

# Then You Shoulda Put a Ring on It... or Not?

A Comparison of Married and Common-Law Relationships in Canada

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Photo by Emma Bauso: <https://www.pexels.com/photo/woman-putting-ring-on-person-s-hand-2253840/>

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If you've ever wondered why marriage is substantially different from cohabitation without marriage (often called "common-law"), or what benefits/drawbacks materialize when you "put a ring on it," we hope to offer some helpful answers.

While it's true that for those in healthy and functioning relationships, there will be no drastic contrasts between the daily lives of spouses and those of common-law partners, the distinction can become all too real when a relationship ends in a divorce (for legally married spouses), a separation (for common-law partners), or by the death of a spouse/partner.

So, dear reader, let's begin!

## Federal or Provincial Law?

In Canada, there is a federal law called the *Divorce Act*, which prescribes the requirements and grounds for divorce (e.g., separated living for a year, adultery, or domestic violence) ([Divorce Act](#), Section 8). This is used when applying for a divorce, so it only pertains to married couples.

However, there are other issues that need to be resolved in both married and common-law partnerships.

For example, separating couples typically need to consider:

- Property Division
- Spousal Support

Additionally, couples with children will need to establish:

- Child Support
- Parenting Arrangements, Access to a Child, Guardianship

These topics fall *primarily* under provincial jurisdiction, which means rules can vary depending on where you live ([LegalAid BC](#), "Do you need to go to Provincial (Family) Court or Supreme Court?"; [Epstein & Associates](#), "Is Divorce Law Federal or Provincial?").

It's important to note that the division of responsibilities between federal and provincial laws over these issues is complicated, *especially for common-law relationships*. Some provinces will apply the same rules to separating common-law partners as they would to divorcing spouses, but others may treat common-law partners as platonic roommates, with little obligation to each other upon separation. Please use this blog as a general guide and seek professional legal advice ("[Common Law v Legally Married in Canada: Pt 1-Property Division](#)").

Now, let's expand on these topics and establish appropriate expectations based on the law.

# Property Division

There is legislation that governs how family property is divided for married couples. Let's start in Ontario. Here, the provincial legislation, called the *Family Law Act*, provides a regime for married spouses that "equalizes" the "net family property." This process can require you to share the value of the assets you hold (even if they are solely under your name) with your divorcing spouse. For instance, if you earned and saved \$100,000 in your bank account while your dependent spouse earned nothing, when you separate, you must share that \$100,000, even though it's in your own account. For an explanation of this, see ["How is Property Divided Upon Separation"](#).

But what about a common-law separation? In Ontario, common-law partners are treated like "platonic roommates" under the law. This means that each partner is entitled to leave the relationship with all the property *that is attached to their name*. Property division in this case becomes a matter of who can prove they paid for what (["Common Law v Legally Married \(Ontario\): Part 1a-Property Division Basics"](#)).

Generally speaking, in provinces like Ontario that don't have specific rules about property division during a common-law separation, the only time each partner can automatically claim one-half of the things owned jointly (like a married spouse can) is *when the property is under the names of both partners* (["Common Law v Legally Married in Canada: Pt. 1-Property Division"](#)).

So, if your name is not "on title" to any of the property you and your common-law partner share (e.g., cars or homes), the law offers you no entitlement to any of those properties if the relationship should end (["Common Law v Legally Married \(Ontario\): Part 1a-Property Division Basics"](#)). It is even possible (as is the case under Ontario's *Family Law Act*) for you to face eviction if the lease/purchase agreement of the home you cohabit displays solely the name of your partner (["Common Law v Legally Married \(Ontario\): Part 1-Property Division"](#); ["Common Law v Legally Married \(Ontario\): Part 1b-Matrimonial/Family Home"](#)).

However, in some provinces, the same family property division regime applies, regardless of whether you are married or not. For example, in Alberta if you live together with another adult

- for a continuous period of at least 3 years
- of some permanence (and less than 3 years) if the couple has a child together, or
- who have entered into an adult interdependent partner agreement
  
- share one another's lives
- are emotionally committed to one another, and
- function as an economic and domestic unit

you may be in an "adult interdependent relationship" (see Government of Alberta's article on the new *Family Property Act*: <https://www.alberta.ca/dividing-property-between-unmarried-partners>).

In such situations, family property exists and both common-law partners are entitled to some portion of it, just like what happens at the end of a marriage! So, it's important to realize that just because you are not married, it doesn't necessarily mean that "what's yours is yours, what's mine is mine" ([Government of Alberta](#), "Dividing Property Between Unmarried Partners").

