And they lived happily ever after...

Rights and Responsibilities of Common Law Partners
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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 concerns of women in Nova Scotia. Programs focus on women in leadership, women’s economic equality, personal safety and freedom from violence, and improved women’s health and well-being – with the overarching goal to include more women in all their diversity in decisions that affect their lives.


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The department also functions as a resource and information centre on aging in Nova Scotia. See [www.gov.ns.ca/seniors/](http://www.gov.ns.ca/seniors/).

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More than 1.3 million same and opposite sex couples lived in common law relationships across Canada in 2006, including 34,700 couples in Nova Scotia. Many people choose common law relationships because they don’t want the responsibilities that go along with marriage. Others may begin living common law, but intend to marry at some point in the future. What many common law partners don’t realize is that living common law creates legal rights and obligations that can be the same as, or 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 marriages. It is intended for women and men of all ages and backgrounds. The law in this booklet is current to May 2009. Laws do change. For the most up-to-date information about the law, speak to a lawyer.
Living Common Law

Under most laws, couples are not considered common law partners the day that they move in together. They only become common law partners if they live together for a significant period of time, 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 can become common law partners. Since 2005, gay and lesbian couples can marry anywhere in Canada. All of the laws discussed in this booklet apply equally to same and opposite-sex common law partners, 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?

The Federal and Provincial Governments can make laws affecting common law partners.

- 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 partners at the back of this booklet, setting out how long two people must live together before they become common law partners. Generally, the longer partners live together, the more rights and responsibilities they have, though no amount of time living together will 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 refer to each other as partners or spouses.

- 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 marrying, registering a domestic partnership, or entering into a cohabitation agreement with your partner. Before signing anything, get legal advice.
• Canada and Nova Scotia have Human Rights Acts that protect common law partners from discrimination based on family status. The Canadian Charter of Rights and Freedoms also guarantees equality to same and opposite-sex common law partners.
In some cases, common law partners have to fight in the courts to have their rights recognized.

• Common law partners and registered domestic partners can adopt children in Nova Scotia.

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**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.
In Nova Scotia, people can choose to become registered domestic partners if they have lived in Nova Scotia for more than three months or own property in Nova Scotia. A registered domestic partnership offers a form of relationship that has more of the rights and obligations of marriage than a common law relationship, but does not have all of the rights of a marriage.

Registered domestic partnerships are like marriages in that they are only available to adults over 19 who are not already married or in a registered domestic partnership. Like a marriage, registering a domestic partnership creates instant rights and obligations as a partner, including the right to inherit property in Nova Scotia, apply for spousal support, and divide property like married spouses on separation.

Unlike married spouses, registered domestic partners can end their partnership without a court order for a divorce. Another difference is that registered domestic partnerships are not recognized outside Nova Scotia. The Federal Government will recognize the partners as common law partners after one year, and other provinces will recognize them as common law partners after they have lived together for the necessary length of time. Registered domestic partners who own property outside of Nova Scotia or intend to move away from Nova Scotia should speak to a lawyer to understand how their rights are affected.
Abuse

Some people experience abuse from their common law partner. Abuse can be physical, sexual, verbal, emotional, psychological, financial, or religious. Some types of abuse are criminal offences. The vast majority of spousal abuse victims are women, but men can also experience spousal abuse.

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.

Violence doesn’t always end after partners separate. According to Statistics Canada, many partners report that violence stays the same or increases after separation. For some, violence only starts after separation. 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. More than three-quarters of women killed after separation are killed within one year. Many women killed by their partners did not believe they were at risk.

Transition houses throughout Nova Scotia are listed in the directory at the back of this book. Call one of them for advice and help.
Did You Know?

Nova Scotia has a Domestic Violence Intervention Act that allows victims of domestic violence to apply for emergency protection orders lasting up to 30 days.

The law applies to all partners and former partners who have lived together, or who have a child together, even if they never lived together. This law mainly addresses the types of abuse that are criminal offences, such as assault, sexual assault, threats, property damage, and stalking or harassment. It does not apply in situations where the only abuse is emotional or verbal.

An emergency protection order can give one partner the right to stay in the family home or apartment and require the other partner to move out immediately. It can require one partner to have no contact with the other partner and stay away from the other partner’s home and workplace. It can also award temporary custody of children to one partner. Other conditions, such as control over bank 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 it is necessary to make the order right away. All hearings are completed by telephone. The victim must be willing to testify under oath about the violence. To apply, call 1-866-816-6555 or contact police, victim services, or a women’s shelter. Emergency protection orders are available 24 hours a day, 365 days a year, but between 9 pm and 9 am you must first contact police, victim services, or a women’s shelter.
Many common law partners are shocked to find out that they do not have the same rights as married couples concerning dividing property after separation. When married couples and registered domestic partners separate, Nova Scotia’s Matrimonial Property Act gives each spouse the right to share in all assets brought into the marriage or acquired during the marriage, with only a few exceptions. Assets are shared equally unless one spouse can prove that equal sharing would be unfair. The Matrimonial Property Act does not apply to common law partners.

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 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 outcome 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 case, 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 earned during the time the partners lived together can also be divided. In some situations, one partner may be entitled to share in the other partner’s employment pension. This right to a share in partner’s pension is difficult to establish and can be affected if the partner with the pension is still married to someone else.

**Walsh v. Bona**

Walsh and Bona were Nova Scotian common law partners who ended their 10-year relationship in 1995. They had two children. When they separated, Walsh asked the court to divide their property equally 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 partners from rights under Nova Scotia’s 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.
**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 presumed 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 unjust enrichment.

Partners who had a very long relationship 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 or may not be entitled to an equal share of each other’s assets. More minor contributions may justify a smaller share, such as 25 per cent, or 10 or 5 per cent, or a lump sum payment. Unlike married spouses, common law partners must prove their entitlement to share in each asset owned by the other partner.

**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 the funds that are 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 were common law partners, 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 are 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 amount back if you separate and 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? Talk to your lawyer about your options.

If you separate and your partner won’t agree to sell the house, you can apply to the Nova Scotia Supreme Court using a law called the Partition Act.

This law allows a judge to order that property owned by more than one person be sold and the money divided between the owners.
Jan and Alex are buying their first house—a fixer-upper in a neighborhood with lots of children for their two-year-old son, James, to play with. Their lawyer asked them if they wanted 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 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 and Jan said.
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 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 require you to leave 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 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 more than $25,000, 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.

Common law partners who separate and both want ownership of a pet can apply to the Small Claims Court to resolve the dispute.
Because pets are considered property, the court will decide which partner gets to keep the pet. Some partners agree to share a pet after they separate, with each partner having the pet with them for a week or two at a time. Before you go to court to decide ownership of a pet, consider trying mediation to solve this dispute. See the Mediation section of this booklet for more information.

Indebted

Manuel and Lydia have been living together for 10 years. Lydia has just discovered that Manuel has 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. Like married spouses, common law partners are each responsible for their own debts, unless they have co-signed for the debt. When common law partners apply for credit, the bank may ask them to co-sign just because they are partners. Think very carefully before agreeing to this.
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.

**Property Issues When One or Both Partners are Registered Indians Living On Reserve**

Canada’s Constitution gives the Federal Government power over “Indians and lands reserved for Indians.” Under the Indian Act, individual band members have a right to possess individual parcels of land, but the reserve is land set aside for the use and benefit of the band as a whole. While parcels of reserve land can be bought and sold between members of the band, reserve land cannot be given or sold to anyone else except the Federal Government.

Members of a band can hold individual parcels of reserve land in two ways. The first way is through what are called “custom allotments.” Under this form of allotment, band members hold individual parcels through historical occupation, community recognition, or inheritance. This form of land holding is not officially recognized under the Indian Act and the possession is not registered in the Reserve Land Register. This form of possession is dependent upon the band council continuing to recognize the custom right. Courts are generally unwilling to recognize custom rights. Common law partners holding a custom allotment must look to their band council, not the courts, to determine possession of these lands upon separation.

