is paid or not.

People receiving social assistance can request that the support payment be made directly to the Department of Community Services. If that is done, the full social assistance amount is

paid to them, and it is the responsibility of the Department of Community Services to collect the support payment.

Immigrants to Canada

Canadian citizens and permanent residents can sponsor common law partners and children to join them in Canada. Sponsors must commit to take care of the sponsored partner for at least three years and must commit to take care of dependent children under 22 years old and other relatives for up to 10 years. On June 28, 2002, a new *Immigration Act* became law in Canada. The new regulations to the *Immigration Act* include same-sex and opposite-sex common law couples.

Not all common law partners will be allowed to come to Canada. First, the government will make sure that the people really are partners and are not just claiming this to gain entry to Canada. A citizen or permanent resident may not be allowed to sponsor a partner if the citizen or permanent resident has been convicted of a serious crime, has gone bankrupt, doesn't pay child support, or defaulted on a previous sponsorship.

Did You Know?

If you are a newcomer to Canada and do not speak either of Canada's official languages (English and French), translation and interpretation services are available through Nova Scotia's Department of Justice if you have to go to court for any reason. In Halifax, the Metropolitan Immigrant Settlement Association (MISA) can help find a translator or interpreter.

Where to Find Help

Getting legal advice, participating in the legal system, and fighting unfair laws and decisions can be a challenge, especially for immigrants, aboriginal people, gays and lesbians, people of colour, people living with disabilities, and people with low incomes, but help is available.

Disclaimer

This publication contains general legal information only and is not intended to serve as a replacement for professional legal or other advice. The Nova Scotia Advisory Council on the Status of Women, Senior Citizens' Secretariat and Legal Information Society of Nova Scotia specifically disclaims any and all liability arising directly or indirectly from the use or application of any information contained in this publication. If you feel you have a legal problem, consult a lawyer.

Help for Common Law Partners

Legal information is available through the Legal Information Society of Nova Scotia (LISNS). Visit them on the web at <www.legalinfo.org> or call 454-2198. LISNS operates a Lawyer Referral Service that can provide a referral to a lawyer for a half-hour meeting for \$20+HST. For a referral, call 455-3135 or 1-800-665-9779 or e-mail LISNS at <questions@legalinfo.org>. To listen to pre-recorded messages on any of 70+ legal topics, call their Dial-A-Law service at 420-1888 (24 hours).

Nova Scotia Legal Aid represents thousands of low-income Nova Scotians each year in family law and criminal law matters. Contact your nearest legal aid office for an application. The number is in the blue pages of your phone book.

The Dalhousie Legal Aid Service provides assistance to low-income Nova Scotians. Call 423-8105 to find out if they can help you.

First Nations people charged with criminal offences can contact one of four native court workers in Nova Scotia. A worker can come to court, refer to other services, explain the system, and assist families, victims and communities. For a referral to a worker, contact the Mi'kmaq Native Friendship Centre at 420-1576.

Women in conflict with the law can call the Elizabeth Fry Society of Mainland Nova Scotia at 454-5041 or 1-877-619-1354 or in Cape Breton at 539-6165.

The Court Challenges Program helps fund important challenges to unfair laws across Canada. Visit their website at <www.ccppcj.ca> or call them at (204) 942-0022. If you have a lawyer, he or she can help with the application.

The Nova Scotia Human Rights Commission and Canadian Human Rights Commission deal with complaints of discrimination. Contact them at <www.chrc-ccdp.ca> or 1-800-999-6899 (Canada) or <www.gov.ns.ca/humanrights> or 424-4111 (Nova Scotia).

Call the Nova Scotia Advisory Council on the Status of Women at 1-800-565-8662 for information and referral on matters of concern to women.

Seniors can contact the Seniors' Secretariat at 424-0561 or 1-800-670-0065 to learn more about programs and services for seniors.

The Lesbian Gay and Bisexual Youth Project can be contacted at 429-5429, and the Nova Scotia Rainbow Action Project can be reached at 832-9100.