British Columbia applies a similar rule. However, it defines the time of cohabitation as "two years" instead of three. For more information, see ["Common Law v Legally Married in Canada: Pt. 1-Property Division"](#).

To summarize, it's important to find out what the law is when it comes to property division for *your situation*. These laws are province-specific. Be careful not to assume that common-law couples are always treated as separating roommates, as is the case in Ontario!

## Methods of Recourse

What happens, then, if your common-law partnership ends and you discover you have no legal entitlement to the value of the home, even though you've renovated and refurbished it at your own expense over the course of the relationship? Methods of recourse do exist but because common-law relationships can fall into a gray area under provincial regulation, these processes can be long, expensive, and uncertain.

One method is "Unjust Enrichment", where a lawyer can help you determine how much of the property you can try to claim based on what you've contributed. This is a very complicated area of law, so seeking a legal professional is necessary (["Common Law v Legally Married in Canada: Pt. 1-Property Division"](#)).

Another method is preventative. Prior to cohabitation, a common-law couple can enter into a cohabitation agreement, which states in advance what property division will look like, should it become necessary (["Common Law v Legally Married in Canada: Pt. 1-Property Division"](#)). However, for it to be binding, this agreement must fulfill the criteria of a legal contract. This can vary from province to province, so professional help is again recommended (["Common Law v Legally Married in Canada: Pt. 3-Domestic Contract"](#)).

Moreover, a cohabitation contract should be revisited with a lawyer every few years, because as the relationship changes, the legal problems that can arise upon separation will also change (["Common Law v Legally Married in Canada: Pt. 3-Domestic Contract"](#); ["Common Law v Legally Married in Canada: Pt. 4-Prenuptial and Cohabitation Agreements"](#)). While this recurring expense may seem superfluous when a relationship is going smoothly, it's an investment that will pay off if a common-law partnership ends, because the alternative process of litigating can be much more expensive and uncomfortable.

This kind of agreement can also be useful for married couples because provincial family law rules and the federal *Divorce Act* have some rules about what happens after divorce that you can choose to opt-out of in advance. For married couples, the agreement is more commonly

known as a “prenup” ([“Common Law v Legally Married in Canada: Pt. 4-Prenuptial and Cohabitation Agreements”](#)).

## Spousal Support

Spousal support obligations typically arise when one partner has sacrificed their salary or career during the relationship, or would face financial hardship after separation ([“Common Law v Legally Married \(Ontario\): Pt. 2-Spousal Support”](#)).

As with property division, different provincial legislation can result in different outcomes for common-law couples across the country.

For instance, under the spousal support section of Ontario’s *Family Law Act* ([Section 29](#)), the definition of “spouse” changes from its more restrictive definition in the property division section. Whereas it referred to *married* individuals for property division purposes, for spousal support obligations, “spouse” applies to those who:

- a) have continuously cohabited for three years or more, or
- b) have continuously cohabited for less than three years but share a (natural or adopted) child together ([“Common Law v Legally Married \(Ontario\): Pt. 2-Spousal Support”](#)).

Similarly, in B.C.’s *Family Law Act* ([Section 3](#)), the definition of “spouse” is a person who:

- a) is married, or
- b) has cohabited in a marriage-like relationship:
  - a. continuously for at least two years, or
  - b. except in *Property Division* and *Pension Division*, has a child with the other person.

So, if you live in these provinces, you may be required to pay spousal support when you separate, *even if you were not legally married to your partner*.

However, this is not the case across the board. For instance, in Quebec, unmarried partners are not entitled to claim spousal support upon separation, unless they have a cohabitation agreement that states differently ([Government of Canada](#), “About Spousal Support”; [Gouvernement du Québec](#), “Separation of Couples in a De Facto Union”).

## Child Support

On the other hand, an obligation to pay child support exists regardless of your relationship status vis-a-vis the other parent (e.g., married, common-law, or a one-night stand) ([“Common Law v Legally Married in Canada: Pt. 2-Child and Spousal Support”](#)). It also exists regardless of your biological relation to the child, so long as a parent-child relationship has been established ([“Common Law v Legally Married in Canada: Pt. 2-Child and Spousal Support”](#); [“Common Law v Legally Married \(Ontario\): Pt. 3-Child Support and Parenting Time”](#)).

This is because the entitlement to child support is a right of the child, and not a right of either parent. Consequently, you cannot waive child support responsibilities or establish in advance how much you'll pay in a cohabitation agreement ([“Common Law v Legally Married in Canada: Pt. 3-Domestic Contract”](#)).