The second way individual parcels of lands can be held on-reserve is through a process set out in the Indian Act. This involves the band council approving an individual allotment of land through a Band Council Resolution, which then must be approved by the Minister of Indian Affairs, who issues a Certificate of Possession. Certificates of Possession are registered in the Reserve Land Register and can be enforced through the courts.
While Certificates of Possession can be issued to both partners, in the past they tended to be issued to the male partner only. The Indian Act does not say what should happen to the home if a relationship ends and the Certificate of Possession is only in one partner’s name.

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. Courts 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 the partner receiving compensation is not a status Indian. If domestic violence has occurred, a judge can grant a no-contact order under the Criminal Code but cannot order an abusive partner to leave the home if the Certificate of Possession is in the abusive partner’s name.

In February 2009, the Federal Government re-introduced Bill C-8: Family Homes on Reserves and Matrimonial Interests or Rights Act. This proposed law will provide married spouses and common law partners with basic rights and remedies in relation to family homes on reserve after separation, or if one of the partners dies. It will also allow First Nations to develop their own laws on matrimonial property. Once the Bill becomes law, married spouses and common law partners will have new rights to

- occupy the family home during the relationship
- not have the family home sold or mortgaged without the consent of both spouses or partners
- apply for emergency protection orders to exclude a violent spouse or common law partner from the family home
- obtain exclusive possession of the family home after separation
- an equal division of the value of the family home and any other family interests or rights
- transfer family property with or instead of financial compensation
- enforce agreements on family property and/or
- remain in the family home after a partner dies, and apply for a division of family property instead of inheriting property from the partner who died.

When this booklet went to print, Bill C-8 was not yet law. To determine if this law is in force, check with Indian and Northern Affairs Canada at 1-800-567-9604 or visit the website at www.ainc-inac.gc.ca/. If Bill C-8 becomes law, common law partners on reserves in Nova Scotia will have greater rights and responsibilities than common law partners off reserve.
When Provincial Laws apply to Persons Living On Reserve

Provincial laws apply to people living on reserve as long as those laws do not conflict with the Indian Act. There are a couple of areas where provincial family laws conflict with the Indian Act: division of property on reserve; and enforcement of child support awards against a registered Indian living on reserve. In these cases, different laws can apply. Otherwise, provincial laws apply to persons living on reserve just as they do to everyone else in the province. For example, provincial laws on custody and access continue to apply on reserve.

Enforcement of Child Support where One Parent is a Status Indian Living On Reserve

Separating partners on reserve are able to get spousal and child support orders under provincial laws, but there can be problems with enforcing such orders when the partner paying support is a status Indian living on reserve. This is because the Indian Act exempts the property of status Indians on reserve from enforcement and garnishment (a form of legal seizure) by anyone who is not a status Indian (this includes non-status Indians as well as non-Aboriginal people).

In cases where the partner attempting to enforce a support order is not a status Indian, he or she may be prevented from enforcing the order against the property of the status Indian partner if that property is located on reserve. If the status Indian partner works or owns property off reserve, then the support order can be enforced through garnishment of the partner’s income, or seizure and sale of their property off reserve.

Where both partners are status Indians, the Indian Act does not limit the ability to enforce spousal and child support orders.
Married couples, common law partners, and registered
domestic partners can make tax-deductible contributions
to each other’s registered retirement savings plans (RRSPs). The
contribution reduces the RRSP deduction limit for the partner
who makes the contribution. 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’s as part of their property division.

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 him or
her. 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 a
lawyer or estate planner.

If no beneficiary is named, the RRSP money goes into the dead
partner’s estate and will be divided according to the provisions of the
partner’s will. Taxes and probate fees will apply. If there is no valid
will, Nova Scotia’s Intestate Succession Act sets out who can inherit
property when someone dies without a valid will. Common law
partners are excluded and inherit nothing, so it is very important for
common law partners to make a will and to name a beneficiary for
their RRSPs.
**Tax-Free Savings Accounts**

In 2009, the Federal Government introduced registered tax-free savings accounts (TFSA) to complement RRSPs and Registered Education Savings Plans (RESPs). Legal residents of Canada over 19 can contribute up to $5,000 per year to their TFSA. Unused contribution room can be carried forward. Contributions are not tax-deductible, but investment income earned in a TFSA is tax-free, as are withdrawals. Money withdrawn can be replaced in future years. TFSA income and withdrawals do not affect eligibility for federal income-tested benefits and credits, such as Old Age Security, the Guaranteed Income Supplement, and the Canada Child Tax Benefit.

Married spouses and common law partners may give money to their spouse or common law partner to invest in a TFSA, if the spouse or common law partner has enough contribution room, but joint and spousal TFSAs are not permitted.

After separation, married spouses and common law partners can divide their TFSAs by written separation agreement or court order as part of their overall division of property. When funds are transferred from one TFSA to another as part of a division of property following separation, the funds do not use up any contribution room in the recipient’s TFSA, and the amount transferred is not added back into the first spouse or partner’s contribution room, as with a withdrawal.

TFSAs can generally be transferred from one spouse or common law partner to the other when the first partner dies. For more information about TFSAs contact Service Canada at 1-800-622-6232 (TTY 1-800-926-9105) or visit www.tfsa.gc.ca.
Pension Income-Splitting

Since 2007, married spouses and common law partners can use pension income-splitting to reduce their taxes by allocating up to half of any income that qualifies for the pension income tax credit to the other spouse or partner. Spouses and common law partners can split income from an employment pension, annuity income from an RRSP or Registered Retirement Income Fund (RRIF), and some other types of retirement income, but not non-registered investments, even if they are for retirement.

Since the election to split pension income is made yearly, spouses and common law partners can change the amount each year to achieve the best tax outcome. Allocating pension income to the lower-earning partner can reduce taxes. In some cases it may make sense to allocate pension income to the higher-earning partner, if it will reduce the claw back of Old Age Security benefits. For more information, visit the Canada Revenue Agency website at www.cra-arc.gc.ca/tx/ndvdlst/cntr/pnsn-splt/menu-eng.html, call the CRA at 1-800-959-8281, or speak to an accountant or tax planner.

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.
Pension Rights after Separation or Death of a Partner

Common law partners may be entitled to receive a share of their partner’s employment pension if they separate, or to a survivor’s pension if their partner dies.

Married spouses and registered domestic partners are automatically entitled to share in their spouse’s pension after separation, but common law partners seeking to share in a partner’s pension after separation must first prove their entitlement to do so, which can be difficult. It takes more than simply living together as partners to prove entitlement to share in a partner’s pension.

The Pension Benefits Act of Nova Scotia applies to people who work for provincially regulated employers, such as manufacturers. Under this law, common law partners and registered domestic partners who are entitled to share in a partner’s pension can receive a share of the pension benefits after separation or their partner’s death if the partners lived together for at least two years and neither partner is legally married to someone else. Nova Scotia’s Department of Labour and Workforce Development publishes a guide on dividing pension benefits after separation. Download a copy by visiting www.gov.ns.ca/lwd/pensions/pubs.asp or call (902) 424-5301.

There are other laws that govern pensions for teachers and Provincial Government employees. The Teachers’ Pension Act and Public Service Superannuation Act (for provincial employees) both recognize common law partners after three years of cohabitation, instead of two years. Visit the Nova Scotia Pension Agency at http://novascotiapension.ca/ for more information.
The Federal Pension Benefits Standards Act applies to individuals who work for federally regulated employers such as banks, railways, and airlines. This law applies Nova Scotia law to pension division after separation for common law partners who have lived together for at least a year.