Some Laws That Affect Common Law Partners

All of the following laws apply equally to same-sex and opposite-sex common law partners, unless otherwise noted.

To find these laws, visit your local library or check these websites:

Nova Scotia laws: www.gov.ns.ca/legislature/legc/

Federal laws: www.justice.gc.ca/en/index.html

All laws: www.canlii.org



| Law Nova Scotia/Federal | Description | Amount of Time Living Together to Qualify as Partners |
|--|--|--|
| Abuse | | |
| <i>Domestic Violence Intervention Act</i> Nova Scotia | Allows a victim of domestic violence to apply for an emergency protection order lasting up to 30 days | Anyone who has lived together or has a child together |
| <i>Criminal Code</i> Federal | Section 810 allows anyone who fears for their safety or their property to apply for a peace bond requiring another person to stay away from them or abide by other conditions | Anyone can apply |
| Taxes | | |
| <i>Income Tax Act</i> Federal | Income tax law for Canada | 12 months or if the couple lives together and has a child together |
| <i>Income Tax Act</i> Nova Scotia | Income tax law for Nova Scotia | 12 months or if the couple lives together and has a child together. |
| Health | | |
| <i>Incompetent Persons Act</i> Nova Scotia | Allows someone to become another person's guardian if that person can no longer look after themselves or manage money | Any relative or friend may apply |
| <i>Health Act</i> Nova Scotia | Allows partners to consent to release each other's medical records if their partner cannot consent | <ul style="list-style-type: none"> • Two years for common law couples • Registered domestic partners from the date they registered their partnership |
| <i>Hospitals Act</i> Nova Scotia | <ul style="list-style-type: none"> • Allows partners to apply to discharge a partner from psychiatric hospital, and entitles partners to notice if their partner is transferred • Partners can also consent to treatment of a partner or to the release of a partner's medical records if the partner cannot consent | <ul style="list-style-type: none"> • Two years for common law couples • Registered domestic partners from date they registered their partnership |
| <i>Human Tissue Gift Act</i> Nova Scotia | Allows married spouses to consent to organ donation on behalf of a spouse who cannot consent | Common law partners and registered domestic partners are not included |
| <i>Medical Consent Act</i> Nova Scotia | Allows a person to appoint another person to consent to medical treatment on their behalf, if they cannot consent | Any person over 19 |

| Law Nova Scotia/Federal | Description | Amount of Time Living Together to Qualify as Partners |
|--|---|---|
| Custody, Access, and Support after Separation | | |
| <i>Maintenance and Custody Act</i> Nova Scotia | Allows partners to apply for spousal support, child support, custody, and access | <ul style="list-style-type: none"> • Any parent may apply for custody, access, or child support even if the parents never lived together • For spousal support, the couple must have lived together for at least two years • Registered domestic partners are included from the date they registered their partnership |
| Property | | |
| <i>Matrimonial Property Act</i> Nova Scotia | Allows married spouses and registered domestic partners to divide property equally after separation, unless it would be unfair to do so | <ul style="list-style-type: none"> • Common law partners are not included • Registered domestic partners are included from the date they registered their partnership |
| <i>Partition Act</i> Nova Scotia | Allows people who own property together to apply to the court to divide the property or order that it be sold and the proceeds divided between the owners | Anyone who owns land or a home with someone else |
| Pensions | | |
| <i>Canada Pension Plan Act</i> Federal | Gives partners the right to share CPP benefits during their relationship and after separation and provides a survivor's benefit if a partner dies | <ul style="list-style-type: none"> • 12 months, but partners who separated more than three years ago may not be eligible to apply for benefits • Registered domestic partners are recognized as common law partners after they have lived together for 12 months |
| <i>Old Age Security Act</i> Federal | Provides benefits to lower-income seniors, and survivor benefits if one partner dies | <ul style="list-style-type: none"> • 12 months just before the partner's death • Registered domestic partners are recognized as common law partners after they have lived together for 12 months |

