

Property Division for Common-law Couples: The Problem, the Project, and the Proposals

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Report Commented On: Alberta Law Reform Institute, [*Property Division: Common Law Couples and Adult Interdependent Partners, Report for Discussion 30*](#)

The Alberta Law Reform Institute (ALRI) is considering how to improve the law of property division for common-law partners. It recently published [*Property Division: Common Law Couples and Adult Interdependent Partners, Report for Discussion 30*](#). The report reviews the issues with the existing law and makes preliminary recommendations for reform. ALRI is now seeking feedback on its preliminary recommendations, before it makes final recommendations to the government of Alberta.

The Problem

Many Albertans live in common-law relationships. According to [2016 census data](#), about 1 in 10 adults in Alberta lives in a common-law relationship. Put another way, in Alberta about 17 per cent of all couples who live together are not legally married. Some of these couples will break up. When they do, they may have a dispute about dividing property.

In Alberta, there is no legislation to guide separating common-law partners about dividing property. If common-law partners cannot agree about how to divide property, they have to rely on the law of unjust enrichment. Unjust enrichment is judge-made law, found in court decisions. It essentially requires a court to determine what each partner contributed to the relationship, in order to divide the property in a way that reflects each partner's contributions. There is no presumption that partners will divide property equally.

In contrast, married spouses are covered by the *Matrimonial Property Act*, [RSA 2000, c M-8](#). If married spouses do not have an agreement about property, the *Matrimonial Property Act* provides a formula for dividing property in the event of divorce or separation. There is a presumption that each spouse will receive an equal share of most property acquired during the marriage.

ALRI's research suggests the existing law contributes to lack of access to justice for separating common-law partners. It is difficult to find and interpret the law, especially for individuals who represent themselves. The applicable law is found only in court decisions. Past cases are not particularly helpful in predicting the outcome of a new case, as outcomes vary widely. As part of this project, my colleagues and I reviewed all reported Alberta trial decisions of unjust enrichment claims between former common-law partners issued since 2011. There are seventeen

such cases. We were unable to find any pattern in the share or amount of property plaintiffs received. Some plaintiffs were entirely unsuccessful, and received nothing. Successful plaintiffs sometimes received a share of all property acquired during the relationship, but sometimes received a share of only part of the property. The share was sometimes up to half, but was more often closer to 30 per cent. Unpredictable outcomes can be a barrier to settlement. It is difficult to decide whether a settlement is fair without comparing it to the likely outcome at trial. The alternative to settlement is litigation, which is both time-consuming and expensive. [A recent CBC News article](#) told the story of a woman who spent four years and \$124,000 in a dispute with her former common-law partner. Our research suggests she is not alone. In most of the reported cases we reviewed, the trial was several years after the partners had separated. Ten of the seventeen cases required five or more days of trial. Although the reported decisions do not tell us directly what parties spent on their cases, legal fees for a trial of five days or more are likely to be prohibitively expensive. There are also costs in terms of judges' time and court resources.

The Project

ALRI's Report for Discussion is the product of more than two years of work.

Our early background research showed there were large gaps in knowledge about common-law partners' expectations and arrangements about property. For example, there was no information available about how many common-law couples have cohabitation agreements. To fill some of the gaps, we commissioned public opinion research to help us learn more about Albertans' attitudes and expectations related to common-law relationships. We partnered with the Population Research Lab at the University of Alberta to place questions on the 2016 Alberta Survey. The Alberta Survey was a random-sample telephone survey of Alberta adults. There were 1208 respondents who answered our questions. Among other things, we learned from the survey that less than a quarter of respondents living in a common-law relationship had a written agreement about how they would divide property with their partner. The full results are available in a research paper written by Aleena Amjad Hafeez, [Albertan's Perceptions and Attitudes Regarding Common-Law Property Division Laws](#).

We also conducted some early consultation with a number of lawyers who practise family law. They gave us input on specific technical issues.

The Proposals

The survey results and input from lawyers helped ALRI develop preliminary recommendations for reforming the law. ALRI's Report for Discussion sets out the preliminary recommendations and explains the reasons for them. The key proposals are:

- People who live together should be able to make agreements about ownership and division of property.
- For those couples that do not make an agreement, there should be new property division legislation with default rules. The new property division legislation:
 - should apply to couples who are adult interdependent partners, as defined in the *Adult Interdependent Relationships Act*, [SA 2002, c A-4.5](#); and
 - should be based on the *Matrimonial Property Act*.

ALRI is now seeking feedback on these proposals, before making final recommendations. Any interested person can give feedback by completing a short survey. There are two surveys for this project. The general survey asks about ALRI's key proposals for changing the law. The technical survey asks about specific legal issues that would arise as a result of the key proposals, and is most likely to be of interest to lawyers who practise family law or others who work in family justice.

The general survey is at <http://bit.ly/2l3kv2D>

The technical survey is at <http://bit.ly/2grPLDt>

You can also send comments to ALRI at the address below:

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