The Pension Benefits Division Act applies to federal public service pension plans, members of Parliament, members of the Canadian Forces, and RCMP members. Common law partners can receive a share of their partner’s pension benefits after separation if they lived together for at least one year.

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

**The Canada Pension Plan**

The Canada Pension Plan (CPP) allows married spouses and common law partners to split their pension income 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 CPP recognizes common law partners, including registered domestic partners, if they have lived together for at least 12 months. The maximum monthly CPP retirement pension in 2009 was $908.75.

**CPP Credit Splitting**

The CPP recognizes that in a common law relationship both partners share in the building of their assets. Among these are CPP pension credits. The CPP keeps a record of pensionable earnings and the contributions made over the years. These become Canada Pension Plan pension credits.
When a marriage or common law relationship ends, the pension credits the partners 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.

CPP 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. If your partner died, you must apply for a credit split within three years of the date of death.

To apply for a CPP credit split, contact Service 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 partners.

A CPP survivor’s pension is paid to the deceased person’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 12 months.
CPP recognized same-sex partners on July 31, 2000, and now pays survivor benefits to same-sex partners.

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.

Court Challenges

Betty Hodge separated from her common law partner of 21 years. Five months later, he died. She applied for a CPP survivor’s pension, but was refused because she was not his spouse at the time of his death. Ms. Hodge sued and asked the courts to grant survivor benefits to separated common law partners. She argued that it violated her equality rights under s.15 of the Canadian Charter of Rights and Freedoms to treat separated common law partners differently than separated married spouses. In 2004, the Supreme Court of Canada disagreed. The Canada Pension Plan did not recognize former married spouses or common law partners, so they were treated the same. Betty Hodge was not entitled to a survivor’s pension.

In 2007, in response to a Constitutional challenge, the Supreme Court of Canada extended full access to CPP survivor benefits to people whose same-sex partner died between 1985 and 1998, but limited retroactive benefits to one year.
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.

**Canada Pension Plan Death Benefits**
The Canada Pension Plan death benefit is a one-time, lump-sum payment made to the estate of the person who 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 $2,500.

**Old Age Security**
Under the Old Age Security Act common law partners over 65 are eligible for a pension if they meet Canadian residency requirements. Seniors who have little or no other income may qualify for the Guaranteed Income Supplement. The maximum monthly benefit in 2009 was $516.96 for Old Age Security and $652.51 for the Guaranteed Income Supplement. If one partner has died, the surviving partner may be eligible for a survivor allowance. For more information about Old Age Security visit the Service Canada website at [www.servicecanada.gc.ca](http://www.servicecanada.gc.ca) or call 1-800-277-9914 or for TTY devices 1-800-255-4786.
**DID YOU KNOW?**

Common law partners who live together for at least one year have an automatic right to share in each other’s Canada Pension Plan credits. 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.
Inheriting Property

Everyone should consider making a will setting out who will get their property when they die. Once made, wills should be reviewed regularly, especially after a person’s relationship status changes, if they have a new dependent, or if their executor (the person named in the will to be responsible for the person’s estate) or one of their beneficiaries (people who will receive something in the will) dies.

If a person dies in Nova Scotia without a valid will, his or her property goes to family members under a law called the Intestate Succession Act. This law recognizes married spouses and registered domestic partners, but not common law partners. If a common law partner dies without a valid will, the Intestate Succession Act states that the partner’s property will go to their surviving married spouse (if they have one) and children. If the common law partner has no married spouse or children, the estate goes to his or her parents. If both parents are dead, the estate goes to the deceased partner’s brothers and sisters. The person’s common law partner is excluded entirely.

In 2001, the Saskatchewan Court of Appeal held that provisions of Saskatchewan’s Intestate Succession Act excluding common law partners violated the equality provisions of the Canadian Charter of Rights and Freedoms.
To ensure that family property goes to the surviving common law 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. 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.

People whose common law partners died with an old will that excluded them may be able to make a claim against their partner’s estate for the time, money, and effort they put into the home and other property in their partner’s name. This type of claim is called a claim for unjust enrichment.

**Did You Know?**

In addition to making a will, common law partners should decide who will be the beneficiary of any life insurance, RRSPs, and investments. Common law partners will also need to decide if they want to support each other financially if one of them becomes ill, or if they separate. What if one partner dies? Do they want their partner to be able to remain in the home for as long as the need is there, and then leave the home to their children? Or do they want their children to have the house right away, even if their partner has to move out after the funeral? Do they want their partner to receive a survivor’s pension? A lawyer can help answer all of these questions and prepare the necessary paperwork.
Holograph wills (handwritten wills that are signed by the person making the will, but not witnessed) are now valid in Nova Scotia. The law changed in August 2008 to recognize holograph wills and give full effect to valid wills made outside Nova Scotia. The law also relaxed the legal requirements for a valid will by allowing a court to find that a will is valid even if it does not meet all of the formal requirements, as long as the will clearly shows the intentions of the person who made it.

Recent changes to the law help to protect a divorced person’s estate from going to his or her ex-spouse in a will that was not changed after the divorce.

In 2008 Nova Scotia’s Wills Act was changed to revoke any part of a person’s will that named a divorced person’s former spouse as executor, trustee, or beneficiary. It treats the will as if the former spouse had died first, so that he or she does not inherit under the will if the spouses later divorce or the marriage is annulled. There is an exception if the person’s will, marriage contract, or separation agreement shows that the person did not intend to exclude his or her former spouse from the will after the divorce or annulment. In 2009, the Nova Scotia Supreme Court limited the effect of this law to people who divorced after August 18, 2008, when the change came into force.
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.

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.
When partners move in together, they should discuss how they will deal with their property during their relationship and if they separate. Some will want to share everything; some will want to keep everything separate; 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 separate, or if one of them dies. 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 partners 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 your 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 your specific situation and help ensure that your 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 Property Equally

- Consider marrying or registering as domestic partners.
- Sign a cohabitation 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. (Each partner should review the agreement with his or her own lawyer before deciding whether to sign it.)
- Combine finances, and use joint chequing and savings accounts.
- List your common law partner as a spouse on your tax returns.
- Buy property in both names.
- Buy a home 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.
- Consider having joint debts and co-signing loans for each other.
- Make a will so that your partner will inherit your property.
- List your partner as the beneficiary of life insurance, RRSP, and Tax-free Savings Accounts.
- Put each other on your benefit plans through work.
- Refer to each other as partners or spouses to friends and family members, and in your community.

If You Want To Keep Property Separate

- Think carefully before moving in together.
- Do not marry or register as domestic partners except after signing a marriage contract or cohabitation agreement.
- Sign a cohabitation agreement agreeing to keep each partner’s property separate. Each partner should ask his or her lawyer whether to give up any right or obligation to receive or pay spousal support. Be sure to get independent legal advice before signing anything. Once you have a cohabitation agreement, make sure to follow it. Review it yearly.
• Think carefully before having children together.
• Keep all finances strictly separate. Do not open any joint accounts.
• Share household expenses equally, and make sure to keep monthly records showing that each partner 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.
• Buy a home as tenants in common so that each partner can leave his or her share of the home to someone other than the other partner if they die. Contribute equally to the down payment, mortgage, expenses, and maintenance. If the contributions are unequal, make sure to have a written agreement about what will happen if the partners separate or if one of partner 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 there is an agreement in writing to repay it.
• If you own a business, pay your partner a fair wage for any work done to benefit the business. Keep records of all payments.
• Each partner should review his or her will, RRSP, tax-free savings account, and life insurance and name a beneficiary who will get their money when they die.
• Do not casually refer to each other as spouses or partners to friends and family, or in your community, unless you both feel the relationship has some permanence.
Common law partners are treated the same as married couples where taxes are concerned. For tax purposes, the Federal Government and Province of Nova Scotia consider two people to be common law partners once they have lived together as a couple for 12 months. Partners 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 returns. 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 contributions to each other’s RRSPs and tax-free savings accounts. They can share pension income to save taxes and maximize government benefits. If they separate, they can share their CPP credits and transfer money tax-free from one partner’s RRSP or TFSA to the other’s as part of their property division.
Partners who meet the Canada Revenue Agency’s (CRA) definition of common law partners cannot opt out and have the CRA consider them as single people. If common law partners do not declare their common law status on their income tax returns, it can 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 CRA might even consider it fraud. If a partner dies, the other partner will have difficulty proving entitlement to a CPP survivor’s pension. If they separate, the CRA may not allow them to split CPP credits or may deny a request to transfer money between RRSPs or tax-free savings accounts as part of the division of property.

