

Property Division: Living Together Before Marriage

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Report Commented On: Alberta Law Reform Institute, [Property Division: Living Together before Marriage, Report for Discussion 31](#)

The Alberta Law Reform Institute (ALRI) is considering changes to property division rules for spouses who live together before marriage. It recently published [Property Division: Living Together before Marriage, Report for Discussion 31](#). Report 31 follows a separate [report for discussion](#) on property division for common law couples and adult interdependent partners. Report 31 covers the related but distinct issue of premarital cohabitation and property division. Before it makes final recommendations to the Alberta government, ALRI is seeking feedback on the proposals below.

What is the Problem?

It is now common for couples to live together before getting married. The *Matrimonial Property Act*, [RSA 2000, c M-8](#) presumes that property acquired during the marriage is divided equally between the spouses if they separate or divorce. However, the presumption of equal division does not apply to property acquired before the marriage. This includes property acquired during premarital cohabitation, that is, property acquired while the spouses lived together before getting married.

As a result, the original value of property acquired during premarital cohabitation is never divided. Only the increase in value of that property during the marriage, if any, may be distributed by the court in a just and equitable manner. A just and equitable division does not necessarily mean that the increase in value is divided equally.

Spouses who believe that they are entitled to a share of property acquired before marriage can ask the court to take into account the full length of cohabitation in distributing the increase in value, or bring an unjust enrichment claim, or both. Without the benefit of a presumption of equal division, however, the onus to present evidence that they should receive a share of the increase in value or some monetary compensation is on the claimant.

The question is whether the *Matrimonial Property Act* should be amended to extend the presumption of equal division to property acquired during premarital cohabitation. When answering that question, it is important to keep in mind that the presumption of equal division can be rebutted when it would not be just and equitable to divide the property equally. In addition, couples always have the option to set out different property division rules by agreement, including rules about ownership and division of property acquired before marriage.

What was Done?

ALRI has been monitoring property division issues for many years. In 2010, we commissioned a [research paper](#) by Professor Jonnette Watson Hamilton and Annie Voss-Altman to identify property division issues. More recently, ALRI partnered with the Population Research Lab at the University of Alberta to place questions on the 2016 Alberta Survey. The results are discussed in Aleena Amjad Hafeez, [Albertan's Perceptions and Attitudes Regarding Common-Law Property Division Laws](#). We also held roundtables with a number of lawyers who practise family law. Earlier this fall, ALRI published [Property Division: Common Law Couples and Adult Interdependent Partners, Report for Discussion 30](#). Newly released Report 31 addresses the narrower issue of whether the presumption of equal division should extend to property acquired by spouses who live together before marriage.

What are the Proposals?

Report 31 sets out the preliminary recommendations and explains the reasons for them. The key proposals are:

- If a couple has a written agreement about property, the agreement should continue if they get married.
- The presumption of equal division should apply to property acquired during premarital cohabitation.
- Only periods during which a couple lives together in a relationship of interdependence should be taken into account for property division purposes.
- Property acquired by the spouses before the relationship of interdependence began should remain exempt from the presumption of equal division.

Whenever possible, couples should be encouraged to make their own agreements about ownership and division of property at the beginning of the cohabitation. Data has shown, however, that many couples do not make agreements. In many cases, the default rules of the *Matrimonial Property Act* will dictate what and how property is distributed between the spouses.

The *Matrimonial Property Act* recognises marriage as an economic partnership. Central to this idea is the presumption that the spouses intend to share the fruits of their joint efforts on an equal basis, unless proven otherwise. Living together is often the point when couples begin to make contributions to the economic partnership. When couples live together before marriage, it is fair to assume that they also intend to share the gains accumulated during that period.

However, only periods during which couples live together in a committed relationship should be taken into account for property division purposes. In Alberta, this type of committed relationship is known as a relationship of interdependence. To be considered in a relationship of interdependence, two people need to be much more than roommates or in a casual relationship.

That does not mean that the presumption of equal division should apply to all property owned by the spouses. Property with no connection to the spouses' economic partnership should be excluded from division.

The main objective of these recommendations is to reduce the need to resort to more complex, unpredictable and costly common law remedies by extending the presumption of equal division to the whole economic partnership.

ALRI is now seeking feedback on these proposals, before making final recommendations. Any interested person can give feedback by completing a short survey.

The survey is at <http://bit.ly/2mtG79b>

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

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