| Law Nova Scotia/Federal | Description | Amount of Time Living Together to Qualify as Partners |
|---|--|--|
| <i>Pension Benefits Act</i> Nova Scotia | A Nova Scotia law that allows partners to divide pensions if they separate and provides a survivor's pension if one partner dies | <ul style="list-style-type: none"> • Two years, but only if neither partner is married to someone else • Registered domestic partners are included from the date they registered their partnership |
| <i>Pension Benefits Division Act</i> Federal | A federal law that allows partners to divide pensions if they separate | <ul style="list-style-type: none"> • 12 months • Opposite-sex registered domestic partners are included after they have lived together for 12 months • An amendment was passed to include same-sex common law partners but it is not yet law |
| <i>Pension Benefits Standards Act</i> Federal | A federal law dealing with administration of pension plans, including death benefits and survivor's pensions | <ul style="list-style-type: none"> • 12 months immediately before the death of one partner • Registered domestic partners are included as common law partners if they have lived together for at least 12 months |
| <i>Public Service Superannuation Act</i> Federal | Deals with pensions for some federal government employees | <ul style="list-style-type: none"> • 12 months • Registered domestic partners are included as common law partners if they have lived together for at least 12 months |
| Wills and Estates <i>Probate Act</i> Nova Scotia | Grants the right to administer the estate of a person who dies without a valid will, or without an executor (a person appointed in a valid will) | <ul style="list-style-type: none"> • Common law partners are recognized only if they have a claim on their partner's property, and then they are at the bottom of the list after married spouses, children, the public trustee, and beneficiaries, though a court can change this order if appropriate • Registered domestic partners are included from the date they registered their partnership |

| Law Nova Scotia/Federal | Description | Amount of Time Living Together to Qualify as Partners |
|---|---|--|
| <i>Intestate Succession Act</i> Nova Scotia | Sets out how a person's property will be distributed if the person dies without a valid will | <ul style="list-style-type: none"> • Common law partners are not included but children are recognized • Registered domestic partners are included from the date they registered their partnership |
| <i>Testators' Family Maintenance Act</i> Nova Scotia | Allows a married spouse or child to apply for financial support from a dead person's estate, if the dead person did not provide for them in his or her will | <ul style="list-style-type: none"> • Common law partners are not included but children are recognized • Registered domestic partners are included from the date they registered their partnership |
| <i>Public Trustee Act</i> Nova Scotia | Allows the public trustee to make payments from a dead person's property to support the person's married spouse, child, or any other relative | <ul style="list-style-type: none"> • Common law partners and registered domestic partners are not included, but children are recognized |
| Insurance and Compensation | | |
| <i>Fatal Injuries Act</i> Nova Scotia | Allows a surviving partner to bring a claim on behalf of a partner who dies in an accident due to negligence | <ul style="list-style-type: none"> • One year just before the partner's death • Registered domestic partners are included from the date they registered their partnership |
| <i>Insurance Act</i> Nova Scotia | Regulates insurance policies and insurance companies | <ul style="list-style-type: none"> • One year, but only where neither partner is married to someone else • Registered domestic partners are included from the date they registered their partnership |
| <i>Victims Rights and Services Act</i> Nova Scotia | Provides compensation to victims of crime and their families | <ul style="list-style-type: none"> • Couples who live together for any length of time as "husband and wife" • The law does not appear to include same-sex couples (whether they are common law partners or registered domestic partners)—call the Nova Scotia Department of Justice for more information |

| Law Nova Scotia/Federal | Description | Amount of Time Living Together to Qualify as Partners |
|---|---|---|
| Benefits | | |
| <i>Student Aid Act</i> Nova Scotia | Regulates Nova Scotia student loans | <ul style="list-style-type: none"> • People who filed their last income tax returns as common law partners or live together and have a child together • Application to registered domestic partners is unclear—contact the Department of Education for more information |
| <i>Social Assistance Act</i> Nova Scotia | Provides benefits for Nova Scotians in need | Any length of time living together as spouses, whether common law or registered domestic partnership |



**Nova Scotia
Advisory Council on
the Status of Women**



Senior Citizens' Secretariat

LEGALinformation
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