**DID YOU KNOW?**

**Common law partners do not 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 and provide them with the benefits to which common law partners are entitled.

**If you receive periodic spousal support from a former partner, you must claim this support as income, and your former 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 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 Revenue Agency online at www.cra-arc.gc.ca or call them at 1-800-959-8281.
Common law partners can make agreements before, during, and after their relationship in which they decide together how they will deal with property, debts, spousal support, and other issues arising on separation. 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 by reviewing the agreement with her or his own lawyer before deciding whether to sign it. Doing all of these things helps to make sure the agreement is valid and will be enforced by the 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, partners 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 partners cannot use the same lawyer to prepare a cohabitation agreement or to give advice after separation. It is a conflict of interest for one lawyer to represent both partners on these family law issues. Each partner needs his or her own lawyer.
The best way to find a good family law lawyer is to get a referral from a satisfied client or from another family law lawyer. 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 or 1-800-665-9779. Most lawyers in Nova Scotia charge between $120 and $350 per hour, but you can see a lawyer for an initial 30-minute appointment for as little as $20+HST through the Lawyer Referral Service. 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, incomes, 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 owe, and what your yearly incomes are. Knowing this information will help you decide whether an agreement is fair or not. 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, a court could set aside the agreement as invalid, or require you to follow the agreement.

Courts seldom interfere with cohabitation and separation agreements, unless an agreement is very unfair to one partner, and that partner did not get independent legal advice before signing it. Courts may also interfere with an agreement if one partner was dishonest about assets, debts, income, or circumstances. If you signed an agreement that 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 and need help 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 agree to it. You should not agree 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.nsfamilymediation.ca. Referrals are available through Family Mediation Canada at www.fmc.ca or by calling 1-877-FMC-2005 or the Nova Scotia Barristers’ Society at (902) 422-1491. Family Courts and the Supreme Court Family Division also maintain a list of mediators. If you are referred to mediation by the court, each partner pays a fee based on income; mediation is free to low-income earners.
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](http://www.collaborativefamilylawyers.ca).
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. It also hears child protection cases. The Family Court can hear applications for peace bonds but cannot deal with division of property. The Family Court operates in all areas of the province except where there is a Supreme Court Family Division.

**Supreme Court**
This court deals with dividing the property of common law partners who cannot agree on how to divide their property themselves, including cases where the partners cannot agree who will remain in their home after separation. The Supreme Court also hears adoption applications and decides serious criminal cases involving domestic violence, including murder.

**Supreme Court (Family Division)**
This court located in Halifax, Port Hawkesbury, and Sydney can deal with all family law issues, but only for those living within the court’s area.

**Court of Appeal**
This court hears only appeals. Few family law cases reach this court.
**Provincial Court**
This court decides most criminal cases involving domestic violence and hears applications for peace bonds. If you are a victim of domestic violence, you can apply for an emergency protection order through the Justice of the Peace Centre.

**Small Claims Court**
This court can deal with cases up to a value of $25,000 but cannot deal with claims relating to ownership of a home or land. Residential Tenancies Appeals are also heard in the Small Claims Court.

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](http://www.courts.ns.ca).
Medical Consent

Doctors and other health care workers must have consent before they begin any treatment. If a patient cannot give consent, another family member may be asked to do so. Married spouses and registered domestic partners can give consent when their spouse is unable to do so. A common law partner can give consent after two years of living together. Separated spouses and common law partners cannot consent to medical treatment for the other spouse or partner, unless they are appointed under the Medical Consent Act. Hospital staff may ask you to sign a form confirming your relationship before you make any medical decisions for your common law partner.

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 the person is mentally competent (meaning the person understands what he or she is doing), 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 the patient cancels it or a court says it is no longer valid.
The Medical Consent Act allows common law partners to appoint each other to give consent even before they have lived together for two years, or to appoint someone other than their spouse or common law partner to make medical decisions for them. Separation does not cancel an appointment under the Medical Consent Act, so it is important to cancel the appointment after separation if you do not want your former spouse or partner to make medical decisions for you.

Many people want to make their wishes and preferences about medical treatment known so that if they cannot decide for themselves, the person making decisions for them has instructions to follow. The law requires someone making medical decisions for another person to follow that person’s informed, expressed wishes. If the patient’s wishes are unknown, the person making medical decisions must do what is in the patient’s best interests.

Patients can put their wishes in writing and appoint someone to make medical decisions for them by completing an advance directive (also known as a living will). A blank advance directive form is available at http://library.cdha.nshealth.ca/chpamphlets/. Patients should also discuss their wishes with their spouse or common law partner, their doctors, families, and nursing staff.

In 2008, the Nova Scotia government passed a new law called the Personal Directives Act, which will eventually replace the Medical Consent Act.
When this booklet went to print, the new law was not yet in force. When it comes into force, it will change the definition of common law partner for medical consent purposes to include partners who have lived together for one year instead of two years. It will also set out a ranking of family members who can make medical decisions for a patient if the patient cannot do so and has not appointed anyone. Appointments made under the Medical Consent Act will remain valid, but the Personal Directives Act will automatically revoke the appointment of a spouse when that person is no longer a spouse, unless the appointment says otherwise. The Personal Directives Act will also recognize advance directives made outside Nova Scotia.

**Did You Know?**

**Having a power of attorney does not permit a person to make medical decisions for another person.**

Powers of attorney only give the power to deal with another person’s financial affairs, unless the power of attorney also includes an appointment under the Medical Consent Act.

**Common law partners and registered domestic partners cannot give consent for organ and tissue transplantation if their spouse or partner dies, even if they have been appointed under the Medical Consent Act.**

The Human Tissue Gift Act only recognizes legally married spouses.
Mary’s common law partner of 15 years was involved in a terrible car accident. Earl was rushed to the hospital but was not expected to live. Mary knew that organ donation was important to Earl. He indicated on his driver’s licence that he had chosen to be an organ donor, so she 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.
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 a child’s best interests. The law governing custody, access, spousal support, and child support for unmarried 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 parents’ 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.

**Five Different Types of Custody**

There are five basic types of custodial arrangements for children.

**Sole custody**
Children live with one parent who is entitled to make all decisions about the children. The children usually continue to spend time with 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. This form of joint custody is also known as shared parenting.

Parallel Parenting
Parallel parenting is a form of sole or joint custody that is sometimes used in extreme cases where two capable parents cannot get along. With parallel parenting, each parent is 100 per cent responsible for the children when they are with him or her, with no say from the other parent. Each parent’s time with the children is scheduled in advance, with no flexibility, and the parents have as little contact as possible with each other, usually only in writing.

Split custody
Split custody is when parents have two or more children and each parent has at least one of the children living mostly with him or her. Split custody is not the same as living in a blended family where both partners have children from a previous relationship living in the same household.

Access
Access is a child’s right to visit and spend time with the other parent. It 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.