## Wills and Estates

Your status as a married spouse versus a common law partner is also relevant if you do not have a will. When this happens, Intestacy Rules come into play: if you are married, your spouse will receive the first \$200,000 of your net worth. If there should be assets beyond that, it will be distributed to your other relatives ([“Common Law v Legally Married \(Ontario\): Pt. 5-Considerations in Estate Planning”](#)).

Conversely, there is no automatic transfer of assets to a non-married partner. The surviving common-law partner in this situation could apply for an Unjust Enrichment claim or a Dependent Support claim at court, which will cost time and money ([“Common Law v Legally Married \(Ontario\): Pt. 5-Considerations in Estate Planning”](#)).

## Summary

Overall, it's useful to remember that marriage is a change in your legal status, which is accompanied by new rights and obligations. It also offers you concrete legal entitlements upon divorce, which may not be automatically available to common-law partners ([“Common Law v Legally Married in Canada: Pt. 1-Property Division”](#)).

For common-law partners, it is important to be wary of assumptions. Just because your day-to-day activities may look the same with or without a ring, this doesn't mean you have the same legal rights as married spouses. Instead, the rights and obligations of common-law partners can fall in a legal gray area, depending on the province of residence. Thus, “you cannot be absolutely certain that the rights involved in being in an unmarried, long-term relationship are the same or even close to the rights that are involved in being in a married relationship” (John-Paul Boyd in [“Common Law v Legally Married in Canada: Pt. 3-Domestic Contract”](#)). The rules differ depending on where you live, and they change over time, so be sure to do your own research or speak to a lawyer to learn about the laws that apply to you.

We hope this has been a helpful overview of the basic legal differences that exist for married couples and unmarried, common-law partners in Canada. Let us know below if you have any comments or experiences that you'd like to share!

# Acknowledgements

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# Appendix

## Divorce vs. Common-Law Separation Comparison Chart

	Married		Common-Law	
	Pros	Cons	Pros	Cons
End of relationship		You need to get a divorce.	No need to get a divorce.	
Property Division	The equalization of “net family property” regime applies, so the spouse with the lesser asset will be protected.	<p>Property under just your own name will still come under equalization.</p> <p>Your matrimonial home also gets special treatment, which means that a house you owned before you got married STILL gets shared.</p>	<p>Generally, the partner with their name on the property will not have to share (i.e., no equalization). What’s yours is yours, what’s mine is mine.</p> <p>For provinces that treat a common-law home as a “matrimonial home” (i.e., the home shared by married spouses), each partner is entitled to half the value of the home, even if only one partner’s name is on the purchase/lease agreement.</p>	A partner without their name “on title” will need to litigate (e.g., unjust enrichment) to get a share in family property.
Intestacy	The surviving spouse is protected by law to receive something from			An unmarried partner has no automatic entitlement to

	the deceased spouse's estate in intestacy.			their deceased partner's estate.
Spousal Support Obligations	Entitlement to claim spousal support (for spouse of lesser income).	Obligation to pay support (if granted).	If you do not meet the provincial definition for "spouse" in the Spousal Support section, no obligation to pay dependent spouse.	If you do not meet the provincial definition for "spouse" in the Spousal Support section, no entitlement to receive support from breadwinner spouse.

### Litigation Help Videos

- ["Common Law v Legally Married in Canada: Pt 1-Property Division"](#)
- ["Common Law v Legally Married in Canada: Pt. 2-Child and Spousal Support"](#)
- ["Common Law v Legally Married in Canada: Pt. 3-Domestic Contract"](#)
- ["Common Law v Legally Married in Canada: Pt. 4-Prenuptial and Cohabitation Agreements"](#)
- ["Common Law v Legally Married \(Ontario\): Part 1-Property Division"](#)
- ["Common Law v Legally Married \(Ontario\): Part 1a-Property Division Basics"](#)
- ["Common Law v Legally Married \(Ontario\): Part 1b-Matrimonial/Family Home"](#)
- ["Common Law v Legally Married \(Ontario\): Pt. 2-Spousal Support"](#)
- ["Common Law v Legally Married \(Ontario\): Pt. 3-Child Support and Parenting Time"](#)
- ["Common Law v Legally Married \(Ontario\): Pt. 5-Considerations in Estate Planning"](#)
- ["How is Property Divided Upon Separation"](#)
- [What to Consider in Marital and Cohabitation Contracts Pt 3](#)

### Other Resources

- [Epstein & Associates](#), "Is Divorce Law Federal or Provincial?"
- [Gouvernement du Québec](#), "Separation of Couples in a De Facto Union"
- [Government of Canada](#), "About Spousal Support"

[How To Separate](#), “Choosing the Right Law”

[LegalAid BC](#), “Do you need to go to Provincial (Family) Court or Supreme Court?”