

## Living Common Law in Canada The fastest growing family structure in Canada, 2012

### Differences

#### **What are the main differences upon separation between being married and being in a common law relationship?**

1. **Division of property.** Upon a marriage ending, there is an automatic right to equalize family property acquired during the marriage. However, if you are in a common law relationship, you have no such right in Ontario. Instead, you must rely on the nebulous legal concept known as "unjust enrichment" - you must show that your common law partner was unjustly enriched at your expense. This is one of the most complicated areas in Canadian family law. As well, because it is so complicated, and there are no clear rules, it becomes very expensive and time-consuming to enforce your rights, and often people are unable to do so.

2. **Possession of the matrimonial home.** Upon a marriage ending, there is an automatic right to stay in the matrimonial home, even if it is not in your name. You have no such right in a common law relationship in Ontario - if your name is not on the home, you could simply come home one day and find yourself locked out.

3. **Special treatment of the matrimonial home.** If you are married, your matrimonial home is treated differently when dividing property in Ontario. Normally, when your marriage ends, the value of any property you owned when you married is yours -- it is not divided. This is not the case with the matrimonial home. If you own a home on your wedding day, your home is automatically divided between you and your spouse. This is not the case in a common law separation.

4. **Spousal support.** If you are married, you have an automatic right (or obligation) to receive (or pay) spousal support upon separation. **If you are living in a common law relationship in Ontario, you do not obtain this right until you have lived together for three years, or are living in a relationship of some permanence and you are the natural or adoptive parents of a child.**

5. **Time limit to apply for spousal support.** If you were married, you always have the right to apply for spousal support, no matter how long has passed since you separated. If you weren't married, you need to ensure that you apply for spousal support within 2 years of separation.

6. **Orders restraining depletion of property.** If you are married, and you believe that your partner will make his or her money disappear so that you can't divide the assets, you can get a court order stopping them from doing that. However, you have no such right in a common law relationship.

**7. Succession rights on intestacy.** If you are married, and your partner passes away without a will, you automatically receive a share of your partner's estate. If you were in a common law relationship in Canada, you have no right to get anything. Instead, you must bring a claim for unjust enrichment against your partner's estate.

**8. Equalization payment on death.** If you are married, and your spouse does not give you a fair share of his or her assets in their will, then you have a remedy against this, namely asking for an equalization payment from your partner's estate. If you weren't married, you have no such right, and must rely on the nebulous legal concept known as "unjust enrichment."

## Similarities

### What are the main similarities between marriage and common law relationships in Canada?

**1. Child Support.** Child support is the right of the child, not the parent (even though the parent receives the money). So, it does not make a difference whether you are married or in a common law relationship, your child support rights and obligations on separation in Canada are the same.

**2. Child Custody.** Child custody is determined according to what is in the child's best interests. So again, it does not make a difference whether you are married or in a common law relationship, child custody is determined the same way upon separation in Canada.

**3. Dependants Relief.** If you rely on your partner for financial support, when your partner passes away, in Ontario you are entitled to support from your partner, regardless of whether you were married or not.

**4. Surnames.** You can change your last name (surname or family name) to your partner's surname or a hyphenated family name, whether you're in a marriage or a common law relationship. As well, your child's last name can be that of either parent or a hyphenated surname, whether you're in a marriage or a common law partnership. (All children born of a relationship must have the same surname).

**5. Adoption.** The rights of a common law couple (same sex or heterosexual) to adopt a child are the same as that of a married couple.

2008: Stats Canada

43.1% of marriages will end before 50<sup>th</sup> anniversary  
an increase of 39% since 1998.