**Custody, Access, and Abuse**

It is 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 to 90 per cent of children know about violence between their parents. 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 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.

**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-status parents to collect child support from status Indians living on reserves. An employee’s wages can be garnisheed if they are employed and paid off reserve.
**Did You Know?**

Both parents have a right to appeal a judge’s decision on custody, access, and financial support, but the time to do so is limited and missing the deadline may mean the right to appeal is lost. 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.

A court can vary custody, access, child support, and spousal support orders if there has been a significant change in circumstances. Property is only divided once.

Children grow out of access arrangements the same way they outgrow clothing and toys. Breastfeeding infants may only be able to be away from their mothers for a few hours at a time. Some toddlers enjoy overnight visits with the access 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 access arrangements.

All children travelling outside of Canada now need a passport. Before leaving Canada with children, parents should also get a letter of permission from the other parent unless both parents will be travelling with the children at all times. Border officials want to prevent one parent from kidnapping the children, so they may ask many questions and not permit your children to leave Canada if they have concerns.
When travelling with children, bring a certified copy of any custody or guardianship order along with the letter of permission from the other parent. A separate letter should be used for each trip outside Canada. 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. A lawyer should notarize the letter. 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 to $40.

For more information, including a sample letter of permission, visit the Department of Foreign Affairs and International Trade Canada at www.voyage.gc.ca/faq/children-travel_enfants-voyage-eng.asp.
Support

Child Support

All children are entitled to financial support, or maintenance, from both parents if the parents can afford to pay. 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 a disability.

The amount of support is based on Nova Scotia’s Child Maintenance 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 “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 some 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. If a parent earns less than $8,000 per year, no support is payable.
**Sample Child Support Amounts Based on the Paying Parent’s Income**

<table>
<thead>
<tr>
<th>Yearly Income</th>
<th>One Child</th>
<th>Two Children</th>
<th>Three Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000</td>
<td>$ 28</td>
<td>$ 61</td>
<td>$ 66</td>
</tr>
<tr>
<td>$20,000</td>
<td>$161</td>
<td>$292</td>
<td>$400</td>
</tr>
<tr>
<td>$30,000</td>
<td>$268</td>
<td>$453</td>
<td>$598</td>
</tr>
<tr>
<td>$40,000</td>
<td>$348</td>
<td>$579</td>
<td>$764</td>
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<tr>
<td>$50,000</td>
<td>$435</td>
<td>$715</td>
<td>$938</td>
</tr>
<tr>
<td>$75,000</td>
<td>$648</td>
<td>$1,045</td>
<td>$1,363</td>
</tr>
<tr>
<td>$100,000</td>
<td>$840</td>
<td>$1,345</td>
<td>$1,750</td>
</tr>
</tbody>
</table>

Special rules apply to parents with shared custody (where both have the child at least 40 per cent 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 can be adjusted during the year, based on the paying parent’s income for the previous year, or as special expenses change. Support can be adjusted more frequently if there is a major change in circumstances during the year. 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 have a copy of the Child Maintenance Guidelines. They are found at [www.gov.ns.ca/just/regulations/regs/mcucmg.htm](http://www.gov.ns.ca/just/regulations/regs/mcucmg.htm). Nova Scotia uses the same child support tables as the Federal Child Support Guidelines. The tables can be found at [www.justice.gc.ca/eng/pi/support/grl/pdftab.html](http://www.justice.gc.ca/eng/pi/support/grl/pdftab.html). This site also includes an online child support calculator based on the federal guidelines.

If you do not have access to a computer you can order a copy of the Federal Child Support Guidelines with tables by calling 1-888-373-2222, or by visiting the Family Law Information Centre at the Supreme Court (Family Division) in Halifax or Sydney.

**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.

Parents who do not increase their child support payments when their income increases may be ordered to pay retroactive child support to the other parent.

Retroactive support means extra child support going back to the date of the increase. The safest practice is for the paying parent to let the other parent know of any significant increases in income in writing soon after they occur, and keep a copy of the letter or e-mail. Parents receiving child support should ask for increased support based on the new guideline amount after receiving notice of the increase.
A parent’s current financial circumstances are taken into account with respect to child support payments.
If a parent loses his or her job or suffers a financial setback, support can be adjusted to reflect the reduced ability to pay support. If the parent received severance pay, he or she may be required to pay some of it for child support. Parents must have the written consent of the other parent or a judge’s permission to reduce their support payments. If they do not have the other parent’s written consent or a court order, any unpaid support is still owed as arrears.

Child support can be reduced if the paying parent would suffer undue hardship by paying the full amount.
The parent paying support may be able to have support decreased, if any of these situations apply:
• a high level of debt that was reasonably incurred to earn a living or support the family before the separation;
• unusually high expenses in relation to access;
• a legal duty to support another person, including another dependent child or someone who cannot obtain food, clothing, or shelter due to an illness or disability (such as a dependent parent), or a person the parent must support under a judgment, court order, or written separation agreement.

The parent paying support must also prove that his or her household will have a lower standard of living than the other parent and children if the child support is not reduced.
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 and is the only father she has ever known. When Lydia and Manuel separated, Lydia applied for child support from Manuel for Tamara.

Manuel is not legally required to support Tamara. Common law partners are only obligated to support step-children while living in the same household. There is no legal requirement for a common law partner to support a step-child after separating and moving out.

If Manuel wants to maintain a relationship with Tamara after separating from Lydia, he will likely need Lydia’s consent. The Maintenance and Custody Act treats Manuel like any other extended family member when it comes to custody and access. He needs a judge’s permission to apply for custody of Tamara or access with her. This permission can be difficult to obtain.

The law is different for married step-parents. Married step-parents quickly acquire a duty to support step-children if they assume a parental role with them, especially if the other birth parent is not part of the child’s life and does not pay support. They can also apply for custody or access without getting a judge’s permission first.
The income of new spouses or partners may or may not be relevant in determining the amount of child support.

Generally, child support is based only on the paying parent’s income. A new spouse or common law partner’s income is irrelevant. However, if one partner makes a claim to reduce child support due to undue hardship, the new spouse or partner’s income is relevant because the court considers the standards of living in both parents’ homes.

A new spouse or partner’s income is also relevant if one partner applies for or pays spousal support. The law does not require a new spouse or partner to help pay for their partner’s ex but will take into account that a partner’s living expenses will decrease when they begin to share living expenses. This may mean that one partner has more ability to pay spousal support, or the other has less need for spousal support.

If you and your former partner agree on an amount less than that set out in the Child Maintenance Guidelines, then the court may require you to justify your agreement and may decline to accept it.
Spousal Support

Spousal support is financial support provided by one partner to the other after a relationship ends. Married couples, registered domestic partners, and common law partners who have lived together for more than two years have the right to apply for spousal support.

If the partners cannot agree, the person seeking support can apply to the court for a spousal support order under Nova Scotia’s Maintenance and Custody Act. First, the court will consider whether the partner is entitled to spousal support. Entitlement may be based on compensating a partner for decreased earning potential because of years spent as a homemaker or parent, by a contract or agreement between the partners, or because one partner needs support and the other has the ability to pay.

Most spousal support orders and agreements require that support be paid on a regular basis (usually monthly). This type of support is called periodic support. In some cases, the partners may agree or the court may order lump sum spousal support. Lump sum spousal support is a pre-determined amount of support that is paid all at once, or sometimes in a few payments, called installments. Unlike periodic support, lump sum spousal support is generally not tax-deductible to the partner paying support, and it is not treated as taxable income of the partner receiving it.

The amount of support ordered will depend on many factors, including the partners’ ages, the length of their relationship, their incomes and financial needs, their ability to work and earn money, and their family responsibilities, such as care of children.
Since 2005, judges and lawyers have had access to Spousal Support Advisory Guidelines to help determine the correct amount of spousal support and how long it should be paid. The final version of the Guidelines was released in July 2008. These guidelines were created for divorcing couples but have also been applied to former common law partners.

Unlike the Federal Child Support Guidelines and Nova Scotia Child Maintenance Guidelines, the Spousal Support Advisory Guidelines are not law. This means a judge can choose to follow them, or not. For more information about the Spousal Support Advisory Guidelines or to find out how they might apply in your case, speak to a lawyer.

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.

Not every partner who seeks spousal support will receive it, even if the partners’ incomes and assets are unequal. 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 to regain spousal support, even if circumstances change for the worse.
Paying What’s Owed

Karen’s former common law partner Wayne was ordered by the court to pay spousal support of $450 a 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 wrong. Spousal support cannot be changed 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.

DID YOU KNOW?

If you and your former 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 former partner wants to return to the amount of support in the earlier order or agreement.
The Maintenance Enforcement Program

The Maintenance Enforcement Program (MEP) can help people collect spousal and child support owing to them. When a Nova Scotia court orders spousal or child support, both partners are automatically enrolled in the Maintenance Enforcement Program unless they agree in writing to opt out. Partners who sign written agreements that are not registered with the court or who have support orders from other provinces must take steps to enroll in the MEP.

The Maintenance Enforcement Act sets out what can be done in Nova Scotia if a person does not pay support as ordered. A person’s wages, workers compensation benefits, bank accounts, pensions, rental income, insurance settlements, inheritances, or lottery winnings can be garnished (legally seized) and sent to the MEP to pay the support. The amount of the garnishment depends on the income source and the amount owed. In addition to the regular monthly maintenance payment, the MEP can take up to 25 per cent of the person’s income before taxes, up to 50 per cent of federal pension or employment insurance benefits, and 100 per cent of income tax refunds, HST credits, and lottery winnings.

The MEP can also place a lien on property and suspend or revoke a person’s driver’s licence, hunting or fishing licence, or request that the Federal Government revoke the person’s passport.

For more information about the Maintenance Enforcement Program, visit www.gov.ns.ca/just/mep/ or call (902) 424-0050 in Halifax/Dartmouth or 1-800-357-9248 elsewhere in Nova Scotia.
**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 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 enroll later.

**It is illegal for an employer to discriminate against someone just because their pay is being garnished to pay support.**

It is also illegal to refuse to hire someone whose wages would be garnished.

**People must provide financial information to the MEP if they request it.**

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 $2,000, up to six months in jail, or both.
Nova Scotia’s Income Assistance (IA) Program helps adults over 19 meet basic needs for food, clothing, and shelter. It can also help with other types of expenses, including medical expenses, child care, transportation, furniture, and emergency shelter or fuel. The basic amount for a single adult is $514 per month. For a family of one adult and one child, it is $784. For a family of two adults and one child, it is $1,048 per month. People may be entitled to receive other government benefits.

Some types of benefits are deducted from income assistance, while others are not. The benefits that do not affect your income assistance payment include the National Child Benefit, the Child Tax Benefit part of the Canada Child Tax Benefit, Nova Scotia Child Benefit, Universal Child Care Benefit, Federal Child Disability Credit, and GST/HST Credit.

The Employment Support Services (ESS) Program helps people on income assistance become more self-sufficient. It offers career and life assessments, payment of tuition and books in approved programs, continued income assistance while in school, job training, help with costs related to your job search, and other benefits.
For more information about the Income Assistance and Employment Support Services Programs, visit [www.gov.ns.ca/coms/employment/index.html](http://www.gov.ns.ca/coms/employment/index.html) or call the Department of Community Services at 1-877-424-1177. The ESIA policy manual used by caseworkers when they make decisions about income assistance and employment support is available online at [www.gov.ns.ca/coms/employment/income_assistance/ESIAManual.html](http://www.gov.ns.ca/coms/employment/income_assistance/ESIAManual.html).

**DID YOU KNOW?**

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

Income assistance payments are reduced by the amount of child or spousal support your former partner has been ordered to pay, whether the support is paid or not. If you are worried that your former partner will not pay, you can request that the support payment be made directly to the Department of Community Services. This means that you will be sure to get the full amount of assistance every month, whether or not your former partner pays the support owed. When support is paid directly to the department, it pays the full amount of income assistance and becomes responsible for collecting support payments from your former partner.
Aboriginal people who live on reserve are not eligible for income assistance or employment support benefits.
If you live on a reserve, contact your band for assistance.

If you disagree with a decision about income assistance, you can appeal within 30 days of the date of the decision.
Extensions are sometimes allowed. Once you appeal, a different worker will review your case within 10 days. If you disagree with the review decision, you can request an appeal hearing within 10 days of hearing the review decision. The appeal is heard and decided within 45 days. If you do not agree with the appeal board’s decision, you can appeal to the Supreme Court of Nova Scotia.
Canada welcomed a record number of permanent and temporary residents in 2008: a combined total of 519,722 newcomers.

Canadian citizens and permanent residents over 18 years of age can sponsor their common law partners, children, and other relatives (such as a parent or grandparent) to come to Canada.

Family Class sponsorships can be made if your common law partner and dependent children live inside or outside Canada, even if they are in Canada without legal status. Applicants for permanent residence must go through medical, criminal, and background screening.

Sponsors must meet the government’s income requirements and agree to take care of their sponsored partner for at least three years after their partner becomes a permanent resident. They must also agree to take care of any dependent children under 22 years old and other relatives for up to 10 years, or until each child turns 25, whichever comes first.

A citizen or permanent resident may not be allowed to sponsor a partner if he or she did any of the following: failed to provide financial support as agreed in a previous sponsorship; defaulted on court-ordered spousal or child support; received government financial assistance for reasons other than a disability; was convicted of certain types of criminal offences; defaulted on an immigration loan; is in prison; or has declared bankruptcy and has not been released from it.
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. You may have to provide proof that you live together. If you have been with your partner for at least a year but cannot live together or marry, you may still be able to sponsor your partner as a conjugal partner. There must be a reason beyond your control for why you cannot live together or marry, for example, an immigration barrier. Engaged partners should either wait until they marry or have lived together for at least 12 months.

For more information, visit Citizenship and Immigration Canada at www.cic.gc.ca or call 1-888-242-2100 (for information on Canadian programs and services). For overseas applications, contact your local visa office.

**Did You Know?**

If you are a newcomer to Canada and have to go to court for any reason, but you 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. You can request an interpreter through the court. It is best to do this as soon as you know you will be going to court.
All of the laws listed in the following chart 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:

- Federal and Provincial laws and court decisions: [www.canlii.org](http://www.canlii.org)
<table>
<thead>
<tr>
<th>Topic</th>
<th>Law</th>
<th>Description</th>
<th>Amount of Time Living Together to Qualify as Partners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abuse</td>
<td>Domestic Violence Intervention Act</td>
<td>Allows a victim of domestic violence to apply for an emergency protection order lasting up to 30 days.</td>
<td>Includes anyone who has lived together or has a child together.</td>
</tr>
<tr>
<td></td>
<td>Nova Scotia</td>
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<tr>
<td></td>
<td>Criminal Code of Canada</td>
<td>Section 810 allows anyone who fears for their safety, their partner’s or child’s safety, or their property, to apply for a peace bond requiring another person to stay away from them or abide by other conditions.</td>
<td>Anyone can apply.</td>
</tr>
<tr>
<td></td>
<td>Federal</td>
<td></td>
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</tr>
<tr>
<td>Benefits</td>
<td>Employment Support and Income Assistance Act</td>
<td>Provides money for food, clothing, and shelter to people in need.</td>
<td>Could be any length of time living together as spouses.</td>
</tr>
<tr>
<td></td>
<td>Nova Scotia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Custody, Access, and Support after Separation</td>
<td>Maintenance and Custody Act</td>
<td>Allows common law partners to apply for spousal support, child support, custody, access, and exclusive possession of the family home.</td>
<td>Any parent may apply for custody, access, or child support even if the parents never lived together. For spousal support and exclusive possession of the family home, the partners must have lived together for at least two years.</td>
</tr>
<tr>
<td></td>
<td>Nova Scotia</td>
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<tr>
<td>Topic</td>
<td>Law</td>
<td>Description</td>
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</tr>
<tr>
<td><strong>Health</strong></td>
<td>Health Act</td>
<td>Allows common law partners to consent to the release of each other’s medical records if their partner cannot consent.</td>
<td>Two years</td>
</tr>
<tr>
<td></td>
<td>Nova Scotia</td>
<td></td>
<td></td>
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<tr>
<td><strong>Hospitals</strong></td>
<td>Hospitals Act</td>
<td>Allows one common law partner to consent to medical treatment or the release of medical records for the other when the other partner cannot consent.</td>
<td>Two years</td>
</tr>
<tr>
<td></td>
<td>Nova Scotia</td>
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<tr>
<td></td>
<td></td>
<td>Allows partners to apply to discharge a partner from psychiatric hospital, and entitles partners to notice if their partner is transferred.</td>
<td></td>
</tr>
<tr>
<td><strong>Human Tissue</strong></td>
<td>Human Tissue Gift Act</td>
<td>Sets out who can consent to donate a family member's organs.</td>
<td>Common law partners are not recognized.</td>
</tr>
<tr>
<td></td>
<td>Nova Scotia</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Incompetent</strong></td>
<td>Incompetent Persons Act</td>
<td>Allows someone to become another person’s guardian if that person can no longer look after themselves or manage money.</td>
<td>Any relative or friend may apply.</td>
</tr>
<tr>
<td></td>
<td>Nova Scotia</td>
<td></td>
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<tr>
<td>Topic</td>
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</tr>
<tr>
<td>Health</td>
<td>Medical Consent Act Nova Scotia</td>
<td>Allows a person to make an advance directive or living will appointing another person to make medical decisions for them if they cannot do so.</td>
<td>Anyone over 19 may be appointed.</td>
</tr>
<tr>
<td></td>
<td>Personal Directives Act Nova Scotia</td>
<td>Allows a person to make a written personal directive and recognizes personal directives made outside Nova Scotia. Creates a ranking of family members who may make medical decisions for a person who cannot make decisions for him or herself.</td>
<td>One year. Note: When this booklet was printed, the Personal Directives Act was not yet in force. See LISNS web site under Advance Health Care Directives.</td>
</tr>
<tr>
<td>Immigration</td>
<td>Immigration Act Federal</td>
<td>Allows a common law partner who is a citizen or permanent resident to sponsor his or her common law partner, children, and other relatives to immigrate to Canada.</td>
<td>12 continuous months or if the partners qualify as conjugal partners</td>
</tr>
<tr>
<td>Topic</td>
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<tr>
<td>Insurance and Compensation</td>
<td>Fatal Injuries Act Nova Scotia</td>
<td>Allows a surviving partner to bring a claim on behalf of a partner who dies in an accident due to negligence.</td>
<td>One year just before the partner’s death</td>
</tr>
<tr>
<td></td>
<td>Insurance Act Nova Scotia</td>
<td>Regulates insurance policies and insurance companies.</td>
<td>One year, but only where neither partner is married to someone else</td>
</tr>
<tr>
<td></td>
<td>Victims Rights and Services Act Nova Scotia</td>
<td>Provides compensation to victims of crime and their families</td>
<td>Partners who live together as husband and wife in a relationship of some permanence. This law does not appear to include same-sex partners – call the Nova Scotia Department of Justice for more information.</td>
</tr>
<tr>
<td></td>
<td>Workers’ Compensation Act Nova Scotia</td>
<td>Provides benefits to workers injured or killed on the job, and their families.</td>
<td>12 months and financially dependent on the other partner’s earnings</td>
</tr>
<tr>
<td>Topic</td>
<td>Law</td>
<td>Description</td>
<td>Amount of Time Living Together to Qualify as Partners</td>
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<tr>
<td>Property</td>
<td>Canada Pension Plan Act Federal</td>
<td>Gives partners the right to share CPP benefits during their relationship and after separation. Provides a survivor’s benefit if a partner dies.</td>
<td>12 months, but partners must apply for a credit split within four years of the separation date, or three years after their partner’s death.</td>
</tr>
<tr>
<td>Property</td>
<td>Matrimonial Property Act Nova Scotia</td>
<td>Allows married spouses and registered domestic partners to divide property equally after separation, unless it would be unfair to do so.</td>
<td>Common law partners are excluded.</td>
</tr>
<tr>
<td>Property</td>
<td>Old Age Security Act Federal</td>
<td>Provides benefits to lower-income seniors, and survivor benefits if one partner dies.</td>
<td>12 months just before the partner's death</td>
</tr>
<tr>
<td>Property</td>
<td>Partition Act Nova Scotia</td>
<td>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.</td>
<td>Anyone who owns land or a home with someone else</td>
</tr>
<tr>
<td>Property</td>
<td>Pension Benefits Act Nova Scotia</td>
<td>Provides a way for partners to divide their pension(s) if they separate and provides a survivor's pension if one partner dies.</td>
<td>Two years, but only if neither partner is married to someone else</td>
</tr>
<tr>
<td>Property</td>
<td>Pension Benefits Division Act Federal</td>
<td>Allows for division of pension benefits accumulated under federal public service pension plans after separation.</td>
<td>12 months</td>
</tr>
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<tr>
<td>Property</td>
<td>Pension Benefits Standards Act</td>
<td>Deals with administration of pension plans connected with federally regulated organizations and businesses, including death benefits and survivor’s pensions.</td>
<td>12 months immediately before the death of one partner</td>
</tr>
<tr>
<td></td>
<td>Federal</td>
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<tr>
<td></td>
<td>Public Service Superannuation Act</td>
<td>Governs pensions for most federal employees.</td>
<td>12 months</td>
</tr>
<tr>
<td></td>
<td>Federal</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Public Service Superannuation Act</td>
<td>Governs pensions for Provincial Government employees.</td>
<td>Three years immediately preceding the relevant time</td>
</tr>
<tr>
<td></td>
<td>Nova Scotia</td>
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<tr>
<td></td>
<td>Teachers' Pension Act</td>
<td>Governs pensions for teachers.</td>
<td>Three years immediately preceding the relevant time</td>
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<td>Nova Scotia</td>
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<tr>
<td>Taxes</td>
<td>Income Tax Act</td>
<td>Income tax law for Canada.</td>
<td>12 months, or if the partners live together and have a child together</td>
</tr>
<tr>
<td></td>
<td>Federal</td>
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</tr>
<tr>
<td></td>
<td>Income Tax Act</td>
<td>Income tax law for Nova Scotia.</td>
<td>12 months, or if the partners live together and have a child together</td>
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<tr>
<td><strong>Wills and Estates</strong></td>
<td>Intestate Succession Act</td>
<td>Sets out how a person’s property will be distributed if the person dies without a valid will.</td>
<td>Common law partners are excluded but children are recognized.</td>
</tr>
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<td>Nova Scotia</td>
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<td>Probatie Act</td>
<td>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).</td>
<td>Common law partners are recognized only if they have a claim on their partner’s property, and then they rank after married spouses, children, the public trustee, and beneficiaries, though a court can change this order if appropriate.</td>
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<td>Nova Scotia</td>
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<td></td>
<td>Public Trustee Act</td>
<td>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.</td>
<td>Common law partners are excluded, but children are recognized.</td>
</tr>
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<td>Nova Scotia</td>
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<td>Testators’ Family Maintenance Act</td>
<td>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.</td>
<td>Common law partners are excluded but children are recognized.</td>
</tr>
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<td>Nova Scotia</td>
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</tbody>
</table>
etting legal advice, participating in the legal system, and challenging unfair laws and decisions can be difficult, especially for immigrants, aboriginal people, gays and lesbians, people of colour, people living with disabilities, and people with low incomes. But help is available.

**Abusive Relationships**

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

Transition houses offer emergency shelter, information, and support. You can call the Transition House Association of Nova Scotia at *(902) 429-7287*, go to [http://www.thans.ca/](http://www.thans.ca/), or contact a shelter on this list:

**Amherst**

Autumn House (Wheelchair accessible) (will accept collect calls)
Crisis line *(902) 667-1200*, Office *(902) 667-1344*

**Antigonish**

Naomi Society, Office/Crisis *(902) 863-3807* and *(902) 863-7628*
Bridgewater
Harbour House (Wheelchair ramp)
Crisis line (902) 543-3999, Office (902) 543-3665
Outreach (902) 543-9970
Toll-free 1-800-543-3999

Halifax
Adsum House (For homeless women and children)
(902) 429-4443 and (902) 423-4443

Halifax
Barry House (Emergency shelter for homeless women and children at risk) (902) 422-8324

Halifax
Bryony House (Wheelchair ramp, one room accessible, accessible bathroom, bilingual staff as required)
24 hr Crisis line (902) 422-7650, Office (902) 423-7183
Outreach (902) 429-9008

Kentville
Chrysalis House (Two bilingual staff, wheelchair ramp, one large room, bathroom accessible)
Crisis line (902) 679-1922, Office (902) 679-6544
Outreach (902) 679-1155
Toll-free 1-800-264-8682

New Glasgow
Tearmann Society (Wheelchair ramp, main floor accessible)
Crisis line (902) 752-0132, (902) Office 752-1633
Outreach (902) 752-2591
Toll-free 1-888-831-0330
Port Hawkesbury
Leeside Transition House (Wheelchair accessible)
Crisis line (902) 625-2444, Office (902) 625-1990
Outreach (902) 625-1106
Toll-free 1-800-565-3390

Sydney
Cape Breton Transition House (Wheelchair lift, bilingual staff as required) Crisis line (902) 539-2945, Office (902) 562-3864
Outreach Program (902) 562-3045, Toll-free 1-800-563-2945
Children’s Services (902) 562-1336

Truro
Third Place (Wheelchair ramp, one room, partial bath, and common areas accessible) Crisis line (902) 893-3232, Office (902) 893-4844
Outreach (902) 895-9740, Toll-free 1-800-565-4878

Yarmouth
Juniper House, Crisis line (902) 742-8689, Office (902) 742-4473
Outreach (902) 742-0231, Toll-free 1-800-266-4087


Men looking for help will find services at these agencies:

- Department of Seniors at (902) 424-4737 or 1-800-670-0065
- Halifax Regional Police (902) 490-5300
- Metro Turning Point (Halifax) (902) 420-3282
- RCMP (902) 865-6649
- Salvation Army (Halifax) (902) 422-2363
- Victim Services, Nova Scotia Department of Justice (Halifax): (902) 424-3307, 1-800-470-0773. 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 counselling, whether or not the charge ends with a conviction.

**Counselling**

Family Service Association
Halifax and Lower Sackville (902) 420-1980

Family Services of Eastern Nova Scotia
Sydney (head office) (902) 539-6868
Toll-free 1-866-330-5952

Mi’kmaq Native Friendship Centre offers family support 420-1576
Government Departments, Programs, and Services

Federal, provincial, and municipal governments list some numbers in the blue pages at the back of your telephone book.

Federal Government
Information line 1-800-622-6232
TTY/TDD 1-800-926-9105

Provincial Government
Nova Scotia Advisory Council on the Status of Women
(902) 424-8662, Toll-free 1-800-565-8662
For information, or see http://women.gov.ns.ca/

Service Nova Scotia and Municipal Relations (inquiries about government programs and services), 1-800-670-4357

Department of Seniors Information Line
(902) 424-0065 or toll-free 1-800-670-0065
or see www.gov.ns.ca/scs/services.asp
LEGAL ADVICE AND JUSTICE SUPPORT

Dalhousie Legal Aid Service
Provides legal assistance to low-income Nova Scotians
(902) 423-8105 or legalaid@dal.ca

Family Law Information Centres (FLIC) of the Supreme Court (Family Division)
In Halifax and Sydney have free information about court processes, services, and legal topics, computer access, information clinics, and referrals to other agencies and programs. Staff cannot give legal advice. Visit the FLIC at either court building, or call the (902) 424-5232 and 424-8826 in Halifax or (902) 563-5761 in Sydney.

Legal Information Society of Nova Scotia (LISNS)
Operates a lawyer referral service offering a half-hour meeting for $20+HST. For a referral, call (902) 455-3135 or 1-800-665-9779. To listen to pre-recorded messages on 70 plus legal topics, call the Dial-A-Law service at (902) 420-1888. Call (902) 454-2198 or visit www.legalinfo.org.

The Lesbian Gay and Bisexual Youth Project
(902) 429-5429
www.youthproject.ns.ca

The Nova Scotia Rainbow Action Project
nsrap@nsrap.ca

Parents, Friends and Family of Lesbians and Gays
www.pflagcanada.ca
1-888-530-6777 (English) or 1-888-530-6483 (French)
Nova Scotia Advisory Council on the Status of Women
Advises the government on women’s issues and offers information (including a library and free publications) as well as referrals to other organizations. Call 1-800-565-8662 or visit http://www.women.gov.ns.ca.

Nova Scotia Human Rights Commission and Canadian Human Rights Commission
Deal with complaints of discrimination, including discrimination on the basis of family status. Contact the Canadian Human Rights Commission at www.chrc-ccdp.ca or call 1-800-999-6899 and the Nova Scotia Human Rights Commission at www.gov.ns.ca/humanrights or call 1-877-269-7699.

Nova Scotia Legal Aid
Offers advice and representation in family law and some criminal law cases. Contact your nearest legal aid office for an application, through the number in the blue pages of your phone book. Legal aid has a lawyer at the Supreme Court (Family Division) who can give legal advice on family law issues but who will not represent you in court. Call (902) 424-5616 and leave a message with your name, your partner’s name, a phone number where you can be reached and any court dates or deadlines in your case.
**Women’s Centres**

Women’s centres provide a range of programs, information, advocacy and referral services for women.

**Antigonish**
Antigonish Women’s Resource Centre
219 Main St, Suite 204
(902) 863-6221

**Cornwallis**
The Woman’s Place, 86 Atlantic Ave.
(902) 638-8566

**Halifax**
Dalhousie University Women’s Centre, 6286 South St.
(902) 494-2432

**Halifax**
Saint Mary’s University Women’s Centre, 526 Student Centre
(902) 496-8722

**Lunenburg**
Second Story Women’s Centre, 22 King St.
(902) 543-1315

**New Glasgow**
Pictou County Women’s Centre, 503 South Frederick St.
(902) 755-4647

**Sheet Harbour**
LEA Place Women’s Centre, 17 Behie St.
(902) 885-2668
Sydney
Every Woman’s Centre, 102 Townsend St.
(902) 567-1212

Truro
Central Nova Women’s Resource Centre, 535 Prince St.
(902) 895-4295

Wolfville
Acadia University Women’s Centre, Student Union Building
(902) 585-2140

Yarmouth
TRI County Women’s Centre, 126 Brunswick St.
(902) 742-0085